



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

Appeal Number: PA/08385/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 16th November 2018**

**Decision & Reasons
Promulgated
On 27th November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**DDN
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Oyemike of Samuel & Co Solicitors

For the Respondent: Miss Z Kiss, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Cameron (the judge) of the First-tier Tribunal (the FtT) promulgated on 23rd August 2018.
2. The Appellant is a Vietnamese national born 4th January 2001 and therefore is a minor. The Appellant made an asylum and human rights claim in the UK on the basis that he would be at risk if returned to Vietnam

because of his membership of the Viet Tan Party which is opposed to the Vietnamese government.

3. The application was refused on 19th June 2018. The appeal was heard by the FtT on 1st August 2018. The Appellant claimed that he had become involved with the Viet Tan Party in Vietnam at the beginning of March 2017. He distributed leaflets and because of this was detained by the police in March 2017 for one day. Another reason for his detention was that he was caught writing graffiti on a gate near to the police station. The Appellant was released from detention after his mother paid money.
4. The judge did not accept that the Appellant had given a credible account of events in Vietnam. It was not accepted that he had been detained. It was not accepted that the authorities had an adverse interest in him.
5. The judge accepted that the Appellant had undertaken activities in the UK in support of the Viet Tan. The Appellant had produced photographs of himself attending demonstrations and meeting party officials. The judge accepted that the Appellant could clearly be seen on the photographs holding placards.
6. The judge concluded at paragraph 100 of his decision that he was “satisfied to the lower standard of proof that the Appellant has been involved in the Viet Tan Party in this country as a supporter”. The judge also accepted that the Appellant had placed posts on Facebook in relation to the Viet Tan Party, and it was accepted that his photograph had appeared on the party website as a result of him attending demonstrations.
7. The judge found at paragraph 108 that the Appellant is a low level supporter of the Viet Tan Party, but did not accept that would bring him to the adverse attention of the authorities. The judge therefore concluded that the Appellant would not be at risk if returned to Vietnam, and dismissed the appeal with reference to asylum, humanitarian protection, and human rights.
8. The Appellant applied for permission to appeal to the Upper Tribunal and permission to appeal was granted by Designated First-tier Tribunal Judge McCarthy in the following terms;
 - “1. On 6th September 2018, the Tribunal received the Appellant’s application for permission to appeal to the Upper Tribunal against the decision and reasons statement of FtT Judge Cameron that was issued on 23rd August 2018.
 2. The application was received within the relevant fourteen day period and is in time.
 3. The grounds make several allegations which allege the judge applied the wrong standard of proof. These allegations are not made out. It was open to the judge when considering all the evidence in the round

to draw the adverse inferences he did regarding parts of the Appellant's evidence. Similarly, the arguments relating to 'anxious scrutiny' cannot succeed.

4. Permission to appeal on these grounds is refused.
 5. However it is arguable Judge Mayall failed to properly assess the risks facing the Appellant on return as a low level supporter of the Viet Tan Party, as submitted at paragraph 8 of the grounds. It is arguable that the assessment carried out by Judge Mayall from [101] to [109] does not satisfactorily explain why the Appellant's involvement in the Viet Tan Party is not sufficient to establish a well-founded fear of persecution.
 6. Permission to appeal is granted on the issue of whether there has been a proper assessment of the country situation the Appellant would face on return to Vietnam."
9. The reference to Judge Mayall in the grant of permission is an error, and it is clear that the judge granting permission meant to refer to Judge Cameron.
 10. Following the grant of permission the Respondent did not lodge a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008.
 11. Directions were issued making provision for there to be a hearing before the Upper Tribunal to ascertain whether the FtT decision contained an error of law such that it should be set aside.

The Upper Tribunal Hearing

12. Mr Oyemike accepted that the grant of permission was limited, and confirmed that there had been no application for permission to appeal in relation to the grounds upon which permission had been refused by Judge McCarthy.
13. Miss Kiss stated that the Respondent conceded that the judge had erred in law by failing to properly assess the risks facing the Appellant on return as a low level supporter of the Viet Tan Party. It was accepted that the judge had not satisfactorily explained why the Appellant's involvement in the Viet Tan Party was not sufficient to establish a well-founded fear of persecution, and it was accepted that there had been an inadequate assessment of the country situation in Vietnam.
14. Miss Kiss submitted that the appropriate course would be to set aside the decision of the FtT, but to preserve the finding that the Appellant is a low level supporter of the Viet Tan Party, and it was conceded that the decision should be remade by the Upper Tribunal and allowed.
15. Miss Kiss confirmed that the Respondent's position is that background evidence shows that the Vietnamese government had in 2016 declared the Viet Tan Party to be a terrorist organisation. It was accepted that

individuals who supported that party would be at risk of persecution if returned to Vietnam.

16. In view of the concessions made, Mr Oyemike had no further oral submissions to make, but helpfully submitted a translated copy of the declaration made by the Vietnamese government, declaring the Viet Tan Party to be a terrorist organisation, which is dated 4th October 2016.

My Conclusions and Reasons

17. I accept that the Respondent has rightly conceded that the judge erred in law. I set aside the decision of the FtT. The findings made by the judge in relation to activities undertaken by the Appellant in the UK, in relation to the Viet Tan Party, are preserved. These findings are that the Appellant has been involved in the Viet Tan Party in the UK as a supporter. He has undertaken posts on Facebook and his photograph has appeared on the party website as a result of him attending demonstrations. The Appellant can clearly be seen in photographs attending a demonstration in December 2017, holding placards. The Appellant is a low level supporter of the Viet Tan Party.
18. The error of law is as set out in paragraphs 5 and 6 of the grant of permission. The judge failed to properly assess the risks facing the Appellant on return as a low level supporter of the Viet Tan Party, and did not satisfactorily explain why his involvement in that party was insufficient to establish a well-founded fear of persecution. There was not an adequate assessment of the country situation in Vietnam.
19. I was invited by both representatives to remake the decision and found it appropriate to do so.
20. I remake the decision by allowing the appeal. The appeal is allowed because it has been conceded by the Respondent that the Appellant would be at risk of persecution if returned to Vietnam. The Respondent accepts that the Vietnamese government has declared the Viet Tan Party to be a terrorist organisation. I find that this declaration was made in October 2016.
21. The Respondent accepts that there is a real risk that the Appellant, as a low level Viet Tan supporter, would be at risk of persecution and ill-treatment if returned to Vietnam.
22. Therefore I find that the Appellant has discharged the burden of proof, to show that he has a well-founded fear of persecution by reason of his political opinion, and he is entitled to a grant of asylum.
23. It is also conceded by the Respondent that the Appellant would be at risk of treatment that would breach Article 3 of the 1950 European Convention, and therefore the appeal is also allowed on human rights grounds with reference to Article 3. Mr Oyemike indicated that he did not wish to pursue an appeal on Article 8 grounds.

Notice of Decision

The decision of the FtT involved the making of an error of law such that it is set aside.

I remake the decision. The appeal is allowed on asylum grounds.

The appeal is allowed on human rights grounds with reference to Article 3 of the 1950 European Convention.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 16th November 2018

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

Because I have allowed the appeal Mr Oyemike applied for a fee award. I make no fee award. The appeal has been allowed because of evidence considered by the Tribunal that was not before the original decision maker. The Home Office Country Policy and Information Note on Vietnam regarding opposition to the state, relied upon by Miss Kiss, was published in September 2018 after the refusal of the claim, and after the FtT hearing.

Signed

Date 16th November 2018

Deputy Upper Tribunal Judge M A Hall