Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08626/2018

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decisions and Reasons Promulgated**
On 25 April 2019	**On 18 September 2019**

Before

MR C. M. G. OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE GRUBB

Between

HANG THI THANH BUI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms N Quadi, instructed by Migrant Legal Project (Cardiff).
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. The appellant is a national of Vietnam. She was born in June 2001. She came to the United Kingdom in December 2016 in order to undertake a years' study at EF Academy Language School in Torquay. She was to live with an English host family. The expenses of her travel and her course fees and maintenance during the year-long course were provided by her family; they also provided her with pocket money. On 7 June 2017 she claimed asylum. After investigation of her claim the respondent refused it on 6 December 2017. For some reason of which we are not aware, that decision was not served on her until 25 June 2018. The appellant appealed against

the refusal. A hearing was fixed for 8 August 2018. The appellant's representative, Migrant Legal Project (Cardiff) sought an adjournment to obtain expert evidence. They asked for a hearing date after 7 September 2018. The hearing was then re-fixed for 10 September 2018. On receipt of the notice of that hearing, the representatives wrote again. They complained that they had asked for an adjournment until a date after 25 October. They included a copy of an adjournment request, referring to the appellant's substantive hearing date "currently set for 8 August 2018". The adjournment request is dated 23 July 2018. It does indeed request an adjournment until after 25 October 2018. That however, we should make clear, is not the document actually sent to the Tribunal on 23 July 2018. However, the Tribunal appears to have accepted what Migrant Legal Project (Cardiff) said. A further adjournment was granted. A new date fixed was 26 October 2018. The hearing appears to have taken place on that date, before Judge Boyes (although his determination indicates a hearing date of 16 October 2018). Judge Boyes dismissed her appeal. Permission to appeal to this Tribunal was sought and was granted by a First-tier Tribunal Judge on 27 November 2018.

2. There were two substantive elements to the claim before the First-tier Tribunal. The first was that the appellant fears persecution as a Hoa Hao Buddhist if she is returned to Vietnam. The second is that she says that she has lost contact with her parents and if she is returned to Vietnam she will be homeless and at risk of being trafficked. The grounds of appeal to this Tribunal take issue with Judge Boyes' findings on each of those points, and raise two further issues. The first is that the judge failed to consider the medical evidence properly in terms of the appeal as a whole but instead committed the "Mibanga error" of reaching a finding on credibility without taking into account medical evidence that might reflect on credibility. The second is that the judge failed to take into account the appellant's age and its effect on her ability to give cogent and comprehensive evidence. We have born in mind those two grounds throughout our consideration of this appeal, because of the effect that concerns of that sort have on the judge's primary findings of fact. It is, nevertheless, right to start with the material that was before the judge.

3. The position of Hoa Hao Buddhists in Vietnam is complex. For the present purposes the following simplified account will serve. Hoa Hao Buddhists as a whole are subject to some suspicion and occasional investigation by the Vietnamese state. There is a state-approved part of the sect. Some followers, however, have declined to give their allegiance to the state-approved part. The factions or sects which they follow have been subject to action by the government which may sometimes amount to persecution. Again for present purposes only, we are content to assume, as appears to have been assumed by the judge and both parties before us, that the appellant may have a well-founded fear of persecution if, but only if, she is a follower of the part of Hoa Hao Buddhism that is not approved by the State.

4. The appellant's claim for fear of persecution on grounds of religion was not part of her original claim. By the time of her interview, she had added it as a factor causing her fear of return, and she was asked, and answered, questions about her religious affiliations and practice. These began with the exchange:

"Q. 89. Have you had any problems because of your religion in Vietnam?

A. A bit because I know with this religion, Vietnam banned this religion."

5. At questions 117-18 she said that a typical religious ceremony would require an altar and incense and prayer; they were quite low key "because it's banned in Vietnam". At 131 the appellant said that because the religion was banned in Vietnam you have to do it quietly and not let the police know, because if the police know they would arrest people. She said that she was "warned" in 2015. There was a celebration in a "secret place". Police came and arrested some people. They took her into a room and questioned her. They told her not to participate in other ceremonies. She attributed her inability to remember very much about the basis and practice of her religion to the fact that she had had a car accident and hurt her head in 2016. She said that she had not mentioned any of these difficulties in her written statement, because the interpreter was "a bit young" and the appellant did not want not to be liked. She would not practice her religion openly if she went back to Vietnam, because "it is banned".

