



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/07487/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1 April 2019**

**Decision & Reasons  
Promulgated  
On 30 April 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT**

**Between**

**MR LONG VAN NGUYEN  
(Anonymity order not made)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Khan of Counsel

For the Respondent: Mr T Melvin, Home Office Presenting Officer

**DECISION AND REASONS**

**The Appellant**

1. The Appellant is a citizen of Vietnam born on 10 October 2000. He is now 18 years of age. He appeals against a decision of Judge of the First-tier Tribunal Davidson sitting at Hatton Cross on 10 January 2019 in which the Judge dismissed the Appellant's appeal against a decision of the Respondent dated 1 June 2018. That decision was to refuse the Appellant's application for international protection. The Appellant arrived in the United

Kingdom clandestinely on 30 March 2015 when he was then aged 14. He claimed asylum on 1 December 2017 at the age of 17. Between arriving in the United Kingdom and claiming asylum he stayed with various individuals and groups.

### **The Appellant's Case**

2. The basis of the Appellant's claim was due to his political opinion. He was detained on two occasions in Vietnam after attending demonstrations, the first was in support of two Roman Catholic priests who had been arrested. The Appellant was held for one month and then released. His father was detained at the same time as the Appellant but has not yet been released. The second demonstration was on 19 May 2014 in relation to the disruption of local fishing by the presence of a Chinese oil and gas platform. The Appellant was detained for two months on that occasion. The Appellant was ill-treated on both occasions being tortured into signing confessions and being placed on reporting requirements. His mother was summoned by the police and feared she would be arrested so both the Appellant and his mother fled Vietnam with the assistance of an agent. The Appellant states he is now lost touch with his mother.
3. After arriving in the United Kingdom, he was placed in foster care by social services but ran away the next day because he was worried about being returned to Vietnam. He stayed with several Vietnamese individuals over the following years until a Vietnamese friend took him to a solicitor so that the Appellant could claim asylum. Since he has been in the United Kingdom he has attended three demonstrations outside the Vietnamese embassy in London protesting against the Vietnamese government. The Appellant produced photographs of himself which had been taken by a friend. He also relied on a medicolegal report from Professor Graham which concluded that the Appellant's scars were consistent with the ill-treatment complained of. There was also background evidence of the adverse attention paid by the authorities to those who openly criticised the Vietnamese state.

### **The Decision at First Instance**

4. At [25] to [31] the Judge set out her findings and decision. She accepted the Appellant's explanation for the delay in claiming asylum bearing in mind the Appellant's age and his fear of return. However, she found the Appellant's accounts of the two demonstrations in Vietnam, in which he claimed to have been detained, lacked credibility. In relation to the demonstration in September 2013 in support of the detained catholic priests the Appellant appeared to have conflated two quite separate demonstrations. The first was on 3 September 2013 and was a large and peaceful demonstration, the second was on 4 September which had turned violent. By contrast the Appellant had stated that he attended a large and peaceful demonstration which turned violent. Even allowing for the Appellant's age the discrepancy was sufficient to damage the Appellant's credibility.

5. The Appellant also appeared to have changed the basis of his case. Having initially claimed that the main ground for his fear of return was his religion, at the hearing counsel clarified that it was not the Appellant's religion which put him at risk but his opposition activities. The Appellant's low-level involvement might attract attention, but this would not amount to persecution. There was no evidence that he had come to the attention of the authorities in relation to any involvement in protests while in the United Kingdom. He had no significant profile and there was no evidence that his activities in the United Kingdom had been recorded by anyone other than his friends. That in turn was only to assist the Appellant with his appeal. There was no evidence that the Appellant's attendance at the United Kingdom demonstrations were in the public domain.
6. Roman Catholicism was recognised in Vietnam and there was no objective evidence that any difficulties encountered by Roman Catholics would amount to persecution. The medical evidence had concluded that the Appellant's scarring could be as a result of ill-treatment, but this was insufficient for the Appellant to show that he was subject to ill-treatment even on the lower standard of proof bearing in mind the credibility findings.

