IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No.: UI-2023-004635
First-tier Tribunal No:
PA/54437/2022
LP/00258/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 15 December 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

QY (VIETNAM)
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer
For the Respondent: Mr C Appiah, Counsel, Vine Law Chambers

Heard at Field House on 30 November 2023

Although is an appeal by the Secretary of State, for convenience I shall hereafter refer to the parties as they were in the First-tier Tribunal.

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. The Secretary of State has been granted permission to appeal against the decision of First-tier Tribunal Judge Andrews promulgated on 4 August 2023 ("the Decision"). By the Decision, Judge Andrews allowed the appellant's appeal against the decision of the Secretary of State made on 3 October 2022 to refuse his protection and human rights claims which the appellant had made in response to a decision to deport him as a foreign criminal.

Relevant Background

2. The appellant is a national of Vietnam, whose date of birth is 20 Feb 1988. On 9 September 2017, the Border Force was notified that the appellant, a crew member, had not returned to his cruise ship before it sailed on 9 September 2017. The appellant was therefore reported as a seaman deserter.

3. On 5 June 2020 the appellant was stopped in his car by the police. He gave a false name and date of birth. He was arrested as an illegal entrant and in connection with an address purported to be a cannabis factory.

4. On 3 December 2020 at Guildford Crown Court, the appellant was convicted of a charge of being concerned in the production of a Class B drug, cannabis, for which he was sentenced to 3 years' and 7 months' imprisonment. On 2 June 2021, the appellant was served with a notice of decision to deport him.

5. On 22 June 2021, the appellant claimed asylum. He was subsequently given both a screening and a substantive asylum interview on 10 May 2022. He was released on immigration bail on 18 July 2022.

6. As summarised in the subsequent refusal decision, his asylum claim was that in 2010 he had received call-up papers to commence his national service. However, as he was studying at the time, he refused to attend. Five men came to his house, two of whom were in military uniform. He was told that he had broken the law and was handcuffed and taken away. He showed the men his father's military service certificate, which could have exempted him from conscription, but he was arrested regardless. He was taken to the_recruiting officer's house, where he was taken into an interview room. He was then hung upside down for two days and beaten. A roller was put between his fingers that caused him pain. The officers said that he would be released if he agreed to pay 1,500 USD to them every year. He subsequently agreed to this and he was released. He did not inform the police of the ill-treatment because the Head of Police was the cousin of the military recruiter.

7. In 2012, he obtained employment on a cruise ship and was thereby able to make the annual payments to the recruiting officer. He would make the payment to the recruiting officer each December by visiting his house.

8. In 2016, he decided to stop making the payments because he felt that he had done nothing wrong. He additionally wrote a letter of complaint to the provincial authorities and to the military officials. After he sent the letter, he was arrested and detained. He was beaten as he had been before. Two days after his arrest, his brother pleaded with the men to release him. His brother said he would make the payments. The men then agreed to release him. The appellant did not make any further payments and fled to Ho Chi Minh City. He waited in Ho Chi Minh City to embark on his cruise ship. However, the military officials caught up with him because they knew he would be returning to the cruise ship. He was again beaten. The men threatened to kill him, and stuck a knife into his leg. The men said that he would now have to pay double the money. When the men left, he went to the hospital to receive treatment. He told the hospital staff that he had been attacked by a stranger. He remained in the hospital for 7 days. His cousin informed the police about what had happened. However, the police were unable to help because the appellant did not have enough evidence.

9. Again, he did not make payment in December 2016. He was subsequently beaten. When he went to the hospital for treatment, he told the hospital staff that he had fallen off his bicycle.

10. On 13 April 2017, he embarked on the cruise ship. No payments had been made to the men, and he knew that he was still of interest to them because they frequently asked his brother to pay instead and threatened him. His fear was that, if he was returned to Vietnam, he would be beaten, killed or charged for not complying with the military men.

11. In the refusal decision, the Secretary of State accepted from the background evidence that military service in Vietnam was compulsory for men between the ages of 18 to 25. But in his case, the appellant could officially avoid recruitment because he was still under education at the age of 21 when an order for his military service was issued, and separately he was exempt from military service as his father had died from an injury incurred during military service in defence of the country, as evidenced by his martyr certificate.

