



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

Appeal Number: UI-2023-001803
[PA/54645/2022; IA/11033/2022]

THE IMMIGRATION ACTS

**Heard at Field House
On 30 January 2024**

**Decision & Reasons Promulgated
On 6 February 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROMM

Between

**VTH
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify SJ or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:

For the appellant: Mr A Gilbert, Counsel, instructed by Fadiga & Co Solicitors
For the respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant brings this appeal against the decision of First-tier Tribunal Judge Chana (“the judge”), signed on 1 May 2023, by which she dismissed the appellant’s appeal against the refusal of her protection and human rights claims.
2. The appellant is a citizen of Vietnam. She came to the United Kingdom as a child, accompanying a relative on a visit. She overstayed her visit visa and she claimed to be a victim of trafficking. However, she received a negative reasonable grounds decision and preparations were made for her return to Vietnam. On 26 June 2019 she made a human rights application based on her family and private life but this was also refused. On 7 November 2019 the appellant claimed asylum as a minor.
3. No decision was made until 10 October 2022 by which time the appellant was an adult. In the decision the respondent accepted that the appellant was a follower of pure Hoa Hao Buddhism. It was also accepted that, before she left Vietnam, the appellant had witnessed an altercation between fellow pure Hoa Hao Buddhists and security officials at a religious gathering. It was noted that the Vietnamese government was suspicious of large gatherings. However, the respondent did not accept that the appellant did not have a family network in Vietnam because her account of her parents abandoning her as a young child was inconsistent with the information given by her grandmother in the visa application. The delay in claiming asylum until after she was served with a negative human rights decision was also considered to have undermined her credibility in accordance with section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.
4. Despite accepting that the appellant followed pure Hoa Hao Buddhism, the respondent did not accept the appellant would be at risk on return. Paragraph 2.4.8 of the CPIN Hoa Hao Buddhism stated that,

“Hoa Hao Buddhists are unlikely to be at risk on return to Vietnam and only those suspected of having a political opinion critical to the government may be subject to monitoring.”
5. The appellant had been a young child when she witnessed the incident in Vietnam and she did not personally come to the attention of the authorities. Since living in the United Kingdom she had practised her religion at home and occasionally visited the temple. There was no reason she would be at risk on return.
6. The appellant appealed on protection and article 8 grounds.

The decision of the First-tier Tribunal

7. At the hearing before the judge the appellant gave evidence that, following the incident in which the authorities beat up Hoa Hao Buddhists, people came to their home and banged on the door. The judge did not find it credible that the appellant's grandmother could repel people banging on the door if they were intent on harming them. It was not credible that the authorities would know who to look for. The appellant's claim that they were terrorised for months in this way was not credible because the authorities would have been able to gain access. The judge agreed with the respondent that the appellant did not have a profile which would bring her to the attention of the authorities on return. She also disbelieved the appellant regarding her family and found the appellant has family support in Vietnam. The fact the appellant made a previous human rights application showed that her asylum claim was an "afterthought".
8. At [24] the judge began her consideration of the background evidence. She looked at the Australian Government's Department for Foreign Affairs and Trade's (DFAT) Country Report for 2019, which confirms that, in general, a person who practises their religion without seeking to challenge the state is unlikely to be at risk of ill-treatment [25]. She noted a similar view contained in the CPIN on Vietnam.
9. At [26] the judge considered the appellant's sur place activities, which consisted of attending a demonstration advocating freedom of religion in Vietnam and posting on Facebook but she found there was no credible evidence that the Vietnamese government took an interest in such activities.
10. The judge returned to the background evidence at [27]. She noted as follows:

"The background evidence states that the Hoa Hao Buddhists are recognised by the Vietnamese government, but many Hoa Hao Buddhist refused to belong to the State sponsored Hoa Hao administrative Council which was established by the Vietnam Fatherland front body under the leadership of the Communist Party of Vietnam. The Christian Solidarity worldwide research suggest that independent non-registered Hoa Hao Buddhist groups and their members suffer ongoing harassment by the authorities, including confiscation of land used for religious worship, intrusive surveillance and disruption of religious activities. Background evidence states that they are accused of "conducting activities aimed at overthrowing the state under article 79 of the penal code, a charge commonly used against activists in Vietnam. Background evidence also states that the Hoa Hao Buddhist religion has some 2 million followers across the country in Vietnam but the Vietnam government imposes house controls on dissenting Hoa Hao Buddhist groups that do not follow the State sanctioned branch of Hoa Hao Buddhism."
11. She concluded from this evidence that the appellant will not face persecution. She can return to Vietnam and practise her religion as do approximately 1.3 to 2.8 million Hoa Hao Buddhists. At [30] she said she considered the appellant to be an "economic migrant".