6. Before the First-tier Tribunal, the appellant's case was supported by an opinion prepared on her behalf by Anh Tran. This, we understand, is the report which was going to be available by 31 August: it is in fact dated 8 October 2018. The author of the report was asked to comment on the appellant's general account of events whether she has practiced or is practising as a Hoa Hao Buddhist as claimed. She met with the appellant for two hours in September 2018, the appellant's guardian (who, other evidence shows has attempted to encourage her to practice her religion in the United Kingdom) was also present. Anh Tran sets out matters relating to the practice of Hoa Hao Buddhism in Vietnam. She indicates clearly, however, that the appellant "does not know which branch of the Hoa Hao Buddhist sect, the "registered one" under the law on religion of Vietnam, or the pure Hoa Hao" she belongs to, although her answers are wholly consistent with her following Hoa Hao Buddhism.

7. The particular difficulty that the evidence does not show that the appellant has any allegiance to the unauthorised part of Hoa Hao Buddhism does not appear to be the subject of any submissions in Ms Quadi's skeleton argument before the First-tier Tribunal Judge. It is obviously a major difficulty for the appellant. It does not appear to us that any concerns about the appellant's memory (in particular ability to recall traumatic events) or maturity can fill the gap: the position was that, when talking to a supportive expert, with the support of her foster carer, she did not say anything which enabled the expert to conclude that she would be in the religious group that is at risk of persecution. In these circumstances the judge's conclusion that the appellant had failed to discharge the burden of proof, even to the appropriate low standard, is far from surprising. Indeed it is not easy to see the basis upon which he could have rationally concluded that the appellant followed unregistered Hoa Hao Buddhism. As we have said, all Hoa Hao Buddhism is the subject of some suspicion from the authorities, and all that the appellant could say was that the practice of what she remembered so little was, she understood, "banned". Indeed the grounds of appeal to this Tribunal do not raise any direct

challenge to the judge's findings on this point. Instead, under a heading "Failure to Consider Age", where Ms Quadi asserts that the judge "fails to consider A's age and its effect on her ability to give cogent and comprehensive evidence" there is this:

> "It is arguable that Judge Boyes' failure to properly consider her age/maturity inhibited a fair finding of whether A was part of the unregistered Buddhist sect. In addition, A's evidence in relation to conduct and practice of her religion clearly indicated that she was part of the unregistered sect."

8. That appears to us to be merely disagreement with Judge Boyes' conclusions on the evidence before him. Besides, it is perfectly clear from what the experts said that the material deriving from A did not demonstrate that she was part of the unregistered sect. It was equivocal.

9. It seems to us that Judge Boyes made no error of law in his assessment of the evidence on this point. In any event, however, it is not easy to see how the risk claimed by the appellant could arise. Her knowledge of Hoa Hao Buddhism does not seem to be such that she would have any desire to practice anything other than the state approved form of it. There is no evidence of the persecution of children merely because they have been brought up in the unregistered sects. Thus, on her return, persecution would arise neither from her past nor from her present activities. Be that as it may, the judge was entitled to conclude as he did.

10. So far as the appellant's links with her family are concerned, the appellant's evidence was that she was regularly in touch with family members during most of her course, but towards the end of it she lost contact with her parents. Her last communication was with her grandmother who appeared unwilling to discuss very much, but said that her parents were bankrupt and her father had been arrested. Her written statement in support of her asylum claim, prepared in her own time and dated 17 August 2017, confirms that the full account of why she is claiming asylum is that she feared that: "I will be homeless and forced to work to pay my parent's debt if I return to Vietnam. There were some problems going on with my family even before I left; my mother used to shout at me and sometimes hit me. I don't think they want me there. They have abandoned me here. I think they owe money for sending me to the UK." When she was interviewed on 31 October 2017, she said again that her mother had sometimes slapped her and used a cane when she was young. She said that in April 2017 she had called her parents and asked for some money and they said they are busy. That was the last time she spoke to them. Her conversation with her grandmother was in May. She had not been able to reach her grandmother after that. She gave the interviewer her grandmother's number so far as she could remember it as [~]. She then explained how she had reached the view that she would be in danger on return. She had reasoned that if the family had gone bankrupt she would have no house and nowhere to stay; that they would owe money to the mafia or to the banks. She did not know whether there had been any contact with the mafia. She thought that the banks would make her repay the debt. She said she did not want to live with her grandmother. The appellant has also said that she does not want to get in contact with her parents, because she thinks they do not want her.