12. Had it been a mistake of the Vietnamese recruitment office to issue the order for his military service, the appellant could easily have rectified the situation with evidence of his late father's martyr certificate (and proof of him being his son) which was issued by the Vietnamese government. Should any punitive measure be applied to his refusal to comply with the order, his case would have to be judged under Article 259 of the Penal Code. He stated that he showed them the certificate, but they still arrested him: "*There must be a proper channel for you to lodge a complaint.*"

13. He had provided no evidence of the recruitment order issued in 2010, nor any evidence of the payment of bribes to someone purporting to be the recruitment authority. He said that his cousin had reported to the police the incident of him being stabbed in Ho Chi Minh City, but he had not provided evidence of a police report. He claimed that he had been treated

in hospital for the assault, but that he had informed the hospital staff that he had fallen off his bike. It was noted that the records stated that the injuries resulted from a road accident. Given that medical staff would be familiar with the difference in injuries resulting from a trafficking incident and physical assault, it was not accepted that the medical staff at the hospital would have accepted his explanation. Consequently, it was not accepted that the medical report corroborated his claim to have been ill-treated.

14. Accordingly, it was not accepted that he had been accused or fined for evading military service, or that he had been ill-treated by the authorities, corrupt officials or their associates.

15. His credibility was also damaged by the fact that he had failed to take a reasonable opportunity to claim asylum in Italy or Norway before the cruise ship reached the UK; and by him then delaying claiming asylum until nearly 5 years had elapsed since he illegally entered the UK, and only making his claim after being notified of his liability to deportation.

16. With regard to future fear, he had failed to demonstrate a reasonable degree of likelihood that he would be at real risk of persecution from the authorities or from corrupt military recruitment officials or their associates.

The Decision of the First-tier Tribunal

17. The appellant's appeal came before First-tier Tribunal Judge Andrews sitting at Taylor House on 12 July 2023. Both parties were legally represented. The appellant gave oral evidence in English, and he was cross-examined on his written statements dated 10 June 2021 and 2 December 2022.

18. In the Decision, the Judge addressed in turn the four issues that had been agreed by the representatives.

19. The first issue was whether the appellant had rebutted the section 72(2) presumption. The Judge held at [20] that the appellant had been convicted by a final judgment of a particularly serious crime. She went on to address the question of whether the appellant had rebutted the presumption that he thereby presented a danger to the community of the UK. At [24], she said that the OASys assessment report did not suggest that there was a zero risk of the appellant re-offending, but that was not the test. She had to decide whether he was a danger to the community of the UK, and having considered all the evidence in the round, and in particular the OASys assessment report, she found on the balance of probabilities that he was not a danger to the community, and that he had rebutted the section 72(2) presumption. He was thereby not excluded from protection under the Refugee Convention.

20. At [25], she said that, in view of the above conclusions, there were not serious reasons for considering that the appellant constituted a danger to the community or to the security of the UK, which meant that he was not

excluded from humanitarian protection pursuant to paragraph 339D of the Rules.

21. The Judge's findings of fact on the protection claim began at [26]. At [27], she held that it was an agreed fact that the children of martyrs were exempt from conscription in Vietnam.

22. In paras [28] to [35], the Judge addressed the factors relied on by the respondent as damaging the appellant's credibility which in her view did not materially damage the appellant's credibility. At [31] she considered it reasonably plausible that the appellant would not have kept copies of the letters of complaint that he claimed to have written in 2016 to *"the province and the military".*

23. At [32], she agreed with the submission of the Presenting Officer (Mr Brown) that the Press reports provided by the appellant indicated that due process existed in Vietnam for people accused of draft evasion. However, the appellant said that he did not go to the police in 2010 because the head military recruiter in his town was the cousin of his town's head of police. The appellant gave the names of both these men, and the respondent did not assert that these names were incorrect. To the lower standard of proof, she found the appellant's evidence on this point reasonably plausible, and she found there was nothing here to damage his credibility.

24. At paras [37] to [38] of the Decision, the Judge identified the factors relied on by the respondent as damaging the appellant's credibility which she accepted damaged the appellant's credibility. At [37], she said it was plausible that the appellant had not kept a copy of the 2010 Recruitment Order. However, the appellant also had told her that when he was in prison, he had unsuccessfully tried to get a copy of the recruitment order from the Vietnamese authorities. She was not told how he had made the request. If the request was made by email or similar, then she considered that the evidence of the same should still readily be available to the appellant. In those circumstances, his failure to provide such evidence would be damaging to his credibility.

