



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004101

First-tier Tribunal No: PA/57078/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 5th of December 2024

Before

UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE BUTLER

Between

HVT
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr F Aziz
For the Respondent: Ms S Rushforth

Heard at Field House on 29 November 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant 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. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant appeals with the permission of First-tier Tribunal Judge Mills against the decision of First-tier Tribunal Judge G R Williams (“the Judge”). By his decision of 18 July 2024, the Judge dismissed the Appellant’s appeal against the

Respondent's refusal of his protection and human rights claim dated 21 September 2023.

2. For the reasons given below, we dismiss the Appellant's appeal.

Background

3. The Appellant is a citizen of Vietnam aged 31. The Appellant claims to face persecution in Vietnam on the basis of:
 - a. His Catholic faith;
 - b. His political activism in Vietnam; and
 - c. His *sur place* activities in the UK.
4. The Appellant claims that the Vietnamese authorities have an adverse interest him due to his political activism and religion. He claims that, in January 2011, he joined a Catholic group called Protecting Livelihood and Helping People. In 2013 the Appellant attended a demonstration outside a court where some of the group's members were being prosecuted for their political activities. He states that the protesters were attacked by the police and he was arrested, detained, and beaten.
5. In 2014, the Appellant states that he attended a demonstration protesting Chinese control of Vietnamese oil fields. He was arrested at this protest and detained for six months.
6. In 2017, the Appellant participated in demonstrations against government land seizures. His father was seriously injured by one of the diggers, leading to his death. The Appellant arranged a protest at the local police station. The police responded violently and the Appellant fled. He was later called by his mother who told him that the police were searching for him and had attended their home. He fled to Hanoi, where he stayed in hiding at a friend's house until an agent was able to arrange for him to leave Vietnam. That agent arranged for him to travel to the UK.

The Decision of the First-tier Tribunal

7. The Judge accepted the Appellant's account that he is Catholic. He also found that the Appellant had given a consistent account throughout his time in the UK, but considered that his credibility was damaged by:
 - a. The Appellant's failure to claim asylum whilst passing through Belgium, Germany and France, pursuant to s. 8 Asylum and Immigration (Treatment of Claimants, etc) Act 2004.
 - b. The Appellant's failure to provide a warrant in support of his appeal, which he stated his mother held.
 - c. The implausibility of the appellant's account of being able to remain hidden for eight months as he describes.
8. Having made these findings, the Judge concluded that the Appellant was not of adverse interest to the authorities in Vietnam. Even taking the Appellant's account at its highest, his account was that he had attended a small number of

demonstrations in Vietnam. The Appellant had failed to establish that a warrant is in existence for his arrest. At its highest, the Appellant's evidence showed that he was a low-level activist. While he was ill-treated and detained, this was not sufficiently serious to amount to persecution. Given the lapse of time, the Appellant had not shown to the lower standard that he remains of adverse interest to the Vietnamese authorities.

9. The Judge also considered the Appellant's *sur place* activities. The Judge found this evidence weak, involving attendance at a single demonstration in April 2024 (at which he played a limited, low-level role) and his decision to join the Brotherhood of Democracy, an organisation designated as terrorist by the Vietnamese state. The Judge found, again taking the Appellant's case at its highest, that he would be perceived as having a very low-level profile, if at all.
10. The Judge did not find the Appellant to have any family or private life in the UK and alternatively found that his removal would be justified.

Grounds of appeal

11. The Appellant's grounds of appeal argue that the Judge erred as follows:
- a. He misapplied s.8 of the 2004 Act, by failing to consider the Appellant's explanation for not claiming asylum *en route*.
 - b. He artificially separated the Appellant's religious and political beliefs when considering risk on return, while the Appellant's case was that they are inextricably linked;
 - c. He based his adverse findings on matter of inherent plausibility, contrary to authority;
 - d. He required the Appellant to provide corroboration, in the form of the claimed arrest warrant; and
 - e. He gave inadequate reasons for rejecting the significance of the *sur place* claim.
12. We heard submissions from Mr Aziz and Ms Rushforth. Mr Aziz's submissions reiterated the points made in the grounds of appeal. Ms Rushforth argued that the Judge's findings were properly open to him and that he had considered the case in the round. She criticised the grounds of appeal as constituting mere disagreement with the Judge's findings.

Analysis

13. **Ground 1.** The Appellant's written evidence describes being brought to the UK by an agent whom he paid. The description given of their interactions in his asylum interview and witness statement is bare, essentially that the agent arranged everything for him. The Appellant does not contend that he is a victim of trafficking, nor that he faced any form of coercion at the hands of the agent. He also does not suggest that he was unaware of the possibility of claiming asylum outside the UK. The Appellant's criticisms of the Judge therefore fail on the basis that there was no relevant information which could have led him to a different conclusion under s. 8.

