



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

Appeal Number: PA/07616/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 4 December 2018**

**Decision & Reasons
Promulgated
17 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE LATTER

Between

**NNL
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Talacchi, Counsel

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellant against a decision of the First-tier Tribunal dismissing his appeal against the respondent's decision of 6 June 2018 refusing his claim for international protection.

Background

2. The appellant is a citizen of Vietnam born on 2 August 1984. He has a wife and two young children who are in Vietnam. On his own account he left Vietnam on 7 July 2017, travelling to Russia by plane where he remained for about a month. He then left Russia travelling through various unknown countries until he arrived in France when he boarded a lorry and arrived in the UK on 18 November 2017. He claimed asylum on 5 December 2017. He based his claim on a fear of persecution as a result of his political involvement in the Viet Tan Party. He claimed that he had become a member in 2012 and had come to the attention of the authorities in Vietnam in 2012, 2013 and 2014. On each occasion he was detained but subsequently released. In 2014 he was summoned and arrested because he had attended a demonstration against China illegally taking the Hai Duong oil rig. He was released with no charge but fined for causing public disorder. He was also required to sign a document promising not to be involved in political demonstrations in the future.
3. In June 2017 he and five others organised a demonstration to take place on 29 June 2017 against the Formosa Company and the pollution it was causing. The appellant did not attend the demonstration in the light of the document he had previously signed but he had called people from home encouraging them to go, made banners and distributed leaflets. The police attended the demonstration and made arrests. One of the appellant's five colleagues called him and told him that his identity had been revealed to the authorities as someone involved in organising the demonstration. Following this the appellant left Vietnam.
4. Since being in the UK he has attended demonstrations taking place in London outside the Vietnamese Embassy organised by the Vietnamese community in this country. He claimed that he would be at risk of persecution on return because of his involvement in demonstrations both in Vietnam and in the UK.
5. The respondent accepted that the appellant's nationality and identity were as claimed but did not accept that he had been a member of the Viet Tan Party who had had subsequent problems with the Vietnamese authorities, that he had been involved in organising the demonstration in June 2017 or that he had had any involvement with the Viet Tan Party in the UK. His claim was dismissed on all grounds.

The Hearing before the First-tier Tribunal

6. The judge, having considered the evidence and submissions, rejected the appellant's claim about what happened to him in Vietnam. He accepted that he had demonstrated some knowledge of the Viet Tan Party but found that it did not go beyond what was in the public domain. His account of how he was initiated to the party could not be tested and was lacking in

detail. He was able to describe the Viet Tan Party flag in detail, but the judge commented that it would be strange if someone claiming to be a member of that party could not describe its flag.

7. The judge reminded himself that the appellant must satisfy him that there was a reasonable degree of likelihood that the claimed events had taken place in Vietnam but he found that the level of detail he had been able to provide, essentially in his interview, was so slim that he did not accept even to the lower standard that he had been detained and released as he claimed or that the authorities had been told that he had organised the demonstration of 29 June 2017. The appellant had been unable to state when he became interested in human rights and his evidence did not satisfy the judge that he had ever become a member of the Viet Tan Party.
8. The judge went on to consider the appellant's sur place claim. He accepted that he had demonstrated outside the Embassy on four occasions: 10 December 2017, 8 April 2018, 29 April 2018 and 10 June 2018. He claimed that he had found out about the first demonstration through the Vietnamese community and, as a result of attending that demonstration, he met five members of the Viet Tan Party in the UK and that thereafter he and they organised further demonstrations. The judge did not accept this evidence. He said there was no evidence to corroborate the appellant's claim that he had been in any way active in the UK Viet Tan Party, none of his five supposed Viet Tan colleagues had attended the hearing of his appeal to support him and he did not accept the appellant's explanation that they feared coming to give evidence at Taylor House because the Vietnamese authorities would find out that they were members of the party. The appellant had produced photographs showing him at the demonstrations but none of his five supposed Viet Tan colleagues appeared in the photographs. The appellant said that they had attended all four demonstrations, but they had all stood apart at different corners of the demonstration so as to be able to police it efficiently. The judge rejected that evidence.
9. The judge found that the appellant had demonstrated outside the Embassy solely to found a sur place claim. He referred to the judgment of the Court of Appeal in Danian v Secretary of State [1999] EWCA Civ 3000 that such behaviour did not bar a successful asylum application and that, despite such cynical conduct, the issue remained whether he would be at real risk of persecution on return to Vietnam because of his political activities. When assessing that risk the judge reminded himself of the guidance given by the Upper Tribunal in BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 and the judgment of the Court of Appeal in YB (Eritrea) v Secretary of State [2008] EWCA Civ 360.
10. The judge accepted that thirteen of the photographs produced in evidence carried a recognisable image of the appellant, whereas in the other photographs his image was unrecognisable. Five photographs showed the appellant carrying a loud hailer but he was not the only person who did so.