12. Under the heading 'Consideration of the humanitarian protection appeal', the judge considered whether the appellant's removal would breach article 3 of the Human Rights Convention on health grounds. At [37] she noted a letter dated 11 April 2023 from Talking Therapies but considered the appellant's mental health problems arose from the fact she does not wish to return to Vietnam and her health issues did not reach the threshold for article 3. She also found the appellant was not suicidal while she was in the United Kingdom, that arrangements would be put in place to safeguard her on her journey to Vietnam and her family would assist and support her on return [39-40].
13. Finally, the judge found there would be no breach of article 8 of the Human Rights Convention in removing the appellant.

The grounds of appeal and grant of permission

14. The grounds of appeal argued the judge failed to consider relevant matters when rejecting the appellant's asylum claim, namely key passages from the background evidence showing pure Hoa Hao Buddhists oppose the state and are subjected to surveillance by the authorities. She had also overlooked that the appellant has expressed her intent to continue to practise her faith and thereby to oppose the state.
15. Permission to appeal was granted in the following terms:

"It is arguable that the Judge may have misunderstood the evidence of the pressures on the minority sect of which the Appellant was a member as opposed to the freedoms granted to the much larger majority Buddhist sect. All grounds may be argued."
16. The respondent has not filed a rule 24 response in this case.

The hearing

17. Mr Gilbert was granted permission at the beginning of the hearing to show me the letter from Talking Therapies, dated 11 April 2023, which had inadvertently been omitted from the consolidated bundle filed by his instructing solicitors.
18. Mr Gilbert argued that the judge's finding that the appellant had not explained the delay in claiming asylum was flawed because this letter, which the judge referred to at [37], showed the appellant was suffering from PTSD and this affected her ability to engage with the authorities. Further, the appellant had explained in her witness statement that she had not been willing to open up about traumatic events from her past. The judge was plainly wrong and made a mistake of fact in stating there was "no explanation" for why she did not claim asylum when she made her human rights application [23].
19. Turning to the judge's consideration of the background evidence as showing the appellant would not be at risk, Mr Gilbert highlighted [28] in

which she treated the appellant as a Hoa Hao Buddhist but did not refer to the fact she belongs to the pure Hoa Hao sect, a matter which the respondent accepted. He took me to passages from the background evidence as follows.

20. The respondent's CPIN - Vietnam: Hoa Hao Buddhism, 13 February 2020, states at 3.2.2 that the pure sect has around 400 followers and the principle of the pure sect is to stand up against dictatorship. Paragraph 5.4.6 states that 18 followers of the pure sect have been detained or imprisoned and a further 67 were under house arrest. Paragraph 5.2.5 states that members of the pure sect continue to face harassment economically and politically. Paragraph 5.4.12 states that followers of independent religious groups face constant surveillance, harassment and intimidation. Followers are subjected to public criticism, forced renunciation of faith, detention, interrogation, torture and imprisonment.
21. Mr Gilbert argued the judge's assessment at [28] failed to appreciate the appellant was a member of the pure sect and that the background evidence showed followers are at risk in ways which do not apply to the other Hoa Hao groups. Furthermore, the judge had not asked herself how the appellant would behave on return: HJ (Iran) and HT (Cameroon) v SSHD [2010] UKSC 31.
22. Mr Gilbert argued the judge's reasoning at [17-19] in finding the appellant's account not credible failed to recognise the background evidence that the sect was very small and followers are subjected to surveillance. The reasoning is inadequate.
23. Mr Tufan argued the judge was entitled to place weight on the appellant's failure to raise asylum in 2019. He argued the judge was entitled to find the appellant would not be at risk because the background evidence showed that only those people bent on overturning the government would face persecution. The appellant had only been 11 years of age at the time of the incident and nothing happened to her. The judge was entitled to conclude there was no reason for the government to see her as a threat.
24. However, Mr Tufan did acknowledge the judge had not made an assessment under HJ (Iran).
25. At the end of the hearing I announced that I found the judge had made a material error of law and that her decision had to be set aside.

