



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/00238/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 13 June 2017**

**Decision & Reasons
Promulgated
On 10 July 2017**

Before

**THE HON. MRS JUSTICE CHEEMA-GRUBB
DEPUTY UPPER TRIBUNAL JUDGE ESHUN**

Between

**CHINH VAN NGUYEN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Asimwe, instructed by Pillai & Jones Solicitors
For the Respondent: Mr P Deller, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Fox made following a hearing at Harmondsworth on 1 March 2017, promulgated on 21 March.

Background

2. This is a case about the application of Section 32 of the UK Borders Act 2007 which states that the Secretary of State for the Home Department must make a deportation order in the case of a foreign criminal subject to the exceptions particularised in Section 33 of that Act.
3. The appellant, Chinh Van Nguyen is 38 years old having been born in Vietnam on 22 October 1988. We should say that this is the date the appellant has given as his date of birth although as pointed out at this hearing there were proceedings for age assessment when he made his original asylum claim in 2005 which resulted in a finding against his claim. The age assessment is not directly relevant to the matter before us today.
4. The appellant's case is that he entered the United Kingdom on 15 November 2004 using a false document, namely a passport which bore his photograph but belonged to someone else. On 17 November 2004 he claimed asylum on the basis of religious persecution as he had distributed Buddhist literature with his father in Vietnam. His claim was refused in a notice dated 4 April 2005. He failed to attend his appeal hearing which was dismissed in his absence on 23 May 2005 and the appellant exhausted his appeal rights on 3 June of that year. After a break he was granted indefinite leave to remain on 13 July 2010 on the basis of the legacy casework exercise. However on 18 December 2014 he was sentenced to 51 months' imprisonment for causing serious injury whilst driving. We shall come on to the facts of that conviction in due course. On the basis of the conviction the respondent made a decision to deport the appellant pursuant to Section 32, sub-Section (5) of the UK Borders Act 2007. That decision is dated 6 April 2016. She also concluded that this decision complied with Section 55 of the Borders, Citizenship and Immigration Act 2009. The appellant made human rights representations which were refused by the respondent in a decision dated 6 May 2016. He then claimed asylum on the basis of political activities in the United Kingdom. This was refused in a notice dated 28 December 2016.

Law: Deportation of foreign criminals: the applicable legislation

5. The Secretary of State's power to deport non-UK nationals derives from Section 3, sub-Section (5) of the Immigration Act 1971, as amended, which reads so far as material:

"A person who is not a British citizen is liable to deportation from the United Kingdom if –

 - (a) the Secretary of State deems his deportation to be conducive to the public good."
6. The UK Borders Act 2007 provides for a regime governing the deportation of non-nationals who are convicted in the United Kingdom of criminal offences. Section 32 reads so far as material as follows:

- “(1) In this section ‘foreign criminal’ means a person –
- (a) who is not a British citizen,
 - (b) who is convicted in the United Kingdom of an offence, and
 - (c) to whom Condition 1 or 2 applies.
- (2) Condition 1 is that the person is sentenced to a period of imprisonment of at least 12 months.
- (4) For the purpose of section 3(5)(a) of the Immigration Act 1971 ...the deportation of a foreign criminal is conducive to the public good.
- (5) The Secretary of State must make a deportation order in respect of a foreign criminal (subject to section 33).”

7. Section 33 as referred to above contains a number of exceptions to the obligation on the respondent to deport a foreign criminal. On this appeal only exception 1 is relevant which by sub-Section 2 applies, “where removal of the foreign criminal in pursuance of the deportation order would breach (a) a person’s Convention rights....”. The consideration by a court or Tribunal of whether a decision made under the immigration legislation is in breach of the rights of any person under Article 8 ECHR is subject to the provisions of part 5A of the Nationality, Immigration and Asylum Act 2002 which was introduced by the Immigration Act 2014 with effect from 28 July 2014. Section 117A (2) provides that in considering whether an interference with a person’s right to respect for their private and family life is justified under Article 8(2) “the court or tribunal must (in particular) have regard (a) in all cases to the considerations listed in Section 117B and (b) in cases concerning the deportation of foreign criminals to the considerations listed in Section 117C”:

“117B: Article 8: public interest considerations applicable in all cases

- (1) The maintenance of effective immigration controls is in the public interest.
- (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –
 - (a) are less of a burden on taxpayers, and
 - (b) are better able to integrate into society.
- (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that

persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –

- (a) are not a burden on taxpayers, and
 - (b) are better able to integrate into society.
- (4) Little weight should be given to –
- (a) a private life, or
 - (b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.
- (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
- (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –
- (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
 - (b) it would not be reasonable to expect the child to leave the United Kingdom.”