He had also been photographed holding a small South Vietnamese flag, posters and placards and numerous other individuals were doing the same. The judge was satisfied that some if not all of the photographs would have appeared on Twitter, Instagram and YouTube and on such sites in Vietnam. He accepted that the Vietnamese authorities would find the brandishing of the South Vietnamese and the Viet Tan Party flags offensive.

11. The judge found that some if not all of the photographs of the appellant demonstrating outside the Embassy would have become available to be seen by the Vietnamese authorities and he was satisfied that they carried out such surveillance on the internet. However, he had no evidence that any photographs had in fact been seen by the Vietnamese authorities. He had rejected the appellant's claim that the authorities had been pestering his mother because of his activities here and allegedly wanted to know his whereabouts and commented that this part of his account in any event would not lie easily with the Vietnamese authorities supposedly knowing where he was: in London demonstrating against the Vietnamese government.
12. The judge said he had no evidence to show that the Vietnamese authorities carried out surveillance of anti-Vietnamese government demonstrations in this country let alone what recognition procedures they may have available to them. He came to the conclusion that the appellant's sur place activities attending these four demonstrations would not put him at real risk of persecution or ill-treatment contrary to article 3 on return. He considered it probable that if the photographs had come to the attention of the authorities, any enquiries they made would in all probability have resulted in their concluding that the appellant was no more than an opportunist seeking to establish an asylum claim rather than a committed oppositionist. For these reasons, the appeal was dismissed.

Grounds and Submissions

13. In ground 1, the appellant seeks to challenge the judge's assessment of the risk on return as a result of his sur place activities, arguing that it is materially flawed or not supported by the background evidence. It is argued that the judge's finding on risk is inconsistent with the evidence that where a person is perceived to have taken part in opposition political activities, they will come to the adverse attention of the authorities in Vietnam and face a real risk of persecution.
14. Ground 2 argues that the appellant's evidence of his sur place activities was supported by the photographs produced. The judge had made a number of positive findings in favour of the appellant: he had demonstrated four times outside the Vietnamese Embassy and there were photographs which carried a recognisable image of the appellant. The judge was satisfied that some of the photographs, if not all, would have appeared on the internet and on sites in Vietnam and the authorities

would find the brandishing of the South Vietnamese and Viet Tan flags offensive. The photographs would have been seen by the Vietnamese authorities because the authorities carry out surveillance of the internet. In such circumstances, the authorities would perceive the appellant as having taken part in opposition political activities and so he would be at risk of adverse attention. The photographs spoke for themselves, so the grounds argue, the Vietnamese authorities on seeing the images would see the appellant carrying a loud speaker and holding a South Vietnamese flag and they would not infer that he was simply a hanger on.

15. Ground 3 argues that the finding of the appellant's attendance at demonstrations was opportunistic and that he was seeking to bolster his asylum claim was irrelevant to the issue of whether such attendance would put him at risk. The evidence about the Vietnamese authorities was such that there would be adverse attention even when the sur place activities were conducted in bad faith. In ground 4 it is argued that the First-tier Tribunal failed to address the issue of how the appellant would be treated on return when interrogated as to his sur place activities. The judge had accepted that the photographs had come to the attention of the authorities. They would make enquiries and that on return the appellant could not be expected to lie about his activities. In any event, even were the authorities not to know of the images in the photographs, when the appellant was interrogated on return, his answers to the questions asked would lead to a real risk that he would be perceived as an activist. There was an added risk that during the questioning the appellant would state that he had attended demonstrations whilst in the UK and would thereby be at risk of persecution.
16. In his submissions, Mr Talacchi argued that the judge materially erred in law when assessing the risk arising from the appellant's sur place activities and when assessing the risk on return. He submitted that the judge had made a number of positive findings which in themselves demonstrated that there was a real risk on return. The judge had erred, so he argued, at [52] in his finding that no government would want to identify and interrogate every one of its citizens who chose to participate in an anti-government demonstration in foreign lands and that, not only would it be illogical to do so, it would be wholly impractical. The judge had said that those acting on behalf of a given government would take soundings from all available sources as to whether an individual was a committed oppositionist, including from Embassies in the countries where the demonstrations had taken place.
17. Mr Talacchi submitted that these comments were not in accordance with the background evidence about the behaviour of the Vietnamese authorities. At [53] the judge had said that, if the photographs had come to the attention of the authorities, any enquiries would in all probability have resulted in their concluding that the appellant was no more than an opportunist rather than a committed oppositionist. He submitted that this was contrary to the background evidence at [34] that a person perceived

to have taken part in opposition political activities and as a result coming to the adverse attention of the authorities would face a real risk of persecution. He submitted that the judge's conclusions were not open to him on the objective evidence and that his findings were flawed by his speculation that no government would want to identify and interrogate every one of its citizens who had participated in anti-government demonstrations abroad.

