Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12978/2018

THE IMMIGRATION ACTS

Heard at Glasgow Upper Tribunal	**Decision and Reasons Promulgated**
On 30 May 2019	**On 11 June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

LANH [D]
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Devlin, Counsel instructed by Chung Solicitors
For the Respondent: Mr A Govan, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Vietnam whose appeal was dismissed by First-Tier Tribunal Judge Handley in a decision promulgated on 12 February 2019. Grounds of application were lodged and permission to appeal granted by First-Tier Tribunal Judge Smith in a decision dated 14 March 2019. Thus, the matter came before me on the above date.

2. Mr Devlin, Counsel for the appellant, relied on his grounds. The first ground was that the Judge erred in law in concluding that the appellant

had not properly addressed concern at the absence of evidence to support the allegation that a demonstration had taken place. In fact, there was evidence from several sources before the Tribunal, all as set out in the grounds.

3. Secondly it was said that the Judge erred in law at paragraph 37 of his decision because his conclusion that the appellant had made no mention at his screening interview of being assaulted cast a significant doubt on his credibility. It would be rational to hold this against him only if he had been silent about it in his full asylum interview but he was not. A person at screening interview was bound to simply outline the nature of their fear and it did not preclude them from adding to these later at the full interview. Furthermore, the Judge erred in law because his conclusion that no or little weight should be given to the two documents described as "Summons Request" was open to him to conclude the authorities were no longer interested in him was irrational. There was no evidence before the Judge to justify this conclusion. I was asked to set the decision aside and remit it to the First-tier Tribunal for a fresh hearing.

4. For the Home Office Mr Govan agreed there was a concern about the correctness of the Judge finding "significant doubts" on the reliability of his evidence as set out in paragraph 37 but the remaining findings were satisfactory. I was asked to uphold the decision.

5. I reserved my decision.

Conclusions

6. The Judge was critical of what the appellant said in his screening interview, noting that the demonstrations and the actions of the police and his claimed fear of the authorities were at the core of the appellant's account and the appellant should have made mention of this at the screening interview. The Judge does not set out what the appellant said at the screening interview but presumably the Judge is referring to paragraph 4.1 where he was asked to briefly explain all the reasons why he cannot return to his home country. The words "briefly" and "all" are in bold letters and are underlined. Accordingly, the appellant is being told to be brief in his answers and, given that restriction, it seems to me a Judge should be slow to conclude that because something is not mentioned this casts significant doubts on the reliability of his evidence. A screening interview is not done to establish in detail the reasons a person gives to support their claim for asylum.

7. In any event what is recorded is that the appellant fears the government; given that he is supposed to answer questions briefly it seems to me unfair to conclude that his account is not reliable. It seems to me that, on any view, the Judge went too far in concluding that there were "significant" doubts on the reliability of his evidence because of what he did not say in his screening interview. Unfortunately, this finding was a major plank of the Judge's decision in concluding that the appellant was

not credible and this finding, on its own, points in the direction that the decision may not be safe.

8. In terms of the first ground of appeal it is not disputed that there was objective evidence from a number of sources that a demonstration had occurred and arrests had been made. The Judge comments on this in paragraph 36 of his decision when he says that the respondent noted the appellant had provided no evidence to support his claim that the event had taken place. The Judge says that the appellant was aware of these concerns but has not "properly addressed them". Given that there was objective evidence from a number of sources the appellant makes out his ground of appeal that the Judge erred in law in not taking this relevant evidence into account.

9. These findings are sufficient for me to conclude that the decision of the Judge is not safe. The appellant has established errors in law as set out above. As stated above Mr Devlin asked me to set aside the decision and order a de novo hearing which seems to me to be the appropriate outcome in this appeal.

10. The decision of the First-Tier Tribunal is therefore set aside in its entirety. No findings of the First-Tier Tribunal are to stand. Under Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 the nature and extent of the judicial fact finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-Tier Tribunal.

Decision

11. The making of the decision of the First-Tier Tribunal did involve the making of an error on a point of law.

12. I set aside the decision.

13. I remit the appeal to the First-Tier Tribunal.

Signed *JG Macdonald* Date 4th June 2019

J G Macdonald
Deputy Upper Tribunal Judge