25. At [38], she said that in view of the appellant's oral evidence, she considered that witness statements from his family in Vietnam would readily be available to him, and his failure to provide such statements was damaging to his credibility.

26. At paras [39] to [43], the Judge addressed section 8 of the 2004 Act, and concluded that it was appropriate to attach relatively little weight to the appellant's failure to claim asylum sooner, whether in the UK or in another safe country. However, the Judge went on at [44] to categorise the section 8 considerations as being matters which caused her serious concern with regard to the appellant's credibility.

27. In her conclusion on credibility at [44], the Judge found to the lower standard of proof that the factors in the appellant's favour, which were a

good level of internal consistency and plausibility, outweighed the factors that raised serious concerns abouts his credibility, such as those referred to in paragraphs [37]-[43] of the Decision.

28. Although she found the appellant credible, the Judge held that the appellant was not a refugee, as she was not satisfied that any risk to the appellant on return to Vietnam would be for a Convention reason.

29. At paras [48] to [56] of the Decision, the Judge gave her reasons for finding that the appellant qualified for humanitarian protection. At [49], the Judge said that the appellant might be at risk of being arrested, tried and imprisoned for draft evasion on return to Vietnam. But assuming that this was done according to due legal process, this would not constitute serious harm or torture or inhuman or degrading treatment or punishment. At [50], the Judge said: *"However, the appellant did not receive due process when he was previously in Vietnam. His refusal to do military service led to him being arrested, detained, beaten and extorted."* She was satisfied that this treatment amounted to serious harm and to degrading treatment and punishment. Past serious harm could be an indication of what future treatment could be expected, as stated in paragraph 339K of the Rules. The Judge continued in [51]:

> "Mr Brown told me that, if the appellant rebutted the s72(2) presumption (which he has), then the respondent accepted that he should win his appeal if I found him credible as regards the claimed events in Vietnam (which I have) ..."

The Grounds of Appeal to the Upper Tribunal

30. Ground 1 was that the Judge had made a material misdirection of law in respect of the finding that the appellant qualified for humanitarian protection. This was because the Judge had failed to have regard to the fact that the appellant was excluded from a grant of humanitarian protection by virtue of his criminal conviction.

31. Ground 2 was that the Judge had failed to give adequate reasons for allowing the appeal on Article 3 grounds. There had not been adequate scrutiny as to why the appellant had not sought to pursue with the authorities his allegation that he was detained, ill-treated and subjected to extortion for failing to undertake miliary service. The Judge had failed to consider that any ill-treatment was a result of abuse of power by an individual against whom the appellant had a right of legal redress. The Judge had failed to consider that sufficiency of protection was available,

32. The Judge had based her findings on the appellant's credibility, but his credibility was damaged by his failure to claim asylum in the first safe country that he reached. The appellant had had the opportunity to claim asylum in Italy or Norway. Instead, the Judge was of the view that the appellant was entitled to make a choice as to where he claimed asylum: see para [41]. A person genuinely fearing persecution would claim asylum

in the first safe country that they reached, and the Judge gave insufficient consideration to the appellant's failure to do so.

The Reasons for the Grant of Permission to Appeal

33. On 19 October 2023, First-tier Tribunal Judge Boyes granted the Secretary of State permission to appeal.

34. With respect to Ground 1, the Judge observed that Ground 1 was not entirely accurate or clear, and as such it read as an insufficient reasons argument. The Judge found that the appellant was not a danger to society at [24], but provided little or no reasoning to support this. This was arguably an error. The Judge simply said that, having considered all the evidence in the round, the appellant was not a danger. Arguably, the Secretary of State was entitled to know a little more.

35. As to Ground 2, again the argument was not clear:

> "I am presuming they seek redress on the reasoning and having considered the judgment, this is arguable. The Judge, for example, says that he has serious concerns about the appellant's credibility then says he is credible. He then finds facts as to what happened but provides no explanation as to why he is credible in light of stating he has serious concerns."

36. Judge Boyes concluded by observing that the grounds were poorly drafted and that by way of accident rather than by design they had achieved their goal of securing permission. He expected that, by the time of the Upper Tribunal hearing, the grounds would be improved.