### **The Onward Appeal**

7. The Appellant appealed against this decision in grounds settled by counsel who had appeared at first instance. The grounds argued that even if the conflation of the demonstrations was an inconsistency giving one reason for disbelieving the entirety of an appeal was an inadequate assessment of the evidence from the outset. The rest of the Judge's findings were premised on this sole discrepancy. The Appellant had explained the alleged discrepancy in the protests namely that the Vietnamese government would not want such details being made public. Failure to consider this explanation was a material error of law. Substantial details had been provided by the Appellant as to his attendance at the demonstrations, but the Judge had not engaged with any of this evidence. The Judge had not considered at all the protest that the Appellant had attended on 19 May 2014.
8. The Appellant's sur place activities further enhanced his credibility. It was not the Appellant's case that those activities would have come to the attention of the Vietnamese authorities. The Judge's finding at [29] that the Appellant's low-level involvement might attract attention but this would not amount to persecution was confused. It was not clear what that finding related to.
9. The second ground of onward appeal argued that the Judge had failed to make material findings in relation to the Appellant's evidence and otherwise given inadequate reasons for her conclusions. The Judge had not considered whether it was accepted that the Vietnamese authorities had sent a summons to the Appellant's mother and had failed to consider

whether or not the Appellant attended the anti-state demonstration in May 2014.

10. Ground 3 submitted that the report of Professor Graham had found the Appellant had a prognosis of long-term post-traumatic stress disorder, but the rejection of the report was based on the one credibility finding. Citing the case of **SA (Somalia) [2006] EWCA Civ 1302**, the grounds argued that medical evidence corroborative of an account of torture should be considered as part of the whole package of evidence going to the question of credibility and not simply treated as an add-on or separate exercise for subsequent assessment only after a decision on credibility had been reached.
11. There then appeared a lengthy passage in the grounds relating to the jurisprudence on self-infliction by proxy which the grounds added, at paragraph 32, had not been explicitly raised by the Respondent in any event. It was not entirely clear why the grounds had raised the issue. The grounds concluded that there was insufficient analysis of the medicolegal report and no weight given to the Appellant's diagnosis of long-term PTSD anxiety and depression. The Judge had failed to recognise that serious mental health concerns could have an effect on the evidence given by an Appellant.
12. The application for permission to appeal came on the papers before Designated Judge of the First-tier Tribunal McCarthy on 27 February 2019. In granting permission to appeal he found it arguable that the Judge had not given adequate reasons for rejecting the Appellant's account of his own and his father's detentions in Vietnam. There was no assessment of the evidence and no clear findings. Instead Judge Davidson appeared to reject the account merely because she found the background country information showed Roman Catholics were not persecuted in Vietnam. The Appellant's case was always that he was at risk because of an additional political factor in that the detentions were the core of the Appellant's claim. Permission was granted on all the grounds, the Designated Judge adding "because although they are long winded they all relate to this core matter and are arguable".
13. The Respondent replied to the grant of permission by letter dated 29 March 2019. It was submitted that the Judge had identified the core claim being the Appellant's opposition to the government and its policies and had considered the Appellant's claim to have been detained twice and ill-treated. The Judge had found against the Appellant's credibility when considering the claim against the known objective evidence. It was clear from the Appellant's own evidence that he and his father had attended a demonstration on 3 September. 1000 people attended, and it dispersed peacefully whilst the violent demonstration took place a day later.
14. The Respondent accepted that the Judge's decision was relatively short, but all the core elements been considered and rejected and as such adequate reasons had been given. There was little information to consider

as there were no documents from Vietnam in support of the Appellant's claim. There was no evidence in relation to the father's detention or any efforts made to confirm that he was still in detention five years after the claimed arrest. There was no medical evidence from the hospital where the Appellant claimed to have been treated for his broken limb. There were no arrest warrants or any evidence that the Vietnamese authorities were looking for the Appellant. Attendance at demonstrations in the United Kingdom did not show the Appellant joining any anti-Vietnamese government organisations in the United Kingdom. There were no supporting statements from other demonstrators in the United Kingdom or any statement from the youth organisation that the Appellant claimed to belong to in Vietnam. The findings of the Judge were sustainable. The Respondent opposed the appeal.

