



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005263

FtT No: PA/52282/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 26 May 2023

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

D T P

(anonymity order in place)

Appellant

and

SSHD

Respondent

Heard at Edinburgh on 10 May 2023

For the Appellant: Ms K Dingwall, of Latta & Co, Solicitors
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. FtT Judge Connal dismissed the appellant's appeal by a decision promulgated on 31 August 2022.
2. UT Judge Keith granted permission to appeal to the UT on 30 November 2022:

Ground (5) is that the FtT failed to consider properly expert evidence on the *sur place* activity, in the context that the FtT had accepted the appellant's filmed attendance at demonstrations in the UK (para [35]). It is argued that the expert report stated that such filming would have been strictly monitored and that there was, in any event, an inconsistency in the FtT's reasoning at paragraph [38], which suggested that there was a risk that the appellant might be detained and questioned on her return, which itself could amount to persecution.

The FtT's findings are detailed and the analysis is extensive, (including that the *sur place* activities are contrived, as to which there has been no challenge). Nevertheless, it is at least arguable, in the context of the FtT finding that the appellant attended demonstrations which were filmed, and where there was expert evidence suggesting close monitoring of such activities by the Vietnamese authorities, if this risked detention and questioning on return, as

per para [38], that the FtT had failed to consider whether such arrest and temporary detention could amount to persecution, even if the *sur place* activities were contrived.

Ground (5) alone is therefore arguable.

3. Ms Dingwall said that the key passage in the report by the expert, Dr Tran, at 7.10, dealt with risk on detention and questioning after return about activities outside Vietnam, which did not depend on whether activities were undertaken in good faith. She submitted that the Judge overlooked the possibility of risk to her even for activities which were not genuine.
4. The section in the report is the expert's answer to question 7 put to her, "*Would the Vietnamese authorities have the ability, means and interest to identify [that P] has been politically active in the UK?*". The report says that her involvement in demonstrations and her Facebook activity will have become known. This is based on specific examples of interest in Vietnamese abroad, in Germany and in Scotland; on the appellant being removed unwillingly; on checking the profile of returnees; and on the appellant's Facebook profile being public and easily detected. At 7.7, the report says that "... the national security service will have noted [P's] presence in demonstrations organized by the Viet Tan party and her personal Facebook page through news / media clips ...". Finally, at 7.10:

As a result, in my view, if [P] is returned to Vietnam, it is very likely she will be required by her local police to answer questions about her involvement to the demonstrations in the UK and her personal Facebook page content. In my view, she is likely to be questioned and temporarily detained at the police station or local government office due to her political profile. As a result, she will face with the risk of being abused at the police station (please see below for the violent abuses in police stations).

5. The report at 7.11 explains that violent abuse during temporary police detention is a serious problem. The examples given are not about questioning of returnees from abroad, but of a varied nature, including many killings during custody.
6. The FtT's decision notes the appellant's *sur place* activity claim carefully and in detail: see [18 (v) (a) - (g)], and [19 (iii) (a) - (f)], on the SSHD's response. The expert's views are noted at [32], and elsewhere. Attendance at demonstrations, recording, and publication, including an instance on a Viet Tan website, and heavy monitoring of the Viet Tan party, are all accepted.
7. The passage in the decision under the heading "attendance at demonstrations" ends thus:

[37]. I find, however, that the Appellant was a low-level participant at these demonstrations. In PLVL's evidence, he confirmed that the Appellant had not been an organiser of either of the two demonstrations he attended with her. On the Appellant's own evidence, she only attended these three demonstrations, which all occurred within a short period of time in 2018, and she did not organise them, nor did she speak at them. In terms of her participation at these demonstrations, I do not consider that there would be anything to draw attention to the Appellant specifically, or to identify her.

[38]. I further note in this regard that, whilst it was said that Dr Tran's report supported that mere attendees at demonstrations, rather than just organisers, were at risk of being detained, Dr Tran also referred, at 6.13 of her report, to her view that *"an ordinary demonstrator"* would still be arrested and temporarily detained by the police *"Then, depending on their participation level such as organizer or merely participant, they would be either prosecuted under the criminal code or be freely released by the police."*

8. Mr Mullen drew attention to the last citation from the report as showing that the consequences of detention were not fixed at the level of persecution.
9. The FtT undertook an exhaustive analysis of the Facebook material before concluding that it presented no risk. No error is suggested in that conclusion. It then turned to the Viet Tan article but found, notwithstanding the appellant being in the main accompanying photograph, that she would not be identifiable from it - see [49 (i) - (iv)]. The Judge noted that the expert did not explain how the appellant might be identified through monitoring, and did not "for example, say that facial recognition software will have been used."
10. It is only after considering those matters that the FtT at [51 (i) - (iii)] gives its reasons for not finding the appellant's political activity to be genuine .
11. I do not consider that the grounds and submissions show that the Judge fell into any misconception that there might be a risk, even if activities were not genuine. That is not fair reading of the carefully structured decision. The evidence was found not to support a risk simply to any face in a crowd, or to anyone who might ever be detained and questioned. The analysis is plainly one of fact and degree, irrespective of whether the appellant acted out of conviction.
12. The appeal to the UT is dismissed. The decision of the FtT stands.
13. The FtT made an anonymity order. The matter was not mentioned in the UT, so anonymity is preserved at this stage.

Hugh Macleman
Judge of the Upper Tribunal, Immigration and Asylum Chamber
11 May 2023