



UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: PA/13179/2017

THE IMMIGRATION ACTS

Heard at: Field House
On: 27 June 2018

Decision and Reasons Promulgated
On: 17 July 2018

Before

Deputy Upper Tribunal Judge Mailer

Between

MR TUNG QUANG DAM
ANONYMITY DIRECTION NOT MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr C Talacchi, counsel, instructed by Morgan Hall Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Vietnam, born on 18 December 1991. He appeals with permission against the decision of First-tier Tribunal Judge Cameron who in a decision promulgated on 12 February refused his appeal against the respondent's decision to refuse his application for asylum.

2. In granting permission to appeal, Upper Tribunal Judge Allen stated that on balance it is arguable that the Judge's adverse credibility findings are flawed and is of potential materiality, bearing in mind the background evidence and considering the situation for dissenters in Vietnam.
3. Mr Talacchi relied on the grounds seeking permission. He submitted that the Judge noted at paragraphs [61–62] the Country Policy and Information Note Vietnam: Political Opponents, dated November 2016. No distinction is made between low and high level activists. The Judge referred to the background information at [65].
4. Mr Talacchi referred to paragraph 2.2.6 of the policy guidance. Where a person is perceived to have taken part in opposition political activities or will otherwise be perceived as being involved in opposition politics - including human rights defenders, journalists and internet based activists - and as a result of that would come to the adverse attention of the authorities, they would face a real risk of persecution. This may also be extended to members of their families.
5. At paragraph 2.2.7 it is stated that each case must be considered on its own facts. The onus is on the person to demonstrate that because of their activities and past experiences, they are likely to be of adverse interest to and/or be persecuted by the Vietnamese authorities because of their actual or perceived political opinion. He referred to the policy summary at paragraph 3.
6. He submitted that in his findings at [74–77], the Judge held that on the lower standard of proof he accepted that the appellant is a low level member of the DVP but did not accept that that in itself would bring him to the adverse attention of the authorities. At [77] he stated that he did not accept that the appellant has a profile which would bring him to the adverse attention of the authorities on return to Vietnam.
7. Mr Talacchi submitted that his findings are inconsistent with the country policy - paragraph 2.2.6 - which I have set out. There is no distinction between high, middle or low ranking

activists. If a person is perceived to have taken part in opposition political activities, he is at risk.

8. He submitted that the Judge has made no clear findings in relation to the distribution of leaflets in Vietnam. He noted that the Judge referred to a protest on 20 September 2016 which the appellant stated he attended. Some people were arrested but he was able to escape during the protest. There was no finding as to any future risk of persecution.
9. Nor did the Judge make any finding in relation to the appellant's determination to continue opposing CVP through his membership of DVP and vocal political oppositions and protest.
10. On behalf of the respondent Mr Melvin sought to rely on his Rule 24 response. He submitted with regard to ground 1 that the Judge did set out at [61-67], the objective evidence including the respondent's policy guidance. He used that to formulate his conclusions on the credibility of the claim and whether the appellant would be at risk on return to Vietnam.
11. He has given reasons as to why the evidence was not consistent, those being that There were no problems for the large family when objective evidence points to family members of activists facing serious problems from the authorities. Further, the treatment of the appellant after his arrest was not consistent with such evidence, including the bribe.
12. The Judge made clear findings that the appellant is not credible regarding his accounts in Vietnam [75]. Further, he is a low level member of the DVP in the UK who is not shown to be in a prominent position in the party, and has had no active role.
13. Having regard to the findings, his attendance at demonstrations does not reveal that he would be at risk that and that the Vietnamese authorities will be aware of the claimed activities. The findings do not reveal a profile of someone who will continue opposing the government in the way that would cause the authorities to persecute him on return.

Assessment

14. First-tier Tribunal Judge Cameron has given a detailed decision. He has set out the submissions made by Mr Talacchi from [23-30]. He set out how the appellant learned

about the unfairness and corruption in Vietnam whilst in Ireland in March 2016 where he was studying. He then became more interested in politics in Vietnam.

15. He returned to Vietnam in the middle of May 2016 and noted that there was nothing referred to in the news which criticised the government or mentioned human rights. He then decided to create a leaflet to educate people about democracy and the DVP and the evil of the government and the communism [35].
16. The appellant claimed that in the middle of July 2016 he was distributing leaflets through doors to people and talking to them in person. He asserted that someone reported him to the police as they later came to his house and arrested him. They found all the materials and deleted it from his computer [36].
17. He claimed to have been taken to the police station where he was beaten and tortured. He was released after two days and warned that they had his details and this was his first time, and his parents had co-operated. His parents later told him that they paid a bribe to secure his early release.
18. He stated that in August 2016 he attended a protest where some people were arrested. However, he escaped. He claimed that the police had discovered that he was at the demonstration. The family had thus arranged for an agent to get him out of the country.
19. The appellant also claimed that whilst in the UK he attended two demonstrations in August 2017 and December 2017 and organised a petition.
20. The Judge assessed his evidence, noting that he was unable to explain what happened to his petition. He referred to the answers given by the appellant during his interview. At [54] he summarised the appellant's own political awareness when he was in Ireland. He joined the DVP and attended meetings there. He noted that he had no injuries other than bruising and did not need to attend hospital on his release from arrest.
21. Judge Cameron referred to his release after two days after his parents paid a bribe. He gave no details of that bribe, however; it was not clear whether he would in any event have been released. After that he attended the demonstration where he believed that plain

