



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00451/2018

THE IMMIGRATION ACTS

Heard remotely via video (Teams)
On 26 May 2021

Decision & Reasons Promulgated
On 15 June 2021

Before

UPPER TRIBUNAL JUDGE BLUM

Between

QUYET NGUYEN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr A Caskie, counsel, instructed by McGlashan MacKay Solicitors

For the respondent: Ms A Everett, Senior Home Office Presenting Officer

This decision follows a remote hearing in respect of which there has been no objection by the parties. The form of remote hearing was by video (V), the platform was Microsoft Teams. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

DECISION AND REASONS

1. This is an appeal against the decision of Judge of the First-tier Tribunal Mackenzie (the judge) who, in a decision promulgated on 31 May 2018, dismissed the appellant's protection and human rights appeal against the

decision of the Secretary of State for the Home Department (“the respondent” or “SSHD”) dated 22 September 2017 refusing the appellant’s protection and human rights claim.

Background

2. There is a long history to this appeal. The appellant is a national of Vietnam, born on 10 February 1986. It is not disputed that the appellant is Catholic.
3. The following is a brief summary of the appellant’s protection claim. As a university student he wrote articles with Catholic friends concerning a church that had been turned into a hospital. These articles were photocopied and passed to other Catholic students. The appellant believes that he was under surveillance at university from government informants.
4. After graduating in 2009 the appellant worked as a history teacher for about two years but became disillusioned with the curriculum’s approach to Vietnamese Catholics and decided to become a priest. The appellant failed his exams to become a priest but instead decided to become a “volunteer” to “help spread the spiritual message of Christianity”. He lived in a parish house and travelled between churches teaching the Catholic faith to adults and children. During this time the appellant claimed to have written articles critical of the government’s treatment of Catholics which were often printed and posted on the Church notice board. The appellant believed that these articles could have been uploaded to the Internet.
5. The appellant claims that he became involved in protests against a decision by the government to allow the Formosa Company to take over a church property at Ky Anh in 2015. The appellant claimed he was involved in a demonstration with 300 people at Ky Anh where there was fighting with the police, although the appellant was not involved in the fighting. The appellant maintains that the police were photographing and watching people.
6. In 2016 the Formosa Company caused an environmental disaster involving toxic waste that affected the livelihood of people around Vinh city and which affected many Catholics in particular. In July 2016 the appellant gave a lecture to a large public meeting in a church hall critical of the Vietnamese government and the Formosa Company. The appellant claimed that he recognised security guards connected with the police in the audience. After the lecture the appellant claims the police visited a parish where he often stayed, but that he managed to avoid them. The police informed the parish priest that the appellant was being disloyal and spreading anti-government propaganda.
7. In July 2016 the appellant was stopped by the police when driving an elderly priest to Mass on a motorbike. The appellant was insulted and accused of being a traitor. In August 2016 the appellant was again stopped by the police when

taking the priest to a special Mass. He was verbally insulted and accused of participating in anti-government activities. The appellant was told to stop what he was doing but argued back. He claims that a lot of other Catholics intervened on his behalf and that they outnumbered the police. The police were intimidated by the large crowd and the appellant was able to continue to the Mass. After this incident the police kept watch on the parish and the appellant went into hiding. He then received a summons and believed that if he answered the summons he may be sent to prison. The appellant therefore stayed hidden and used various contacts in the Catholic faith to contact an agent to facilitate his departure from Vietnam.

