



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-004319  
First-tier Tribunal No: PA/54280/2021  
PA/00177/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 16 March 2023**

Before:

UPPER TRIBUNAL JUDGE GILL

Between

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**(ANONYMITY ORDER MADE)**

Appellant

And

The Secretary of State for the Home Department

Respondent

**Representation:**

For the Appellant: Mr A Khan of Counsel, instructed by Thompson & Co Solicitors.

For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

**Heard at Field House on 11 January 2023**

**Anonymity**

I make an order under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the original appellant. No report of these proceedings shall directly or indirectly identify him. This direction applies to both the appellant and to the respondent and all other persons. Failure to comply with this direction could lead to contempt of court proceedings.

I make this order because this is a protection claim.

The parties at liberty to apply to discharge this order, with reasons.

### Decision

1. The appellant, a national of Vietnam born on 6 July 1988, appeals against a decision of Judge of the First-tier Tribunal K Swinnerton who, in a decision promulgated on 3 April 2022 following a hearing on 1 April 2022, dismissed her appeal on asylum, humanitarian protection and human rights grounds against a decision of the respondent of 23 August 2021 to refuse her protection and human rights claims.
2. The following is a summary of the basis of the appellant's protection claim, taken from para 19 of the judge's decision. The appellant attended Hoa Hoa Buddhist religious ceremonies that took place in the homes of followers of the religion in Vietnam. Prior to November 2012, she had attended about 30 such ceremonies and had not encountered any problems. In November 2012, a religious ceremony was raided by the authorities and the appellant was detained for 5 days. Thereafter, she was monitored by the authorities and "*would be intimidated by gangsters used by the authorities who would block her way and pressurize her to give up her religion*". In March 2013, her paternal grandmother with whom she lived, died and she went to live with the local leader of the religion in his home and with his family. She was detained again in May 2015 for 2 weeks after the police attended the house of the brother of the local leader. During that period of detention, she was interrogated on two occasions. A third period of detention took place in March 2017 for 16 days after the appellant had attended a demonstration in relation to pollution by a company named Formosa. In May 2019, whilst distributing leaflets "*with demands for freedom and religious and human rights and information on crimes committed by the authorities*", the appellant fled when the authorities attended. In May 2019, she left Vietnam.

#### The judge's decision

3. At para 18 of her decision, the judge said:
  - "18. On the basis of the evidence given that was accepted or unchallenged, I find as facts that the Appellant is aged 33 and is a national of Vietnam. She is a follower of Pure Hoa Hoa Buddhism. She is not married and does not have any children."
4. At para 31, the judge said:
  - "31. Taking account of all the evidence in this case, I do not find the Appellant's account of events in Vietnam to be credible and, considering all the evidence in the round, I find that the Appellant has not shown even to the low standard required that she is at risk of persecution or ill treatment on return to Vietnam due to her religion or due to her political opinion. I do not find that she came to the adverse attention of the authorities due to her religion or due to her political opinion. Consequently, neither do I accept there would be any need for the Appellant to relocate."
5. One of the grounds is that the judge failed to make adequate findings, including the appellant's evidence of her claimed arrests, her attendance at demonstrations and her evidence of surveillance by the authorities. Since the judge did not make such findings in terms, it is necessary to consider whether her reasoning at paras 20-30 is

such that findings on these matters can be legitimately inferred. Paras 20—30 of the judge's decision read:

