



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

Appeal Number: PA/00077/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7<sup>th</sup> June 2019**

**Decision & Reasons Promulgated  
On 27<sup>th</sup> June 2019**

**Before**

**UPPER TRIBUNAL JUDGE FRANCES  
UPPER TRIBUNAL JUDGE STEPHEN SMITH**

**Between**

**V V L  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms F Clarke, instructed by Fadiga & Co  
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant appeals against the decision of First-tier Tribunal Judge Hussain promulgated on 27 March 2019 dismissing his protection claim on asylum grounds, humanitarian protection grounds and human rights grounds.
2. The Appellant appealed on four grounds. The judge had mistakenly concluded that the Formosa protests were non-political and his finding that only those who threw stones or insulted or swore at officials were police targets was irrational. Further, he had reversed the standard of

proof in assessing risk on return and applied the wrong standard of proof in assessing credibility.

3. Permission was granted by First-tier Tribunal Judge Grimmett on 25 April 2019 on the basis that it was arguable that the judge had made a mistake of fact because the expert evidence and CPIN said that the Formosa protests were political and the judge found that they were not. Permission was granted on all grounds.

### **The Judge's Findings**

4. The judge made the following findings:

"19. There is no evidence directly linking the Appellant to participation in the demonstration, save for an email at page 33 of the Appellant's bundle purporting to come from a man called Long Ngoc Le. It is unclear whether this email was written from within the United Kingdom or elsewhere. In this email the author claims that the Appellant and he were both at the demonstration and relies on a photograph to confirm that fact. However, no such photograph is apparent in the Appellant's bundle. The provenance of the email is also unclear. Therefore, the email referred to on its own does not prove that the Appellant participated in the demonstration.

...

21. Whilst I do not find it inherently implausible that the Appellant could have escaped from the scene and would have chosen to come home at his first point of call it has not been explained how late in the evening, given the situation, he managed to make a 100 kilometre journey to his home.

22. In paragraph 38 the Secretary of State claims that the police were only interested in stone throwing demonstrators as well as those insulting officials and swearing at them, and in paragraph 48 that only some high profile activists of the demonstrations were ill-treated. The Appellant was neither of those. The expert report does not specifically address these issues but suggests that the Appellant will be treated as an opponent of the regime which is not tolerated and therefore the subject of adverse interest. I am unable to accept that as a proposition because the expert's own report suggests that there were mass protests against a particular institution which was admitted by them to have been responsible for causing pollution. Any protest against that would have been specific to that issue and would have a non-political dimension to it. Whilst I can well understand the authorities' interest in anyone involved in breaking the laws such as causing public disorder, that every single person who participated should be treated as an opponent of the regime simply makes no sense.

...

25. Having looked at the totality of the evidence and in the light of the observations made above I have come to the conclusion that

the Appellant has not satisfied me firstly that he was the subject of any adverse interest and secondly, which follows from my first finding, that he would on return be the subject of any adverse interest.

26. If I am wrong about that I find it unlikely that with the passage of some three years the authorities would still retain an interest in the Appellant in order to get to the bottom of who was involved in the demonstration. By the Appellant's own evidence one of the organisers that prompted him to attend was his local priest. The Appellant claimed that the priest was also the subject of a summons but failed to turn up. That the priest was in a position to have moved parish suggests that in the three years that have passed in between the authorities have not come after him. It must therefore follow firstly that the authorities will have by now established who the organisers were behind the protests and secondly that with the passage of time there would be no point in pursuing a child of the Appellant's age whose involvement was no more than simply attending along with many thousands of people that participated in the protests.

...

28. In view of my findings firstly that I am not satisfied to the requisite standard that the Appellant has proven that he attended the demonstration and was the subject of adverse interest and secondly the unlikelihood of him being seen as an opponent of the regime simply because he participated in what was a protest with a non-political context, I find that even if the Appellant is apprehended and questioned nothing adverse would be revealed about his past so as to put him at the risk of ill-treatment amounting to persecution."