8. The appellant left Vietnam around the beginning of September 2016 and was flown to Russia. He then travelled through Latvia, Poland and onto France. The appellant claims he arrived in the UK illegally in November or December 2016. He claimed asylum on 31 August 2017 after being encountered by the police. The respondent accepted that the appellant is Vietnamese and a Catholic, but rejected his claim to have been targeted by the Vietnamese authorities on the basis that it was not credible. The respondent does not consider that there would be any risk to him on his return to Vietnam.
9. The appellant appealed the respondent's decision pursuant to s.82 of the Nationality, Immigration and Asylum Act 2002. The judge dismissed the appeal but the appellant was given permission to appeal to the Upper Tribunal. In a decision promulgated on 21 December 2018 Upper Tribunal Judge Macleman found there was no material error of law in the judge's decision and dismissed the appeal. The appellant sought and obtained permission to appeal to the Court of Session.
10. In a Joint Minute dated 20 October 2020 the appeal was settled extra-judicially, it being accepted that the Upper Tribunal erred in law. The following reasons were given:
 - i. At section 5.3.1 of his report (item 3 of the Appendix) the expert witness Professor Bluth stated that returnees to Vietnam would be routinely questioned at the airport; he then proceeded to give examples of persons targeted in Vietnam;
 - ii. At paragraph 56 of its decision (item 4 of the Appendix) the FTT had found that, as a result of his not being wanted by the authorities before the norm, the appellant was not 'at risk of being interrogated and mistreated' upon his return there;
 - iii. Paragraphs 3 and 7 of his grounds of appeal to the UT (item 7 of the Appendix) argued that the appellant was at risk from the Vietnamese authorities as being perceived to be a person involved in political protests; reference was made to section 5.3 of the report of Professor Bluth;

- iv. At paragraph 4 of its decision (item 8 of the Appendix) the UT observed that risk on return as a failed asylum-seeker had been raised before it, but found that failed asylum seekers were not at risk by virtue of that alone; then found at paragraph 11 that the FTT had reached no conclusion as to whether the appellant is a catechist, and that finding had to be read in it would be negative;
 - v. Neither Tribunal therefore engaged with the assertion in Professor Bluth's report that a returnee will face interrogation; and that as a consequence might be at risk of being perceived by the authorities as a person involved in protests.
11. The consequence of the Joint Minute was that the appeal would be allowed and the Upper Tribunal's decision dated 7 December 2018 would be set aside. The case was remitted back to the Upper Tribunal.

The decision of the First-tier Tribunal

12. The judge had before her various documents produced by the respondent and the appellant including an expert country report by Prof Christoph Bluth dated 5 April 2018, a statement from the appellant dated 28 March 2018, and a summons allegedly issued against the appellant on 12 August 2016. Also before the judge were:
- (a) a letter of appointment dated 11 March 2014 in respect of the appellant's appointment as a catechist of "Sub- parish of Ngoc Thanh";
 - (b) a "certificate of authenticity" dated 23 September 2017 issued by the Catholic Church of Vietnam, Diocese of Vinh, Parish of Xa Doai, Sub-parish of Ngoc Thanh, confirming that the appellant was a parishioner, that he contributed "positive activities for religious life", and that he was trained as and became a catechist of the Sub- parish;
 - (c) a further "certificate" from pastor Peter Nguyen Van Vinh of the Vinh Bishop's Office dated 26 November 2017 asserting that the appellant worked as a catechist for a period of time, and;
 - (d) a further "certificate" dated 24 September 2017 from a parish priest also asserting that the appellant was a catechist.
13. The judge heard oral evidence from the appellant, he was cross examined, and she heard submissions from both representatives. The judges findings are located at [34] onwards. She first considered background evidence contained in the March 2018 CPIN relating to Registered Religious Groups in Vietnam and to Catholics. At [36] the judge did not find the appellant would be at real risk of

persecution on his return to Vietnam on account of him being Catholic. The judge noted that the appellant was able to practice his religion, live in parish houses and actively teach Catholicism without difficulty until 2016. The judge stated, "I do not find that the views expressed by Professor Bluth in his Report or to my conclusion on this point."

