



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

Appeal Number: PA/02648/2018

THE IMMIGRATION ACTS

**Heard at Columbus House, Newport
On 12th October 2018**

**Decision & Reasons
Promulgated
On 23rd October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**MHL
(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 C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Mathews (the judge) of the First-tier Tribunal (the FtT) promulgated on 4th May 2018.
2. The Appellant is a female citizen of Vietnam born in June 1996. She arrived in the UK on 19th November 2017 and claimed asylum on 6th December 2017 on the basis that she would be at risk of persecution if

returned to Vietnam because of her political opposition to the Vietnamese government.

3. The claim for international protection was refused on 8th February 2018 and the FtT heard the appeal on 3rd April 2018.
4. The judge heard oral evidence from the Appellant and did not find her to be a credible witness. The judge rejected the Appellant's claim to have distributed leaflets in Vietnam, and rejected her claim to have been detained and beaten while in detention, and found that she had not been subject to any adverse interests from the authorities in Vietnam. The judge did not find that the Appellant had undertaken any activities in the UK that would bring her to the adverse attention of the authorities in Vietnam.
5. The Appellant applied for permission to appeal to the Upper Tribunal. In summary it was submitted that the judge had erred in assessing credibility. The judge had accepted that the Appellant had attended four demonstrations in Vietnam, in 2014, 2015, 2016, and 2017. The judge had found that her account of arrest was not consistent with the background material, and it was submitted that the judge had erred on this point. The Appellant referred to the Respondent's Country Policy and Information Note dated November 2016 at 7.1.3 which indicated that in May 2016 peaceful demonstrations had taken place against the government's poor handling of an ecological disaster, and these demonstrations were met with excessive use of force and the arrest and detention of hundreds of protestors. The judge had found at paragraph 24 of his decision that it was leaders who were arrested, and it was submitted that he was incorrect in making such a finding.
6. It was submitted that the judge erred at paragraph 33 in finding that the Appellant had attended a demonstration in the UK simply in order to obtain photographs to bolster her claim. It was contended that this finding was at odds with the earlier finding by the judge that the Appellant had attended demonstrations in Vietnam.
7. The Judge had found that the Appellant had a lack of knowledge as to who organised the demonstration but it was submitted that this did not detract from her attendance.
8. It was submitted that the Appellant is a supporter of the Viet Tan Party and would be at risk of harm if returned to Vietnam due to her political opinion. It was submitted that given the express acceptance by the judge of the Appellant's activities in Vietnam, the judge thereafter erred in the credibility assessment, and should have given the Appellant the benefit of the doubt, and also applied the country background material when assessing risk.
9. Permission to appeal was granted by Judge Bird of the FtT and I set out below in part the grant of permission;

- “2. The Appellant seeks permission to appeal against this decision on the grounds that the judge made inconsistent findings on the Appellant’s credibility and in finding that the Appellant’s account was not consistent with the background evidence.
 3. It is arguable in finding that the Appellant’s account that she had attended demonstrations was plausible and finding that he was persuaded by the fact that the Appellant had attended the demonstrations as she claimed in Vietnam (see paragraph 17) and yet at paragraph 33 finding that the Appellant had simply attended a demonstration and meeting in the UK in order to bolster her claim, it is arguable that in finding that the judge has failed to consider the finding made at paragraph 17. This gives rise to an arguable error of law in the judge’s assessment of the Appellant’s evidence.”
10. Following the grant of permission the Respondent did not lodge a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
 11. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision should be set aside.

The Upper Tribunal Hearing

12. Miss Record relied upon the grounds contained within the application for permission to appeal, and submitted that the judge had made findings which were confusing and contradictory. Reference was made to paragraph 17 of the FtT decision in which it was accepted that the Appellant had attended four demonstrations. This was confirmed in paragraph 18. It was also accepted that the Appellant had demonstrated once outside the Vietnamese Embassy in the UK.
13. It was submitted that the judge had made a contradictory or conflicting finding at paragraph 33 in which he found that “the Appellant has simply attended a demonstration and meeting in order to obtain photographs to bolster her claim, I do not find that she in fact is politically active as claimed, or perceived to be so by the Vietnamese government.” It was submitted that the judge had erred at paragraph 33, given his express acceptance that the Appellant had attended four demonstrations in Vietnam.
14. It was submitted that the findings made by the judge in relation to risk if the Appellant is returned to Vietnam are flawed, and the judge erred at paragraph 35 by not accepting that the Appellant had been detained in Vietnam.
15. It was further submitted that at paragraph 27 the judge erred by drawing adverse inference from what he described as a false assertion of membership of the Viet Tan Party. Miss Record pointed out that in answering questions 21-22 of her asylum interview, the Appellant had explained that she had been a supporter of the Viet Tan Party, and had not claimed to be a member.