The Secretary of State's Case following the Grant of Permission

37. Pursuant to Judge Boyes' concluding observation, the Upper Tribunal directed the Secretary of State to provide a skeleton argument in which her error of law challenge was presented with greater clarity.

38. David Clarke, Senior Home Office Presenting Officer, provided greater clarity in a skeleton argument dated 7 November 2023.

39. With respect to Ground 2, he developed an argument that the Judge had not given adequate reasons for finding that the claim under Article 3 ECHR was made out.

40. Mr Clarke submitted that the Judge's key findings on the issue were set out at [32]. He submitted that the finding that the appellant could name the head of police and the military recruiter was a wholly inadequate explanation as to why the appellant would not have judicial redress against local corrupt officials acting inconsistently with the Penal Code. The Judge accepted that the evidence indicated the availability of due process, but failed to give any reasons as to why the appellant's fear of reporting in 2010 (because of the alleged cousin relationship) could be probative of the

issue of judicial redress (i.e. probative of the non-availability of judicial redress in the appellant's particular case).

41. The Judge's finding at [53] that the Secretary of State did not argue that there was sufficiency of protection was inconsistent with the submissions on due process made by the Presenting Officer at [32] by reference to the materials before the Tribunal. Equally, the decision letter had expressly argued that should any punitive measure be applied to his refusal to comply with the order, his case would be judged under Article 259 of the Penal Code - Evading Military Service. The Judge had failed to made any findings at all as to why the appellant had not pursued his day in court under the Penal Code, rather than paying bribes to avoid military service, which the appellant said he was not require to do under the law.

The Hearing in the Upper Tribunal

42. At the hearing before me to determine whether an error of law was made out, Mr Tufan relied on the skeleton argument prepared by Mr Clarke. I pointed out that this did not address the fact that the Presenting Officer, Mr Brown, was recorded as having conceded that, if the appellant's account of past persecution was made out, the respondent accepted that the appellant would be at risk on return. Mr Tufan agreed that, in the circumstances, the error of law challenge could only succeed if it was shown that the Judge had materially erred in her assessment of the appellant's account of past persecution. But he submitted that the case put forward by his colleague established this.

43. In reply, Mr Appiah (whose sister had appeared on behalf of the appellant before the First-tier Tribunal) said that the concession made by the Presenting Officer at the hearing made it difficult for the respondent to succeed in her error of law challenge to the Judge's findings on humanitarian protection and on Article 3 ECHR. He submitted that the Judge had given adequate reasons for accepting the credibility of the appellant's account of past persecution.

44. As to Ground 1, he submitted that the Judge's finding that the appellant had rebutted the presumption that he was a danger to the community was entirely in line with the assessment of risk contained in the OASys assessment report, and that no error in the Judge's reasoning was made out.

45. After hearing briefly from Mr Tufan in response to Mr Appiah, I reserved my decision.

Discussion and Conclusions

46. Before turning to my analysis of this case, I remind myself for the need to show appropriate restraint before interfering with the decision of the First-tier Tribunal, having regard to numerous exhortations to this effect emanating from the Court of Appeal in recent years, including in *T (Fact-*

finding: second appeal) [2023] EWCA Civ 485 and in *Volpi & another -v-Volp*i [2022] EWCA Civ 464.

47. As it was originally framed, Ground 1 was misconceived, as it was founded on the false premise that under paragraph 339D all that needed to be shown was that the person seeking humanitarian protection had been convicted of a particularly serious crime. Mr Tufan conceded in oral argument that it did not automatically follow that such a person was a danger to the community, and that while this was a presumption inherent in the Rule, it was a presumption that could be rebutted.

48. In his skeleton argument, Mr Clarke submits that the Secretary of State does not know exactly what test has been applied by the Judge at para [24] to the question of danger to the community. He cites *EN (Serbia)* [2009] EWCA Civ 630 at [45] and [46] as to the test to be applied.

49. The second limb of the test is that normally the danger is demonstrated by proof of the particularly serious offence and "*the risk of its recurrence, or of the recurrence of a similar offence.*"

50. Mr Clarke submits that the emphasis placed by the Judge on a requirement of *"danger*" appears to create an elevated requirement of seriousness over and above the previously-found "*particularly serious*" index offence. He submits that the Judge has not turned her mind as to whether there is a real risk of repetition of the index offence or a recurrence of a similar offence.