14. **Ground 2.** The Judge expressly found that the Appellant was Catholic and at §22 of the determination considered the Appellant's evidence about his treatment as a Catholic. This point is dealt with at §23 of the determination, where the Judge notes that it was the Appellant's political participation as a result of his religious beliefs that he said led him into conflict with the authorities. The Judge's conclusion was that, broadly, it was his political activism rather than his religious beliefs *per se* which caused the difficulties he experienced. Therefore, it cannot be said that the Judge failed to have due regard to the Appellant's religious beliefs in reaching his conclusions.
15. **Ground 3.** The Judge's criticisms regarding the Appellant's plausibility are that (i) his explanation for failing to have the warrant sent to him, namely fear of attracting the attention of the Vietnamese authorities, was not plausible, and (ii) his account of remaining hidden in Hanoi for eight months also lacked plausibility. The Judge was plainly entitled to reach the conclusion he did on (i) as the Appellant has adduced no material or argument to support a conclusion that there was any risk in even an electronic copy of the warrant being sent. While we consider that there may be more force in the arguments related to (ii), any error was not material. The Judge expressly considered the Appellant's case at its highest in reaching his conclusions.
16. **Ground 4.** The Judge placed adverse weight on the fact that the Appellant had failed to provide the warrant which he had described being in his mother's possession. In so doing, he correctly directed himself at §33 that the Appellant was not required to provide corroboration. There is no material error of law here as the Judge was entitled to place adverse weight on the fact that, by the Appellant's description, this would have been a relatively simple document to obtain, but it was not before the Court in any form nor was there a good reason for its absence. The warrant was a potentially significant piece of evidence and the Judge was not obliged to disregard its absence when it was reasonably open to the Appellant to obtain it.
17. **Ground 5.** The Appellant's written grounds of appeal suggest that this ground relates both to his political activities in Vietnam as well as his *sur place* activities. However, in answer to questions from Judge Rimington, Mr Aziz confirmed that this ground was limited to the evidence on the Appellant's Facebook page related to his *sur place* activities.
18. The Judge found that the evidence of the Appellant's *sur place* activities was limited to low-level participation in a single protest and membership of the Brotherhood of Democracy. There were also some untranslated Facebook posts but these were limited in number.
19. Mr Aziz's submissions were that the Judge failed to have regard to the relevant parts of the Respondent's Country Policy and Information Note *Opposition to the state* (v. 4.0, August 2023). He referred us to various sections which referred to the state's actions in persecuting activists. However, he did not refer us to the CPIN's conclusion, namely that:

"Those who openly criticise the state or who protest against the government are likely to attract adverse attention from the authorities. Treatment will vary depending on a person's level of involvement, the nature of the activities, the person's role in those activities and their profile. Low level protesters may be subjected to intimidation by police and may be arrested and subsequently

released but in general this is not sufficiently serious, by its nature and/or repetition, to amount to persecution and/or serious harm”

20. The excerpts from the CPIN cited in the determination and the conclusions which the Judge draws from them accurately reflect its conclusions. We did not understand Mr Aziz to contend that the Appellant’s *sur place* activities would place him in the higher-level category identified in the CPIN.

21. The grounds did not specifically raise **HJ (Iran)** [2010] UKSC 31. Notwithstanding, it was not pleaded, we carefully considered the **HJ (Iran)** question and whether there was a Robinson obvious point not considered by the judge. We note the following. The issues raised in the skeleton argument rested solely on religion which the Judge dealt with carefully. The last ground of appeal to the UT, as indicated, focussed on *sur place* activity.

22. Although **HJ (Iran)** was not cited by the Judge, we consider he made the necessary findings and there was no material error of law. The Judge clearly found that the Appellant was of no adverse interest to the authorities for his activity in Vietnam and that he had attended demonstrations at a low level only, §38. The Judge did not accept that an arrest warrant had been issued in Vietnam for reasons which we found to be adequate and the Judge found, at best, that the Appellant would have been seen as a low level supporter of groups against the government. The Judge clearly engaged with the CPIN in detail noting that persecution was dependent on the degree of involvement in activity.

23. There is no indication that the Judge overlooked paragraph 3.1.1 of the CPIN which states that:

“A person who is a member of an illegal opposition political party and is able to show that his/her political opposition has come to the attention of the authorities is likely to be at risk of persecution and / or serious harm”.

24. This does not exclude a fact sensitive assessment and which the Judge undertook and he engaged extensively with the CPIN and cited section 3 particularly 3.2.2 at §39.