16. I then heard submissions from Mr Howells who contended that the FtT decision disclosed no error of law. It was submitted that the judge was entitled to find at paragraph 25 that the Appellant's account was not consistent with background information, in relation to political opponents of the Vietnamese government.
17. Mr Howells pointed out that the reference by the judge to a false assertion of membership of the Viet Tan Party, was made by the Appellant in her oral evidence-in-chief, as explained in paragraph 26.
18. Mr Howells noted that there had been no challenge to the findings made by the judge at paragraphs 29-30 which led to his conclusion at paragraph 31 that there had not been a political meeting at the Appellant's home in Vietnam as she had claimed, and therefore there had not been a raid by the authorities from which the Appellant and her mother had escaped. I observed that there appeared to be a typing error in paragraph 29, in that the judge referred to adequate evidence, when it appears that he meant to refer to inadequate evidence. The typing error is not material.
19. Mr Howells submitted that with reference to the acceptance by the judge that the Appellant had attended four demonstrations in Vietnam, the judge had made clear in paragraph 18 that she had not attended those demonstrations as a supporter of the Viet Tan.
20. In response Miss Record submitted that individuals attend demonstrations for a range of reasons, and the judge had found that she had attended demonstrations, and therefore her activity would be seen as being opposed to the government in Vietnam.
21. I was asked to set aside the decision and direct a remittal to the FtT so that the appeal could be considered afresh.
22. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

23. I commence by considering the point raised by Miss Record in her oral submissions that was not included in the grounds seeking permission to appeal. This relates to the finding by the judge at paragraph 27 that adverse inference should be drawn because the Appellant made a false assertion of membership of the Viet Tan Party, and subsequently accepted that this was a false assertion and that she had not in fact become a member of that party.
24. I do not find that the judge erred on this issue. I accept that the Appellant when interviewed, in answering questions 21-22 claimed to be a supporter, not a member of the party, but the judge does make it clear at paragraph 26, that it was in oral evidence that the Appellant claimed to have joined the Viet Tan Party in the UK. When cross-examined on this point she conceded that she was not a member of the party and explained why she had not been able to become a member, in that she lacked the

age and experience that was necessary. The judge was entitled to draw an adverse inference from this evidence and did not err in law.

25. I next consider the alleged conflicting or contradictory findings when paragraphs 17-18 are compared with paragraph 33. I do not find that there is either a conflicting or a contradictory finding. The judge at paragraphs 17 and 18 accepted that the Appellant had attended four demonstrations in Vietnam, but did not find that she had attended those demonstrations as a supporter of the Viet Tan. There is therefore no contradiction in the judge's finding at paragraph 33 that the Appellant had attended a political demonstration in the UK to obtain photographs to bolster her claim. The judge was entitled to find in that paragraph that the Appellant was not politically active as claimed, and would not be perceived to be politically active by the Vietnamese government. The judge pointed out at paragraph 32 that there had been a lack of political activity as claimed in Vietnam, which was consistent with the fact that the Appellant had not joined the Viet Tan Party in the UK. In addition the Appellant had accepted that she did not know who organised the demonstration that she attended in London, and the judge found that she was only photographed with a banner which she had borrowed from a fellow demonstrator. She was photographed holding a banner that sought religious freedom, but had made no previous mention of that particular cause. I detect no material error of law in paragraph 33.
26. In my view the judge has considered the evidence in the round and was entitled to conclude on that evidence, that the Appellant had not proved that she had been detained as claimed. The background evidence referred to on behalf of the Appellant is the CPIN dated November 2016, included within the Appellant's bundle. The judge did not err at paragraph 24 in making reference to the CPIN at 6.1.3 which refers to a Freedom House report confirming that it is leaders and members of illegal opposition parties who are subject to arrest and imprisonment. The judge did not err in that paragraph by recording that the Appellant "by her own account was not a member of the Viet Tan, certainly not a leader, and mentions no membership of any organisation."
27. As correctly pointed out on behalf of the Appellant in the grounds, there is reference in the CPIN at 7.1.3 to arrests of protestors taking part in demonstrations against the government's poor handling of an ecological disaster. That in my view does not detract from the findings made by the judge that the Appellant was not arrested by reason of her political opposition to the Vietnamese government. The judge at paragraph 25 found that the Appellant's account of detention followed by release was "not consistent with the objective material before me as to the treatment of perceived opponents." That objective material is the CPIN of November 2016 in which it is stated at 2.2.2 that the Vietnamese authorities detain perceived political activists without charge indefinitely under vague national security provisions, and are reported to be subject to lengthy detention and ill-treatment. That background material does not accord

with the account given by the Appellant and the judge was entitled to take note of that.

28. My conclusion is that the grounds upon which permission to appeal was granted, disclose a disagreement with the conclusions reached by the judge but do not disclose a material error of law. I therefore conclude that this appeal must be dismissed.

Notice of Decision

The decision of the FtT does not disclose a material error of law. I do not set aside the decision. The appeal is dismissed.

Anonymity

The FtT made an anonymity direction. I continue that direction because the Appellant has made a claim for international protection. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. Failure to comply with this direction could lead to contempt of court proceedings. This direction is made pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date 13th October 2018

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

The appeal is dismissed. There is no fee award.

Signed

Date 13th October 2018

Deputy Upper Tribunal Judge M A Hall