



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12268/2019

THE IMMIGRATION ACTS

Heard at Field House
On 14 October 2020

Decision & Reasons Promulgated
On 9 November 2020

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

PL
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Childs, Counsel, instructed by Curling Moore Solicitors & Advocates

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

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

1. The Appellant is a citizen of Vietnam. According to the Secretary of State his date of birth is 1 January 1998. The Appellant says that his date of birth is 9 November 1988. The First-tier Tribunal anonymised the Appellant. There is no reason for me to interfere with this.
2. The Appellant came to the United Kingdom on 17 April 2016. He made a claim on protection grounds on the same day. However, this application was withdrawn on 7 July 2016. The Appellant absconded. He made further submissions on 14 August 2019. Following from those further submissions the Secretary of State on 22 November 2019 refused his application on asylum grounds.
3. The Appellant appealed against the decision. His appeal was dismissed by First-tier Tribunal Judge Skehan in a decision which was promulgated on 19 February 2020 following a hearing at Hatton Cross on 22 January 2020.
4. On 27 July 2020 the matter came before Upper Tribunal Judge Kekić, who decided that the judge erred in a number of respects. Her decision was made on the papers under Rule 34 of the 2008 Procedure Rules. She took into account the written submissions that had been provided from the parties.
5. Judge Kekić identified errors of law in the decision of the First-tier Tribunal and set aside the decision to dismiss the Appellant's appeal. The error of law decision reads as follows:
 - “16. I have considered all the evidence, the grounds for permission and the submissions made by both parties. I am satisfied that, despite the absence of any meaningful response to the directions from the appellant's new representatives, for the following reasons the judge's determination contains errors of law with respect to certain aspects of the claim.
 17. Plainly it was wrong for the judge to undertake post-hearing research and then to decide not to give the parties any opportunity to put forward any submissions they may wish to on that material. Time and time again judges are warned of such inappropriate behaviour so it is difficult to understand why this judge took such a course of action. This would have been ameliorated by putting the material to the parties for a response but there is a complete absence of any reasoning as to why the judge considered this would not be necessary (at 7). The error is material because the judge then proceeded to rely on the evidence as part of her reasons for dismissing the appeal (at 16). It follows that her findings on risk of return to the appellant on account of his religious beliefs are unsustainable. I, therefore, set aside the conclusions in that respect.
 18. I now proceed to consider her other findings and the grounds for permission which are relied on in full by the appellant. I note that whilst permission to appeal was only granted on the above issue, and that the granting judge found the other arguments less meritorious, he did not prevent argument to be brought in pursuance. The appellant's representatives have chosen not to make any further arguments or to expand upon them so I consider the points made in the grounds themselves and the respondent's submissions.

19. The first complaint is that the judge wrongly found a conflict in the appellant's evidence as to practising his religion. I agree with the grounds in this respect. Whilst the judge maintains that the appellant's oral evidence of practising at home because there was no Pure Hoa Hao community conflicted with the evidence in his witness statement that he attended a temple in Croydon, it is plain from the Record of Proceedings and indeed the determination itself (at 9) that the appellant did also mention the temple in oral evidence. The absence of evidence from the Temple, whilst it would have been helpful, does not in itself mean that the appellant never attended it. The judge's assessment of how the appellant practises his faith is therefore flawed and this matter will need to be re-assessed.
20. The second ground is that the judge did not consider an argument before her; i.e. the article 8 claim. It is maintained that this was mentioned in the skeleton argument and had been addressed by the respondent in her refusal letter.
21. I do not find any merit in this complaint. The respondent may have considered article 8 in her decision making but no such claim had been made to her in the appellant's application. There is no mention of any article 8 claim in the letter of 13 August 2019 from the appellant's previous representatives or in the appellant's accompanying witness statement of 9 August 2019. Nor was any oral evidence called at the hearing in respect of any private or family life and the appellant's witness statement of 23 December 2019 written in support of the appeal does not give any information either. The skeleton argument which is relied on in the grounds is the only document in which article 8 is mentioned and it has to be said the reference is brief and vaguely put (at 27). It was not expanded upon in oral submissions at the hearing. Thus, whilst it may have been preferable for the judge to refer to it and then conclude no claim was made out, given the absence of any information as to a private or family life and given the absence of any engagement in submissions with it, I do not find that the judge's observation that no article 8 claim was pursued amounts to a material error of law.
22. The strongest point is, surprisingly, put as ground three, and I have already dealt with that above at paragraph 12.
23. Ground 4 complains that the wrong standard of proof was used. This is also unmeritorious. The judge was aware of the correct standard (see paragraphs 2 and 3 and repeated at 15, 16 and 18). The complaint about a few words of paragraph 15, as highlighted in the grounds, amounts to a complaint over a turn of phrase rather than substance, particularly given the judge's reference to the correct standard just two sentences earlier.
24. Ground 5 complains that the judge did not follow the respondent's policy on unaccompanied children when assessing the claim. This complaint is not fully supported by the determination. The judge specifically noted that the appellant had been a minor at the time the alleged events in Vietnam took place and at the date of his departure (at 6 and 10). However, I accept that there is no clear consideration of the appellant's youth when his

account of his experiences in China and, subsequently, in the UK were considered. These matters will have to be re-assessed with that in mind.

