



IAC-BH-PMP-V1

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

Appeal Number: AA/01691/2015

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke
On 28th September 2015**

**Decision and Reasons Promulgated
On 06th October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

**H T T N
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard, Solicitor of Fountain Solicitors

For the Respondent: Ms C Johnstone, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The First-tier Tribunal made an anonymity direction in this appeal. I continue anonymity in the Upper Tribunal by making the following direction:

**DIRECTION REGARDING ANONYMITY – RULE 14 OF THE TRIBUNAL
PROCEDURE (UPPER TRIBUNAL) RULES 2008**

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) 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 the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Background

2. On 9th July 2015 Upper Tribunal Judge Renton sitting in the First-tier Tribunal, gave permission to the appellant to appeal against the decision of Judge of the First-tier Tribunal A J Parker in which he dismissed the appeal against the decision of the respondent to refuse asylum, humanitarian and human rights protection to the appellant, a female citizen of Vietnam.
3. The grounds of application take issue with the judge's credibility findings, particularly that the appellant had no risk profile on return to Vietnam as a political activist. It was also contended that the judge's consideration of the best interests of the appellant's child, applying the provisions of Appendix FM and Section 55 of the Borders, Citizenship and Immigration Act 2009, was inadequate.
4. In granting permission Upper Tribunal Judge Renton considered that the grounds which impugned the credibility findings of the judge in relation to risk on return as a political activist had no merit, adding that the judge had given a satisfactory explanation about why he did not find the psychiatric report determinative. Nevertheless, permission was granted on the basis that it was a "significant" part of the appellant's case that she was at risk on return because of her political activities in the United Kingdom as set out in a statement dated 12th January 2015. The judge had made no credibility findings on this part of the appellant's claim and no finding as to whether these activities put the appellant at risk on return.
5. At the hearing before me in the Upper Tribunal I heard submissions from both representatives after which I reached the conclusion that the decision of the First-tier Judge showed an error on a point of law such that it should be set aside and re-made. I summarise, below, the submissions made and the reasons for my conclusion.
6. Mr Howard confirmed that the grounds were relied upon, the key issue being the judge's failure to deal with the appellant's *sur place* claim applying the conclusions and guidance of the Court of Appeal set out in *Danian* [1999] EWCA Civ 3000. Mr Howard suggested that the judge was aware that the appellant claimed to be politically active as this is referred to in paragraph 26 of the decision. The judge also noted in paragraph 15 that the appellant claimed to be politically active in the United Kingdom attending demonstrations involving human rights. However, the decision does not show that the judge gave any consideration to that aspect of the appellant's claim when reaching findings about her refugee status.
7. Ms Johnstone made submissions strongly arguing that the judge had made findings in relation to the appellant's political activity in her home country which did not show errors and so those findings should stand. She further contended that the judge's adverse credibility findings in relation to the main claim could be extended to cover the claim of *sur place* activity. That was because the judge had found inconsistencies in the main claims which led him to conclude (paragraph 28) that the appellant's story

was inconsistent and implausible and that there would be no risk profile on return as a political activist.

8. When I suggested to Ms Johnstone that the judge's apparent failure to deal with the *sur place* claims at all meant that the findings in relation to claimed political activity in Vietnam could be affected, she maintained that such adverse credibility findings should remain. She also reminded me that the judge granting permission had concluded that those findings were not affected by arguable error. I was also reminded of the content of the Secretary of State's response to the grounds of application under Rule 24, which argue that, from the judge's findings on the appellant's inherent lack of credibility, it can reasonably be inferred that the appellant's activities in the UK cannot be considered to be a credible reflection of her genuine political position. Following a quote from the Court of Appeal decision in *YB (Eritrea)* [2008] EWCA Civ 360 the response also contends that the appellant would be recognised by the authorities as someone with no real commitment.

Conclusions

9. The decision does not show that the judge gave any consideration to the appellant's claim to have been politically active in the United Kingdom. This was evidently an important part of the appellant's claim it having been included in her statement.
10. Whilst I can accept that the reasons given in the decision for the negative conclusions about the appellant's claimed political activity in Vietnam appears to show no arguable error, those conclusions cannot be seen in isolation from the appellant's claim to have been politically active in the United Kingdom in relation to human rights issues by attending demonstrations. I have inferred, from Ms Johnstone's argument, that the respondent sees the appellant's political activity in the United Kingdom as different from that in Vietnam so the two claims can be seen separately and the findings on the latter can therefore stand, but I do not accept that argument. The appellant's claim that she attended protests against the Vietnamese government's seizure of land and claimed failure to pay compensation cannot be clearly distinguished from human rights issues in general which are claimed to be the subject of the demonstrations in UK.
11. In any event, if the judge had applied his mind to the appellant's claims of *sur place* activity, which evidently he did not, he might have reached different conclusions about the claims relating to political activity in Vietnam. It is not possible to say that the judge's adverse credibility findings on the latter aspect of the claims meant that he was certain to find that the appellant was incredible in relation to her *sur place* claims. If he had found the *sur place* claims to be credible this could also have led to a successful refugee claim in its own right.
12. Thus, whilst it might be arguable, in isolation, that the judge's findings in relation to the appellant's claim of political activity in Vietnam might not show arguable errors that does not mean, for the reasons I have given, that the findings on those issues can be preserved. Therefore, I conclude that the decision must be re-made before the First-tier Tribunal afresh. This conclusion accords with the provisions of paragraph 7.2 of the Practice Statement for the Tribunal by the Senior President of Tribunals made on 25th September 2012.

DIRECTIONS

13. The decision of the First-tier Tribunal shows a material error on a point of law such that it should be set aside and re-made by the First-tier Tribunal afresh.
14. The First-tier hearing will take place on 20th April 2016 at the Stoke Hearing Centre.
15. A Vietnamese interpreter will be required.
16. The time estimate for the hearing is three hours.
17. The appeal should not be put before Judge of the First-tier Tribunal A J Parker.

Signed

Date

Deputy Upper Tribunal Judge Garratt