



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/02254/2019**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 24 October 2019**

**Decision & Reasons Promulgated
On 26 November 2019**

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

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(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Aitken, Counsel, instructed by Warwick Vesey Solicitors

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

The appellant is a citizen of Vietnam born on 17 May 1994. He applied for asylum in this country on the basis that he feared persecution upon his return to Vietnam on grounds of his religion (Catholicism) and political opinion (anti-government activism). He arrived in this country initially claiming to be a child born on 17 May 2002. He was placed into the care of a local authority but subsequently absconded. He later approached the police, and then claimed asylum on 1 May 2018.

Factual background

The appellant's asylum claim was refused by the respondent, and his appeal against that refusal was dismissed by Judge Joshi of the First-tier Tribunal in a Decision and Reasons promulgated 27 June 2019. The judge summarised the appellant's claim in these terms, at [4] and [5] of his decision:

"The appellant lived in Quynh Nogoc village, in Quynh Luu district in Vietnam with his family. He was brought up as a strict Catholic. His parents were farmers and his father worked at the parish and taught Catholic teachings to children.

The appellant attended demonstrations against a church being destroyed. After the first demonstration the police sent papers to his house asking him to report. After the second demonstration the police visited his house again asking him to report. He refused to do so. The appellant continued to organise and attend demonstrations. On 14 February 2017 he along with others were beaten up by the authorities, but managed to escape arrest. Rather than going home he went to Saigon city and then fled knowing that the police had visited his home."

The judge made a number of findings concerning the appellant's claimed Catholicism and anti-government activism in Vietnam. He found that the appellant lacked credibility. The operative findings of the judge are set out at [38] to [48] of his decision. The judge writes that he did not consider the appellant's claim to be Catholic to be consistent with the simple facts about Christianity ([43]). He was unable to provide answers concerning essential details of the faith. The judge also considered that the appellant's travel through various safe countries prior to his arrival here was a factor that harmed his credibility.

Permission to appeal

Upper Tribunal Judge Norton-Taylor granted permission to appeal on the sole ground that the judge had failed to consider some Facebook posts made by the appellant in Vietnamese which were critical of the government and of its programme of destroying some church buildings. The appellant's additional grounds of appeal relating to the challenges to the primary findings of fact reached by the judge were not granted permission to appeal and it follows that the unchallenged, or the final findings of fact of the First-tier Tribunal against which this appeal is now set against are that he is not a Catholic, that he has not engaged in anti-government protests and that he has not otherwise come to the attention of the authorities in Vietnam.

Discussion

Mr Aitken submits that the judge failed to have regard to the social media materials which may be found at pages 54 to 65 of the appellant's bundle from the First-tier Tribunal. There is superficial force in this submission, in the sense that the judge does not deal in any way with the content of the materials, or their impact upon the appellant's risk profile upon his return.

The judge, however, was clearly aware of the existence of these materials. At [12] of the decision, the judge noted that there had been a skeleton argument submitted by Mr Aitken. I have viewed a copy of that skeleton argument,

which clearly refers at [81] and [82] to the Facebook materials and the background materials which, it was submitted, exposed the appellant to a risk of harm. In addition, at [15] of the decision the judge specifically noted that there had been Facebook posts with translations that had been included in the appellant's bundle. At [16] the judge said, "I took into account all of the evidence whether or not mentioned specifically in these reasons".

The Facebook posts were *sur place* materials, generated during the appellant's time in this country. Any risk said to arise from the appellant's engagement in anti-government activities in this country must be viewed against the background of his now dismissed claims to have been an anti-government Catholic activist in Vietnam.

Mr Aitken stated in his skeleton argument at [81], "it is submitted that these activities [the Facebook posts] will heighten the risk that the appellant will face upon his return to Vietnam." At [48] the judge reached the following global conclusion in relation to the appellant's risk upon his return:

"I have had regard to the objective evidence particularly the reports from Human Rights Watch and Amnesty International to show that Catholics are regularly harassed and intimidated in Vietnam. However, I find that the appellant is not Catholic and did not come to the adverse attention of the authorities and is therefore not at risk in return."

In my view, given the judge clearly stated that all relevant materials had been considered and in light of the findings that were adverse to the core of the appellant's case, there was no material before the judge which would have merited a finding that the appellant would be subject to some form of analysis or scrutiny upon his return. There was no evidence demonstrating that the appellant would for some other reason come to the attention of the authorities. It was not reasonably likely that they would have any interest in him, on the judge's analysis, so it is difficult to see how the Facebook materials could heighten the risk he would face. There was no underlying risk which was at jeopardy of being heightened on account of the Facebook materials. The appellant was refused permission to appeal to challenge the judge's findings of fact, and, as such, those findings of fact stand.

I queried with Mr Aitken whether there is any authority concerning the approach of the authorities in Vietnam upon the return of a failed asylum seeker at the border, for example whether the often-quoted term "pinch point" of the border can be applied in this context, or whether there is a "hair trigger" reaction which the appellant is likely to face in the event of adverse social media material being found. Mr Aitken said that he was not aware of any authority.

Mr Aitken relied to a number of materials in the appellant's bundle from the First-tier Tribunal in support of the proposition that the appellant would be at risk on account of the social media posts alone. I do not consider those materials to demonstrate that the appellant will be at risk.

The Human Rights Watch World Report 2019, the relevant extracts of which may be found at pages 6 and 7 of the bundle, states at the second unnumbered paragraph on page 7:

“Activists questioning government policies or projects, or seeking to defend local resources or land, face daily harassment, intrusive surveillance, house arrest, travel bans, arbitrary detention, and interrogation. Thugs, apparently collaborating with police, have increasingly launched physical attacks against activists with impunity.”

On the same page the Human Rights Watch Report states,

“Vietnamese rights bloggers face regular harassment and intimidation. Officials often arrest political critics for their posts on the internet.”

Mr Aitken submits that the risk faced by bloggers extends to mere users of social media, and the occasional posters of critical material, such as this appellant. In addition to the above materials, he relied upon an Amnesty International press release at pages 37 to 38. It states, in relation to activists, that they have been targeted “purely for their peaceful activism” and they have “merely used social media to express opinions that the authorities do not like – namely by supporting the protection of human rights and social justice in the country.”

In my judgment, these materials do not assist the appellant. They relate to individuals who would have some form of profile with the authorities in Vietnam or who have otherwise engaged in some form of activism. There is nothing that was in the materials before the First-tier Tribunal which could have merited a finding that there was a real risk of the appellant coming to serious harm on account of the limited range of Facebook posts which are copied at pages 54 to 65 of the bundle. The materials featuring in those pages are limited and are vague high level criticisms being made by a person who, as found by the judge below, had not engaged in any in-country activism, has no profile with the authorities, and is not otherwise at any risk from them upon his return.

For these reasons, I do not consider that the judge erred by not giving specific and additional attention to the issue of the Facebook posts in the decision, given the findings of fact which have not been the subject of a successful challenge I have already outlined and secondly, in light of the background materials which suggest that there is a degree of risk faced by bloggers of a certain profile or prominence in the country.

For these reasons, the decision of the First-tier Tribunal did not involve the making of an error of law and this appeal is dismissed.

Notice of Decision

This appeal is dismissed.

The anonymity direction which was made by the First-tier Tribunal remains in force.

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.

Signed *Stephen H Smith*

Date 21 November 2019

Upper Tribunal Judge Stephen Smith