



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

Appeal Number: PA/02861/2019 (V)

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre **Decision & Reasons Promulgated**
On 6 August 2020 Remotely **On 20 August 2020**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**T A T
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Frost instructed by Migrant Legal Project (Cardiff)
For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. The appellant is a citizen of Vietnam who was born on 10 October 2000. He arrived in the United Kingdom clandestinely approximately on 21 June 2016. He was arrested and identified as a minor and placed with foster carers. Shortly after, the appellant disappeared from his foster care home until he was apprehended almost two years later.
3. On 9 April 2018, the appellant claimed asylum. The basis of his claim is that he comes from a village which has a fishing community. He was involved in a demonstration in Hanoi on 1 May 2016 protesting against pollution produced by a factory near where he lived. He claims that he held up a manuscript banner at the demonstration and that he was arrested and detained by the police during which time he was beaten and ill-treated. After four days, he was released and returned to his family home and subsequently noticed that his home was being watched by police officers. He also claims that, whilst attending church each day (he is a Roman Catholic), there were police at the church who disrupted the services. As a result, at his mother's suggestion, he left Vietnam to avoid further mistreatment by the police.
4. On 14 March 2019, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and on human rights grounds.

The Appeal

5. The appellant appealed to the First-tier Tribunal. In a decision sent on 14 November 2019, Judge N J Osborne dismissed the appellant's appeal on all grounds.
6. The appellant appealed to the Upper Tribunal. On 30 December 2019, the First-tier Tribunal (Judge L S Bulpitt) granted the appellant permission to appeal.
7. In the light of the COVID-19 crisis, the Upper Tribunal initially expressed the provisional view that the decision to determine whether the judge had erred in law could be made without a hearing. However, in the light of submissions from both the appellant and respondent, on 3 July 2019 UTJ Owens directed that it would not be appropriate to determine the error of law issue without a hearing and directed that the appeal be listed for a remote hearing as requested by the appellant's representatives.
8. Consequently, on 6 August 2020, the appeal was listed before me. The appeal took place at the Cardiff Civil Justice Centre with me based in the court and Mr Frost, who represented the appellant, and Mr Howells, who represented the respondent, taking part in the hearing remotely via Skype for Business.

The Submissions

9. On behalf of the appellant, Mr Frost relied upon the grounds of appeal and submissions made on behalf of the appellant (by Ms Pollard) prior to the hearing and dated 15 April 2020 and 23 April 2020.
10. First (relying on Ground 2), Mr Frost submitted that Judge Osborne had reached two wholly inconsistent factual findings in his determination. Mr Frost submitted that at para 16, the judge found that the appellant's claim was "incredible" and at para 19 made the finding that he did not accept that the appellant had attended the demonstration and that he had been arrested and detained and mistreated by the authorities. However, Mr Frost submitted that at para 37 the judge had made precisely the opposite finding when he said:

"The Appellant, as I have found above, attended a demonstration in Hanoi with many others. He was arrested, detained and ill-treated, again with many others. The appellant after four days was released to his mother. He returned home."
11. Mr Frost submitted that this was not a "slip" because the judge then went on in subsequent paragraphs to deal with the appellant's claim on the basis that he had found that the appellant attended the demonstration and was detained and ill-treated as the appellant claimed. Mr Frost submitted that there were no reasons given for these inconsistent findings. The judge's decision was, as a result, legally flawed.
12. Secondly (relying on Ground 1), Mr Frost submitted that the judge had misunderstood the appellant's evidence concerning who had organised the demonstration in Hanoi. Mr Frost submitted that the appellant had not, as the judge stated in para 19, given contradictory evidence. He had said throughout that the demonstration in Hanoi was organised by people against the government but that his local group's participation had been instigated by the local priest. He had not said that the local priest organised the demonstration in Hanoi. That, Mr Frost submitted, resulted in the judge's adverse finding in para 19, namely that the appellant had not taken part in the demonstration, been arrested or detained and mistreated, legally unsustainable.
13. Thirdly (relying on Ground 3), Mr Frost submitted that the judge had made an adverse finding as to whether the appellant, as a former demonstrator, would be at risk on return by misapplying the expert evidence of Dr Tran. He submitted that, contrary to the judge's view expressed in para 46, Dr Tran had not concluded that the appellant would not be at risk of persecution on return when he registered his profile/CV with the local authority in order to obtain a job or open a business. Mr Frost submitted that reading paras 5.1 and 5.4 of Dr Tran's reports together made it clear that the appellant would be asked about why and how he had left Vietnam and would have to lie about his arrest and detention.
14. Fourthly (relying on Ground 5), Mr Frost submitted that the judge had failed to adequately take into account the psychiatric report of Dr Battersby in assessing the appellant's evidence, in particular when

identifying inconsistencies in his evidence about the periods of surveillance outside his house and when he had attended church, given Dr Battersby's view that the "cogency of his evidence will ... be slightly reduced by his PTSD".