25. I now consider whether any of the judge's other findings can be preserved. The appellant's representatives make no submissions on this in their second response even though the respondent had set out very clearly in her submissions which findings she invited the Tribunal to preserve.
26. I preserve the judge's finding that the appellant is a follower of the Pure Hoa Hao Buddhist faith, inferred from the contents of paragraph 8.
27. I do not preserve any findings made by the judge as to the appellant's religious practices or the risk he would face on return to Vietnam because of his religion.
28. I do not preserve the finding that the appellant's father was treated as described for his religious/political activities or that the appellant would not be at risk on account of his father's activities because those findings are made with reference to the CPIN report which the judge should not have considered (at 10).
29. I preserve the finding that the appellant and his mother were not caught for distributing leaflets. That finding is not challenged in the grounds and the judge's assessment and conclusions at paragraph 11 were properly made.
30. I do not preserve the findings on the appellant's experiences in China and his account of being abducted in the UK for the reasons set out at 18 above.
31. I preserve the finding that the appellant would not be at risk on return because of his attendance at demonstrations in the UK because the complaint about the wrong standard of proof being used to make that assessment is not borne out.
32. I preserve the finding that there was no article 8 claim before the First-tier Tribunal.
33. I would note the many spelling, typographical and other careless errors in the determination (for eg, at 5(ii), (iv), (vii), (ix), (xi), (xiii), (xv) and 10) although they have not been raised as an issue in the grounds. Whilst these are regrettable and should not have occurred, they do not impact upon the findings that have been preserved.
34. The issues to be re-determined are:
 - (i) the manner in which the appellant practises his faith and the risk to him on return for that reason;
 - (ii) the nature of his father's activities and his alleged ill treatment;
 - (iii) whether the appellant would be at risk because of his father's activities; and
 - (vi) whether he was held against his will in China and in the UK and, if not, whether that damages his credibility.
35. The appellant's youth at all relevant times must be taken into account when fresh findings are made."

6. Judge Kekić made a number of directions at paragraphs 39 to 43 of her decision, which included a direction that the parties serve and file skeleton arguments and any further documentation relied on.
7. The Appellant's claim is that he is an orphan who has been raised by adoptive parents. He followed the Pure Hoa Hao Buddhist faith and he would be at risk as a result of this on return to Vietnam. He claims that his adoptive father was involved with the Viet Tan Party and that he was arrested and died whilst in prison. As a result of this he fears he will be at risk on return. He says that he was held against his will in China for two years and that after arriving here in the UK he was kidnapped and forced to grow cannabis until he was able to escape.
8. There is an Appellant's bundle that was before the First-tier Tribunal which includes the Appellant's witness statement. The Judge of the First-tier Tribunal summarised the Appellant's evidence at paragraph 5. There are a number of typographical errors, but the evidence as set out by the judge is not challenged. It reads as follows:
 - "5. The appellant had the benefit of a Vietnamese interpreter during the hearing. The appellant confirmed that his witness statement was true, and it was accepted as evidence in chief. The appellant was allowed to adduce further evidence in chief and was cross-examined. The appellant's evidence may be summarised as follows:
 - (i) The appellant was born in Vietnam. He was an orphan and given to a monk of the temple and raised in the temple. He was adopted by his father [HL] and mother [HD]. The appellant's father passed away on 08/02/2013. The appellant stayed with his mother until he left Vietnam but has now lost contact with her. The appellant went to school and finished his education at year 9. From the age of 14 he mostly stayed at home. His schooling was interrupted because his family faced problems with the government. He has not worked in Vietnam.
 - (ii) The appellant is a follower of Pure Hoa Hao Buddhism and his adoptive parents were followers of this religion. This religion was founded by Master Huynh Phu So, who was considered a profit. Part of the religious teaching advocates democracy and giving power to the people. Huynh Phu So was considered an enemy and murdered on 24/02/1947.
 - (iii) The appellant says that he prayed twice a day and describes in detail the rituals followed. During the course of the hearing, the appellant told me that he mainly prays at home as there is not a Pure Hoa Hao community in the UK. He added that he visits the Linhson temple regularly. The appellant's witness statement states that there are events arranged by Buddhists and the Pure Hoa Hao followers every Sunday. No one had attended Tribunal from the temple as he had not asked them to attend.
 - (iv) The appellant said he experienced persecution from for the Vietnamese authorities on 18/05/2012 when he, along with his family organised a celebration to mark the anniversary of the

founding of the religion. The appellant's father was the local leader of the religious group and invited 65 other followers. The celebration was interrupted by 7 uniformed policemen and 5 in civil clothes. They entered the house forcefully and started shouting at the people asking why so many were gathered. They become aggressive. They broke everything including the altar and pictures of the master. The arrested 8 people including the appellant's father and mother and some others. They were taken to the police station interrogated, abused and threatened stop after 20 days, 6 were released, all except the appellant's father and the deputy local leader. They were warned not to attend any religious celebrations. On 18/06/2012 the appellant's father and the deputy local leader were released with the condition to report monthly for the next 6 months. Thereafter the police started visiting the appellant's house regularly and harassing them making their day-to-day life difficult.

