



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11268/2019 (V)**

THE IMMIGRATION ACTS

Heard remotely by "Microsoft Teams"
On 2 June 2021

Decision & Reasons Promulgated
On 18 June 2021

Before

UT JUDGE MACLEMAN

Between

MANH PHU TRAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr A J Bradley, Solicitor
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Vietnam, born on 6 April 1990. He sought asylum in the UK, asserting that the Vietnamese authorities were likely to persecute him for taking part in protests on 29 June 2017 and on 10 June 2018.
2. The respondent refused the claim by a decision dated 31 October 2019. It was accepted that the appellant might have been arrested at the first protest, but he had been released without charge and that was not considered to create a risk. It was not accepted that he took part in the

second protest. The respondent also relied on the appellant's failure to seek asylum while in France.

3. FtT Judge MacKenzie dismissed the appellant's appeal by a decision promulgated on 21 June 2020. She declined to accept that the appellant took part in the second protest. The appellant relied also on evidence of attending a protest outside the Vietnamese Embassy in London in April 2019. The judge considered that his activities in the UK would not place him at risk, because the authorities would identify those activities as opportunistic.
4. The appellant sought permission to appeal to the UT, on the grounds that the judge overlooked the issue of risk arising from the first protest; gave inadequate reasons for holding that activities in the UK would be seen as opportunistic; and reached adverse conclusions prior to considering a letter from a priest, and an expert report.
5. The FtT refused permission. The appellant applied to the UT, slightly amplifying his grounds. The UT also refused permission.
6. The appellant petitioned the Court for reduction of the UT's refusal of permission. Parties entered into a joint minute:

"The respondent accepts that the argument ... that the judge failed to provide adequate reasons for her conclusion that the Vietnamese authorities would view the [appellant's] *sur place* activities ... as opportunistic identified an arguable material error of law ... and that this ground of challenge was sufficiently identified in the ... grounds submitted to the UT ...

For avoidance of doubt, the [appellant] maintains ... all grounds submitted to the UT ..."
7. On 30 March 2021, the Court reduced the UT's refusal of permission, in terms of the joint minute, and remitted the application to the UT for consideration anew.
8. On 21 April 2021, the Vice President of the UT granted permission, in that light.
9. Ms Isherwood conceded that the grounds identified error of law, but only on the issue specified in the joint minute.
10. Mr Bradley submitted that all the grounds were made out. He further argued that based on the acceptance of attendance at the first protest; evidence of *sur place* activity; and the expert report and background evidence on the low level of opposition required to establish a risk, the UT should allow the appeal, as brought to the FtT; or alternatively, remit to the FtT for rehearing.

11. Ms Isherwood contended that there were no other errors, and that on all the evidence which was before the FtT, and correcting for its error, no risk was disclosed, so the UT should dismiss the appeal.
12. In his reply, Mr Bradley mentioned that although there is no application before the UT to admit further evidence (either on error of law, or in remaking) the appellant has received a warrant or summons from Vietnam, which is in course of translation. Absence of such evidence was treated by the FtT at [34] as adverse.
13. I reserved my decision.
14. The error conceded, absence of reasoning for the finding that the Vietnamese authorities would not take an adverse view of the appellant, is so material as to require the decision to be set aside and remade. Ms Isherwood did not press any argument to the contrary.
15. The wording of the FtT's decision at [31], that nothing in the expert report alters the judge's assessment of the appellant's evidence, is unfortunate. This suggests a process of reaching an adverse conclusion, then looking to whether it is displaced, rather than considering the evidence as a whole. The appellant has similar justification, although more faintly, for challenging the evaluation of the priest's letter at [32]. As the decision falls to be set aside on the error conceded, it is unnecessary to consider the other grounds further than that.
16. Mr Bradley did not take me to anything in the background evidence or expert report by which the appellant's evidence, to the extent to which it has been accepted by the respondent, makes his case. Equally, Ms Isherwood did not establish that his case was bound to fail.
17. The decision of the First-tier Tribunal is set aside, other than as record of what was said at the hearing. In that light, and as further evidence is likely to be forthcoming, 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.
18. The member(s) of the FtT chosen to consider the case are not to include Judge MacKenzie.
19. No anonymity direction has been requested or made.

Hugh Macleman

7 June 2021
UT Judge Macleman

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **“working day”** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is **“sent”** is that appearing on the covering letter or covering email.