14. At [38] to [54] the judge gave her reasons for rejecting as incredible the appellant's account that he had engaged in anti-government activities and had come to the adverse attention of the Vietnamese authorities. These included vagueness in respect of the appellant's recollection whether the articles he circulated to students had been published online, his inability to locate articles said to have been posted on church noticeboards and his vagueness and lack of explanation for the absence of enquiries to trace these articles, a contradiction in his evidence relating to the publication of articles online, a contradiction in relation to his adoption of pseudonyms in respect of the authorship of his articles, the implausibility and vagueness of his account of evading police detection and being able to evade the police when stopped, and contradictions between his claim at interview to have gone into hiding and his claim in his witness statement to have remained in his small village where he was known to the police. The judge also noted the absence of expert evidence to support the validity of the summons and the absence of an explanation as to why the originals had been only produce on the day of the hearing, and the delay in the appellant's claim for asylum.
15. In her conclusion at [55] the judge did not find that the appellant gave a credible account of his background and the reasons why he came to the UK. The judge did not find any of the documentary evidence before her or anything said in the report by Professor Bluth altered her assessment of the appellant's evidence. The judge found that the appellant came to the UK as an economic migrant. At [56] the judge found that, given her reasons for disbelieving the appellant's claim, he had not proved to the lower standard that he would be at risk of being interrogated and mistreated on his return. The appeal was dismissed.

The challenge to the judge's decision

16. The grounds contend that the judge failed to adequately engage with the expert report by Professor Bluth and failed to make any clear finding as to whether the appellant was a catechist. It was said to be "virtually inconceivable" that a catechist in the area local to the Formosa plant would not have participated in the Formosa protests, or at the very least be perceived as such in the event of being returned to Vietnam. The question whether the appellant was or was not a catechist was therefore a material factor in determining the plausibility and credibility of his account. Given that the expert indicated at 5.3 of his report that returned Vietnamese are interrogated by immigration officials and, in the context of failed asylum seekers, the interrogation will be more thorough and

take longer, there was a real risk that the appellant's answers would result in the Vietnamese authorities perceiving him as someone who was involved in anti-government protests.

17. At the remote 'error of law' hearing Ms Everett was made aware of the Joint Minute described at paragraph 10 above. She accepted that (v) of the Joint Minute indicated that neither the FTT nor the UT had considered the expert's assertion that a returnee will face interrogation and that the appellant may be at risk of being perceived by the authorities as a person involved in protests. I additionally expressed my concern that the judge failed to make any clear findings as to whether the appellant was a catechist. In the circumstances both parties were of the view that the decision contained a material error of law and that the case should be remitted back to the FTT for a de novo hearing.

Discussion

18. The judge did not make any clear finding as to whether the appellant was a catechist. The judge did not refer to or make any clear findings in respect of the documentary evidence, identified at paragraph 12 above, supporting the appellant's claim to be a catechist. Whilst the judge found that the appellant was able to practice his Catholic faith the appellant's claim to be a catechist was a relevant factor in assessing his alleged activities critical of the Vietnamese state.
19. Whilst the judge gave a number of legitimate reasons for concluding that the appellant's account of his critical activities was not credible, that assessment was undertaken without it being clear whether the judge accepted the appellant was a catechist. If the appellant was a catechist then this was a factor capable of rendering it more likely that the appellant would have been involved in protests against the Formosa Company and the Vietnamese authorities, and therefore supporting his account. Further, if the appellant was a catechist from the area he claimed to have resided in, then there may be a real risk that this information would be disclosed to the Vietnamese authorities on his return to Vietnam during any interrogation. The judge failed to undertake any assessment as to whether the appellant may be perceived as someone who was likely to have been involved in the protests against the Formosa Company and the Vietnamese authorities given his role as a catechist and his place of residence. For these reasons I am satisfied that the judge's findings, though supported by legitimate reasons, is unsustainable.

Remittal to First-Tier Tribunal

20. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 18 June 2018 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
 - (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.
21. The judge's failure to determine whether the appellant was a catechist has rendered her adverse credibility findings unsafe. In these circumstances there will need to be a full re-assessment of all the evidence rendering it appropriate to remit the matter back to the First-tier Tribunal for a full fresh (de novo) hearing, all issues open.

Notice of Decision

The making of the First-tier Tribunal's decision involved the making of an error on a point of law requiring it to be set aside.

The case will be remitted back to the First-tier Tribunal for a de novo hearing before a judge other than Judge of the First-tier Tribunal Mackenzie.

Signed *D. Blum*

Date: 31 May 2021

Upper Tribunal Judge Blum