- (v) On 05/12/2012 the appellant's father went to Hanoi accompanied by the deputy local leader. They were arrested in Hanoi. And taken to a police station. They were tortured and interrogated in Hoan Kien police station.
- (vi) On 07/12/2012 the police came to the appellant's house with a search warrant. They found information on foreign organisations relating to democracy and freedom of religion. They realised that the appellant's father was involved with the Viet Tan party, which led them to confiscate the appellants' house. The appellant and his mother were detained and interrogated. After 16 days they were released and forced to sign a declaration not to be involved in any sort of activities against the government.
- (vii) The appellant and his mother thereafter lived with a friend of his mother's. On 08/02/2013 the appellant heard news that his father had passed away in prison. He stopped going to school. The appellant was told that his father had passed away due to a lung infection. The appellant does not believe that believes that his father passed away due to torture inside the police station. The appellant sought to make a complaint to the People Committee Bureau but was ignored. The appellant and his mother blamed the Vietnamese police and the government for their predicament.
- (viii) The appellant began distributing leaflets on 06/04/2013. These leaflets would say the Vietnamese government is corrupt... there is no human rights and freedom of religion. They arrest people with no reason. The appellant started distributing leaflets twice a week. He did so at night when there were fewer people around. The appellant distributed leaflets about 9 to 10 times before being arrested on the last time. He was on a motorbike with his mother and was detected by a security man. The appellant and his mother were identified from CCTV and they were informed that the police were looking for them as they had been identified through the motorbike.
- (ix) The appellant's mother arranged for them to leave the country. She did not have enough money to pay for an agent for both of them so

she sent the appellant first. The appellant left Vietnam on 12/05/2013 and travelled to China by lorry. He lived in China for over 2 years and was then helped to fly from China to Russia. The appellant says he that was the only time he used a fake passport. He stayed in Russia for one month and then travelled to Poland, then to France where he stayed for a month, thereafter he was boarded in a lorry and arrived in the UK on 17/04/2016. The appellant said that previously did not wish to disclose to the route taken by his agent to UK authorities as they told him that they, being the agent and people who arranged for him to come to the UK, would kill his mother.

- (x) The appellant said that he was arrested upon his arrival on 17/04/2016 and he was taken to a detention centre. At that time, he was 17 years old. He claimed asylum in the UK on the same day. The following day he moved to temporary accommodation. That evening he went out with another Vietnamese boy called Quang who was living in the same accommodation. They lost their way and that night slept on the street. Due to the language barrier they could not ask for help or explain their situation. The following morning, they were approached by a car, kidnapped and taken to a house where there were 4 people from different nationalities. He was forced to do domestic work and thereafter grow cannabis. During cross examination the appellant told me that he was in a private house for over 2 years. They grew cannabis inside the house and he was not allowed to go out. He was moved to many different houses during that time and lived in many different houses. He said each time that he moved to a new house he attempted to escape but could not. He would try to open the windows but they would be locked and he could not break them open. He would make noise to try to attract attention from people outside but he would be spotted by his captors and beaten up. He was told that should he try again he would be beaten severely.
- (xi) In September 2018 there was an altercation in the house and the appellant had the opportunity to run away. The appellant withdrew his NRM claim because he was scared to involve the police as he was obsessed by Vietnamese police. The appellant did not report his experience in the UK to the UK police as he was afraid because he was involved in an illegal activity, although forced.
- (xii) Thereafter he met Ms Vuong who was supporting him with food and accommodation and helped him find his solicitor. Since being in the UK the appellant has attended two demonstrations. At those demonstrations they demanded freedom for their religion and demanded that the communists stopped suppressing their religion. They also demanded the release of religious activists. The appellant attended his first demonstration on 10/12/2018 outside the Vietnamese Embassy in London. The appellant says he was informed of the demonstration by Ms Vuong. During the demonstration the appellant held banners saying, 'release the religious activists' and 'freedom of religion'. There are pictures of the appellant at the demonstration.

- (xiii) The appellant attended a second demonstration on 28/04/2019. The purpose of the demonstration was to demand freedom of religion and the release of religious prisoners and the Communist to stop suppressing their religion. They were demanding democracy freedom and human rights of people in Vietnam. This demonstration also took place outside the Vietnamese Embassy. It was attended by over 200 people. The appellant says that the Vietnamese government will have video footage and CCTV of the demonstrations. Further these demonstrations on social media and the internet. He will be easily identified from them.
- (xiv) the appellant says that should he be returned to Vietnam he will lose his religious freedom be arrested and imprisoned and may be killed like his father. The authorities have details and are aware of him.
- (xv) The appellant refers to inconsistencies noted within his asylum interview is and notes the words 'vehicle' or 'lorry' are subject to confusion when translated into Vietnamese.
- (xvi) The appellant has not sought assistance from the Red Cross family reunification service or the Vietnamese embassy in London because he was scared for the safety of his mother in Vietnam."

The Appellant's evidence

9. The Appellant relied on a second witness statement of 24 September 2020. He gave evidence before me and adopted both of his witness statements as his evidence in chief. He was cross examined by Mr Tufan. His evidence can be summarised. The Appellant is active as a critic of the Vietnamese government. He continues to attend rallies, meetings and gatherings at the temple in Croydon. He also practises his religion at home.
10. The agent who took him to China held him captive. He was held in debt bondage. He wanted to escape but could not. He owed the traffickers money. After two years in China he travelled to Russia and then France. In France was put on a lorry. He arrived in the United Kingdom. He has not seen the trafficker/agent since he got here. He was kidnapped and forced to work in a cannabis factory. He escaped and met Ms Vuong in Deptford. She was not a witness. She was at work and the Appellant did not know that she needed to attend.
11. The Appellant's father invited people to the house on the day of the ceremony in 2012. There are four such ceremonies a year. If the Appellant was in Vietnam he would attend all of them. He would never give up his religion. He practises every day. He prays in front of the altar. He would be at risk in Vietnam because he and his mother delivered leaflets.
12. The Appellant attended two demonstrations in April and December 2019. He demonstrates for freedom of religion in Vietnam. He does not attend ceremonies in the United Kingdom because there is no group here of pure Hoa Hoa Buddhists.

