



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05108/2017

THE IMMIGRATION ACTS

Heard at Glasgow
on 5 July 2018

Decision & Reasons Promulgated
on 9 July 2018

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

TUAN [P]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr J Chaudry, of Latta & Co, Solicitors
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This decision is to be read with:
 - (i) The respondent's decision dated 16 May 2017, refusing the appellant's claim.
 - (ii) The appellant's grounds of appeal to the First-tier Tribunal.
 - (iii) The decision of FtT Judge S Gillespie, promulgated on 16 January 2018.
 - (iv) The appellant's grounds of appeal to the UT, stated in the application for permission to appeal filed on 2 February 2018.

- (v) The grant of permission dated 22 February 2018.
2. The appellant's grounds are headed:
 - 1) Use of speculation / error in approach to the case – sub-headings (a) and (b).
 - 2) Common fairness.
 - 3) Failure to engage appropriately with the evidence / provide clear reasons – sub-headings (a) and (b).
 3. Ground 1 (a) quotes from *Tanveer Ahmed*, which the judge cited, to the effect that judgements are not to be made by UK standards, and says that it was speculative to assume there would be a method of registering property transfers in Vietnam without reference to background evidence.
 4. The judge at paragraph 36 explicitly recognised that any method of registering property transfers in Vietnam might be “less sophisticated by Western standards”. It is hardly speculative to think there must be “some method”. It might be taken as within public and judicial knowledge that developed societies in all cultures have had some form of registration of titles or property transfers for many centuries.
 5. That was not the only reason for doubting the evidence of the transaction. The judge noted that the document was only a photocopy; there was nothing in it to persuade him it was an official document; and it was unimpressive on its face, being entirely in handwriting. He concluded that “absent evidence that such a thing would typically correspond to that used in Vietnam to transfer property I give it little weight.”
 6. This ground does not show that the amount of weight given by the judge to the document was based only on speculation.
 7. (I note incidentally that since raising the ground, the appellant has not suggested either that there is no official method of registering property transfers in Vietnam, or that the appellant's document conforms to the method used.)
 8. Ground 1 (b) disagrees with the judge's rejection at paragraph 42 of the appellant's evidence that he did not know an asylum claim was open to him, and that the late timing counted against him. (Mr Chaudry in submissions correctly accepted that the suggestion of “a prejudicial approach” was unfortunate.)
 9. The finding at paragraph 42 has to be read in context of the decision as a whole, and of paragraphs 40 – 41 in particular. The judge notes that the appellant had lived illegally in the UK for at least 3 years after curtailment of leave, spoke English, had studied here, there were many charitable organisations from which advice could be taken, and he claimed only when arrested. The appellant's criticism of the finding ignores the reasons given and does not show that it falls in the realm of speculation.

10. Ground 2 says that in fairness the judge should have put it to the appellant that he had constructed a story against a known background. However, the choice posed by the judge at paragraph 46, whether the background supported the claim or merely provided the scene, is only another way of putting an issue which was clearly at the heart of the case. The appellant knew very well that his credibility was under challenge. Putting it in the way the judge did does not lead the appellant into any different response.
11. Mr Chaudry in submissions suggested that the judge erred by taking the congruence with the background as a point against rather than in favour of the appellant, but that is not a fair reading either. Consistency with the background was treated as a point either neutral or as tending, although not decisively, in his favour. It was not held to be adverse.
12. Ground 3 (a) contends that the judge erred in thinking that the appellant's parents could not have incurred large debts to loan sharks. Mr Chaudry had cited to the FtT evidence showing that to be possible, and Mr Mullen so conceded. However, the decision on this point does not centre on inherent unlikelihood. The judge at paragraph 37 said the appellant's evidence was vague and unpersuasive; the sum was large; and that given the other documentation presented, it was within the appellant's ability to obtain detailed information. He went on to doubt the alleged loss of contact with the appellant's parents, and at paragraph 38 to find the account of a facetime call and the coincidences involved to be beyond credit. This ground is a selective disagreement.
13. Ground 3 (b) criticises the finding of no risk on return because the judge identified "an indirect risk from people known to [the appellant's] parents in a personal capacity in addition to the risk from loan sharks" and unlike the loan sharks, they would know of the appellant's existence. This is said to be an error of failing to make findings on "additional risk factors".
14. In submissions, Mr Chaudry widened the challenge to go expressly against the judge's conclusions on legal sufficiency of protection and on internal relocation, and against failure to deal with the case on humanitarian protection, article 3 and humanitarian protection as advanced in his skeleton argument in the FtT.
15. There is nothing to show a distinction between persons known to his parents and loan sharks in general which bears on risk to the appellant (if that had been proved) extending throughout Vietnam.
16. The judge did not err by finding, although briefly and in the alternative, that there was no risk throughout Vietnam.
17. Failure to deal with the alternative case based on humanitarian protection and article 3 is not alleged in the grounds. In any event, such a case was vague; little more than nominal.

18. There was no reference in the FtT or in the UT to material which might have established, absent any risk of persecution, that the appellant was entitled to leave to remain in the UK simply as an ordinary citizen of Vietnam.
19. The grounds and submissions do not show that the making of the decision of the FtT involved the making of any error on a point of law, such that it ought to be set aside. That decision shall stand.
20. No anonymity direction has been requested or made.

A handwritten signature in black ink, appearing to read "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

6 July 2018
Upper Tribunal Judge Macleman