Section 117C Article 8: Additional considerations in cases involving foreign criminals provides:

- (1) the deportation of foreign criminals is in the public interest.
 - (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
 - (3) In the case of a foreign criminal (“C”) he was not being sentenced to a period of imprisonment of four years or more, the public interest requires C’s deportation unless Exception (1) or Exception (2) applies.
- ...
- (5) Exception (2) applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C’s deportation on the partner or child would be unduly harsh.

- ...
- (7) The considerations in sub-sections (1), (2), (6) are to be taken into account where a court or Tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.”

Appeal

8. It was the decision of 28 December 2016 which was the subject of the appeal before the Immigration Judge. In his judgment the judge dismissed the appeal on asylum, humanitarian protection and human rights (i.e. Articles 2, 3 and 8 ECHR) grounds. His findings appear below at paragraphs 41-47 as follows:

- “41. The appellant has failed to satisfy the burden of proof. I firstly consider the appellant’s asylum claim. My starting point is the Tribunal decision dated 25 May 2005 which affirmed the adverse credibility findings of the respondent’s corresponding decision; Devaseelan applied.
42. The appellant has raised a new claim in different circumstances. He now relies upon political opinion as a convention reason rather than religion. I have had the benefit of observing the appellant. When asked about his historic asylum claim he had difficulty in recalling it.
43. Once coached on the substance of that claim he confirmed that he had claimed asylum on the basis of religion. The appellant’s evidence that Buddhism is regarded as camouflage for Viet Tan is unconvincing at best. There is no reliable evidence of a credible nexus between the appellant’s 2 asylum claims.
44. Upon the available evidence it is reasonable to conclude that the appellant had forgotten the basis of his historic asylum claim as it was false. The appellant failed to engage with the first appeal. This is a modus operandi he adopted during the course of his criminal trial which required a warrant to cause the appellant to appear.
45. I do not accept the appellant’s claims that detention has frustrated the collation of corroborative evidence. It is reasonable to conclude that the appellant has been given ample time to contact his alleged political associates with the benefit of formal legal representation.
46. Nor do I accept his explanation that political operations are conducted in secret which prevents his representatives from obtaining evidence on his behalf. When the available evidence is considered in the round it is reasonable to conclude that the

absence of reliable evidence is due to the absence of any political activity as claimed.

47. When the available evidence is considered in the round it is reasonable to conclude that the appellant advances a false and opportunistic claim in an attempt to frustrate his departure from the UK. The appeal fails in accordance with the Refugee Convention, humanitarian protection and Articles 2 and 3 ECHR for these reasons.”

At paragraphs 48-55 the judge stated:

- “48. I now consider Article 8 ECHR. It is apparent that the appellant cannot satisfy the respondent’s definition of Article 8 ECHR. I therefore turn to consider the 5 stage test as set out in Razgar [2004] UKHL 29. I remind myself that the respondent is entitled to control the entry of foreign nationals into the territory and she afforded a margin of appreciation in the administration of this. A fair balance must be struck between the competing interests of the individual and the needs of wider society.
49. There is no reliable evidence of family life for the purpose of Article 8 ECHR. The appellant concedes that his relationship with the child’s mother has come to an end and that she has embarked upon a new relationship.
50. As the appellant’s credibility is damaged for the reasons stated above I do not accept the appellant’s self-serving evidence that he is the biological father of the child despite another name appearing on the child’s birth certificate. There is no reliable nexus between the father’s name as stated on the child’s birth certificate and the appellant’s name.
51. However for completeness I consider the appellant’s claim to have a child in the UK. I firstly remind myself that there is no suggestion that the child is expected to leave the UK. The appellant has stated that he has maintained remote contact with the child whilst in prison. There is no reliable evidence to demonstrate why this arrangement cannot continue when the appellant returns to Vietnam.
52. I also note the absence of the child’s mother who chose to prioritise her work commitments over the appellant’s alleged need to maintain physical contact with the child. The available evidence taken at its highest also leads to the reasonable conclusion that the child has been subsumed into a new family unit with the mother’s new partner. This does not assist the appeal.