## **Submissions**

5. Ground 1: Ms Clarke submitted that the mistake of fact had infected the judge's finding at [28] of the decision that the Appellant was not of adverse interest and was unlikely to be at risk on return. It was clear from [51] of the CPIN that the Vietnamese government did not tolerate political expression contrary to the government. Individuals who criticised human rights came to the adverse attention of the authorities. There was reference to the Formosa disaster and it was clear from the CPIN that this was considered to be a political protest. There were plain clothes police officers attacking demonstrators and this was an example of how the government acted against its critics. The treatment by the state, including an assault on protesters, amounted to persecution and the demonstration was considered to be political in nature. The judge did not take this into account.
6. Ground 2: It was accepted in the CPIN that anyone at risk would not be able to escape serious harm by relocating. Accordingly, the judge's finding that the Appellant would not be at risk was irrational.

7. Grounds 3 and 4: The judge stated at [26]: “I find it unlikely that with the passage of some three years the authorities would still retain an interest in the Appellant in order to get to the bottom of who was involved in the demonstration.” This was the wrong standard and the judge further speculated as to the likely actions of the government. There was evidence in the expert report that the Appellant would come to the attention of the authorities if he sought to relocate. A summons had been issued against him, which would bring him to the attention of the authorities on return. There was also evidence that the authorities went to the Appellant’s school and that the priest who organised the demonstration was living with the Appellant’s grandma. These were all factors that would bring the Appellant to the attention of the authorities. This was a demonstration by Catholic followers. The judge was wrong to find that the Appellant had added the matters referred to at [23] to bolster his claim. There was an increased threat to Catholics who were part of a government uprising and the judge had failed to consider this aspect of the claim.
8. Mr Tarlow submitted that there was no material error of law and the judge’s findings were open to him on the material before him. There was an email at page 33 but no photograph was attached. The judge was entitled to rely on this at [19] and the discrepancies he referred to at [23]. The judge specifically rejected the explanation that the police were not permitted to enter the houses in Catholic areas. The judge’s finding at [26] that it was unlikely, with the passage of time, the authorities would have any interest in the Appellant, given his age, was open to the judge on the evidence before him. Even if the judge got it wrong about the Formosa protests being non-political, the Appellant had not shown to the lower standard that he in fact attended the demonstration. Accordingly, the nature of the protests was not relevant to the judge’s finding at [28] and the Appellant would not be at risk on return.
9. In response, Ms Clarke submitted that the Respondent rejected the Appellant’s claim to have attended the demonstration but in doing so had ignored the expert evidence that the Appellant had given the correct date for the demonstration. Further, the judge acted unfairly in relying on the lack of explanation for how the Appellant made a 100 kilometre journey to his home after the demonstration in the evening, given that the matter was not canvassed at the hearing by the judge or the Respondent.

### **Conclusions and reasons**

10. There was no challenge in the grounds of appeal to the judge’s finding that the Appellant had failed to show to the requisite standard that he attended the demonstration and was the subject of adverse interest.
11. The mistake of fact was not material because the nature of the demonstration was irrelevant to the judge’s finding that the Appellant had failed to prove he attended the demonstration.

12. I am not persuaded by Ms Clark's submission that the judge had acted unfairly in failing to ask for an explanation for the Appellant's journey home from the demonstration. The Appellant was represented and the burden was on him to prove the facts he relied upon.
13. The judge took into account the expert report and gave adequate reasons for why he rejected the Appellant's evidence to have been visited at school by the authorities or to have received a summons, relying on the inconsistent evidence the Appellant gave about the contact he had with the parish priest and his grandmother. Accordingly, the judge's finding that the Appellant was of no adverse interest to the authorities prior to leaving Vietnam was one which was open to the judge on the evidence before him and any mistake of fact was immaterial.
14. Whilst the judge may well have speculated in some respects at [26] his conclusion that, given the passage of some three years, the Appellant would be of no interest to the authorities, because his participation was not such that he brought himself to the attention of the authorities, was a rational one. The judge applied the correct standard of proof, which he set out at [14] and [15]. The reference at [26] that it was 'unlikely' did not show that he had applied a higher burden, given his conclusion at [28] where he summarised his findings.
15. Accordingly, we find that there is no error of law in the judge's decision and we dismiss the Appellant's appeal.

### **Notice of Decision**

### **Appeal dismissed**

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

**Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.**

**J Frances**

Signed  
Upper Tribunal Judge Frances

Date: 26 June 2019

**TO THE RESPONDENT**  
**FEE AWARD**

We have dismissed the appeal and therefore there can be no fee award.

**J Frances**

Signed  
Upper Tribunal Judge Frances

Date: 26 June 2019