The Respondent's submissions

13. The Respondent continues to rely on the decision letter dated 22 November 2019 and the skeleton argument. The Respondent also relies on the CPIN – Vietnam: Hoa Hao Buddhism February 2020 and the Report of the Home Office Fact-finding Mission published September 2019.
14. Although the Appellant has been found to be a follower of the Pure Hoa Hao Buddhist faith, he has failed to provide any satisfactory evidence to demonstrate how he practises his faith in the UK. Although he claims to have attended a temple in the UK, he has provided no corroborative evidence from anyone connected with the temple. The evidence is that he preaches at home. There is no evidence that he attends a temple. There is a small number of people who have been arrested in Vietnam. The Appellant does not pose a threat to the government.
15. The Appellant has failed to establish that he openly practises his religion in UK or that he would seek to do so on return to Vietnam. The Respondent relies on the February 2020 CPIN at 2.4.8-2.4.9. The Appellant could continue to follow his faith on return to Vietnam without facing the risk of persecution or ill-treatment.
16. The Appellant has not established that he would practice his religion in a way which would put him at risk from the authorities on return to Vietnam or that he would have to change the way in which he practises his faith in order to avoid persecution (HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31). The Respondent submits that, even if the Appellant follows his faith within an unregistered group, he has not established that he has an opposition profile that would put him at risk.
17. It is accepted that the Appellant was a child at the time of events in Vietnam, however he has failed to provide any evidence to corroborate his account of his father's activities or alleged ill-treatment.
18. The Appellant does not have a political or imputed political profile which would put him at risk on return. Whilst the Respondent accepts that the Appellant's evidence must be assessed in light of his young age at the time of these events, it is submitted that he has failed to provide any evidence to corroborate his account. His credibility is damaged pursuant to s.8 Asylum and Immigration Act 2004. The Appellant has not established that he has a religious or political profile that would put him at risk on return to Vietnam.

The Appellant's submissions

19. When considering the Appellant's account of the events that took place in Vietnam, the Tribunal must follow the Respondent's Asylum Policy Guidance, cited with approval in AA (unattended children) Afghanistan CG [2012] UKUT 16 and KS (benefit of the doubt) [2014] UKUT 552.,

20. The finding that the Appellant grew up in a household that followed the unregistered sect of the Hoa Hao Buddhist religion was preserved by Upper Tribunal Judge Kekic at [26] of the determination. Therefore, the question is whether the Appellant would practice his religion in a way which would put him at risk from the authorities on return to Vietnam. If he would not do so, would this be to avoid persecution (HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31).
21. The Appellant has demonstrated his commitment to his religion and that his religion forms his core beliefs in a number of ways:
 - a. His extensive knowledge of the history and practice of his religion;
 - b. His continued attendance at religious meetings in Vietnam, despite harassment and arrests by the authorities;
 - c. He continues to carry out his prayers twice a day in the United Kingdom; and
 - d. A attends the Linh Son Temple (a Vietnamese Buddhist Temple in South London) for prayers at least once a month.
22. It must be considered what practice of Appellant's religion would put him at risk in Vietnam. The Appellant was not able to attend temples in Vietnam because Pure Hoa Hao Buddhism is not a registered religion in Vietnam, and therefore, they are not allowed to build Temples. The Appellant does attend the Temple in the United Kingdom. Therefore, it would appear important to him to practice his religion with others. In Vietnam followers gather together for important religious ceremonies. Followers go to other followers' homes, or host the gathering at their own home. Despite followers meeting at each other's homes, the authorities still discovered this form of practice. The authorities were concerned by these gatherings because they feared that people were coming together in opposition to the government. This has led to harassment, arrest, detention, and beatings of followers.
23. Therefore, the Appellant openly practiced his religion in Vietnam and continues to practice his religion openly in the United Kingdom. There is no evidence to suggest that he would act differently on return, but for the persecution he would face.
24. Furthermore, the Appellant has attended demonstrations in the United Kingdom, which demonstrates his continuing opposition to the government. Therefore, he will be of interest to the authorities on return for the activities already undertaken, together with his desire to continue his religious practice and opposition to the government in Vietnam.
25. The account of his father's activities and his ill treatment in Vietnam has remained consistent, and is consistent with the country information.
26. Whilst the Respondent alleges that the Appellant initially stated that his fear was related to a land dispute, this does not contradict the Appellant's account. The Appellant's screening interview was conducted over the telephone with the use of an interpreter, and he believes that some matters may have been confused. The

Appellant was able to clarify in his witness statement of 23 December 2019 that the government sealed his house after they found religious material there. Therefore, his parent's house was confiscated, but this did not engage a land dispute. This is consistent with the background information about confiscation of land used for religious purposes.