15. Fifthly (relying on Ground 4), Mr Frost submitted that, although the judge had made the positive finding that the appellant was a Roman Catholic, when he considered that as a risk factor at paras 22 - 26, he did so in isolation having in the preceding paragraphs found the appellant's claim to have been involved in a demonstration and arrested, been detained and ill-treated incredible. The point, Mr Frost submitted, was that this was an aggravating factor if the appellant had taken part in political activity before.
16. On behalf of the Secretary of State Mr Howells relied upon the submissions made by the respondent prior to the hearing (by Mr Bates) dated 20 April 2020.
17. First, Mr Howells submitted that the judge had not made inconsistent findings as to whether the appellant had taken part in the demonstration in Hanoi and had been arrested and ill-treated. He submitted that what the judge said in para 37 was a "slip". Mr Howells submitted that the judge had given no reasons anywhere in his determination for that finding but, by contrast, he had earlier in the determination found the appellant to be "incredible" and had given reasons at paras 18 - 22 for rejecting the appellant's account concerning the demonstration and thereafter.
18. Secondly, in any event, Mr Howells submitted that the judge made alternative findings at paras 38 - 43 that the appellant would not be at risk on return even if he had been involved in a demonstration and arrested and ill-treated as he claimed.
19. Thirdly, in respect to his finding in paras 38 - 43, that the authorities had not shown any interest in him after the demonstration, Mr Howells submitted that the judge had not failed to take into account Dr Battersby's evidence that he suffered from "mild PTSD" and her view that the "cogency of his evidence will ... be slightly reduced by his PTSD". She had not said that he was severely affected and the judge specifically took into account, at para 32, that the appellant was a young person and, at para 27, the judge treated the appellant (at the request of Mr Frost) as a 'vulnerable witness' throughout the hearing.
20. Fourthly, as regards the judge's finding that the appellant would not be at risk as a former demonstrator, Mr Howells submitted that the judge had properly applied Dr Tran's report at para 5.1 where he had unequivocally said that the appellant would not be persecuted on account of his involvement with the demonstration in 2016. Dr Tran had recognised that the appellant would be "mistreated" but not "persecuted" when he registered with his local authority and, as Dr Tran recognised, was likely to be summoned to the police station when he sought to register his

profile/CV in order to obtain a job. Mr Howells accepted, however, that Dr Tran may not have had in mind the legal distinction between “persecution” and “mistreatment” falling short of that. He submitted that the judge was entitled to find in para 47 that the appellant would not be at risk on return because he would be able to explain to the authorities in his local area that he had left Vietnam in an attempt to obtain work in the UK and trace his father.

21. Fifthly, Mr Howells submitted that the judge had not misunderstood the appellant’s evidence about who had organised the demonstration or his involvement in that demonstration. Mr Howells submitted that in the appellant’s asylum interview (at Q47) the appellant had not mentioned, what he subsequently claimed, namely that a priest instigated his involvement. He pointed out that a subsidiary question to question 47 had been “Was there any one person in your area who organised this?”, to which he had replied a group of people who were against the government.
22. Finally, relying on Mr Bates’ written submissions, the respondent contended that the judge had properly considered the risk to the appellant as a result of his Roman Catholic faith.

