



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/02044/2019**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Bradford
on 11 December 2019**

**Decision & Reasons
Promulgated
on 2 January 2020**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**TVT
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Frantzics instructed by Howells Solicitors
For the Respondent: Mr Diwncyz Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge T Jones promulgated on 3 September 2019 in which the Judge dismissed the appellant's appeal on all grounds.

Background

2. The appellant is a citizen of Vietnam born on 3 October 2000.
3. The Judge did not find the appellant credible and did not find that as a result of any adverse political opinion he had a well-founded fear of persecution or breach of a protected right on return.
4. The Judge records at [10] of the decision under challenge:

“In terms of the Appellant’s claim there is a summary of findings at paragraph 61. Therein the Respondent accepts the Appellant’s nationality but rejected his claim that he has taken part in and prepared leaflets for demonstrations which resulted in his “arrest twice”.

5. This is a reference to paragraph 61 of the respondent’s reasons for refusal letter.

6. At [21] of the decision under challenge the Judge also writes:

“The respondent at paragraph 61 rejects the Appellant’s claimed involvement in the demonstrations or the preparation of banners or leaflets”.

7. It is clear the Judge was specifically referred during the course of the hearing to [48] of the reasons for refusal letter which it was submitted was binding upon the Judge. In this paragraph the decision-maker writes:

“It is considered that in relation to this first arrest you have been consistent throughout and that therefore it is accepted that you and your father were arrested at a demonstration and questioned about the leadership. The fact that land demonstrators are arrested is supported by the country information in the CPIN.”

8. There was, therefore, before the Judge a contradiction in the content of the refusal letter. A submission was specifically made by Ms Frantzics that the Judge was bound by the concession at [48]. There is no indication as to how the Judge resolves this conflict in the evidence supported by adequate reasoning.

9. Mr Diwncyz was asked whether he was able to shed light upon the respondent’s position. He accepted there is clear ambiguity and stated that for the purposes of these proceedings he would have to accept that a concession had been made as set out at [48]; although the author of the refusal letter appears to have forgotten this by the time he or she got to [61].

10. It is submitted on the appellant’s behalf that this error is material as:

- a) The Judge proceeded on the erroneous basis that the respondent had rejected the entirety of the appellant’s account and that had the Judge proceeded on the basis that part of the appellant’s account had been accepted this should have positively informed that assessment of the remainder of the appellant’s account; with specific reference to the adverse findings at [79] of the decision.
- b) The Judge holds against the appellant, to the extent that his claim is undermined, at [59] and [74], the fact that the country expert Dr Tran was unable to find reference to a demonstration in January 2016 at the same time failing to acknowledge that the respondent accepted that the appellant attended and was questioned after that demonstration and that the expert report is supportive of the credibility of the appellant’s account.

11. I find merit in the appellant's claim in relation to this aspect of the evidence and materiality in the error. It is not known what decision the Judge would have made had the conflict in the refusal letter been properly resolved. It is material that the respondent accepted the appellant's account in relation to the first demonstration which the Judge rejected and therefore did not factor into the assessment of any risk the appellant may face on return to Vietnam.
12. The appellant also asserts that the Judge had no regard to the unchallenged expert evidence of Dr Tran, but no specific findings are required upon such a claim at this stage in light of the other points raised.
13. I find the appellant has established that the Judge has erred in law in a manner material to the decision to dismiss the appeal such that the determination must be set aside.
14. In light of the error it was accepted the matter will need to be considered afresh by a judge other than Judge T Jones. Accordingly I remit the appeal to the Bradford Hearing Centre to be heard by a judge other than Judge T Jones.
15. Case management directions shall be issued by Bradford according to the operational requirements of that centre which it is hoped will include a direction for the respondent to clarify her position in relation to what is and is not accepted concerning the appellant's activities in Vietnam; with specific reference to [48] and [61] of the refusal letter.

Decision

16. **The First-Tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. This appeal shall be remitted to Bradford to be heard by a judge other than Judge T Jones.**

Anonymity.

17. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 12th December 2019