27. The alleged inconsistency about whether the Appellant was discouraged from his faith takes his answers to the interview questions out of context. It is clear that the Appellant was released by the police on condition that he did not attend any religious ceremonies [Q56]. Despite trying to discourage the Appellant from his faith, he continued to practice it after release [Q58]. Again, at Q64 the Appellant explains how the police regularly came to his house and told him to give up his religion (therefore, trying to discourage him from practicing his religion). However, this did not discourage him from his faith [Q65]. The Appellant has been clear and consistent with his evidence in this respect.
28. Version 1.0, February 2020 sets out a clear example of family members being arrested and detained together (§5.4.1). The same guidance also sets out the family will be arrested if they try to resist when police try to stop gatherings and confiscate vehicles (§5.2.7). This indicates that family members are considered as one unit for the purpose of perceived activities against the state.
29. The Appellant would not be able to hide his connection with his father on return to Vietnam because of the Ho Khau (household registration) system, which is related to social benefits and medical care. There is no reason why the Appellant becoming an adult would make him any less connected with his father, and his father's activities. It is likely to be assumed that Appellant continues to follow the same religion as his family, and this religion is seen to be opposed to the government.
30. Furthermore, the Appellant has partaken in demonstrations in the United Kingdom, which demonstrates his ongoing commitment to promoting democracy in Vietnam.
31. Again, the Appellant's evidence must be assessed in light of his young age at the time of these events. The Appellant raised forced labour whilst abroad in his first interview [Q2.5]. He was kept by his agent in China for two years and carried out unpaid domestic work. This is consistent with the background information that *[m]ost trafficking victims in Vietnam are taken to China and are sold into prostitution, forced labour or marriages with Chinese men.*
32. In relation to the trafficking of children, there is no requirement for there to have been any threat involved in the trafficking. It is simply the transportation of someone for the purpose of exploitation. Therefore, this meets the definition.
33. The Respondent does not accept that the Appellant was held against his will in the United Kingdom. Firstly, it was not possible for the Appellant to raise this in his first interview in 2016 [RFRL: §8], because this was before he was taken and held against his will. Secondly, the Respondent has found it implausible that the Appellant would not ask for help when he found himself lost in the United Kingdom.

However, this ignores his age, and that his lack of knowledge of the language and culture of the United Kingdom might have prevented him from seeking help rather than compelling him to do so [RFRL §10].

34. The Appellant has provided a plausible explanation for not raising his kidnap with the police and not wanting to be referred to the NRM as a victim of trafficking. He only has experience of authorities who have harassed, detained and beaten him. He is a young man in an unfamiliar country, being forced to carry out an illegal activity. It is understandable why he would be scared of going to the police and not aware of the police and judicial system in the United Kingdom.
35. The Appellant's credibility was previously found to be damaged by his failure to claim asylum in other safe countries that he passed through on his way to the United Kingdom. It is further held against him that he failed to continue with the asylum procedure after arriving in the United Kingdom. If it is accepted that the Appellant is a victim of trafficking, then this cannot be held to damage his credibility.
36. Even if it is not accepted that the Appellant is a victim of trafficking, the adverse credibility finding appears to ignore the reality that he was a child when he left Vietnam, and was still a child when he entered the United Kingdom. Throughout his journey he was always under the control of an agent. Therefore, it is unlikely that he was making the decisions about where he travelled to, or even knew the process of how to claim asylum. However, this is not contrary to his account that the reason he left Vietnam was due to a fear for his life.
37. Even if it is not accepted that the Appellant was held against his will in the United Kingdom, it must be remembered that he was a child when he entered the United Kingdom having been through a long (and likely difficult) journey to the United Kingdom. He was alone in a country he did not know. However, he was not treated as a child, despite the Respondent only considering him to be 11 months older than he really is. Furthermore, it is far more likely that he was born on 9 November 1998, rather than 1 January 1998 (a day a month of birth often given to asylum seekers who do not know the day and month of their birth).
38. However, he did bring himself to the attention of the authorities after receiving assistance from a Vietnamese woman in the United Kingdom who assisted him to find a solicitor. This suggests that he did so when he felt safe to. Therefore, given his young age, this should not damage his credibility.
39. Should the Appellant return he would attend the ceremonies. The First-tier Tribunal did not accept that the Appellant had been caught distributing leaflets, but not that they did not distribute leaflets. The background material establishes poor prison conditions. The Appellant's religion is seen as political (with reference to page 172 and 177 of the Appellant's bundle).

Country Policy and Information Note Vietnam: Hoa Hao Buddhism Version 1.0
February 2020

- 2.4 Risk
- a. State treatment
- 2.4.1 The Constitution allows for freedom of religion but in practice this is restricted. Religious groups are required to seek approval from and register with the government, which restricts the activities of unregistered and unrecognised religious groups and/or persons associated with them (see Difference between registered and unregistered groups).
- 2.4.2 The exact number of Hoa Hao Buddhists is unknown. Estimates range from 1.3 million to 8 million, with around 2 million being a more realistic number (representing just under 2% of the total population). Followers of the Hoa Hao Buddhism are almost exclusively concentrated in the Mekong Delta region and tend to come from poor economic backgrounds with the majority being farmers (see Demography).
- 2.4.3 Hoa Hao Buddhism is an officially recognised religion in Vietnam but most Hoa Hao Buddhists refuse to belong to the state recognised group due to the authorities' control over this group. Some members of unregistered Hoa Hao groups are subject to police harassment, surveillance, confiscation of property, beatings, restrictions on movement and the disruption of their religious activities (see State treatment of Hoa Hao Buddhists).
- 2.4.4 Hoa Hao Buddhism is normally practiced at home or while tending the land. Where a person practices their faith at home or in a small group cooperating with local authorities and where they or their leaders do not get involved in political issues they are unlikely to face adverse treatment from the authorities (see State treatment of Hoa Hao Buddhists).
- 2.4.5 The government is suspicious of large gatherings (over 20-25 people) and will look for ways to break them up. People may be taken to police stations to be asked their names and relationships, released after 3-4 hours, and "invited" back for further questioning. Some people may eventually be charged with public disturbance/disrupting public order, "conducting propaganda against the state" or traffic disruption.
- 2.4.6 Some members of unofficial Hoa Hao Buddhist groups have been subjected to arrest, detention and harassment, with a small number - between 10-20 - arrested, prosecuted and imprisoned for dissent or criticising the government. In general this is not solely due to their faith but the perceived threat they pose to the government due to their involvement in political activities, such as land/environmental issues or advocating for democracy in Vietnam or because they are deemed to

pose a threat for other reasons (see State treatment of Hoa Hao Buddhists).