Discussion

23. I deal first with the issue of whether the judge erred in reaching inconsistent findings on whether the appellant had taken part in the demonstration in Hanoi on 1 May 2016 and had been arrested, detained and ill-treated by the police.
24. At paragraph 16 of his determination, the judge set out, in advance of his reasons, his conclusion on the appellant’s credibility. He said this:

“... I find the appellant’s claim is incredible. It contains discrepancies, the cumulative effect of which is to cast serious doubt upon the reliability of the appellant’s evidence and the veracity of his case.”
25. Then at paras 18–19, under the heading “Arrest, Detention and Mistreatment”, the judge gave his reasons for finding the appellant incredible and why he did not accept the appellant’s claimed activity in Vietnam. The judge said this:

“18. Although in the Reasons for Refusal Letter the Respondent rejects the Appellant’s account of his arrest, detention and mistreatment by the police, Mrs King, Counsel for the Respondent conceded on behalf of the Respondent that that part of the Appellant’s account is accepted. However, after the hearing by telephone with Tribunal staff, Mrs King corrected her position and explained that the Respondent’s position is set out in the Reasons for Refusal Letter. Consequently, I issued directions dated 31 October 2019 which was sent to the parties. Mr Frost (Counsel) has provided further written submissions on behalf of the Appellant.

Objective/background information confirms that there were demonstrations on 1 May 2016 in Hanoi organised by local clergy against the Formosa environmental disaster.

19. Additionally, the Appellant's country expert Dr Tran Thi Lan Anh in a report dated 15 August 2019 confirms that in May 2016 following the Formosa pollution disaster, there was a demonstration in Hanoi at which many demonstrators were temporarily arrested by police and then released. Apparently, hundreds of protestors were pushed into police cars and removed from the area. That is well-known and has been widely documented and reported. The Appellant gave contradictory evidence as to who organised the demonstrations; in his AIR he stated that people just gathered around and the participation from his area was organised by people who were against the government. In his witness statement the Appellant stated that the demonstration by his own locality was organised by the local priest. The Appellant has given fundamentally inconsistent evidence upon a central part of his claim. That discrepant evidence undermines the Appellant's reliability as a witness, his personal credibility and the credibility of his account to attend the demonstration. If the Appellant had genuinely attended the demonstration by going with a large group from his own locality he would have known precisely who organised it. The fact that he was inconsistent about such an important matter undermines his claim to have attended the demonstration whether as claimed by the Appellant or at all. It follows from that finding that the Appellant was not arrested and/or detained and/or mistreated by the authorities whether as claimed by the Appellant or at all."
26. As can be seen, the judge did not accept the appellant's account and, in particular, he relied upon inconsistencies in the appellant's evidence concerning who had organised the demonstration. I will return to that reasoning shortly.
27. Having made that finding, the judge then at para 37 said this:

"The Appellant, as I have found above, attended a demonstration in Hanoi with many others. He was arrested, detained, and ill-treated, again with many others. The Appellant after four days was released to his mother. He returned home."
28. Mr Howells submits that that was a "slip" and that the judge's finding was that the appellant was incredible which led the judge to reject the appellant's claimed involvement in the demonstration. That is a difficult submission to sustain given what the judge said in para 37 which is not capable of being easily reconstructed to produce the opposite conclusion. Further, the finding in para 37 is entirely consistent with the way the judge then, thereafter, approached the issue of the risk to the appellant on return in paras 38 - 43 dealing with what, if any, interest was shown in the appellant (as he claimed by the police carrying out surveillance) after the demonstration and, at paras 45 - 47, whether the appellant would be at risk as someone who had been involved in the demonstration on 1 May 2016. At no point does the judge indicate that he is, in these passages,

dealing with the appellant's claim "at its highest" and so assuming that his account is true but nevertheless concluding he is not at risk. These sections follow a clear and unequivocal finding in para 37 that the judge believed the appellant's account. I do not accept Mr Howells' submission that it is a mere slip. The judge has reached inconsistent findings on a central issue in the appeal, namely whether the appellant's account was true.

29. Mr Frost suggested that the inconsistency might have arisen because of the change of position by the respondent's Counsel after the hearing. At the hearing, she had accepted (departing from the refusal letter) that the appellant had been involved in the demonstration and had been detained and mistreated as he claimed. However, the following day, she telephoned the Tribunal to indicate that the respondent's position was as initially set out in the refusal letter and that she did not accept that the events had occurred. That, of course, required the judge to consider the credibility of the appellant's claim which, at least at the hearing, had not been in issue.
30. What happened is unusual. The judge, quite properly, gave the parties (in particular the appellant) an opportunity to make submissions given the respondent's change of position after the hearing. As I was told, Mr Frost made written submissions - which I have seen - subsequent to the hearing. It was, however, very unusual that such a dramatic change of position post-hearing by the respondent's representative should have occurred. I cannot speculate what effect, if any, that may have had. It is incumbent upon a judge to both make relevant findings and give adequate reasons for those findings. It is plain, however, that the judge's inconsistent findings are irreconcilable and only one finding has any reasons given for it. The absence of a clear finding whether or not he accepted that the appellant was involved in the demonstration and was arrested and ill-treated by the police, amounted to an error of law.
31. Of course, if the appellant could not succeed even if his account was true, that error might not be material to the judge's ultimate decision. On the basis of Mr Frost's submissions, I am not satisfied that this error was immaterial to the outcome of the appeal. I say that for two principal reasons.
32. First, I accept Mr Frost's submission that the judge, in finding the appellant to be incredible at paras 18 - 21, did misunderstand the appellant's evidence and wrongly found an inconsistency in it in relation to who had organised the Hanoi demonstration. The appellant's evidence throughout was that the local group's involvement in the demonstration, of which he was a part, was instigated by the local priest. At para 7 of his asylum statement (dated 26 May 2018), the appellant said this:

"The local priest instigated our participation... and we were joined by people from many other villages affected. There were lots of people at the demonstration, I would guess about 1000 people."

33. Likewise, in very similar terms, at para 9 of his witness statement (dated 29 April 2019), the appellant said:
- “The local priest instigated our participation in this and we were joined by people from many villages affected. There were a lot of people at the demonstration, I would guess about 1,000 people.”
34. In his asylum interview (on 26 February 2019) at question 47, the appellant was initially asked “Who organised this demonstration you went to?”, to which he replied:
- “People just gathered and organised together”.
35. Then he was asked a supplementary question “Was there any one person in your area who organised this?”, to which he replied:
- “Yes a group of people who are against the government so I kind of heard from people in the demonstrations that the group of people are from Hanoi.”
36. The judge relied upon the fact that the appellant failed to say, in response to the supplementary question, that the local involvement had been at the instigation of the priest. But, it is plain from question 47, that the appellant was not answering that question as asked. That may be because he did not understand the question but, in any event, the sense of his answer is clearly not about local involvement but rather about the demonstration in Hanoi which was not in his locality. In other words, he was asked a question about who organised local involvement but answered focused on the demonstration in Hanoi. There was, therefore, a mismatch of answer to question. Whilst of course that might be understood as a failure by the appellant to mention the fact, as he had said all along, that the priest was responsible for the local organisation, it is not an inconsistency in the sense identified by the judge at para 19. The answer in his AIR relates to the demonstration in Hanoi and the evidence in his witness statement relates to who organised his local participation in that Hanoi demonstration. This claimed inconsistency was a central part of the judge’s reasoning in paras 19 why he reached his finding that the appellant’s account was incredible. He made this finding despite the appellant’s account of the demonstration being consistent both with the background evidence and that of the expert, Dr Tran given in his report. In my judgment, in relying upon this “inconsistency” in the appellant’s evidence, the judge erred in law in reaching his adverse credibility finding.
37. Secondly, the judge’s findings that the appellant would not be at risk on return, based (now) on his finding in para 37 that the events did occur on 1 May 2016, as the appellant claimed, are in themselves unsustainable.
38. As regards the judge’s reasoning in paras 38 - 43, he concluded that he did not accept that the appellant had been under police surveillance at his home as he claimed. Here, again, the judge identified a discrepancy in the appellant’s evidence. At para 38 he said this:

“When the Appellant returned home with his mother following his release from detention, the Appellant claims that two police officers appeared in the street outside his home. He has claimed that they were there to monitor him and that he was unnerved and disturbed by their presence. In the Appellant’s two witness statements he claims that the two officers were present for between two – three hours each day. However, in his oral evidence the Appellant initially stated that to be the case but then went on to say that sometimes the police officers were there for two to three hours twice per day. I find that the Appellant failed to resist the temptation of exaggerating his claim for effect. The Appellant’s claim that the officers were present for two – three hours twice a day was inconsistent with his earlier oral evidence and his written evidence given in his witness statements. The inconsistency in the Appellant’s evidence undermines his reliability as a witness, his personal credibility, and the credibility of his claim that the police officers monitored him after his release from detention whether as claimed by the Appellant or at all.”