18. Mr Whitwell argued that the judge had properly identified the issues he had to address. He had found that the appellant had not been involved in anti-government political activities inside Vietnam and that he was not a member of the Viet Tan Party. When assessing whether he would be at risk, assuming that the photographs had come to the attention of the authorities, the judge was entitled to take into account the fact that he had not been taken to any background material showing that the Vietnamese authorities carried out surveillance of anti-government demonstrations in countries outside Vietnam [46] and to note at [50] that there was no evidence what recognition procedures they might have available to them. The appellant had left Vietnam for Russia by plane and there was nothing to suggest that his departure was in any way unlawful. He submitted the judge had carefully considered the evidence and reached a decision properly open to him.

Assessment of Whether the Judge Erred in Law

19. I am satisfied that the judge properly directed himself on the approach to an assessment of whether sur place activities could lead to an appellant being at real risk of persecution on return. He reminded himself of the approach set out by Sedley LJ in YB (Eritrea) that the real question in most cases would be what followed for an individual claimant if any information reaching the Embassy was likely to be that the claimant identified in the photograph was identified as a hanger on with no real commitment to the oppositionist cause.
20. This was a question of fact for the judge to assess on the evidence before him. He accepted that the appellant had attended demonstrations, albeit that this was solely to found a sur place claim rather than as a result of any genuine political commitment. That conclusion was one the judge was entitled to reach in the light of his finding that the appellant had not taken part in activities in Vietnam nor had he been a member of the Viet Tan Party. Nonetheless, the judge accepted that he had to consider whether the appellant in his particular circumstances would, as a result of his activities coming to the attention of the Vietnamese authorities, be at real risk of persecution.
21. He accepted that the appellant did appear and was recognised in thirteen photographs. In five he was carrying a loud hailer and he was also photographed holding a South Vietnamese flag and various posters and placards. He also accepted that some of the photographs would have

appeared on the internet and on sites in Vietnam. He accepted that the Vietnamese authorities did carry out surveillance in Vietnam and at [47] that they would therefore be available to be seen by the Vietnamese authorities. Contrary to the assertions in the grounds he did not make a finding that the photographs had been seen by the authorities. He had no evidence that any photographs had in fact been seen by the Vietnamese authorities and, in this context, he was entitled to note that this did not sit easily with the appellant's evidence that the authorities had been pestering his mother wanting to know his whereabouts if indeed they had knowledge that he was in London.

22. Nonetheless, the judge went on to consider whether, on the assumption that some photographs had come to the attention of the authorities, they would have put the appellant at risk. On the judge's findings the appellant would not be someone who had previously come to the adverse attention of the Vietnamese authorities. It was for him to assess on the evidence before him how the Vietnamese authorities in such circumstances would view the appellant. His finding was that if the photographs had come to the attention of the authorities, any enquiries they would have made would have resulted in their concluding that the appellant was nothing more than an opportunist seeking to establish an asylum claim. It was argued that the judge's comments on how the Vietnamese authorities might behave or be expected to behave were speculative, but I am not satisfied that they undermine his findings. Indeed, they indicate that he was applying his mind to the correct question.
23. Taking into account the fact that there would be no record of activities in Vietnam, the judge was entitled to find that, even if on arrival the appellant was recognised as someone who had been seen in a photograph on the internet, the authorities would in all probability conclude that he was nothing more than an opportunist. No point was made in submissions about the use of the phrase "in all probability" in [53] which must be read in context and there is nothing to indicate that the judge was not applying the correct standard of proof, not least as he properly directed himself on the correct standard at [10] and again referred to the lower standard at [55] and [56]. I am therefore not satisfied that ground 1 is made out. The judge's assessment of risk on return to Vietnam on the basis of the appellant's sur place activities is not materially flawed or unsupported by the background evidence. The judge proceeded on the basis that the authorities would have an adverse interest in an actual or perceived oppositionist. It was a question of fact for him to assess whether the appellant fell into either category. He found that he did not for the reasons he has given.
24. So far as ground 2 is concerned the fact that the judge made a number of positive findings does not undermine the fact that his conclusion on whether there was a risk on return was properly open to him. Ground 2 essentially reargues ground 1 as do grounds 3 and 4. There is no substance in ground 3 as the judge accepted that even if his attendance at

the demonstrations was opportunistic, the appellant could potentially be at real risk on return, subject to his particular circumstances. There is no substance in ground 4. This is not a case where there is an assumption that the appellant would have to lie about his activities if questioned about them on return in the light of the judge's findings that the appellant would not be of adverse interest to the authorities on return

25. In summary, I am satisfied that the judge reached findings and conclusions properly open to him for the reasons he gave on the issue of whether the appellant would be at risk as a result of his sur place activities.

Decision

26. The First-tier Tribunal did not err in law and its decision stands.
27. The anonymity order made by the First-tier Tribunal remains in force until further order.

Signed H J E Latter

Date: 4 January 2019

Deputy Upper Tribunal Judge Latter