- 2.4.7 Hoa Hao Buddhists, particularly leaders, who openly criticise the government or participate activities that are, or may be perceived to be, political in nature may face harassment and arrest and detention. However, sources indicate that there are very few people detained or imprisoned (see State treatment of Hoa Hao Buddhists).
- 2.4.8 Hoa Hao Buddhists are unlikely to be at risk on return to Vietnam and only those suspected of having a political opinion critical to the government may be subject to monitoring (see Returns).
- 2.4.9 In general a person, regardless of being a member of registered or unregistered group, who practices their faith without seeking to challenge or criticise the state are unlikely to be at risk of treatment that amounts to persecution or serious harm. Persons who, however, belong to unregistered groups and criticise or challenge the state may face state monitoring, harassment, arrest, interrogation and torture. Whether they are they are at risk of persecution or serious harm will depend on their profile and activities. Each case on its facts with the onus on the person to demonstrate that they would be at real risk of serious harm or persecution from state actors on return.
- 2.4.10 For further information please see the country policy and information note on Vietnam: ethnic and religious groups.
- 2.4.11 For further guidance on assessing risk, see the instruction on Assessing Credibility and Refugee Status.

2.5 Protection

Where the person has a well-founded fear of persecution from the state, they are unlikely to be able to avail themselves of the protection of the authorities. For further guidance on assessing the availability of state protection, see the instruction on Assessing Credibility and Refugee Status.

State treatment of Hoa Hao Buddhists

- 5.1 Requirement to register
 - 5.1.1 The World Atlas page on 'Hoahaoism (Dao Hoa Hao)' last updated in April 2017 noted that many followers '... refuse to affiliate with the government committee that is in charge of overseeing all activities of Hoahaoism. This refusal to be involved with government mandates and administration is the cause of significant problems for Hoa Hao Buddhists. The government has also prohibited celebrating the founder's birthday and destroyed important religious texts.'
 - 5.1.2 Human Rights Watch in their report covering events in 2018 stated 'Religious groups are required to get approval from, and register with, the government, and operate under government-controlled

management boards. While authorities allow many government-affiliated churches and pagodas to hold worship services, they ban religious activities that they arbitrarily deem to be contrary to the “national interest,” “public order,” or “national unity,” including many ordinary types of religious functions.’

- 5.1.3 Christian Solidarity Worldwide noted in a news report from 2018 that ‘Hoa Hao Buddhism is recognised by the Vietnamese government, but many Hoa Hao Buddhists refuse to belong to the state-sponsored Hoa Hao Administrative Council, which was established by the Vietnam Fatherland Front, a body under the leadership of the Communist Party of Vietnam.’
- 5.1.4 According to a Human Rights Watch report from February 2018: ‘In 1999, the Vietnamese government recognized Hoa Hao Buddhism as a religion. However, many followers refused to join the state-sanctioned Hoa Hao Buddhist Church. They have been subjected to intrusive surveillance and repression. Every year, local police have used various means to prevent independent Hoa Hao Buddhist followers from gathering for important events such as the founding day of the religion or the anniversary of the death of the Hoa Hao founder Huynh Phu So. The authorities have repeatedly set up barriers to block the Quang Minh pagoda in Cho Moi district (An Giang province), which is often used by independent Hoa Hao followers for worshipping... In recent years, there have been numerous incidents of protest and government attacks centering on Hoa Hao believers.’
- 5.1.5 Diplomatic sources explained to the UK FFT that the Hoa Hao and the Cao Dai face more scrutiny from the government and some of the tensions they face now are borne out of the fact that they forged their own army before 1975 and formed an allegiance with the former Southern Vietnamese government. The treatment of unregistered members of the Hoa Hao religion varies from locality to locality and can be different depending on local relationships. Small churches such as Hoa Hao have found different ways to cooperate with local governments and where leaders don’t get involved in political issues, they are ignored but those who take a more political stance face more harassment.
- 5.1.6 The 2019DFAT report noted that: ‘Like other religious groups, followers of Buddhism (including Hoa Hao Buddhism) are divided between those affiliated with government-sanctioned religious organisations and those with independent groups. DFAT understands that followers of official Buddhist groups are generally able to practise their religion freely without government intervention. Followers of independent Buddhist groups, however, including Khmer Krom, the Unified Buddhist Church of Vietnam (UBCV), and unrecognised branches of Hoa Hao, reportedly face ongoing surveillance, harassment, and occasional violence from authorities.’