39. Of course, in this passage the judge is proceeding on the basis that he has accepted the credibility of the appellant’s account of being involved in the demonstration and as a result being arrested, detained and ill-treated by the police. Mr Frost relied upon Dr Battersby’s expert psychiatric evidence that the appellant suffered from PTSD and that the “cogency of his evidence will ... be slightly reduced by his PTSD”.
40. I accept, as Mr Howells submitted, that the judge properly treated the appellant as a vulnerable witness during the hearing (see para 27) and he took into account the appellant’s young age (para 32). However, the only reference to Dr Battersby’s evidence was at paras 20 – 21 of the determination:

“20. The Appellant has produced a psychiatric report prepared by Dr Alison Battersby dated 5 September 2019. In that report, Dr Battersby, a well-known and respected expert, diagnoses the Appellant as suffering from a mild post-traumatic stress disorder. She finds that the Appellant must have been exposed to a stressful event or situation but Dr Battersby reports at page A71 of the Appellant’s bundle that,

‘At all times his behaviour and responses were consistent with someone who had mild PTSD. It is extremely difficult to consistently feign those conditions over an interview. I have considered whether he is exaggerating his difficulties but in my interview, he was avoidant of discussing his symptoms. He told me that he does not have significant difficulties with his mental health and was very reluctant to talk about his problems despite being reminded that this was important for his immigration matter. This is strongly supportive of a diagnosis of PTSD. At one point in the interview he briefly disassociated. At no point was his verbal or non-verbal behaviour inconsistent with someone who had mild PTSD. In my opinion he has found it very difficult to accept how he is struggling with his mental health.’

Dr Battersby considers that the main risk to the Appellant is of re-traumatisation but in her opinion, this is low.

21. The Appellant in his interview with Dr Battersby consistently described he had been mistreated during his four-day detention in Vietnam. It is no part of Dr Battersby's role or responsibility to assess the credibility of the Appellant's account. That is the task of the judge. I have found the Appellant's account of his arrest and detention to be incredible. The Appellant might well have suffered a stressful event or situation such that he has been left suffering from the condition diagnosed by Dr Battersby. It is not for me to speculate how the Appellant came by his condition. However, for all the reasons set out herein, I am not satisfied, even to the low standard that has to be applied, that the Appellant has suffered that condition for the reasons claimed by the Appellant."
41. Here, however, the judge made no reference to Dr Battersby's opinion as to the potential effect of the appellant's mental health on the cogency of his evidence. Indeed, in para 21 the judge said he had already found the appellant's account of arrest and detention to be "incredible". The discrepancy relied upon by the judge in para 38 is a minor one. Whilst I accept that the judge also identified other inconsistencies in the appellant's evidence, for example at para 40 that the appellant said that they were present on Saturdays and Sundays or alternatively every day in his evidence, that too was also a relatively minor inconsistency which at least warranted consideration in the light of Dr Battersby's evidence. The judge, in my view, failed to have regard to the relevant expert evidence in assessing whether he accepted the appellant's account that, having been involved in the demonstration and arrested and ill-treated, the authorities continued to have an interest in him thereafter.
42. Further, in relying upon Dr Tran's expert evidence for his finding that the appellant would not be at risk on return, the judge has, in my view, failed properly to take that evidence into account.
43. At paras 45-46, and under the heading "Risk to the Appellant as a Former Demonstrator", the judge considered the evidence of Dr Tran as follows:
 - "45. Dr Tran, the Appellant's country expert, reports that the primary risk to the Appellant upon return does not come directly from his prior involvement in the demonstration on 1 May 2016.
I find that the Appellant, when he attended the said demonstration, was of such low profile and the demonstration is now more than three and a half years later, that it is unlikely that the state authorities would have any interest in him.
 46. The evidence from Dr Tran suggests that the Appellant faced a risk of being mistreated by the local authority when he asks the approval from the local authority for his personal profile. Mr Tran reports it is likely that he will be asked why and how he left Vietnam and what he did overseas. In that capacity, the Appellant risks being abused at the local police station. However, the evidence in this respect falls considerably short of a risk of

persecution. Mr Tran's report at page A25 of the Appellant's bundle at [5.1] that as the Appellant was only involved in a demonstration with the local authority in May 2016 when he was still a minor (under 18 years), he will not be persecuted by the local authority upon his return to Vietnam. However, if he is returned to his original local authority, he still would face a risk of being mistreated. Mr Tran draws a distinction between persecution and mistreatment falling short of persecution."

44. What Dr Tran said in paras 5.1-5.4 so far as relevant was as follows. At 5.1 he said this:

"In my view, as the appellant only involved in the dispute (demonstration) with the local authority in May 2016 when he was still in the minor age (under 18 years old), in my view, if returned to Vietnam, he will not be persecuted by the local authority."

