



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

Appeal Number: HU/09931/2018

THE IMMIGRATION ACTS

**Heard at Birmingham Employment Decision & Reason
Tribunal Promulgated
on 17 October 2018 on 8 November 2018**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**QAV
(anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss C Record of Counsel.

For the Respondent: Mr Mills Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-Tier Tribunal Judge Howard promulgated on 6 June 2018 in which the Judge dismissed the appellant's appeal on protection and human rights grounds.

Background

2. The appellant is a citizen of Vietnam born on 12th February 1968 who is the subject of an order for his deportation from the United Kingdom following his conviction on 26 August 2016 at Perth Sheriff Court of assault with a statutory aggravate of domestic abuse, for which he was sentenced to 42 months imprisonment, reduced to 36 months on appeal.
3. The appellant asserted that his removal from the United Kingdom will breach his human rights pursuant to article 8 ECHR outside the Immigration Rules. Such claim was refused by the respondent on 24 April 2018 and on 25 April 2015 the respondent refused the applicant's protection claim on the basis he had not established a well-founded fear of being persecuted if returned to Vietnam. It is the appeal against these decisions which came before the Judge.
4. Having considered the evidence with the required degree of anxious scrutiny the Judge sets out findings of fact from [22] of the decision under appeal. The Judge did not find the appellant to be a credible witness for the reasons set out at [24 - 29] of the decision. The Judge found that the cumulative effect of the appellant's inconsistencies in his claim and his behaviour when engaged with the respondent led to rejection of the appellant as a credible witness. The Judge also found the appellant had not made a genuine effort to substantiate his claim in accordance with paragraph 339L(i) the Immigration Rules.
5. At [32] the Judge confirms the appellant's narrative account of being persecuted for failing to do his duty when requested by the army was rejected as not being credible, which was the only basis on which the protection claim was based.
6. The Judge, having dismiss the protection claim, considered the human rights claim noting the appellant has a wife and son who are, for the time being, in the United Kingdom with leave to remain until 11 June 2018.
7. At [40-42] the Judge records the following:
 40. The appellant was convicted of an offence that ultimately resulted in the immediate term of imprisonment for 36 months. The respondent relies upon the appellant's removal being conducive to the public good and in the public interest because of the single conviction secured before the Perth Sheriffs Court. The appellant pleaded guilty. The sentencing judge heard that the appellant slapped his wife about the face until her vision became blurred. He then repeatedly kicked her to her body shouting "I'm going to kill you". He then grabbed her by the hair and dragged her through the bedroom where the children were. He continued to assault her in front of the children. He twisted her arm causing friction burns to them. He then kicked her to the body before holding her down and attempting to suffocate her by squeezing her throat and holding her nose for two minutes. All the time she was struggling to break free. He released his grip before pinning her to the bed holding the duvet over her face in an attempt to suffocate her all the time shouting I'm going to kill you. The assault lasted thirty minutes. The appellant and his wife now seek to minimise the seriousness of the assault. I reject those attempts at minimisation. The appellant pleaded guilty and was sentenced on the facts as I have set them out above.

41. Following his arrest the appellant was bailed. His wife stated that one of the conditions was that he not contact the children, as she put it because "he was accused of hitting me". There is no doubt an address to which he moved is a Bournemouth address. It has been said this was his girlfriend's address. The appellant refutes the suggestion the woman was his girlfriend although he accepts the children called him "daddy". Both he and his wife refer to her as such in their witness statements.
 42. Whether that is the case matters not. What is clear is that the appellant and his wife set about reconciling. The events between his being arrested and sentenced require careful consideration. The appellant's wife told me that following the appellant's arrest she and the children moved to Manchester. There she met with the appellant. In January 2016 she travelled to Vietnam leaving the children with the appellant. There are two notes on the respondent's system about events in Manchester. What is clear is that following her departure the children were taken into the care of Manchester Children's Services. Harry had a nonaccidental injury about which I know no more. The appellant's wife was contacted in Vietnam and returned in mid-February.
8. The Judge noted that following the appellants wife's return both the appellant and his wife appeared to be living in the Middlesbrough area and at [44] that the appellant's wife said in her evidence there was a plan with social services concerning her children. They are not in care, but she has signed a contract with social services such that the appellant is not allowed to see them. There is a prohibition on his seeing the children an issue substantiated by his advocate in the Perth proceedings who commented that the appellant was seeking to obtain contact to the children and that there are 'ongoing matters down south which he requires to attend'.
 9. The appellant's evidence was that he had not instituted proceedings in the Family Court but lodged complaints about the conduct of his Scottish advocate and named social workers.
 10. The Judge finds at [51] he was not satisfied it is in the best interests of the children to live as a family with the appellant and that that had been the conclusion of social services without challenge for two years now. The Judge finds the children's best interests are to continue to live with their mother, a conclusion of social services, albeit with supervision.
 11. The Judge concludes that the public interest requires deportation and none of the exceptions found in UK Borders Act apply to the appellant. The Judge also finds no very significant obstacles to the appellant's integration into Vietnam have been identified. At [56] the Judge finds:
 56. He has committed a serious offence in the United Kingdom, assault in the context of domestic violence. It has a social impact upon the wider public. The appellant has knowingly and wilfully breached the law in the UK. I assess the appellant as posing a threat to the personal safety and well-being of the general public on the basis of his known offending.
 12. The Judge concludes there are no very compelling circumstances which outweigh the public interest in the appellant being deported and that, therefore, the appeal must fail.