### **The Hearing Before Me**

15. In consequence of the grant of permission to appeal the matter came before me to determine in the first place whether there was a material error of law in the Judge's determination such that it fell to be set aside and directions given for the rehearing of the appeal. If there was not, then the decision at first instance would stand.
16. For the Appellant counsel, who had not represented the Appellant below, argued that the Judge should have looked at the case in the context of the Appellant's explanation for the discrepancy over the two dates for the September 2013 demonstration. The Judge was required to consider the 2<sup>nd</sup> demonstration and give reasons why it was not credible.
17. For the Respondent, reliance was placed on the rule 24 response. The Respondent had taken issue in the refusal letter with a major discrepancy in the Appellant's claim relating to the September 2013 demonstration. There was no other evidence to support the claim beyond the Appellant's own evidence. There was no evidence that the Appellant's sur place activities were in the public domain. He claimed to have been heavily involved with the Roman Catholic Church but there had been no evidence from the church in support of the Appellant's claim. The scarring on the Appellant was 5 years old and it was difficult for the expert to say that it related to the causation claimed by the Appellant. It was not important that the determination be set out in any particular order as long as the Judge had looked at all the evidence in the round.
18. In conclusion it was argued that the Judge had not rejected the May 2014 incident because of a lack of evidence but only based on the finding in relation to the September 2013 demonstration. It affected the way that the Judge had looked at all of the evidence, having first made a finding and then rejected the rest of the claim. The Appellant had been quite clear about the disappearance of his father and that he had no knowledge of his father after his arrest. He had tried to speak to the Red Cross to trace his parents and to expect the Appellant to provide more was unreasonable.

The determination was not cohesive or coherent it was not reasoned or in an acceptable form.

## **Findings**

19. This is essentially a reasons-based challenge to adverse credibility findings. The Judge did not find the Appellant to be a credible witness and rejected his account of taking part in opposition activities or of being ill-treated by the authorities. Further the Judge found that the Appellant's sur place activities in the United Kingdom were for the purposes of bolstering the claim but in any event were not in the public domain. The onward grounds of appeal themselves accept at paragraph 17 that the Appellant's activities would not have come to the attention of the Vietnamese authorities. It was thus a matter for the Judge to decide what the Appellant's motivation was in engaging in any such activities.
20. Even if the activities had been conducted in bad faith the Appellant could still rely upon them if they could come to the attention of the authorities with adverse consequences. In this case it was common ground that they had not come to the attention of the authorities and the Appellant's bad faith in producing such evidence was a factor which the Judge was entitled to consider in arriving at an overall conclusion on the issue of credibility.
21. As the Respondent acknowledges in the rule 24 response the determination is a short one but it is not necessary for the Judge to set out each and every piece of evidence presented at the hearing. The core of the claim was the Appellant's claim to have attended a demonstration in September 2013 which turned violent and as a result of which he was arrested, detained and ill-treated. The problem for the Appellant was that he had muddled his account conflating two quite separate incidents into one. This was a major discrepancy since it was the foundation of the Appellant's claim.
22. The problem for the grounds in arguing at paragraph 14 that the Appellant had given "substantial detail ... as to the attendance of the demonstrations" is that if the Appellant was able to give this substantial detail the muddle he got into in conflating two quite separate incidents was inexplicable. In those circumstances it was open to the Judge to conclude that the Appellant had embroidered his account by claiming to have taken part in a large demonstration that had turned violent resulting in arrests. If the Appellant had attended the large peaceful demonstration on 3 September 2013 he would not have been arrested because there were no arrests and the demonstration itself was peaceful as the Judge found. On the other hand, if the Appellant had attended the demonstration on 4<sup>th</sup> September which had turned violent the Appellant would have known it was not a large demonstration and would have been able to say so particularly if it was being argued the Appellant had a detailed knowledge of the events in question.