53. I also remind myself that the length of the appellant's prison sentence engages the higher threshold of public interest in favour of his removal; EJA, MF (Nigeria) and section 117 of the 2002 Act applied. Any mitigation has been addressed at the point of sentencing and I remind myself that I remain bound by the higher threshold.
54. For the reasons stated there is no reliable evidence to demonstrate that the appellant has satisfied the evidential burden upon him to override the public interest in his removal.
55. I do not accept that the appellant has no ties to Vietnam as claimed. In examination-in-chief he stated that he has had no contact with anyone in Vietnam since 2004. In cross-examination he revealed that he has contact with the child's maternal grandmother. When the available evidence is considered in the round it is reasonable to conclude that the appellant seeks to suppress evidence of his ties to Vietnam in an attempt to bolster his appeal."
9. The judge's decision is said to be flawed on the basis that -
- (1) He did not provide adequate reasons for concluding "hastily and unfairly" that the appellant's account was not credible, and
 - (2) He failed to engage with the appellant's claim based on political opinion and dismissed it without giving any or adequate reasons. In addition
 - (3) The Article 8 decision was insubstantially reasoned.
10. Permission to appeal was granted by the First-tier Tribunal Judge Keane on 20 April 2017 on the basis that absent the arguable errors of law alleged the outcome of the appeal might have been different. The respondent, in writing, contests the appeal on the basis that the Immigration Judge did not make any error, directed himself appropriately and gave adequate reasons why the appellant's account was not believed and that the judgment read as a whole makes clear why the appeal against the 28 December 2016 decision failed. In the same way that the First-tier Judge did we remind ourselves of the burden of proof which lies on the appellant:
- (1) As to the Section 32 UK Borders Act 2007 he has to demonstrate compelling reasons why he should not be deported;
 - (2) As to his refugee claim he has to prove on a reasonable degree of likelihood that he has a well-founded fear of persecution for a Convention reasons;
 - (3) As to humanitarian protection he has to prove substantial grounds for fearing a risk of serious harm;

- (4) For his human rights claim he has to demonstrate that the Secretary of State for the Home Department's obligations under the European Convention on Human Rights are engaged and that there is a real risk of harm to him at the date of the hearing. The standard is of course the balance of probabilities.
11. We have had assistance today from submissions by Counsel representing the appellant and the Home Office Presenting Officer representing the respondent. We have had the opportunity to consider all the evidence that was before the First-tier Tribunal. In particular we have regard to:
- (1) The appellant's screening interview record dated 17 November 2004 in which he relied on a fear of persecution due to his Buddhist religion;
 - (2) His Statement of Evidence Form dated 15 March 2005 which sets out the basis of his claim for asylum, namely his fear of persecution in Vietnam because he had assisted his father in distributing Buddhist books to people in their commune. The books and leaflets had, he said, contained a section criticising the government for its repression of various religions including Buddhists although he and his father had not known that when they had taken delivery of the material from people who did not live in Vietnam. His father had been arrested and he believed his own life to be in danger. He had been arrested and held for a few hours and threatened. He had not reported any incidents of persecution to the police in Vietnam as the police were the agents of government control.
 - (3) His Asylum Interview Record dated 15 March 2005 in which he was asked in detail about his activities prior to leaving Vietnam. He could not remember some dates because it had been a long time since the events concerned. He said his mother had died some time earlier and although he had written once to his family in Vietnam since arriving in the United Kingdom he had not heard back. He sought protection in the UK until his father was released and any charges he faced were dropped.
 - (4) The refusal letter dated 4 April 2005 set out eight paragraphs of reasoning with details including details of apparent discrepancies in the information the appellant had provided.
 - (5) The First-tier Tribunal's decision rejecting his appeal against that determination by the respondent.
 - (6) His application for a certificate of approval for a marriage together with the birth certificate of a child the appellant says is his daughter although a different name has been used to register the details of the father of that child.

