



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

Appeal Number: PA/05573/2018

THE IMMIGRATION ACTS

**Heard at Glasgow
On 11 April 2019**

**Decision & Reasons Promulgated
On 26th April 2019**

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

**TVT
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Caskie, instructed by Peter G Farrell

For the Respondent: Mr A Govan, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Vietnam, where he was born in 1983. His protection claim was refused by the Secretary of State on 17 April 2018. He appealed unsuccessfully to First-tier Tribunal Judge Farrelly who summarised the appellant's claim at paragraph [1] of his decision, as follows:

"1. The appellant is a national of Vietnam born in August 1983. He made a claim for protection in December 2017. His account is that in Vietnam he along with 7 others held a 10 year lease of land from the government which they farmed. However, after 5

years the Vietnamese authorities took possession of the land. The farmers had protested in October 2014 and a fight broke out. The appellant became fearful that he would be arrested as someone was injured. Consequently, in February 2015 he left his home country and travel [sic] to the Czech Republic. He then travelled on to Germany and then France, arriving ultimately in the United Kingdom in June 2015."

2. The Secretary of State had observed in his decision that the appellant had not wished to claim asylum but only wanted to claim humanitarian protection. In a confusing decision letter, in which there was frequent reference to "free text" the respondent concluded that it was not accepted the appellant had a genuine subjective fear on return to Vietnam. Matters were rectified in a further decision and reasons letter of the same date.
3. After observing that he could not see how the appellant could be considered to be a member of a particular social group and that there was nothing to suggest that the appellant had been a victim of trafficking, the judge concluded:

- "14. Ultimately, I find this to be a very weak claim. I agree with the respondent that there have been inconsistencies in respect of the underlying claim. Some of the points made on behalf of the respondent are not particularly meritorious. An example is the suggestion that if he was too weak to work on a building site, he would be too weak to farm. I also accept the appellant may not appreciate the distinction between ownership and leasehold in relation to the original family farm. His account about the subsequent lease of the land is very general. I accept he may be mistaken about the size of the land. There is no requirement to produce corroborative evidence but that is not the says claim [sic] could not have been strengthened by the production of something about the claimed land acquisition.
15. The appellant remained in Vietnam on his account for several months after the incident. There is a possibility he was in hiding. However, his subsequent delay in claiming detracts considerably from his credibility. I find his explanation that he wanted to get to an English-speaking country carries little weight.
16. Ultimately, even on the low standard of proof I find he has not established his claim.
17. Regarding his article 8 rights, there has been a considerable lack of proofs. There is a birth certificate naming him as the father of a child. I have been provided with no evidence about his partner and her circumstances. In particular, there is an absence of evidence to suggest she is a mother of a British child. I was told her application to remain been [sic] unsuccessful and she is appealing. As things stand, both could return to Vietnam and continue their family life together. Their child is only a baby and I can see no reason why the child could not accompany them. There is nothing to suggest the child has any right to be here. The child's best interest are to be with his parents.

18. The appellant has only been here a short time and will have little by way of private life. I can see no reason why [sic] could not reintegrate into life in his home country in the short time he has been away as well as a fact his parents are there. His partner is from the same country.
 19. I can see no other basis whereby the appellant would be entitled to remain. I consider the public interest factors set out in section 117B & nothing which would assist the appellant. Consequently, I find myself in agreement with the respondent's decision."
4. The grounds of challenge re-state the appellant's claim and argue that it was unclear from the judge's decision whether the central core of the claim had been accepted or not. Concrete findings of fact were lacking in respect of the refugee claim as well as whether the appellant's partner was the mother of a British child or not. Permission was granted by Judge Osborne. He observed:
- "3. In a concise decision, it is arguable that the judge failed to make specific and/or adequately clear findings on the core of the Appellant's appeal to the extent that the Appellant does not know why his appeal was dismissed.
 4. This arguably material error of law having been identified, all the issues raised in the grounds are arguable."
5. Although initially arguing that the judge had erred in his consideration of the protection grounds, on reflection, Mr Caskie no longer relied on that ground of challenge. He was correct to do so. The judge set out in his decision all relevant factors relied on by the appellant and explained clearly at [16] of his decision that even on the low standard of proof he found the appellant had not established his claim. This was clear enough indication that the facts of the claim had not been accepted or that the appellant would be at risk.
6. Nevertheless, Mr Caskie maintained the argument that the judge erred in relation to his decision on Article 8 grounds. The material before him including the record of interview of the appellant indicated there was evidence showing that the appellant's partner was the mother of a British and therefore a qualifying child and furthermore an indication that she had been granted discretionary leave to remain which was pending. Mr Govan accepted these points and agreed that the judge had erred. I do have some sympathy for the judge since the second of the two refusal decisions indicated that the appellant who was unrepresented at the time had been unclear on his partner's status. The Secretary of State knew well or at least would have been able to readily establish that she had discretionary leave to remain based on the British citizen child and that there was an application pending at the time of the hearing culminating in a grant of further leave on 21 November 2018.
7. I therefore set aside the decision of the First-tier Tribunal insofar as it relates to the Article 8 grounds. Mr Govan indicated the Secretary of State was to reconsider the matter and accordingly withdrew the Article 8

decision under challenge. Sitting as a Judge of the First-tier Tribunal, and applying Rule 17 of its rules, I am satisfied that the effect of the Secretary of State's decision is that the appeal in the First-tier Tribunal is withdrawn. The appellant's application for further leave to remain is pending and awaits a further decision.

8. As accepted by Mr Caskie, the appellant's appeal in the Upper Tribunal must therefore be 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 their 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

Date 19 April 2019.

UTJ Dawson
Upper Tribunal Judge Dawson