



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/08329/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 23 October 2017**

**Decision Promulgated
On 24 October 2017**

Before

UPPER TRIBUNAL JUDGE SOUTHERN

Between

M. T. T.

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C. Hulse, counsel instructed by Qualified Legal Solicitors

For the Respondent: Ms Z. Ahmad, Senior Home Office Presenting Officer

DECISION

1. As it was common ground and agreed between the parties that First-tier Tribunal Judge Greasley made an error of law in determining this appeal, and that the error was material to the outcome, it is necessary for me only briefly to identify the nature of that error and to make clear the scope of the hearing that must now follow.
2. The appellant, who is a citizen of Vietnam, arrived in the United Kingdom in January 2014 and was admitted as a student. In February 2015 he returned to Vietnam for a short holiday. He said that when the motorcycle upon which he was a pillion passenger stopped, he became aware of police officers seeking to extort money from the occupants of a

car that had been stopped in connection with an alleged traffic violation. When he saw that one of the police officers about to attack one of those people he intervened and as a consequence was struck with a baton and arrested for obstructing the police. He was then detained and ill-treated at the police station before being charged with the offence of obstructing justice. That incident, he said, occurred on 3 March 2015 and he returned to the United Kingdom on 19 March, as he held a return ticket for that date. After he had returned to the United Kingdom he became aware that a summons against him had been issued in Vietnam.


3. The appellant next came to notice when he was encountered on 26 January 2016, according to the respondent, working unlawfully and, having been served with notice of liability to be removed, he claimed asylum a few days later. As well as relying upon his fear of arrest, having left Vietnam after having been charged with an offence, he said also that he was at risk of persecutory ill-treatment from the authorities on account of his political opinion, because he had posted anti-government material on social media.
4. The judge dismissed the appeal because he did not accept to be true the appellant's account of the incident with the police officers and because he considered it to be very unlikely that the authorities would become aware of the views expressed by the appellee on his Facebook page.
5. The first of the grounds upon which the appellant sought and was granted permission to appeal is that the judge erred in law in dismissing the appeal on the basis that the account of the incident with the police officers was untrue, because in the reasons for refusal letter this account had been accepted by the respondent and, as the appellant's account of that incident had not been challenged in cross examination at the hearing, he had no reason to suppose he needed to say anything further in evidence to persuade the judge that these events had in fact occurred.
6. In my judgment, that complaint is plainly made out. In the refusal letter, under a heading "What is accepted", the respondent includes the appellant's account of the incident with the police officers, his arrest, the fact that he sustained injuries during the incident and that he charged with a criminal offence. Although the judge was not bound by that acceptance to also accept without question that the account was true, in not making clear to the appellant his concern as to whether this had in fact occurred, the appellant has plainly suffered unfairness and we simply do not know what else he may have said in support of his account had he known that it was in issue, and so we do not know either whether, had he said more about this, the judge would have been persuaded to take a different view.

7. That alone is sufficient to establish that the decision of the judge to dismiss the appeal cannot stand. But the determination discloses other errors. It appears that the only real reason given by the judge for setting aside the acceptance of the respondent of the appellant's account and finding his account to be untrue is his delay in claiming asylum and, in the circumstances of this case that was simply not an adequate basis upon which to arrive at a comprehensively adverse credibility finding.
8. Further, the judge has failed altogether to determine the claim raised on the basis of rights protected by article 8 ECHR, despite there being before him evidence from the appellant's girlfriend, Ms N.
9. For these reasons alone, which are not the only concerns properly identified by the grounds, the judge has made errors of law material to the outcome of the appeal and his decision to dismiss the appeal on asylum and human rights grounds cannot stand.

Summary of decision:

10. First-tier Tribunal Judge Greasley made material errors of law and his decision to dismiss the appeal must be set aside. His determination is to be set aside in its entirety.
11. The appeal to the Upper Tribunal is allowed to the extent that the appeal is remitted to the First-tier Tribunal to be determined afresh.

Signed



Upper Tribunal Judge Southern
Date: 23 October 2017