11. Also before the judge was a certain amount of background evidence relating to the appellant's own ability to be contacted. She had, as we have said, set off from Vietnam with the scheme of being looked after by an English family while she undertook her studies. On the day that she went to Croydon for her first interview, 7 June 2017, she lost her phone. After she made her claim she was taken into local authority care, so she changed her address on 15 June 2017. There is no suggestion that the appellant has ever sought to get in touch with her family by letter.

12. The respondent, however, did make investigations. It raised an inquiry through the appellant's school, EF Academy, and they made inquiries through their Vietnam office. The result was, in due course, an email dated 5 December 2017 from EF Academy in Torquay, reading as follows:

> "I can confirm we received confirmation, through a colleague in our EF Academy Vietnam Admissions Office, from the Students' Province Peoples Committee that [the appellant's] parents have not been arrested nor are there any political or religious issues of concern to report and this information was provided to … the Home Office."

13. That email is referred to in the letter refusing the appellant's claim. It was available to the appellant and those advising her from, at the latest, the time when the decision refusing her claim was served on her in June 2018. The notice of appeal, dated 9 July 2018, raises no issue about it. It was before the judge. The judge's conclusions on this issue are set out in paragraphs 33 and 34 of his determination as follows:

> "33. I turn to the issue in relation to the appellant's parents which is the second distinct issue in this case. Having given the matter some careful thought and consideration I am of the view that the appellant is neither credible or believable in relation to her claims made about not being able to contact her parents, her grandmother, that they have been arrested and all made bankrupt or that she will be sent into penury if returned to Vietnam.
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> 34. The letter produced by the Home Office at pages H1 and H2 of the respondent's bundle is telling. EF Academy, I am satisfied, have no axe to grind in relation to this appellant and no reason whatsoever to lie to the Home Office in relation to the welfare of her parents. The information provided is clear, unambiguous and it is in direct contradiction to those claims made by the appellant. The appellant has never presented any evidence other than her oral claims that her parents have been arrested, made bankrupt, or had been involved with Mafia-type organisations such that would lead the appellant to be placed in dire or grave circumstances on her return. The appellant has only challenged this document by way of comment in saying one does not know the extent of the enquiries made. To that remark, the answer is we do know. They have conducted a sufficient enquiry so as to be able to tell a Government Department and ultimately a Court that there is nothing wrong or has happened to the appellant's parents."

14. We need to set out Ms Quadi's ground of appeal in full:

> "**Ground 3: Undue weight given to EF Academy letter**

9. Judge Boyes gave undue weight to a letter which claims that "everything is fine" without any consideration as to how this was determined and what investigations were undertaken by the academy. Judge Boyes explains that he is "satisfied" that the academy would have no "reason whatsoever to lie", however fails to consider whether the checks undertaken by the academy in concluding that everything was "fine" were adequate.

10. Country expert Anh Tran, provided her opinion on the reliability of the letter. However, despite being instructed prior to the hearing she was unable to formulate a response until after the hearing as she was traveling. She states as follows:

> "Regarding the email from EF Academy Vietnam Admission Office informed that they have contacted with the student home province council committee who have confirmed that everything is fine back home and the appellant's parents have not been arrested nor are they having any problems on account of their politics/religion, I would like to present my opinion on this information as follow:
>
> According to the Criminal Procedure Code of Vietnam, Vietnam citizen only are determined as guilty or innocence by the Court. If any citizen is suspected that he/she would violate the state law, they might be questioned, arrested, and detained by the police. If after investigating the matter the police believe that there are enough evident to prosecute this person, they will refer the matter to the Prosecution Office for charges. The Court will ultimately determine guilt or innocence of the suspected persons.
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> According to the appellant's claim, her parent have conducted some religious activities which expressed the opposing political opinion but if her parent would not be yet determined by the court as guilty, under the Vietnamese criminal law, the appellant parent: "are normal and everything is fine" is consistent with the country practice.
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> Full Criminal procedure code of Vietnam can be viewed at
>
> http://noip.gov.vn/noip/resource.nsf/vwResourceList/3457A7711572E0534725767200203DDA/$FILE/CRIMINAL%20PROCEDURE%20CODE.pdf
>
> In addition, in my view the religious/political matter has been considered as "sensitive matter" in Vietnam. Furthermore, the information which EF Academy Vietnam Admission Office has asked in relates to the foreign diplomatic issue (Vietnamese student in the UK). As a result, the local authority would not willing to disclose details of the case by simple response as the appellant "are normal and everything is fine" to the EF Academy Vietnam Admission Office to avoid further sensitive diplomat correspondences."