13. The appellant sought permission to appeal on a single ground that the Judge erred by failing to give weight to the appellant's family life. The Grounds of Appeal assert, inter alia, the appellant's family life continues and that he wishes to sort out contact with his child and stepchild and seek leave to remain, so he can sort out contact with his children. The appellant states that despite the serious nature of his conviction he is reconciled with his wife and that he will not be able to see the children if he is deported to Vietnam. The appellant claims that the finding he poses a threat to the personal safety and well-being of the general public is not supported by evidence as the attack of his wife was a "one-off" and that is his only conviction.
14. Permission to appeal was granted by another judge of the First-Tier Tribunal on 22 June 2018.

Error of law

15. Ms Record relied on two issues, the first being an assertion evidence in the Home Office bundle contained false information. This refers to a letter provided by the appellant from the Vietnamese Embassy dated March 2016 which is said to support the appellant's claim that is not entitled to a passport. It is argued that this is a relevant issue which could make a material difference to the outcome.
16. The Judge considered the evidence from all sources which would have included that provided by the respondent in the refusal letter. There is no dispute that the appellant is a citizen of Vietnam and therefore not stateless. The respondent's position is that the appellant should be deported from the United Kingdom to his home country for which, even if he does not have a valid passport, he can be removed on an emergency travel document. If the appellant is undocumented and cannot be returned that may give rise to concerns at a later date but does not, in itself, give rise to an issue that impacts upon the adverse credibility findings. Those findings were arrived at by a proper consideration of the evidence and are adequately reasoned. They are sufficient to support the Judge's concerns in this respect. I do not find this establishes arguable legal error material to the Judge's conclusions.
17. The chronology attached to the front sheet prepared by the Criminal Casework Directorate shows on 25 November 2014 an emergency travel document was agreed by the Vietnamese authorities which is all that is needed for the appellant to be returned.
18. The second ground relates to article 8 in which it is submitted that the Judge did not recognise that the appellant was not granted bail earlier but now he has he can make an application to see his children. It was argued there will be no supervised contact in Vietnam and that the appeal should have been allowed on article 8 grounds to enable the appellant to pursue options available to him through the UK courts.
19. The Judge property records that at the date of the hearing there were no applications made by the appellant even if he had remained in detention until his release which must have been prior to the

appellant's wife going to Vietnam as this is when she left the children with him.

20. Even though article 8 contains a positive obligation upon the State to enable the maintenance and development of family life the proportionality assessment in any cases where this is the issue arises is to be undertaken in exactly the same manner as in other human rights cases.
21. The Judge carefully considered the available evidence with the required degree of anxious scrutiny, weighing up competing arguments, before concluding that the public interest warrants the appellant's removal from the United Kingdom.
22. The appellant may disagree with this conclusion but the suggestion the public interest was somehow reduced on the basis the appellant may at some point in the future do something that might have a particular result has not been shown to establish arguable legal error. The conclusion by the Judge that, notwithstanding this being an assault by the appellant upon his wife in relation to which there is a strong deterrent argument, the appellant posed a risk to the public is in accordance with the evidence the Judge was asked to consider and has not been shown to be irrational.
23. No arguable legal error material to the decision to dismiss the appeal is made out sufficient to warrant a grant of permission to appeal to the Upper Tribunal.

Decision

- 24. There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

25. The First-tier Tribunal make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 31 October 2018