45. That is a finding, consistent with what the judge says in para 46, that merely by being involved in the earlier demonstration would not result in him being persecuted on return.

46. However, Dr Tran goes on in para 5.1 to say this:

"However, if he is returned to his original local authority, he still would face with the risks of being mistreated from local authority when he would ask the approval from local authority for his personal profile (CV) with the details set out below."

47. Dr Tran then goes in in para 5.2 to explain the process for registering a "profile/CV" in order to obtain work. Then at para 5.3 he said this:

"So, even if the appellant was not prosecuted due to his protect activities, the negative treatment from the local authority would very likely apply to him."

48. I anticipate that Dr Tran intended to say that the appellant would not be "persecuted" due to his protest activities rather than not "prosecuted".

49. Then, importantly at para 5.4 Dr Tran said this:

"In addition, as the appellant applied to the asylum in the UK. He does not want to return to Vietnam. If being forced to return to Vietnam, he will be returned under the special arrangements such as removal directions. In my experience and knowledge about Vietnam immigration policy, he will be arranged to return to his original local authority. In this case, it is very likely that he will be summoned to the police station to answer about why and how he left Vietnam and what he did overseas. As a result he would face with the risks of being abusing at the local authority as in May 2016.

For the risks of being abused at the police station, please see part 6 below for further information."

50. Then, in part 6 of his report Dr Tran sets out instances of abuse, including "violent abuse" in police stations.

51. Whilst Dr Tran's report, written no doubt in his second language, has some grammatical problems, his conclusion is palpably clear. Whilst the appellant would not, simply be at risk of persecution on return because of his prior involvement in the demonstration as a minor, when he returns and wishes to work, he will return to his original local authority and it is very likely that he will be summoned to the police station to answer why he had left Vietnam and what he did. As a result, he would be faced with the risks of being abused at the local police station as in May 2016. Of course, what happened to him in May 2016 at the police station – at least if his account is accepted – is that he was seriously ill-treated. He was beaten daily. Dr Tran is, therefore, postulating the appellant's circumstances on return to be that he would be exposed to precisely the same risk of persecution even though he refers to it as abuse or "negative treatment". As Mr Howells accepted, Dr Tran may not have been using these words in a discriminating way to reflect particular legal concepts. Consequently, the judge, in my view, failed properly to take into account Dr Tran's view as to the likely consequences for the appellant if he returned to Vietnam.
52. One final point. At para 47, the judge added this as regards the risk to him on return:
- "I have every confidence that the appellant will be able to explain to the Vietnamese authorities in his local area that he left Vietnam in an attempt to obtain work in the UK and in an attempt to trace his natural father in this country."
53. That, of course, would be potentially a permissible course of action if the appellant had not been involved in a demonstration and arrested and mistreated by the police. However, the judge expressed this view in a section of his determination premised on a finding that he was involved in the demonstration and detained and abused as he claimed (see paras 37 and 45). If, therefore, the judge reached this conclusion on the basis that he accepted the appellant's account but that, in effect, the appellant could persuasively lie or dissemble about his previous political involvement, then the appellant would fall within the principle in HJ (Iran) v SSHD [2010] UKSC 31 and RT (Zimbabwe) v SSHD [2012] UKSC 38 and would, on that basis, have a claim that he was being persecuted for a Convention reason by being required to lie, or dissemble, about his political activities.
54. For these reasons, the judge's adverse credibility finding and his finding that the appellant would not be at risk on return based upon an acceptance of his account, were legally flawed.
55. It is not necessary for me to reach a view on the final point relied upon by Mr Frost, namely that the judge failed properly to take into account "holistically" the appellant's Roman Catholic faith having accepted that he was a Roman Catholic. Suffice it to say that, since the appellant's appeal has to be re-determined *de novo*, the appellant will, to the extent that it is relevant, be able to rely upon his claimed faith as an aspect of the circumstances which, he says, put him at risk on return to Vietnam.

Decision

56. For all these reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. That decision cannot stand and is set aside. The appeal must be re-heard *de novo*.
57. Given the nature and extent of fact-finding, and having regard to the Senior President's Practice Statement at para 7.2, the proper disposal of this appeal is, as both representatives recognised if Mr Frost made good his grounds of appeal, to remit it to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge N J Osborne.

Signed

Andrew Grubb

Judge of the Upper Tribunal
14 August 2020