23. It was also significant that the Appellant appeared to have changed the focus of his claim as time had gone by from initially stating that he was claiming asylum because of his Roman Catholic religion to saying it was due to his political activities. On this issue I respectfully disagree with the learned Designated Judge who granted permission to appeal who stated that it had always been the Appellant's case that he was at risk because of political activities. The interview record shows that the Appellant had put forward another ground in interview which was then abandoned at the hearing, as the Judge noted. In the Appellant's interview at question 33 when asked whether there were other reasons why he feared the Vietnamese government in addition to his family attending a demonstration (not 2 demonstrations) the Appellant stated that the other reason was that he did not have freedom of religion, adding: "Whenever we have a religious Festival then we fear that the government will repress". This claim of religious persecution contradicted the background information as the Judge pointed out in her determination and it is not surprising therefore that it was abandoned by the Appellant through counsel at the hearing at first instance. Nevertheless, the Judge was entitled to take such a change in the evidence into account when arriving at an evaluation of the Appellant's credibility.
24. The third ground focuses on the Judge's treatment of the medical evidence arguing that the Judge having arrived at a conclusion about the Appellant's lack of credibility because of the inconsistency over the September 2013 demonstration dealt with the medical evidence as something of an afterthought. The Respondent submits that it is not particularly important in what order the Judge sets out her conclusions as long as all relevant matters were covered.
25. The medical evidence stated that the Appellant's injuries were consistent with his account. That meant that they could be consistent with other explanations. It was not for the Judge to speculate on whether the injuries, which would have been 5 or 6 years old by the time of the hearing, could at some point have been self-inflicted by proxy. It was for the Appellant to show that the injuries were caused in the way he claimed. That involved an assessment of the Appellant's credibility which the Judge was in a better position to assess than the doctor because the Judge had had the benefit of seeing the Appellant give evidence in cross examination. While it is correct that the events the Appellant was relating occurred were said to have occurred when he was a young teenager, by the time he came to give his evidence he was an adult.
26. Given the fact that the Appellant had travelled from Vietnam to the United Kingdom arriving here on his own at a young age and then lived "under the radar", it is perhaps unsurprising that the doctor might conclude that the Appellant had mild chronic anxiety and stress with borderline abnormal elevated levels of anxiety and depression. Professor Graham's diagnosis was noted by the Judge at [6b] and she had it in mind in arriving at her conclusions, but the issue was whether the Appellant's explanation of what had happened to him was credible. If it was not there could be

other reasons why the Appellant was under stress, such as the fact that he was living in a foreign country. It was not for the Judge of the First-tier Tribunal to speculate on such matters. It was for the Appellant to be able to show to the lower standard that his symptoms were caused by the treatment he had received in the past. Since the Appellant was not a credible witness, he could not show that.

27. All that the Appellant could show was what the Judge referred to at [29] as “a low level of involvement which might attract attention but would not amount to persecution”. The objective background material, noted by the Judge in that paragraph, did not show that Roman Catholics were persecuted per se. Such adverse attention as the Appellant might receive upon return would not amount to persecution. The Respondent pointed to the lack of supporting evidence produced by the Appellant. There is no requirement that such evidence should be produced but the lack of it meant more attention was paid to the Appellant’s own testimony. That testimony was deficient because the Appellant had been inconsistent about the core incident in his claim. Ultimately the assessment of the evidence was a matter for the Judge and the grounds of onward appeal and submissions made to me amount to no more than a disagreement with the Judge’s decision. They do not disclose any material error of law on the Judge’s part and I dismiss the Appellant’s onward appeal.

**Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant’s appeal

Appellant’s appeal dismissed

I make no anonymity order as there is no public policy reason for so doing.

Signed this 25 April 2019

.....  
Judge Woodcraft  
Deputy Upper Tribunal Judge

**TO THE RESPONDENT**  
**FEE AWARD**

No fee was payable and I have dismissed the appeal and therefore there can be no fee award.

Signed this 25 April 2019



.....  
Judge Woodcraft  
Deputy Upper Tribunal Judge