- 5.2 Banning/restrictions of religious ceremonies and/or activities
- 5.2.1 The 2018 USSD RIRF, stated: ‘The law provides a separate process for unregistered, unrecognized religious organizations or groups of individuals to receive permission for specific religious activities by submitting an application package to the commune-level people’s committee. Current regulations require the people’s committee to respond in writing to such an application within 20 working days of receipt. The law specifies that a wide variety of religious activities require advance approval or registration from the authorities at the central and/or local levels.’
- 5.2.2 The same source further added: ‘These activities include “belief activities” (defined as traditional communal practices related to ancestor, hero, or folk worship); “belief festivals” being held for the first time; the establishment, split, or merger of religious affiliates; the ordination, appointment, or assignment of religious administrators (or clergy with administrative authority); establishment of a religious training facility; conducting religious training classes; holding major religious congresses; organizing religious events, preaching or evangelizing outside of approved locations; traveling abroad to conduct religious activities or training; and joining a foreign religious organization... Certain religious activities do not require advance approval, but instead require notification to the appropriate authorities.’
- 5.2.3 The USSD RIRF 2018 also noted ‘Registered and unregistered religious groups continued to state [that] government agencies sometimes did not respond to registration applications or approval requests for religious activities within the stipulated time period, if at all, and often did not specify reasons for refusals. Some groups reported they successfully appealed local decisions to higher-level authorities through informal channels. Several religious leaders reported authorities sometimes asked for bribes to facilitate approvals. Authorities attributed the delays and denials to the failure of applicants to complete forms correctly or provide complete information. Religious groups said the process to register groups or notify activities in new locations was particularly difficult.’
- 5.2.4 Asia News reported in August 2018 that ‘[...] authorities impose strict controls on dissident groups that do not follow the official branch. Human rights groups argue that the authorities of An Giang persecute followers of unapproved groups, prohibiting public reading of the sect’s founder’s writings and discouraging faithful worshipers from visiting pagodas.’
- 5.2.5 Hoa Hao Buddhist managers of the ‘pure sect’ told the FFT that they had previously thought that the government were trying to eliminate the religion by confiscating property and not allowing them to show

portraits of the grandmaster but now it is more relaxed for the 'neutral' sect. The 'pure' sect however continue to face harassment economically and politically. When asked whether the government only targets those struggling for the legitimate interest i.e. the 'pure sect', the Hoa Hao Buddhist managers said that it did not matter which sect you were from if you were struggling for the legitimate interest but that the majority of those who do are from the 'pure sect'

- 5.2.6. The Hoa Hao Buddhist managers of the 'pure sect' were asked if they could provide details of arrests and detentions. They told the FFT that where people hold gatherings in their community for ceremonies such as weddings and funerals, they will invite the core followers to attend and pray together. The authorities start to worry that they will be discussing political issues, so they ban the families from inviting other people. The families holding the event described this as a violation of their freedom of religion and the government found this term offensive and charged them with disturbing the peace. The FFT were told of current prisoners: Vuong Van Tha, who has been in prison since 2017 and was charged under Article 88 (propaganda against the state) and convicted for 12 years. The other person, Bui Van Trung, was charged for 6.5 years imprisonment for fighting against the constabulary. His family have been unable to meet with him and no one knows his current situation.
- 5.2.7 The Hoa Hao Buddhist managers of the 'pure sect' stated that when the invitees try to attend the gathering, they are stopped by police and they have their papers taken away. If they resist, then the police would confiscate their vehicle. If the family try to argue then the police will view that as them trying to incite a disturbance and they start to arrest people.
- 5.2.8 This kind of religious gathering scenario was also confirmed by diplomatic sources who stated that the term 'arrested' was used liberally in Vietnam and that often when a gathering reaches numbers above 20-25 people the police get nervous about such a big group. The police then bring people into the police station to get details such as their names and relationships. They may be there for 3-4 hours and then released with some being issued a 'letter of invitation' to return for further questioning later. The citizen has the right to refuse but is likely to face harassment. This can go on for many months and they noted an example of a death anniversary commemoration of some Ho Hoa Hao followers where over the course of many months different people were brought in for different questioning sessions. This ultimately resulted in 6 people being charged and sentenced for 'public disturbance' and 'traffic disruption'
7. Returns

- 7.1.1 The UK FFT asked the Hoa Hao Buddhist managers of the ‘pure sect’ whether in general Hoa Hao members outside of Vietnam would be at risk if they were returned and they stated that they probably wouldn’t. They went on to note that the government only targets those who are struggling for the legitimate interests of the pure sect’ and that if the government thought a returnee would create a risk then they might not grant them entry into the country or they may grant them entry and then monitor them and escalate issues later.”

The Report of a Home Office’s Fact Finding mission to Vietnam, published 9 September 2019

- “1.3.4 Diplomatic sources added that in other cases, such as where arrests follow on from demonstrations, the procedures will vary depending on circumstances, reasons for the arrest and the individuals involved, and numbers involved and the perceived threat, including political threat that the person arrested is deemed to pose. There have been numerous reports of activists and demonstrators arrested or detained without an arrest warrant, sometimes under broad interpretations of the emergency custody/security provisions. There are also reports of police frequently using excessive force when making an arrest.”

Findings

40. The maintained finding of the First-tier Tribunal is that the Appellant and his mother were not caught distributing leaflets. I do not go behind this. I had the benefit of hearing oral evidence. I found that the Appellant was on the whole credible. His account is supported by the background evidence. While the RFRL refers to inconsistencies in the Appellant’s screening interview on 17 April 2016 because he made reference to a land dispute with the Vietnamese government, I am satisfied that this is not discrepant with his claim that the family home was confiscated. In addition, I take into account that what was said is in the contest of a screening interview over the telephone.
41. The evidence relating to the Appellant’s father’s arrest and imprisonment and the confiscation of the family home is entirely consistent with the background material. I accept that the Appellant’s father was a religious leader and anti- government literature was found at the family’s home following the execution of a search warrant. I find that the Appellant and his mother were arrested (in 2012) and released having signed a declaration. This is all entirely consistent with the CPIN (see 2.4.3-2.4.9, 5.1.4, 5.2.6-5.2.8). There is no good reason brought to my attention to doubt what the Appellant says about his father. The Appellant has good reason, considering the background evidence, to believe that his father was killed rather than dying in prison of natural causes. While there is no independent corroboration specifically relating to his father it is difficult to see what evidence could have been obtained by the Appellant. I also take on board Mr Tufan’s reference to 2.4.6 of the CPIN about the number of people arrested, but I accept Ms Child’s point that the

figure is not in context. Considering the background evidence as a whole, it supports that arrests take place.