Conclusions on error of law

26. The jurisdiction of the Upper Tribunal on an appeal from the First-tier Tribunal lies only in relation to an error of law, not a disagreement of fact. The following are possible categories of error of law, as summarised in R (Iran) & Ors v SSHD [2005] EWCA Civ 982 at [9]:

"i) Making perverse or irrational findings on a matter or matters that were material to the outcome ("material matters");

- ii) Failing to give reasons or any adequate reasons for findings on material matters;
- iii) Failing to take into account and/or resolve conflicts of fact or opinion on material matters;
- iv) Giving weight to immaterial matters;
- v) Making a material misdirection of law on any material matter;
- vi) Committing or permitting a procedural or other irregularity capable of making a material difference to the outcome or the fairness of the proceedings;
- vii) Making a mistake as to a material fact which could be established by objective and uncontentious evidence, where the appellant and/or his advisers were not responsible for the mistake, and where unfairness resulted from the fact that a mistake was made.”

27. It is important to reiterate the need to exercise restraint before interfering with a decision of the First-tier Tribunal. In this regard, I have borne in mind what has been repeatedly stated by the Court of Appeal in, for example, KB (Jamaica) [2020] EWCA Civ 1385, at [16], UT (Sri Lanka) [2019] EWCA Civ 1095, [19]; Herrera [2018] EWCA Civ 412, at [18], and MI (Pakistan) [2021] EWCA Civ 1711, at [47] and [51]. When analysing a decision of the First-tier Tribunal, is important to read it sensibly and holistically, and to guard against the danger of simply substituting one view for the legitimate view of another. Perfection is not being sought, there is no obligation to provide the best possible reasons (or indeed reasons for reasons), and an irrationality challenge imposes an elevated threshold.
28. However, I find the judge erred in this case for the following reasons.
29. The assessment of risk on return must be forward-looking. As explained in cases beginning with the landmark decision in HJ (Iran), careful findings of fact must be made on the genuineness of a political opinion; the future conduct of an individual on return in relation to the expression of genuinely held beliefs; the consequences of such expression; and, if the beliefs would be concealed, why this is the case.
30. The core of the appellant’s account was accepted by the respondent: she is a follower of the pure Hoa Hao Buddhist sect and, as a child, she witnessed an incident in which fellow members were involved in an altercation with the authorities.
31. The background evidence which was before the judge clearly explained that the pure Hoa Hao Buddhist sect is a very small group, which is subjected to state harassment and surveillance and that a good proportion of its members have been detained and imprisoned. The government perceives members as opposing the state, which in fact is a defining characteristic of the sect.

32. In this context, it is clear the judge misdirected herself at [28] by treating the appellant as if she were a member of a much larger group.
33. As Mr Tufan said in his submissions, there are features of the appellant's case which could justify adverse findings. It might have been open to the judge to find, on the low standard applicable, that the appellant would not be at a real risk on return.
34. However, she could not do so without making an assessment of how the appellant would behave on return. She could have found the appellant would conceal her faith for reasons of preference or privacy not amounting to persecution, but she would only have been able to reach that conclusion after considering her sur place activities in that context and by giving reasons for not accepting the appellant's evidence in her witness statement at [16] that, if returned to Vietnam, she would proudly be a pure Hoa Hao Buddhist and she would practise her religion the way she was taught.
35. I note the respondent was unrepresented at the hearing before the judge so it would appear the appellant's evidence was not challenged.
36. The judge's decision contains inadequate reasoning. She did not place her findings properly within the context of the background evidence and she became confused in her assessment as to which group the appellant belonged to. She also failed to ask herself how the appellant might behave on return. These errors are plainly material to the outcome of the appeal.
37. I canvassed the views of the parties as to the venue for remaking the decision and I have taken them into account. Mr Gilbert and Mr Tufan both favoured remittal to the First-tier Tribunal so that another judge could make fresh findings on the appellant's credibility, on the background evidence and on how the appellant would behave on return.
38. Applying AEB v SSHD [2022] EWCA Civ 1512 and Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC), I carefully considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in paragraph 7 of the Senior President's Practice Statement. I took into consideration the history of this case and the nature and extent of the findings to be made. The parties were in agreement that a considerable amount of fact-finding needs to be done. I must also consider that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process and I therefore remit the appeal to the First-tier Tribunal.
39. The decision of Judge Chana is set aside and none of her findings are retained. The appeal must be heard again by a different judge.

Anonymity

40. The First-tier Tribunal made an anonymity direction, presumably because this is a protection claim, but the judge appears to have lifted it without

giving reasons. Taking all the circumstances into account, I conclude that a direction should be made.

Notice of Decision

41. **The decision of the First-tier Tribunal involved the making of an error of law and the appeal to the Upper Tribunal is allowed.**
42. **The decision of the First-tier Tribunal is set aside.**
43. **The appeal is remitted de novo to the First-tier Tribunal to be reheard by any judge other than Judge Chana.**

Signed: ***N Froom***
2024

Date: 4 February

Deputy Upper Tribunal Judge Froom