



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: PA/05069/2018

THE IMMIGRATION ACTS

**Heard at Glasgow
On 15 March 2019**

**Decision & Reasons
Promulgated
On 29 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DEANS

Between

**HV
(Anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms K Dingwall, Latta & Co, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision by Judge of the First-tier Tribunal MacKenzie dismissing an appeal on protection and human rights grounds.
2. The appellant is a national of Vietnam and a Roman Catholic. He claims he is sought by the police in Vietnam following his involvement in two public protests. The Judge of the First-tier Tribunal did not find credible the appellant's evidence of his reasons for leaving Vietnam and rejected the core of his evidence

to the effect that he is wanted by the authorities in Vietnam by reason of his political opinion.

3. Permission to appeal was granted by the Upper Tribunal on the grounds that the Judge of the First-tier Tribunal arguably erred by misapprehending certain aspects of the evidence and thereby finding that there were inconsistencies in the evidence when there were none.
4. In particular, it is contended that at paragraph 37 of the decision the judge stated that, according to the appellant's evidence, a protest he attended on 14th February 2017 was also attended by a priest called Father Huong, who was arrested and later released. The judge noted that a letter dated 10th May 2018 from Father Huong did not refer to attendance at any protests or any other political activities. According to the application for permission to appeal, the appellant's evidence at paragraph 17 of his witness statement was not that Father Huong attended the protest in question but that a different priest, called Father Thuc, attended. Father Thuc also provided a letter of support. It is contended that the Judge of the First-tier Tribunal misrecorded the evidence on this matter and drew an adverse inference on credibility as a result.
5. The second alleged misapprehension of the evidence by the judge arose from paragraph 41 of the decision, where the judge recorded that according to his oral evidence the appellant injured two police officers at the protest on 14th February 2017. The judge observes that in his witness statement the appellant stated that at a protest in October 2016 he pushed a police officer, who fell over, but made no mention of involvement in any injury to police officers at the February 2017 protest. Again the application for permission to appeal contends that the judge misapprehended the evidence. A quotation is given from paragraph 17 of the witness statement, where the appellant recorded that at the February 2017 protest two police officers in plain clothes took the appellant's phone, on which he was recording the protest, and tried to arrest him but the appellant fought back. He was helped by other protesters and managed to escape. Again it is alleged that the judge drew an adverse inference on credibility from misapprehending the evidence.
6. At the hearing I was addressed by Ms Dingwall on behalf of the appellant and by Mr Govan for the respondent. Mr Govan submitted that at paragraph 37 of her decision the judge had made a slip in mixing up the names of the two priests. This was not material to the outcome in what was a very detailed decision. Mr Govan further submitted that in his witness statement the appellant made no mention of the two officers being injured at the protest in February 2017. This ground of the application for

permission to appeal was not made out. The judge was being criticised for not inferring what happened.

Discussion

7. So far as confusing the names of the priests is concerned, I consider the judge's mistake amounts to more than an accidental slip and is material to the findings made. At paragraph 37 of the decision the judge erroneously records the evidence of the appellant as stating that Father Huong led the contingent from the appellant's church to the February 2017 protest and was arrested and later released. The judge observes that Father Huong provided no explanation about this in his letter of 10th May 2018 and comments that no explanation has been provided for this omission. Then at paragraph 38 the judge refers to the letter of 28th April 2018 from Father Thuc. The judge observes that Father Thuc's letter states that the appellant took part in the activities alleged and was "threatened and disturbed" by the authorities but according to the judge the details given were vague. At paragraph 40 the judge states that having considered the letters in the round with the other evidence "and not having found the appellant to be an honest witness in respect of his claimed political activities" the letters added no weight to the appellant's claim.
8. It is unfortunate that the judge reached this finding about the weight to be given to these letters while under the misapprehension that it was Father Huong who had attended the protest in February 2017. The judge's comment that there was no explanation of why Father Huong's letter of 10th May 2018 did not refer to attendance at protests or involvement in political activities is an adverse inference drawn from a document which was never intended to speak to the appellant's political activities. As was pointed out at the hearing, Father Huang's letter was mainly a record of the appellant's involvement in the church, starting from his baptism. It was Father Thuc's letter which addressed the appellant's political activities, but having mistakenly drawn an adverse inference from Father Huong's letter, the judge then went on to disregard the potential significance of Father Thuc's letter. In these circumstances I do not agree with Mr Govan's submission that confusing the two priests was not material.
9. At paragraph 41 of the decision the judge referred to the appellant's oral evidence that at the February 2017 protest he had injured two police officers. The judge observed that the appellant's witness statement did not mention any injuries to police officers at the protest in February 2017 but stated that the appellant came to the adverse attention of the police because he was trying to record events on his mobile phone. At paragraph 42 the judge observed

that a summons produced by the appellant was for disturbing the police and acting against officers in their duty and not for assaulting police officers.

10. The appellant's evidence in his witness statement was that at the protest in February 2017 the two plain clothes officers came over to take his phone away. They started beating him but he fought back. Regrettably the judge has disregarded this account in the witness statement of a physical altercation with the two officers. Mr Govan submitted that the judge was not at fault for not drawing an inference that the officers were injured when there was no mention of this in the witness statement. While there is some force in this submission, it is more significant that the judge failed to refer to the appellant's evidence in his witness statement of fighting with the two officers.
11. Furthermore, the judge considered that the appellant's evidence on this point went to the core of the claim. Where the judge has stated this, it is difficult to regard the judges' failure to take fully into account the content of the witness statement as anything other than material.
12. Mr Govan pointed out that there were a number of other reasons given by the judge for making adverse credibility findings. I note, for example, that one of these appeared to be on the issue of whether the police succeeded in taking away the appellant's mobile phone. This is not, however, a matter which was raised before me. The difficulty though in scrutinising a decision such as this is in knowing whether the judge would have reached the same adverse finding on credibility if she had apprehended all the evidence correctly. In the context of the judge's findings in the appeal the mistakes made by the judge are sufficiently significant and material to render her overall findings unsound.
13. The parties were not in agreement about how the appeal should proceed. Ms Dingwall suggested the decision might be re-made on the basis of submissions but Mr Govan submitted that if the errors were material then as they concerned credibility remittal would be more appropriate. I agree with Mr Govan that as the errors relate to credibility remittal is the appropriate course. The extent of findings of fact to be made is such that remittal is necessary in terms of paragraph 7.2(b) of the Practice Statement. The appeal will be remitted to the First -tier Tribunal for hearing before a differently constituted tribunal with no findings preserved.

Conclusions

14. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
15. The decision is set aside.
16. The appeal is remitted to the First-tier Tribunal to be reheard before a differently constituted tribunal with no findings preserved.

Anonymity

The First-tier Tribunal did not make a direction for anonymity. In order to preserve the positions of the parties until the appeal is finally decided I make a direction in the following terms. Unless or until a court or tribunal directs otherwise no report of these proceedings shall directly or indirectly identify the appellant or any member of his family. This direction applies to the appellant and the respondent. Failure to comply with the direction may lead to proceedings for contempt of court.

M E Deans
Deputy Upper Tribunal Judge

26th March 2019