- “20. I have considered all the documentation provided and the case law to which I was referred, even if I do not refer to it specifically in my decision, including the documentation provided in the bundle of the Appellant and the bundle of the Respondent. I listened carefully to the evidence of the Appellant and to the submissions made on behalf of the Appellant and the Respondent. The Appellant provided a bundle of 453 pages (Tabs A to C) which included objective or background evidence and caselaw as well as the Country Policy and Information Note, Vietnam: Hoa Hoa Buddhism (Version 1.0, February 2020). The Respondent provided a bundle of 146 pages.
21. Mr Nath for the Respondent made the point that, despite being detained on three occasions and having been monitored by the authorities for a number of years since 2012, the Appellant has not been able to provide any documentation at all in support of her account. Mr Nath also correctly acknowledged, at the same time, that there is no requirement upon the Appellant to provide any corroborative information in support of her claim and that to do so in cases like this is often difficult.
22. The Appellant's account is that, following the death of her grandmother with whom she lived after her parents left her at the age of 3, she went to live with the local leader of the religion. She lived with him and his family for more than 6 years until she left Vietnam. Clearly, having previously been detained in November 2012, going to live with the local leader and his family in March 2013 would have put her more in sight of the authorities if they were already monitoring her and given that she was now living with the local leader. It is reasonable to assume, and I heard no evidence to the contrary, that the Appellant enjoyed a good relationship with the local leader and his family including his daughter, particularly as the Appellant was detained with the daughter of the local leader and also was with the daughter of the local leader when distributing leaflets in May 2019 when they had to flee. Additionally, it was the local leader who arranged for the Appellant to leave Vietnam and who paid for her passage out of Vietnam. That makes it most difficult to understand why the Appellant would have made next to no effort in trying to contact either the local leader or his daughter and other family members since she left Vietnam which is almost three years ago. In effect, the local leader and his family had taken the Appellant into their home on the death of her grandmother and they became for her a type of substitute family.
23. At the hearing, when asked why the Appellant had not been in contact with the local leader since leaving Vietnam, her response was that she called his number but that it did not function. When asked why she had not written to him and his family, she replied that she did not know how to send a letter and, when asked why she had not sought the assistance of her solicitors to send a letter, she then answered that she was concerned that sending a letter would alert the authorities in Vietnam to her whereabouts.
24. The Appellant was asked similar questions relating to the lack of contact between her and the deputy local leader and, in this instance, her response was that she had lost his telephone number and that is why she had not had any contact with him since leaving Vietnam. She was also asked at the

asylum interview why she had not been in touch with her fellow followers in Vietnam since leaving Vietnam and her response was that she had lost their telephone numbers.

25. In respect of the Appellant's account as to the lack of contact that she has had with the local leader and his family and the deputy local leader since she left Vietnam, I found her account to be completely lacking in credibility and I do not believe it. The Appellant has not provided any plausible reason at all for not having had any contact whatsoever, since leaving Vietnam, with the local leader and his family and with the deputy local leader. That is all the more difficult to understand given that the very nature of the Appellant's religion is that it is celebrated in the homes of followers which naturally would foster close ties between followers as they are visiting and spending time in each other's homes.
26. Putting her religion to one side, the Appellant was taken into the family of the local leader and they acted as her substitute family for more than 6 years. I was not provided with any evidence that the local leader and his family are no longer in Vietnam or something ill-toward has happened to them. Given that, I simply can see no reason at all why the Appellant would not have made every effort to contact the local leader and his family (and the deputy local leader). Similarly, I have not been provided with any plausible reason as to why the Appellant has not been able to re-establish and maintain contact with the local leader and his family and with the deputy local leader. I place no weight at all on the explanation of the Appellant that seeking to contact them might alert the authorities to her whereabouts. That the Appellant has made, by her own account and at most, negligible effort to contact the local leader and his family (and the deputy local leader) or, indeed, any other of the followers of the religion in Vietnam that she knew, significantly damages the credibility of her account.
27. About 4 months after having been detained by the authorities in November 2012, the Appellant went to live with the local leader and his family. She was then monitored and frequently intimidated by gangsters used by the authorities. She was next detained in May 2015 for 14 days. At the hearing, when asked what had happened during those two weeks of detention, the Appellant stated that she was questioned twice for about one hour on each occasion and asked her name, age and questions about her religion. When asked on cross-examination why she was detained for two weeks given the limited extent of the actions of the authorities during her detention, the Appellant answered that she did not know why the authorities detained her for that length of time. The Appellant's lack of knowledge is entirely understandable as to why she would have been detained for such a length of time when she appears to have been *[sic]* only been questioned on two occasions for a relatively short period on each occasion. That said, the Appellant was able to provide only limited detail at the hearing about what happened to her during that period of detention.
28. **In relation to the political profile of the Appellant, the evidence of the Appellant at the hearing was that she does not have a political profile. It follows that the Appellant would not, therefore, be viewed by the authorities as a high-profile activist. Mr Nath for the Respondent submitted that the authorities in Vietnam would have no interest in the Appellant were she to return to Vietnam.**

29. The Country Policy and Note, Vietnam: Hao Hoa Buddhism referred to above states, at 2.4.8, that: "Hao Hoa 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". It also states, at 2.4.7, that: "Hao Hoa Buddhists, particularly leaders, who openly criticise the government or participate [in] 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".
30. As stated above, the Respondent does not dispute that the Appellant is a follower of Pure Hoa Hoa Buddhism. That said, the Appellant was asked on re-examination whether she attended a temple to worship her religion in the UK and she replied that she did. However, when asked which temple she attended the Appellant was unable to name a specific temple and her answer was only that she attended a temple in London. Clearly, it is not in dispute that Appellant is a follower of Pure Hoa Hoa Buddhism but her inability to state which temple she attends does cast some doubt upon the seriousness with which she is pursuing her religion at present."

(My emphasis)

#### The grounds

6. The grounds may be summarised as follows:

(i) Ground 1: There are two aspects to ground 1 as follows:

(a) The judge failed to make findings on material issues; that is, the appellant's claimed arrests as a result of her participation in religious activities; her evidence of her participation in a demonstration, of taking photographs and being arrested as a result; and her evidence of surveillance by the authorities.

(b) The judge failed to make a finding as to whether those people who participate in "*certain religious activities*" may be perceived as political activists by the state. It is contended that the appellant's past religious activities were perceived as political activities by the authorities in Vietnam.

(ii) Ground 2 contends:

(a) that the judge applied too high a threshold in considering the appellant's explanation for her failure to contact the local leader and the deputy leader;

(b) that the judge refused the appeal solely on the basis that it was not sufficiently clear why the appellant did not make efforts to contact the local leader and the deputy leader; and

(c) that the judge erred at para 25 in considering that the appellant's reasons for her lack of contact with the local leader were not plausible, whereas (ground 2 contends) there was nothing implausible in the

appellant's explanation that the phone number was not reachable; and that she did not write to the local leader as the authorities may intercept the letter and discover her location.

## **ASSESSMENT**

7. Ground 2 can be disposed off fairly briefly.
8. In relation to ground 2(a), whilst I would accept that the judge's assessment of the appellant's explanation for her failure to contact the local leader and the deputy leader occupied more paragraphs than was necessary, it does not follow that she applied too high a threshold or standard of proof in assessing the appellant's evidence.
9. It is simply not the case, as contended in ground 2(b), that the judge dismissed the appellant's appeal solely because it was not sufficiently clear why the appellant did not make efforts to contact the local leader and deputy leader, as contended in ground 2. She gave other reasons – see paras 27-31 of her decision.
10. Ground 2(c) amounts to no more than a disagreement with the judge's reasoning and an attempt to re-argue the evidence.
11. I therefore reject ground 2. There is no substance in ground 2.
12. Likewise, there is no substance in ground 1(a). Although I accept that the judge did not make findings, in terms, on the appellant's evidence of her claimed arrests and detentions, attendance at demonstrations and her evidence of surveillance, it is nevertheless clear, when her reasoning at paras 22-30 is considered in the context of what she said at para 31, that she did not find that the appellant's evidence of her alleged arrests and detentions and her evidence of being under surveillance was credible.
13. However, I am concerned about ground 1(b). The second sentence of para 28 shows that the judge drew the inference, from the appellant's evidence that she did not have a political profile, that it *must* follow that "*she would not be perceived by the authorities as a high-level activist*". The fact that the judge jumped to that conclusion, from the appellant's evidence that she did not have a political profile, shows that she overlooked or ignored the possibility of the appellant's religious activities giving rise to adverse interest on the part of the Vietnamese authorities due to their perception that she had an adverse political opinion.
14. In other words, I am satisfied that the judge overlooked considering whether the appellant's religious activities might have given rise to adverse interest in her on the basis of her perceived political opinion.
15. If the judge had considered that possibility, she may have taken a different view of the appellant's credibility, bearing in mind her summary of the CPIN at para 29, which specifically refers to the possibility of Hoa Hoa Buddhists being subjected to monitoring if they are suspected of having a political opinion critical to the government and that "*Hoa Hoa Buddhists .... who ... participate [in] activities that are, or may be perceived to be, political in nature may face harassment and arrest and detention*".

16. I am therefore satisfied that ground 1(b) is established and that the judge materially erred in law in her assessment of credibility.
17. For all of the above reasons, I set aside the decision of the judge in its entirety.
18. In the majority of cases, the Upper Tribunal when setting aside the decision will re-make the relevant decision itself. However, para 7.2 of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal (the "Practice Statements") recognises that it may not be possible for the Upper Tribunal to proceed to re-make the decision when it 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."
19. In my judgment this case falls within para 7.2 (b).
20. This appeal is therefore remitted to the First-tier Tribunal for a judge of that Tribunal other than Judge Swinnerton to re-make the decision on the appeal on the merits on all issues.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of errors on points of law such that the decision is set aside in its entirety. This appeal is remitted to the First-tier Tribunal for a judge of that Tribunal other than Judge Swinnerton to re-make the decision on the appeal on the merits on all issues.

Signed: Upper Tribunal Judge Gill

Date: 4 February 2023

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### **NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is “sent’ is that appearing on the covering letter or covering email