25. Paragraph 3.2.1 records:

“Those who openly criticise, or are perceived critics of, the government are likely to attract adverse attention from the authorities. Whether a person is likely to be at risk of persecution and/or serious harm will depend upon their level of involvement, their activities, the nature of any criticism, the topics they have been critical about, and any previous adverse interest.

*3.2.2 Whilst there is some tolerance for protests, those who do so on political or sensitive subjects **may be** subject to intimidation by police and may be arrested and subsequently released. However, in general, this is not sufficiently serious by its nature and/or repetition to amount to persecution.” (emphasis added)*

26. The Judge took a balanced approach to the CPIN identifying that high profile activists were at risk. The Judge at §42 noted the arrest in 2014 but and found thereafter that the Appellant was not subject to police harassment or house arrest and rejected the account of an arrest warrant from 2017. Thus, although previously arrested, the Judge did not accept that the Appellant was of continuing

interest because of the nature and level of activity with which he was involved. Just because the Judge accepted some aspects of the claim does not mean he has to accept them all and he clearly considered the evidence including the background evidence and addressed the relevant issues as per **Azizi (Succinct credibility findings; lies) [2024] UKUT 65 (IAC)**.

27. The Judge addressed the issue of the membership of the Brotherhood of Democracy and evidently found it lacked weight because he found the card was issued on 20th September 2023, the day before the Appellant's asylum claim was refused (the evidence was only presented in the supplementary bundle). The Judge carefully considered the material and clearly found his membership of the Brotherhood to be opportunistic and noted in particular that the evidence suggested that this organisation was now defunct. The hurdle for perversity is very high and not reached here. It has been suggested that the Appellant would not have known when his asylum claim was to be determined. As the judge found, the appellant clearly joined the Brotherhood after his asylum claim was refused.
28. The Judge considered the sur place activity in the UK presented from §44 onwards and effectively found at §45 that the activity was merely to bolster a failed asylum claim. He found the sur place activities were not extensive (the appellant had only attended one demonstration as an attendee) and that the evidence of the Facebook account presented was inadequate and did not show risk. The Judge followed **XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 23 (IAC)**. Indeed, the evidence presented was untranslated, the use of Facebook was not extensive and did not support the contention that the appellant had been politically active on Facebook §52. Those findings were open to the judge.
29. The Judge drew his findings overall, which were open to him, to a close at §56 following a fair, balanced, and comprehensive assessment. On these findings which in effect that he would *remain* a low-level protester on return to Vietnam, we conclude that the Judge found the Appellant would not be at risk on return even if he continued with his activity because of the nature and level.
30. There is no suggestion that the Appellant has come to the attention of the authorities as a member of an illegal party nor any reason, given the Judge's conclusions about his level of activism and his reasons for joining the Brotherhood, for considering that this would happen following his return. Given the Judge's lawful findings, there is also no basis for us to conclude that his membership of the Brotherhood would give rise to a risk pursuant to **HJ (Iran)**.
31. **Volpi v Volpi [2022] EWCA Civ 464** confirms at 2(i) that '*An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong*'. We are not persuaded that the Judge was plainly wrong in his findings or omitted to address relevant issues.
32. The Court of Appeal in **Lowe v SSHD [2021] EWCA 62** referred to and repeated the judgment of Lewison LJ in **Fage UK Ltd. v Chobani UK Ltd. [2014] EWCA Civ 5** at §114 as follows:

"Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them. The best known of these cases are: Biogen Inc v Medeva plc [1977] RPC1; Piglowska v Piglowski [1999] 1 WLR 1360; Datec Electronics Holdings Ltd v United Parcels

Service Ltd [2007] UKHL 23 [2007] 1 WLR 1325; Re B (A Child) (Care Proceedings: Threshold Criteria) [2013] UKSC 33 [2013] 1 WLR 1911 and most recently and comprehensively McGraddie v McGraddie [2013] UKSC 58 [2013] 1 WLR 2477. These are all decisions either of the House of Lords or of the Supreme Court. The reasons for this approach are many. They include.

i) The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed.

ii) The trial is not a dress rehearsal. It is the first and last night of the show.

iii) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court and will seldom lead to a different outcome in an individual case.

iv) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.

v) The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence).

(vi) Thus even if it were possible to duplicate the role of the trial judge, it cannot in practice be done”.

33. In those circumstances, there is no error of law nor could such be material.

Notice of Decision

34. The decision of the First-tier Tribunal did not involve the making of an error of law and stands.

M Butler

Deputy Judge of the Upper Tribunal Butler
Immigration and Asylum Chamber

Signed 2nd December 2024