- (7) The respondent's decision granting indefinite leave to remain dated 13 July 2010.
- (8) A transcript of the sentencing remarks of His Honour, Judge Critchlow at Guildford Crown Court on 18 December 2014 in which he describes the offences for which the appellant had to be sentenced as follows:

"You have to be sentenced for two offences of causing serious injury by dangerous driving. You were driving a motor car, a Lexus 300 containing your wife and two young children on the A30 near Camberley when without warning you decided to perform a U-turn out of a layby. Something that had gone on in the vehicle had caused you, an unlicensed and uninsured and inexperienced driver to take over the driving, that was something you should not have done and it was immediately an unlawful act... You plainly either did not look or failed to see Mr Cox and his pillion passenger approaching and they were there to be seen on this straight road. By your manoeuvre you gave Mr Cox no chance of avoiding a collision as you turned right across his path and it is plain from the photographs that he hit you amidships on the driver's door and the consequence for him and for his passenger were immediately extremely serious and could have been fatal.... No sentence within the guidelines permitted and legally permitted by Parliament can restore the health and mobility of Mr Cox who is in court today and his life at 27 has changed forever and he will spend his life now coping with paralysis from the chest down. I have read the victim impact statement and I recognise the courage he is showing in coping with the effects of that day and the serious injuries he sustained. I have also read the statement of Miss Maria Bello, a student nurse, his girlfriend, and the effect on her of the spinal injuries have been serious, though plainly not as serious as those to Mr Cox.... In the view of this court this is a most serious example of this offence. You have to be sentenced on two counts reflecting that two people were very seriously injured and I have to consider whether or not a consecutive sentence should be imposed to reflect the culpability and harm that was caused. ...I consider that this was at the top of the range without any specific guidelines for this offence because of the nature of what you did and the aggravating factors. I therefore consider that giving you some credit for your guilty plea the sentence in respect of count 1 is 51 months' imprisonment, that is four and a quarter years and that reflects a 15 percent discount from the maximum sentence. ...I do impose a consecutive sentence because this was an incident which involved a danger to a motor cycle with two people on it, resulting in two serious separate injuries to those individuals and motor cyclists are vulnerable, and so therefore I impose a consecutive sentence of 21 months on count 2 to reflect the totality as well as having regard to the injuries. It

would have been longer but for the fact of totality. That makes a total sentence of 72 months, that is six years' imprisonment."

Returning to the list of evidence that we have before us:

- (9) The order of the Court of Appeal Criminal Division when the consecutive sentence on count 2 to which we have just referred was quashed and ordered to run concurrently to the sentence on count 1 making a sentence of 51 months' imprisonment rather than 72 months.
- (10) Media articles about the circumstances of the offences.
- (11) The subsequent notice of deportation dated 5 April 2016 and reasons.
- (12) The appellant's solicitor's letter dated 6 May 2016 which contains some inaccuracies but in essence asserts that the appellant had been in the United Kingdom for a long time, had been well-behaved apart from the events leading to his convictions in 2014 and he had a child who would suffer if he were deported.

Reliance was also placed on his fears of persecution in Vietnam. The respondent sought further information about these matters and although the appellant's second asylum claim in totality itself is not included in our papers, the content can be gleaned from the next document we have seen which is

- (13) The appellant's political asylum statement made in January 2017 which is relatively short and reads as follows in its body:

"Basis of claim for asylum in the United Kingdom

I have been in the UK legally for ten years and have spent my formative life in this country. I have no family, friends, home or job to return to in Vietnam, a country I barely know. It certainly has a government I despise and a political system I have campaigned against and as a result of my previous activities and my activities in the UK it is unsafe for me to return to Vietnam. My parents were sympathisers and members of Viet Tan and were faced persecution and eventually possible death for their activities. I was forced to flee as I was in danger too and the government was searching for me. Since I have been in the UK I have developed a more keen interest in politics and especially since 2010 I have been an active volunteer with Viet Tan. I have distributed leaflets for them in the UK, I have written to the Vietnamese government and to the Vietnamese embassy through my friends who translated the letters into English and other relevant bodies campaigning for the release of many people illegally detained in Vietnam. People like father Nguyen Van Dai, Le Quoc Quan and others. I have also arranged and signed many petitions. I was also a very active social media

blogger and had a very interactive twitter and pro democracy Facebook account. Democracy for Vietnam is something I cannot give up campaigning. I have attended demonstrations and protests outside the Vietnamese embassy. I believe that the Vietnamese Government is aware of me since I left the country and is aware of my activities in the UK as many protests the Vietnamese embassy officials took many photographs of the protestors by mingling with the protestors in casual clothes. I cannot give up my political beliefs as I believe that democracy and human rights is every Vietnamese national's God given right and the CVP cannot deny us this right. I have campaigned for this right in the UK and have sincerely believed in it and sacrificed my money and time in this country despite living here and having indefinite leave to remain....".