11. It is submitted that the weight attached to this letter by Judge Boyes was undue and Ms Tran's further opinion should be considered in light of the following:

a. NIAA 2002 s. 84(4): On an appeal under section 82(1) against a decision the Tribunal may consider evidence about any matter which it thinks relevant to the substance of the decision, including evidence which concerns a matter arising after the date of the decision;

b. The very greatest care must be taken before refusing to admit late evidence *(AK (admission of evidence – time limits) Iran [2004] UKIAT 00103* at [13]);

c. "Apart from circumstances where lateness of the evidence means it is unfair to receive it, issues of unfairness to the weight to be attached to evidence, not admissibility" *(MB (admissible evidence, interview records) Iran [2013] UKUT 119* at [31])."

15. The first thing to say is that there is still no evidence on this issue from Anh Tran, and there was no application to adduce such evidence at the hearing before us. The suggestion made in paragraph 11 of the grounds that the issues raised in paragraph 10 ought to have been regarded by the judge as late evidence is entirely without merit. There is no reason to suppose that the judge was aware of this issue at all. Ms Quadi told us that the judge had her submissions. We have studied her skeleton argument, it raises no issue about the content of the email, but argues instead that the respondent should have enquired whether the presence of the appellant's own family at home amounted to adequate reception arrangements for her.

16. It is because of this particular ground of appeal that we set out the chronology leading up to the hearing before Judge Boyes. There was ample time before the hearing for any question to be raised about whether the content of the email was trustworthy. No such issue was raised either before the hearing or at it. Only when Judge Boyes makes a decision actually based on the evidence before him is there a complaint that he has preferred what appeared to him to be objectively verifiable evidence over the appellant's unsupported statements and speculation. It was for the judge to determine what weight should be given to the various items of evidence before him. It does not appear to us that there is any sustainable ground for criticising the choices he made. In any event, the position was that it was the appellant's own movements that had made it impossible for her family to get in contact with her; she had chosen not to get in contact with her family. It is not clear that the telephone number given as her grandmother's even could be a Vietnamese telephone number. She reported what she claimed her grandmother had said to her and built a mountain of speculation upon it. The only other evidence was apparently dispassionate evidence that her family were not in the difficulties that she claimed. It is not at all surprising that the judge reached the conclusion he did and, certainly, he committed no error in doing so.

17. In that context, Ms Quadi's submissions that are based on the acceptance of the appellant's account and of her speculations simply do not bite. There was no reason for the judge to suppose and, indeed there is no reason for us to suppose other than that the appellant, if returned to Vietnam, will be returned to her family.

18. We have dealt with the two substantive issues before the judge first, because it is important to identify what the evidence was. It is right to say as Ms Quadi does say, that the appellant giving evidence before the judge was still a minor, and that there was evidence from a psychologist about her mental state. The psychologist diagnoses the appellant as suffering from Alexithymia, which is a "personality construct" occurring in about 10% of the population. She also has what the

psychologists call variously an "avoidant attachment disorder" and an "avoidance attachment disorder", which means that she is self-contained and does not show outward desires for closeness or love. The psychologist says firmly that the appellant's head injury and the car accident in 2016 has not had any lasting effect, but is able to say that the appellant's memory is bad.

19. Despite our best endeavours we are unable to see what the identification of those conditions, or the appellant's age, could add either to the evidence she gave or to the process by which it should be analysed. The judge was concerned to determine whether the appellant's claimed fear of persecution was well-founded. In relation to her religion he found, as the country expert whose report was adduced on her behalf had found, that it was not possible to say that she identified with the unregistered sect. In relation to her claim to have lost contact with her parents, her own evidence was that she had chosen not to be in touch with them. The evidence that the judge took into account, and the conclusions he reached, appear to be exactly in line with what the authors of the reports said.

20. It is true that there are passages in the determination which might be subject to criticism. There are numerous typographical errors and other infelicities: we have already pointed out that the determination starts with an error in the date of the hearing. There is what might be regarded as an unnecessary rant in relation to the psychological evidence, and the judge perhaps grasps too readily the Presenting Officer' suggestion that the appellant had failed exams and was afraid of going home. No doubt the determination would have been better, and perhaps could have been more readily accepted by the appellant, if it had not had those features. But, at its heart, it seems to us that the judge took into account all the evidence before him and reached conclusions which are not only in line with that evidence but are, so far as we can see, virtually inevitable on the evidence as it was presented to him. The grounds of appeal to the Upper Tribunal do not disclose any error of law by him. We accordingly dismiss this appeal.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 11 September 2019