Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/02078/2019**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 27 August 2019	**On 10 September 2019**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

TUNG SON NGUYEN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Bassiri-Dezfouli instructed by A2 Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Vietnam. He appealed to a Judge of the First-tier Tribunal against the Secretary of State's decision of 13 December 2018 refusing his claim for asylum and humanitarian protection.

2. The appellant claimed to have been a member of a Vietnamese national karate team. He had gone to France to take part in a sporting event in November 2012. He said that while there he was told by the team manager that when he returned to Vietnam he would have to work as a bodyguard for an unnamed high-ranking figure within the regime. He decided to run away and met an agent to whom he gave his passport. The judge noted a discrepancy in his evidence in that in his screening interview he had said he gave the passport to the agent when he first arrived in France as opposed to later on after being given the information by the team manager.

He entered the United Kingdom illegally in January 2013 and the judge noted a further discrepancy in that he said that he was kept against his will in a house and forced to cultivate plants without pay, whereas his solicitors in a letter of 8 September 2014 said he was cleaning the house.

3. He claimed asylum on 22 September 2014, claiming to fear the authorities in Vietnam because he had absconded from the karate team and refused to work as a bodyguard for the regime. In addition he feared reprisals from traffickers from whom he said he had escaped in the United Kingdom, although that claim was, it appears, abandoned at the hearing as he no longer wished to be considered as a victim of trafficking.

4. The judge considered the evidence and accepted that the appellant had practised karate in the past and might even have represented his country at some level and that in November 2012 he had gone to France along with other members of a karate team to attend a sporting event.

5. The judge however did not accept that the appellant was asked to be a bodyguard nor that his disinclination to take up the job led him to flee to the United Kingdom. The judge noted that the appellant was only 19 years old at the time, and although he might be good at karate he had no experience of close protection work or weapons training and in the circumstances considered it not to be credible that agents of the Vietnamese state would seek to recruit him in this way in a foreign country rather than waiting to approach him after his return.

6. The judge considered that the reality of the situation was that when in France the appellant had decided to take the opportunity to abscond from the team and journey to the UK in pursuit of a better life. He did not consider the photographs of the appellant wearing karate outfits that showed he was a prominent member of a high profile national team. He noted also that the appellant had never claimed to hold any prominent position within public life in Vietnam and had not involved himself in political activity in the United Kingdom.

7. The judge went on to conclude that even if the appellant had attended the SEA Games in Malaysia in 2014 (the judge's doubts appear to result from his noting at paragraph 7 that the objective evidence showed the SEA Games were only held in Malaysia in 2001 and 2017) he did not accept that the appellant represented his country at such a high level that his failure to return would embarrass the Vietnamese Government and therefore bring him to the adverse attention of the authorities simply for absconding from his karate team. The judge did not accept that it had been established that the Vietnamese authorities would thereby view him as a political enemy or impute to him any political opinion deserving of persecution. He went on to say that even if the appellant were asked and declined the offer to work as a bodyguard, nonetheless it had been established (I think in the end it was common ground that the word "not" had been omitted between "has" and "been" in line 2 of paragraph 54) that the Vietnamese authorities would even in those circumstances view him as a political enemy or impute to him any political opinion deserving of persecution.

8. The judge noted a discrepancy in the appellant's evidence in that in cross-examination the appellant said he had spoken to members of his karate team in December 2018 and they had told him that the Vietnamese authorities had gone to his home looking for him, but this was not stated in the witness statement, even though written after December 2018. The judge considered that this was a recent embellishment and that it further undermined the appellant's credibility.

9. The judge then went on to doubt the credibility of the trafficking claim and concluded at paragraph 60 of his decision that in light of the above inconsistencies he also concluded that the appellant had failed to establish to the lower standard applicable in asylum appeals that he was trafficked into the UK and it was therefore damaging to his credibility that he did not claim asylum sooner after arriving and did not claim asylum in France at all. The appeal was dismissed on all grounds.

10. Permission to appeal was granted by a Judge of the First-tier Tribunal on the basis that it was arguable that the judge had attributed undue importance to factors extraneous to the core of the appellant's account, noting the abandonment by the appellant of the trafficking issue and considering it to be arguable that the judge had attributed too much importance to the question of the level of the representation of the appellant in relation to his country.

11. In her submissions Ms Bassiri-Dezfouli relied on the grounds and what was said in the grant of permission.

12. In the decision letter the respondent had not accepted that the appellant had taken part in the competition as claimed and, she argued, there was no mention of the alternative of what would happen to the appellant if he had taken part and what he would face from the authorities in Vietnam.

