



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006711
First-tier Tribunal Nos:
PA/52142/2021
IA/05041/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 23rd September 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

**HP
(ANONYMITY DIRECTION MAINTAINED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr W Ahmad, Counsel; instructed by Goodfellows Solicitors
For the Respondent: Ms S McKenzie, Senior Home Office Presenting Officer

Heard at Field House on 21st August 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the Appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant, a citizen of Vietnam, appeals against the decision of First-tier Tribunal Judge Green, promulgated on 4 July 2022, dismissing her appeal against the decision to refuse her protection and human rights claims.
2. The Appellant applied for permission to appeal which was granted by First-tier Tribunal Judge Sills in the following terms:
 - “2. The grounds argue that the Judge failed to give adequate reasons and gave weight to immaterial matters. It is not clear that the Judge has made the necessary reasoned findings of fact in this determination. In particular, it is arguable that the Judge fails to make any findings about what happened to the Appellant’s husband in the findings of fact section. It is thus arguable that there are no reasons given for finding that her husband was not detained and killed by the authorities. There are also no findings as to what level of political involvement for the Appellant’s husband are accepted. This means that the Judge’s conclusions about any risk by association are arguably inadequately reasoned. It is also arguable that the Judge has failed to consider the implications of the Appellant’s membership of the Brotherhood for Democracy”.
3. There was no Rule 24 response provided by the Respondent but Ms McKenzie indicated at the outset that she conceded there was an error of law in respect of the *sur place* activities performed by the Appellant, concerning the demonstrations she had participated in against the Vietnamese authorities; but maintained that the error was discrete and therefore did not infect the remainder of the decision such that only the issue of the Appellant’s *sur place* activities required rehearing in relation to whether that issue in isolation created a risk on return for the Appellant.

Findings

4. At the conclusion of the hearing I reserved my decision which I now give. I find that the decision contains material errors of law such that it should be set aside in its entirety for the following reasons.
5. In respect of the grounds, it merits comment that they are unhelpfully framed in that they highlight a number of features of the Appellant’s case such as her being a Christian, her being a member of a proscribed/terrorist organisation (namely the Brotherhood for Democracy), whilst also raising that the First-tier Tribunal had failed to consider the objective evidence before it in respect of risk to the Appellant as a political activist; but crucially without enunciating with detail, what the real grievances are with the decision. I am grateful to Judge Sills for his attempt in quantifying those arguments and distilling them into their form in the grant of permission the parties, and I, took as the structure for my consideration of the issues.
6. In respect of the Appellant’s Christianity and her being a political opponent/activist, I take these issues together given that they seem to also have overlap in the objective material that Mr Ahmad sought to rely upon, which the judge allegedly failed to take into account. Whilst the judge accepted the Appellant is a Catholic as reflected at paragraph 32 of the decision but there does

not seem to be any explicit consideration of whether or not this gives rise to a risk on return for her. Whilst Ms McKenzie attempted to persuade me that paragraph 53 of the decision, which discusses the country information on Catholicism in broad terms (which discusses that Christians are able to practise their religion freely), means that I should take it as read that the judge has considered and rejected the Appellant's claim to be at risk by virtue of her being a member of the Catholic faith, given that this forms a basis for her protection claim and given the seriousness of the issues at stake I cannot agree as there is a complete absence of adequate or any reasoning in this regard and it cannot be said that the Respondent's objective evidence is the beginning and end of the matter as every decision must carry reasons, if they may seem obvious as one cannot assume what the judge would have concluded.. Therefore this is a matter which requires rehearing and a reasoned decision.

7. In respect of the Appellant's activism, I note that the judge has found that the Appellant has a low level profile in their view (see paragraphs 43 and 63 for example), however at paragraph 61 the fact that the judge has considered the Appellant to be of a low profile and is therefore not at risk, does not resolve the fact that the Country Profile and Information Note for Vietnam (Ethnic and religious groups, June 2020) at paragraph 8.2.1 recites that DFAT (the Department of Foreign Affairs and Trade) is aware of more serious incidents of violence such as local authorities beating citizens in respect of their Catholicism as well as being low level supporters, which compounds the absence of a finding and/or reasoning in respect of the Catholicism. This also does not sit well with the CPIN regarding Opposition to the state, version 3.0, which states that political activists who are active in Vietnam face risk of detention or harassment and at paragraph 53 recites that more serious incidents of violence pertain to anti-government activities, which does not sit well with the findings that the Appellant is a Catholic and a low level supporter who had participated in anti-government activities. Thus, in my view the assessment of risk to the Appellant arising from her being a Catholic and a low level supporter who had participated in anti-government activities, is insufficiently reasoned and demonstrates a material error of law.
8. Concerning the Appellant's husband and his membership of the Brotherhood for Democracy, although the judge notes this at paragraph 43 of the decision and finds that, on the Appellant's own case, the Vietnamese authorities were unaware of her involvement with the Brotherhood for Democracy in Vietnam and thus finds that it undermines her claim concerning her husband's profile and his ultimate fate, I agree with Judge Sills' observation when granting permission, that the First-tier Tribunal has failed to resolve clearly what level of political involvement for the Appellant's husband was accepted and what was his ultimate fate. This represents a further material omission in relation to the judge's findings going to whether or not the Appellant is at risk on return.
9. Bearing those errors in mind, alongside the conceded error that the *sur place* activities have not been considered in terms of the risk that they would hold for the Appellant on return to Vietnam given her participation in demonstrations in front of the Vietnamese Embassy, and that the judge has failed to make any assessment of risk on return arising from the *sur place* activities; I find that the remaining grounds, as argued by the parties, are established on all issues raised and that the decision contains several material errors of law such that it must be set aside.

10. I therefore find that the First-tier Tribunal has materially erred in law for the reasons given above.

Notice of Decision

11. The Appellant's appeal is allowed.
12. The appeal is to be remitted to the First-tier Tribunal to be heard by any judge other than First-tier Tribunal Judge Green.

Directions

13. The appeal is to be remitted to IAC Taylor House.
14. A Vietnamese interpreter is required.
15. Mr Ahmad confirms that only the Appellant is expected to give evidence at this stage.
16. Neither party asked for any special or further directions, however upon remittal each party is at liberty to seek any further direction that may assist in the further management of this appeal.

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber