



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005861
First-tier Tribunal No:
PA/51186/2022
IA/03384/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 19 October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

AKTB (Vietnam)
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: No representation

For the Respondent: Ms Lecointe (Senior Home Office Presenting Officer)

Heard at Field House on 11 August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Hena, promulgated on 25th October 2022, following a hearing at Birmingham on 11th October 2022. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a female, a citizen of Vietnam, who was born on 6th May 1992. She appealed against the refusal of her claim for asylum by the Respondent in a decision dated 9th March 2022.

The Appellant's Claim

3. The essence of the Appellant's claim is that she was born into the Pure Hoa Hao Buddhism faith, a minority faith in Vietnam, and risked persecution and ill-treatment on account of this. She had entered the UK legally on a student visa in November 2011, and previously studied for a year in New Zealand, before claiming asylum in the UK on 26th April 2019. The Respondent had not accepted that the Appellant belonged to the Pure Hoa Hao Buddhist faith, given the answers she had provided regarding her knowledge of the faith, and did not accept that the Appellant had been arrested due to her faith when she was a 15 year old, because Vietnamese law states that minors can only be prosecuted if they commit serious crimes. The Appellant maintained that there are only two sects of Hoa Hao faith, one of which is the Pure faith and is not registered as a state religion, and this is the faith she belongs to. She also maintained that she continued her Facebook posts as she has been posting since early 2022 and wants the world to be aware of the impact of Vietnamese Communism.

The Judge's Findings

4. The judge accepted that the Appellant belonged to the Pure Hoa Hao faith given the way in which she answered questions during the hearing (paragraph 23) and also accepted that she had handed out leaflets in the way claimed. At the hearing, the Respondent had also conceded that the Appellant was of the Hoa Hao faith, but as the judge explained, "but the issue comes down to whether she is in fact from the Pure sect" and in this respect "the appellant has been consistent in her claim she of the Pure sect". The judge also noted that "there is little to distinguish the sects as set out in the CPIN on the Hoa Hao faith dated February 2020", and that "there is actually little official information as to the number of Pure sect and where they reside as it is not a registered religion" (paragraph 26). The judge went on to accept that the Appellant had been detained twice before going to New Zealand (paragraph 28). Nevertheless, "the CPIN is also clear that only two members of the Pure sect were detained long-term and that most are released after being questioned" (paragraph 30). As a result, the judge concluded that, "it does not seem to be that the threat of being of the Pure sect is more than discrimination as opposed to persecution" (paragraph 31). In any event, "The fact that the appellant was able to leave for New Zealand and returned is evidence that the threat was not one of persecution" (paragraph 32). The judge finally concluded that, "The objective evidence does not support that members of the Pure sect such as the appellant are at risk of persecution and would have issues upon return just for simply being a member of the Pure sect" (paragraph 34).
5. The judge also dealt with the Appellant's *sur place* activities. It was noted that "the appellant has only evidenced *sur place* activities from 2022" (paragraph 35) and that also "there is nothing really to identify that it is in fact the appellant making the political statements" (paragraph 36). In the circumstances, "the appellant was at liberty to relocate within Vietnam should she chose to do so in order to be able to practice her faith" (paragraph 39). The appeal was dismissed.

Grounds of Application

6. The grounds of application state that the judge failed to provide adequate reasons for finding that the Facebook posts amounted to low-level activities; that the judge failed to provide any adequate reasons for finding that the Appellant's three periods of detention were brief; that the judge failed to explain why a restriction of the Appellant's faith does not amount to serious harm; and that the judge gave weight to immaterial matters in finding that her overall credibility did not prompt other considerations.
7. Permission to appeal was granted by the Upper Tribunal on 9th January 2023 on the basis that it was arguable that a person who has been detained on three occasions due to their faith has been subject of past persecution which is probative of the risk to which they may be exposed in the future. That being so, it was arguable that the judge's assessment at paragraphs 28 to 34 had been erroneous in law.

Preliminary Issues

8. At the hearing before me on 11th August 2023, the Appellant was not represented. I asked the court clerks to make enquiries. They returned to say that having contacted Thompson & Co (Solicitors) Limited, they had been able to speak with one, Mr Ali Zeeshan who confirmed that his firm was still representing the Appellant, but he could not say why no-one was at the hearing this morning to provide representation for the Appellant. He explained that one of the solicitors had left the firm recently and made an application on the telephone for an adjournment.
9. The clerks properly informed him that the application would have to be made in writing. An email was then sent by Mr Zeeshan who wrote to say that,

"I understand there was a hearing today listed for this matter. However, I did not get the notice of hearing for this matter. I have also emailed my colleague who has access to the other email as which the clerks advised they have emailed the notice of hearing. He also advised that a notice of hearing had not been received",

He went on to say that, "This matter was being conducted by Haqar Ahmed who has now left the firm and I have taken over conduct of all his matters. I have access to the same email address as him and have not received the notice of hearing either". He proceeded on this basis to ask for the hearing listed today to be adjourned to the next available date. I noted that a notice of hearing had indeed been sent.
10. At the hearing Ms Lecointe, representing the Respondent, also confirmed that there had been plenty of notice and therefore objected to the adjournment application. The overriding objective requires cases to be dealt with fairly and justly. Proportionality has been borne in mind. Avoiding delay so far as compatible with proper consideration of the issue is also a consideration. I had regard to **Nwaigwe (adjournment: fairness) [2014] UKUT 418 (IAC)** where it was held that the test to be applied is that of fairness and whether there has been a deprivation of the affected party's right to a fair hearing. Given that a notice of hearing was sent out, I have concluded that there is no deprivation of

the affected party's right to a fair hearing. I refused the application for an adjournment.

Submissions

11. I heard submissions from Ms Lecointe. She submitted that the grounds of application were nothing more than a disagreement with the decision of Judge Hena. The fact was that there was, and continues to still be, limited evidence as to whether those of the Pure Hoa Hao Buddhism faith are persecuted. Ultimately, the question was whether the judge had interacted with the evidence before the Tribunal in a proper and clear manner and it was evident that there had been such proper engagement so that there could not be said to be an error of law in the manner in which the appeal had been determined.

No Error of Law

12. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law such that it falls to be set aside. My reasons are as follows. First, in considering the Appellant's length of detention in Vietnam, the judge concluded that the risk on return had not been made out because after the first two detentions the Appellant was able to travel to New Zealand and then re-enter Vietnam and that after the third detention she was able to travel to the United Kingdom. On each occasion, she did so without encountering any difficulties. After observing that "there is actually little official information as to the number of the Pure sect" Hoa Hao Buddhist in Vietnam (at paragraph 26), the judge went on to state that "only 2 members of the Pure sect were detained long term and that most are released after being questioned" (paragraph 30) according to the CPIN evidence. The judge then observed that the threat of being Pure sect is no more "than discrimination as opposed to persecution" (paragraph 31), and the judge came to this conclusion on the basis that "The objective evidence is clear that whilst members are watched closely, they are detained briefly and then released if authorities feel threatened" (paragraph 31). There is no evidence that the authorities were threatened by the activities of the Appellant in Vietnam that the judge referred to. Second, against this background, the judge went on to consider the Appellant's sur place activities and observed that the Appellant had not used the full name and could not therefore be identified when she denounced the activities of the Communist government through Facebook activities in the UK. That too was a conclusion that the judge was entitled to come to.

Notice of Decision

13. There is material error of law in the original judge's decision. The determination shall stand.

Satvinder S Juss

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Judge of the Upper Tribunal
Immigration and Asylum Chamber

18th October 2023