Under the heading 'Conclusions':

"I apologise for not recollecting everything in detail as remembering such events is painful and disturbing. If I am returned to Vietnam I fear for my life, safety and freedom from the Vietnamese government, I have no family or friends to look after me in Vietnam. I need help please."

It is right to point out that in the signed copy of this statement that Mr Asimwe provided to us today there is further reference to the closing of his social media accounts while he has been in custody and other difficulties in obtaining material referred to in the passages we have just set out.

Returning to the material before us:

(14) The decision letter dated 28 December 2016 which extends to over twelve pages of reasoning for the refusal of the appellant's subsequent human rights claim and which points out that he had supplied no documentary evidence to support the assertions of political activity he had made.

12. The First-tier Tribunal Judge heard the appellant give evidence and made adverse findings about him and his evidence. The appellant adopted his statement and explained that he is father to a girl but he had used a different name to register her birth. No explanation was given for this. He was in touch with the child who had not been living with him because he was separated from the mother who had gone on to form another relationship but he said he had maintained contact by telephone and in writing. He was not able to provide corroborative evidence of his activities because he was in custody and a third party could not approach the organisation he had worked with. His social media accounts had been suspended due to inactivity while he was in custody and he had no means of contacting any of his political associates. He would as a result of these activities be a person of interest were he returned to Vietnam. The

mother of his daughter had not attended the hearing but if he were at liberty he would be able to gather further evidence.

Submissions

13. Mr Asiimwe relied on his grounds and submitted that the judge had not adequately reasoned his decision in refusing the appellant's appeal:
 - (1) He did not consider fresh evidence presented by the appellant about his *sur place* activities and relied on the fact that a previous asylum claim had been refused in 2005. At paragraph 46 it is submitted the judge was wrong to conclude that there had been ample time for the appellant to provide corroboration. Mr Asiimwe submitted that it was simply not reasonable to conclude that the lack of evidence was due to the absence of political activity. If the appellant had been given further time he may have been able to obtain evidence in support of his assertions.
 - (2) However Mr Asiimwe had to concede that he could not point to a single class of evidence not sought or enquiry that was not carried out because the appellant was in custody nor was there any particular line of enquiry that he had been able to instruct his solicitors to conduct but which had been frustrated because the appellant has been in custody. Indeed the appellant has been represented throughout these proceedings and certainly since 28 December 2016. It is also to be noted that the appellant obtained bail and release from detention on 26 May 2017. He does not attend this hearing. He has not provided any further statement or information of any form setting out what further material if any he would wish to be able to put before a decision maker or an appeal court.
 - (3) As to submissions, in respect of Article 8 Mr Asiimwe submits that in the decision of Judge Fox he did not explain sufficiently why the family connection was not present. On the contrary it is submitted an obvious family connection was present and this will be interrupted by the deportation and should counter the requirements of the respondent to deport a foreign criminal.
14. Mr Deller, Home Office Presenting Officer submitted that the grounds had no merit. With conspicuous fairness he did articulate potential inadequacies in the determination of the First-tier Judge which we have considered with particular care. Regarding paragraph 41, he points out that this support for an adverse credibility finding arose from a claim made in 2005 at which the appellant was not heard in evidence. That claim resulted in a dismissed appeal which has been relied upon by the First-tier Tribunal Judge as support for his own credibility findings. In our view the judge was entitled to take the decision into account to some extent and certainly his concise expression at paragraph 41 fairly reflects the Tribunal's decision on 25 May 2005.

15. Mr Deller also drew our attention to the formulation used by the judge in his decision, “it was reasonable to conclude” against the appellant and Mr Deller invites us to consider whether that may demonstrate the use of a burden and standard of proof higher than the lower standard of which the appellant bore the burden. In this regard we can observe that earlier in his decision at paragraphs 17 to 22 Judge Fox dealt with the burden of proof in respect of the asylum claim and in paragraph 19 he says the following:

“The burden lies with the appellant, to prove that he has a well-founded fear of persecution, for a Convention reason. The standard of proof is the lower standard, on a reasonable degree of likelihood, in accordance with Ravichandran [1996] Imm AR 97. The evidence to prove this is assessed according to the principles of Karanakaran [2000] Imm AR 271.”