51. I do not consider that the Judge failed to apply the correct test, or that her line of reasoning has left the Secretary of State in genuine doubt as to the test which she has applied. It is tolerably clear that the Judge found that there was not an appreciable risk of the appellant re-offending, albeit that the OASys assessment report did not suggest that there was a zero risk of the appellant re-offending. It is apparent from an examination of the OASys assessment report that the appellant had very low percentage scores for the likelihood of re-offending: his OGP probability of proven non-violent re-offending was 5% over one year, and 9% over two years. His risk of serious recidivism over two years was 0.3%.

52. Mr Clarke's second line of argument is that, while the Judge is entitled to take into account the low risk of re-offending in the OASys report and the appellant's express intention to address his offending, the Judge failed to explain the probity of the appellant's intention, given that she attached little weight to his assertions that he regretted his actions and that he had now changed. Mr Clarke submits that the tension in these findings is further underscored by the Judge's failure to address the appellant's motivation for the index offence and the risk factors identified in the OASys report as underpinning the offence. He says that the Judge failed to make any findings on whether these features had been addressed.

53. While I accept that the Judge did not undertake a comprehensive analysis of all the relevant factors bearing on the risk of offending, including the criminogenic factors identified in the OASys assessment report, I consider that the Judge gave adequate reasons for finding that the appellant would not be a danger to the community on the basis that the probability of the appellant's re-offending was low in all relevant categories; that he was stated by the Offender Manager to be very motivated to address his offending behaviour, and very capable of changing; that he had now been out of detention for a little over a year, and it was not suggested that he had re-offended in that albeit relatively short period. I do not consider that there is tension between the Judge's reliance on what might be described as objective factors in reaching this conclusion, while at the same time discounting the appellant's personal assurance that he regretted his past actions, and that he had now changed.

54. In conclusion, I find that the error of law challenge under Ground 1 is not made out.

55. Ground 2 contains two overlapping challenges to the Judge's reasoning process in arriving at a positive credibility finding.

56. Firstly, it is submitted that the Judge erred in her assessment of the credibility questions arising under section 8 of the 2004 Act. In particular, Mr Clarke submits that in reaching the conclusion that the appellant had given a plausible explanation for not claiming asylum until after he had been notified of his liability to deportation, the Judge failed to consider "*the elephant in the room*" which was that, following his arrival in the UK, the appellant had set about on a criminal enterprise managing a cannabis factory. He submits that the Judge failed to factor this matter into account when considering the credibility of the appellant's asserted motivation for not claiming asylum earlier.

57. It is undoubtedly the case that the Judge did not expressly take into account the appellant's involvement in a criminal enterprise before reaching the conclusion that his explanation for not claiming asylum earlier was reasonably plausible. However, the Judge was not bound to rehearse every argument as to why the appellant's explanation should be disbelieved, and I consider that ultimately this error of law challenge is an expression of disagreement with a finding that was reasonably open to the Judge for the reasons which she gave.

58. Moreover, it is not the case that, as contended in Ground 2 as originally formulated, that the Judge proceeded to disapply section 8 of the 2004 Act. What she did was to find that it was appropriate to attach relatively little weight to the appellant's failure to claim asylum sooner, and the Judge thereby directed herself appropriately.

59. The other error of law challenge in Ground 2 is much more significant, as it goes to the heart of the appeal. If it is made out, it follows that the decision allowing the appeal is unsafe and cannot stand.

60. The central thrust of the respondent's reasons for rejecting the appellant's account of past persecution was that sufficiency of protection was available to the appellant and, precisely because it was available, the appellant's account was not credible.

61. At [32] the Judge recorded a submission by Mr Brown that the appellant had not attempted to seek any protection from those who detained, attacked and demanded money from him.

62. The Judge said that she agreed with this submission. She agreed that the Press reports provided by the appellant indicated that due process exists in Vietnam for people accused of draft evasion.

63. Although the Judge went on in the same paragraph to find plausible the appellant's explanation for not going to the police in 2010, this finding does not in itself address the broader question of whether sufficiency of protection was available to the appellant if he made a meaningful effort to obtain it, such as by going to court or seeking redress from a higher authority that was not part of the corrupt circle that operated in his local area/province.