clothes police officers were pretending to be demonstrators and then started arresting people. He was not arrested but stated later on that he was advised that they had come to his home looking for him.

22. The Judge noted the appellant's assertion at interview that the authorities have continued to attend his home looking for him and that he was advised of this by his father when he telephoned. There was however no statement provided from his father confirming this. Nor had he provided any evidence of his assertion that photographs could be provided to show him at demonstrations in the UK which had been on the Viet Tan website.
23. He also noted that the letter from the DVP dated January 2018 referring to the appellant's alleged activities was signed on behalf of the co chairman of the party.
24. As already noted Judge Cameron had regard to the country policy which he set out in some detail from [61] to [63]. He was also provided other reports. He noted that the background information indicated that the authorities targeted family members, yet the appellant's family had not been subjected to any problems other than the appellant's evidence that they had come to his parents on a regular basis.
25. He found that there is no doubt that the authorities do target those who express views which the government considers to be anti-government. Further, the authorities are able to act with impunity [65].
26. He then set out the appellant's claim that he was arrested after distributing leaflets and also talking to people about political positions and in particular the government abuse of human rights. He claimed that the authorities came to his house and discovered leaflets and removed information from his computer.
27. He noted in that respect that the authorities would therefore have had considerable information against the appellant, yet on his own evidence he was released after two days [67].

28. He found after taking into account the objective evidence submitted in the respondent's own guidance notes and the other background information submitted by the appellant, that his treatment does not appear to be in line with the way the authorities react.
29. With regard to the demonstration he attended in Vietnam on 20 September 2016, it did not appear to be credible that the authorities would simply turn up at his house on a regular basis for over a year looking for him yet take no action against his family members.
30. Judge Cameron then stated after taking into account all of the evidence available and notwithstanding that the appellant has been consistent with regard to his detention and then a subsequent attendance at a demonstration in Vietnam, that he was not satisfied even to the lower standard of proof that the appellant was in fact detained as stated as it is not credible that he would have been released simply after two days where the authorities had direct evidence against him of anti-government activities even with the payment of a bribe to release him early [71].
31. He went on to find that notwithstanding his attendance at two demonstrations in the UK, there was no evidence which would indicate that he has come to the attention of the authorities. The appellant had not shown that he has taken any other active part in the DVP or that he would be deemed to be in a prominent position in the party itself.
32. He concluded on the lower standard of proof that although he accepts that he is a low level member of the DVP, he did not accept that that of itself has or would bring him to the adverse attention of the authorities.
33. He repeated at [75] that he did not find the appellant's evidence to be credible with regard to his detention in Vietnam, nor that the authorities are actively seeking him. Nor did he find that any of those activities in the UK would have brought him to the adverse attention of the Vietnamese authorities.
34. When granting permission to appeal it was stated to be arguable that the adverse credibilities are flawed and of potential materiality bearing in mind the background evidence considering the situation for dissenters in Vietnam.

35. It is evident however that Judge Cameron was aware of the background evidence which he set out at [61–67] including the respondent’s CPIN. He is also aware of the appellant’s own background evidence.
36. He found that the appellant was not detained. He has given reasons for that finding at [71]. There is no appeal against that significant finding. The only assertion is that the Judge found against the appellant on plausibility rather than the objective evidence. He had however also found that it was not credible that the authorities would simply turn up at his house on a regular basis for over a year looking for him yet take no action against his family members.
37. Having regard to his findings relating to the appellant’s credibility at [71] he stated that whilst accepting that he attended demonstrations in the UK there was nothing in the evidence indicating that he would come to the attention of the authorities.
38. In that respect he referred to the concerns that he had regarding the letter from the DVP which was not signed by the actual co-chairman. The appellant’s own evidence was vague as to the aims of the party. He simply attended two demonstrations, one of which was not organised by the DVP. He was not shown to have taken any other active part in the party.
39. Although accepting that he is a low level member, that of itself would not bring him to the adverse attention of the authorities.
40. The Judge has considered all the background evidence applicable in this case. He has given sustainable reasons that his low level non-active role with the DVP would not attract adverse interest by the authorities.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of any material error on a point of law. The decision shall accordingly stand.

Anonymity direction not made.

Signed

Date 15 July 2018

Deputy Upper Tribunal Judge C R Mailer