42. The First-tier Tribunal did not accept the Appellant's evidence that he was arrested with his mother for distributing leaflets. There is nothing in my view incredible about the Appellant's account that he delivered anti-government leaflets particularly in the light of what had happened to the family and particularly to his father, albeit he was not caught or arrested.
43. In respect of his own activities, having heard his evidence, I accept that if the Appellant returned to Vietnam, he would continue to practice his religion as an unregistered Hoa Hoa Buddhist. This would not necessarily put him at risk. The background evidence does not support that all unregistered Hoa Hoa Buddhists are at risk per se. I accept that the Appellant and his mother distributed leaflets which were anti-government. In the light of his religion and what happened to his father, it is credible that the Appellant would wish to continue his efforts to fight for freedom of religion. He has been on demonstrations in the United Kingdom fighting for religious freedom albeit he has no prominent role as an activist. I accept that he is not able to practise his religion here as openly as he would wish to because he does not know other pure Hoa Hoa Buddhists with whom he can worship and attend ceremonies. However, I find that he does what he can. He attends a non Hoa Hoa Buddhist temple in Croydon every month where he lights a candle on the ceremony days. There were no witnesses to support the Appellant's account. However, that he is pure Hoa Hoa Buddhist is not in dispute. Ms Vuoang did not attend the hearing; however, she is not pure Hoa Hoa and neither are the worshippers in the temple.
44. There is no obvious reason why the Appellant did not call witnesses with whom he has demonstrated, but there was no dispute that he was on those demonstrations. Having heard the Appellant give evidence, it was apparent to me that he is isolated here in the United Kingdom and unable to practise his religion with others as he would wish because of the lack of a pure Hoa Hoa community with whom to worship. Considering his evidence overall, I do not find that the absence of corroborative evidence about his activities in the United Kingdom undermines his credibility.
45. I accept that the Appellant was trafficked to China. There is much background evidence that would support the trafficking of Vietnamese nationals to China. His account of being in a debt bondage position is credible. The Appellant's journey here is not out of the ordinary. There is no good reason to disbelieve it. I accept that there is no clear explanation of how the Appellant became estranged from the trafficker/agent, who would have had a financial interest in remaining close to him, on arrival to the United Kingdom. However, this is not the core of the Appellant's account and I do not find that it damages his credibility. The Appellant gives an account of being kidnapped and working on a cannabis farm. Being forced to work on a cannabis farm is entirely credible. He made an NRM claim which he later withdrew. I understand from the RFRL that the Appellant refused to sign a NRM form in his interview. He also denied in his screening interview that he had been

trafficked. He has expressed fear for his mother's safety and of the police here because of his engagement in illegal activity. His fear is rational and logical. His reluctance to disclose the whole story which may identify others is understandable. His reluctance to report matters to the police is credible. His behaviour is not unusual for a genuine victim of trafficking. His conduct does not undermine his credibility. I have taken s.8 of the 2004 Act into account, but do not find that the Appellant's failure to make an asylum application in another safe country or that he "absconded" after he made a claim for asylum undermines his credibility.

46. After the Appellant's father's death, he and his mother continued to practice their religion. This in itself would not put them at risk. However, they engaged in the distribution of anti-government leaflets. This could have put them at risk. I accept that he would wish to continue practising his religion in Vietnam with others of the same faith. This would for the Appellant involve attending gatherings, ceremonies (at 5.2.6 of the CPIN it is documented that Hoa Hoa Buddhist managers of the pure sect told the FFT where there are gatherings, the authorities start to worry the participants start to discuss political issues) and engaging in anti-government activity including the distribution of anti-government leaflets which I find is part of his religious practise in Vietnam. The Appellant is now an adult. He believes his father was killed by the authorities. I find that he would wish to continue his fight for freedom of religion on return. This would put him at risk of arrest and detention. Applying the lower standard of proof and considering the background evidence (see 2.4.5, 2.4.6, 2.4.7, 2.4.9 of CPIN, 1.3.4 FFM report) I am satisfied that the Appellant's religious practice would be perceived as political. While the CPIN does not support that many people have been arrested, it clearly establishes that there are arrests. The 2018 Human Rights Watch Report at p177 of the Appellant's bundle says that 129 people are imprisoned for expressing critical views of the government, taking part in peaceful protests, participating in religious groups not approved by the authorities, or joining civil or political organisations. At 5.2.6 of the CPIN current prisoners are named. The 2019 Human Rights Report at p 163 paints a grim picture of Vietnam's human rights record as regards dissidents and followers of independent religious groups. The Appellant in oral evidence said that he would not be arrested because of his father's activities. I find that his own activities would put him at risk. If he is arrested, his family background and previous arrest are reasonably likely to be additional risk factors.
47. I am satisfied that the background evidence supports that the Appellant would practise his religion openly in Vietnam which would be perceived as political anti-government activity because he would fight for freedom of religion. If he chose not to, this would be because he wants to avoid persecution. Thus, properly applying HJ (Iran), the Appellant is a refugee in need of international protection.

Notice of Decision

The appeal is allowed on protection grounds.

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 *Joanna McWilliam*

Date 3 November 2020

Upper Tribunal Judge McWilliam