13. The judge had erred, it was argued, in that it had not been agents of the Vietnamese state who had sought to recruit the appellant in France but the team manager who had put this to him as good news. It was also to be noted that the appellant had said he had previously worked as a security officer and that he was going to be trained rather than acting as a bodyguard immediately and that would be a good option with his karate background. He had asked if he would be able to refuse the job and was told that he could not and therefore he had decided to abscond.

14. He was one of the fifteen chosen to represent Vietnam in France so the judge's conclusion at paragraph 52 that he was not a prominent member of a high profile national team was not borne out by the evidence. He was known and identified by the authorities. He never claimed to be politically involved. There would be embarrassment to Vietnam, and his level of achievement was irrelevant but it was the fact that he had taken part and the authorities would be aware that he had absconded and this would cause embarrassment and he would be identified on return to Vietnam. His representation of Vietnam at three international games would have been known to the authorities. The judge had referred to no objective

evidence concerning risk on return. Nor had the Secretary of State in her conclusions. In the absence of this the Tribunal should accept that any sportsman who did not return to a country such as Vietnam would be identified and persecuted on return on the basis of imputed political opinion.

15. Ms Bassiri-Dezfouli accepted that the word "not" was probably missing from paragraph 54, as noted above, but it had to be read with the other paragraphs in the absence of objective evidence to support the judge's conclusions. The judge was also confused in referring to trafficking since that claim had been abandoned. It was accepted that the other points on credibility had been considered, for example at paragraph 57 in the contrast in the evidence as to when he gave the agent the passport, he might have given the passport to the agent who brought the team to France and he had not been asked to clarify those issues and it was necessary when the questions were asked to be aware of omissions and misunderstandings. A witness could not be expected to be precise in answering every question. He had not been asked to clarify the inconsistencies and the decision was perverse and unlawful.

16. In his submissions Mr Melvin relied on the Rule 24 response that had been put in. He argued that the claim was one of simply rearguing what had been argued before the judge. The first point argued was not in the grounds and should be rejected and the main contention seemed to relate to a lack of objective evidence put in by the Secretary of State, but it was for the appellant to provide evidence of risk to a person in the appellant's position if his claim were true and he had absconded overseas and that no such evidence had been put in. In its absence the judge had been entitled to find as he did and it was concluded there was no imputed political opinion. Up to the time of the hearing the trafficking point had been a live issue and the judge was entitled to consider that evidence, even if it was withdrawn at the final hour. There was no unlawfulness in the decision.

17. In her response Ms Bassiri-Dezfouli emphasised that the Secretary of State had not taken issue with the question of risk if the appellant were a sportsman as he claimed and in the absence of taking issue with that the appellant did not have to prove he would be persecuted if sent back to Vietnam. He had shown he was a sportsman. There was no reference to what objective evidence had not been before the judge. The appellant would be known as an absconder on return and as an embarrassment to his country. It was a matter of common sense and judicial notice that such a country would persecute him.
18. I reserved my decision.

19. The main difficulty in the appellant's claim is the absence of background evidence to support his contention that even if his claim were taken at its highest, he would be at risk on return to Vietnam. It is not a matter in respect of which judicial notice can be employed or some common sense approach adopted in order to conclude that Vietnam is a country which, without evidence to establish this, would routinely persecute a person who, having been on a visit abroad to represent his country at a sporting competition, decided to abscond. It is possible, of course, that the Vietnamese authorities would take such a view. But the onus is on the appellant to

make out his claim and that was signally not done in this case. The onus was not on the Secretary of State, having decided not to accept his claim to be an international athlete, to find background evidence that would show that he would not be at risk on return. That would be entirely to reverse the correct burden of proof in a case such as this. Even then if the case was taken at its highest, which in effect it was done at paragraph 54 by the judge, it was fully open to him to conclude as he did that it had not been established that the Vietnamese authorities would even if he had been a representative of his country in karate and even if he had been asked and declined the offer of work to work as a bodyguard, view him as a political enemy or impute to him any political opinion deserving of persecution. There were in any event the discrepancies noted at paragraphs 55 and 57 of the judge's decision which undermined his credibility. The judge was careful, though he did address the trafficking issue which had been abandoned at the hearing, to make it clear at paragraph 60 that he also concluded the trafficking claim could not succeed, but it is clear from his judgment that he was not in any sense incorporating the adverse findings on the trafficking point into the adverse credibility findings overall. But even if he had done, there would be no error of law in this case since the essential point, that of risk on return on the basis of the claim taken at its highest had not been made out. Accordingly, the judge's decision dismissing this appeal is maintained.

20. No anonymity direction is made.

Signed Date 03 September 2019

Upper Tribunal Judge Allen