This is a correct statement of the law and we find no reason to conclude other than the judge applied the burden and standard he set out there.

16. In response to Mr Asiimwe’s submissions Mr Deller notes the lack of evidence including any evidence from his associates. He encapsulates his submissions in this way, that this was not “an impressive case” as presented to the Tribunal and remains so. In particular he draws our attention to the shift from a religious claim in 2004 to *sur place* political activity claim in 2016. Secondly, he points to the lack of evidence to support the appellant’s asserted activities and he reminds us that the appellant has been represented throughout. In reply Mr Asiimwe urges us to allow the appeal on the basis that there has been a material error in the decision and the only just outcome would be a remittal for a re-hearing.

Findings and Conclusions

17. Do paragraphs 41 to 47 adequately express a fair assessment of the merits of the appeal? Do they disclose a failure to apply the correct burden and standard of proof? On Mr Asiimwe’s first point the judge was bound to reflect upon the evidence presented and to have regard to relevant background information where available such as the history of a previous asylum claim. He had to apply the burden and standard of proof and he had to express his decision in a way that was clear and fully explained when he reached the conclusion that the appeal had to fail. The parts of the decision we have set out earlier demonstrate that the judge did consider the appellant’s claim of political activities and he looked specifically for evidence in support. He found that the appellant had been given ample time to obtain evidence. He was entitled to do so. He found that there were inconsistencies in the account the appellant gave about his historical claim but although he could have pointed out in the appellant’s favour that time had passed and recollections may fade,

nevertheless the judge was entitled to take the inconsistencies into account.

18. The findings of a lack of actual political activity as claimed which the judge reached in paragraph 46 could have been more fully set out both in terms of the evidence the appellant had provided (which would have meant a summary of his short statement set out above) and the burden and standard of proof which the judge applied. Nonetheless, even today there is no corroborative evidence and we can but conclude that the judge was entitled to come to the conclusion that he did on the evidence provided to him.
19. As to the Article 8 argument which is dealt with at paragraphs 48 to 53 again an unhelpful degree of compression is displayed. But there is a difference between concision and superficiality in setting out reasons. Here the judge has failed to set out the five stage test **Razgar [2004] UKHL 29**. He does deal with the question of a family life and whether the decision interferes with it. Having answered that first question effectively in the negative albeit acknowledging that the appellant claimed to have some form of contact with the child he said was his daughter even while in prison it was not strictly necessary for the judge to then go on and consider the remaining questions in **Razgar** but even if he should have gone on to consider the fifth question, i.e. proportionality, the need to conduct a balancing exercise and the findings at paragraphs 54 and 55 concerning the public interest in the appellant's removal and the lack of hardship in his return to Vietnam, demonstrate that even if not addressed directly the outcome of a proportionality judgment would have been the same.
20. Drawing these threads together and having considered the matter with care we do find an error of law in the decisions of the First-tier Tribunal Judge but this is restricted to the lack of transparent demonstration of his reasoning for the conclusions reached. In particular as Judge Keane observed paragraphs 41 to 47 provide a limited expression of the judge's findings. However that is not an end of the matter. We must go on to consider whether this error is a material error in all the circumstances i.e. does it lead to the decision being set aside and require a new decision which may have to be made in this Tribunal or after remittal. As we have pointed out this is not a case in which we are invited to receive any further evidence nor is the appellant able to point to any line of enquiry. Having considered the evidence presented before the First-tier Tribunal Judge which amounts to a dearth of material to support the political asylum claim we conclude that the judge was bound to have come to the decision he did in this case. There was a conspicuous lack of weighty private and family life considerations in this case and that which did appear to be present, including his relationship with his biological daughter, are equally incapable of defeating the public interest in deportation in this case.

Notice of Decision

PA002382017

21. In the circumstances this appeal must fail and the decision of Judge Fox is affirmed.
22. No anonymity direction has been made previously in this case, none is sought today and none is made.

Signed

Date: 4 July 2017

The Hon. Mrs Justice Cheema Grubb