64. The same question also arises in the context of the two claimed attempts by the appellant and his cousin to seek protection in 2016. With regard to the alleged complaint to the police, the Judge found it credible that there was no written police report. But the Judge did not ask herself whether this was ever going to be an effective complaint when the appellant's case was that he had not told the truth to the hospital about the cause of his injuries and/or about who had inflicted them, so the police would have been confronted with medical evidence that contradicted a claim of assault by the appellant's persecutors. With regard to the alleged sending of a letter or letters of complaint, the Judge found it was credible that the appellant had not kept copies of it/them but she did not ask herself whether by sending a letter or letters of unknown content to vaguely defined recipients the appellant had made a genuine attempt to obtain effective redress and hence sufficiency of protection – and if the answer was no, whether reflexively it was credible that the appellant had not availed himself of an easy means of redress rather than continuing to submit to unlawful demands from corrupt local officials.

65. The other pivotal paragraph is at [44] where the Judge found that the positive credibility points (internal consistency and plausibility) outweighed the matters about which she had a serious concern, leading to the conclusion that the appellant was credible in his account of past persecution. On analysis, this balancing exercise is highly problematic.

66. Firstly, there is an internal inconsistency in the Judge initially treating the section 8 considerations as being of little weight, and then placing them in the same category as the matters mentioned in paras [37] and [38] as being matters of serious concern.

67. Secondly, it is unclear whether the Judge has treated her findings in paras [28]-[35] as being positive credibility findings which outweigh the adverse credibility findings in paras [37]-[43], or whether she has continued to treat them as merely non-adverse credibility findings, which are not the same thing. On their face, the findings in paras [28]-[35] are "defensive". They are findings as to why various matters relied on by the respondent are not in the Judge's view damaging to the appellant's credibility, but they are not findings to the effect that the matters relied on by the respondent, or the corresponding findings made by the Judge, enhance the appellant's credibility. Nor are they reasonably capable of performing that function. However, the balancing exercise carried out by the Judge at [44] implies that she has treated her findings in [28]-[35] as positive credibility findings which outweigh the adverse credibility findings in [37]-[43].

68. Thirdly, on the face of it, the Judge has excluded from the balancing exercise the existence of the martyr's certificate. For the reasons given in the refusal decision, this is not a neutral document. Its existence is antithetical to the credibility of the core claim, as prima facie it provides, and has always provided, the appellant with an exemption from military service and therefore, contrary to what the Judge went on to find at [49], there was objectively no real risk of the appellant being charged, tried and convicted of draft evasion on return to Vietnam, and there never had been such a risk before he left Vietnam, as his persecutors had been operating entirely outside the law, and hence the appellant had not been threatened with a criminal prosecution for draft evasion if he did not submit to their unlawful demands.

69. In conclusion, I find that the Secretary of State has made out her case that the Judge materially erred in law by conducting a flawed credibility assessment in which she did not adequately engage with the central reason given in the refusal decision for disbelieving the appellant's account of past persecution, which was the existence of the martyr certificate that gave the appellant an exemption from military service and the availability of due process by which the appellant could deploy this exemption, and in which she did not give adequate and internally consistent reasons as to why she found the appellant credible, notwithstanding the respects in which she had serious concerns about his credibility.

70. As a consequence of Ground 2 being made out, the Decision is unsafe and it must be set aside in its entirety, with none of the Judge's findings of fact being preserved.

Remaking

71. Given the extent of the fact-finding that will be required to remake the Decision, the most appropriate course is for the appeal to be remitted to Taylor House for a *de novo* hearing on all issues before another Judge of the First-tier Tribunal.

Anonymity

72. The First-tier Tribunal made an anonymity direction in favour of the appellant in the light of his claim to fear persecution or serious harm at the hands of the Vietnamese authorities. So, I consider that it is appropriate for the appellant to continue to be accorded anonymity for the purposes of these proceedings in the Upper Tribunal.

Notice of Decision

The Decision of the First-tier Tribunal involved the making of a material error of law, and so the Secretary of State's appeal is allowed. The Decision of the First-tier Tribunal is set aside in its entirety, with none of the findings of fact being preserved.

Directions

The appeal shall be remitted to the First-tier Tribunal at Taylor House for a fresh hearing before any Judge apart from Judge Andrews.

Andrew Monson
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
10 December 2023