



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

**PA/03340/2019**

THE IMMIGRATION ACTS

Heard at Edinburgh  
on 12 March 2020

Decision & Reasons Promulgated  
on 19 March 2020

Before

**Upper Tribunal Judge Macleman**

Between

**HUNG [N]**

Appellant

and

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

Respondent

For the Appellant: Mr A J Bradley, of A J Bradley & Co, Solicitors  
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. FtT Judge Gillespie dismissed the appellant's appeal by a decision promulgated on 17 September 2019.
2. The appellant applied to the FtT on 27 September 2019 for permission to appeal to the UT. His grounds were (1) assessing credibility prior to considering the expert report and (2) inadequacy of reasoning. The FtT refused permission on 30 October 2019.
3. The appellant applied to the UT on 28 November 2019, presenting the same grounds, adding on (1) that the decision does not bear the

interpretation that the evidence was treated holistically, and on (2) that in the *sur place* claim the FtT erred on whether the Vietnamese authorities distinguish between genuine opponents and hangers-on.

4. UT Judge Pickup granted permission on 5 December 2019, on the view that the drafting of the decision rendered it arguable that the judge failed to consider the evidence as a whole before reaching his conclusion.
5. Mr Bradley submitted along the lines of the grounds. He added that the expert report confirmed that the Vietnamese authorities deployed unidentifiable thugs, in a way which was consistent with the appellant's account, and which enhanced plausibility and credibility. The judge made no reference to that when rejecting the claim about incidents in 2013. He also submitted that the FtT overlooked case law and background evidence about the repressive and irrational nature of the authorities when concluding that they would target only genuine activists and not hangers-on in *sur place* activities.
6. Mr Govan submitted that the decision gave ample clear reasons for finding against the appellant, and that [26] should not be read as reaching a final conclusion on credibility before turning to the expert report.
7. I found that the decision was not sustainable.
8. Judges should not be criticised too readily for dealing with matters point by point, as they have to adopt some order of treatment; but it has to be clear that they have made their final assessment in the round. This decision can only sensibly be read as having rejected at [26] the appellant's account of events in Vietnam *before* turning to the rest of the evidence, including the expert report. That report is then discussed with reference to events outside the Embassy in the UK, without noticing the significance it might have about events in Vietnam.
9. Quite a number of the findings stated by the judge (although not all) express that the appellant's allegations are not credible, but without attaching a reason. In some instances, an obvious reason might be implied, but not in all; and reasons should be explicit.
10. The judge was not helped by the inclusion in the expert report of statements about the risk to the appellant on account of his religious conviction and practice in Vietnam, dealt with at [27]. The appellant never made any claim based on religion.
11. The judge was also hindered by the state of the papers produced for the appellant. The decision describes this at [22] as "rather haphazard" but might have gone further. The papers are piecemeal and chaotic.
12. Making allowances for these matters, and for those reasons in which no error has been alleged, the error committed at [26] is such a clear one that the decision cannot safely stand. Parties agreed that on that view, the outcome should be as follows.

13. The decision of the FtT is set aside. It stands only as a record of what was said at the hearing. It is appropriate under section 12 of the 2007 Act, and under Practice Statement 7.2, to remit to the FtT for an entirely fresh hearing.
14. The member(s) of the FtT chosen to consider the case are not to include Judge Gillespie.
15. The appellant must provide a fresh, clear and comprehensive bundle for the rehearing.
16. No anonymity direction has been requested or made.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

12 March 2020  
Upper Tribunal Judge Macleman