



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

Appeal Number: IA/00462/2020
[PA/50670/2020]

THE IMMIGRATION ACTS

**Heard at Field House
On 14 December 2021**

**Decision & Reasons Promulgated
On 11 January 2022**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**HV
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. E. Harris, Counsel instructed by Thompson & Co
Solicitors

For the Respondent: Ms. E. Cunha, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge SJ Clarke, promulgated on 5 May 2021, in which she dismissed the Appellant's appeal against the Respondent's decision to refuse a grant of asylum.
2. I make an anonymity direction, given that this is an asylum appeal.

3. Permission to appeal was granted by First-tier Tribunal Judge Landes on 7 June 2021 as follows:

“The judge may well have meant that the witness went with the appellant to show him the way to the demonstration rather than that the witness did not attend the demonstration, but in any event the witness evidence was that he had attended two demonstrations with the appellant in front of the Vietnamese embassy in London. The judge did not explain whether or not she accepted that part of the evidence or explain whether or not she accepted that the appellant had been involved in sur place activity. The sur place activity was arguably relevant to the appellant’s credibility generally as well as to the risk on return (see para 8 grounds).

I also agree that the judge did not explain why she placed little weight on the summons. While she may have done so because she had already found the appellant not to be credible it is arguable that she should have first considered whether she could place any weight on the summons as an independent document; in addition she did not explain why it was implausible that the appellant could have left Vietnam if a summons had been issued; a summons is not an arrest warrant.

If the judge erred in her approach to credibility and/or the sur place activity which was relevant to risk on return then I consider it arguable that any errors were material.”

4. It was accepted that all grounds could be argued.
5. The Appellant attended the hearing. I heard submissions from both representatives following which I stated that I found the decision involved the making of material errors of law. I remitted the appeal to the First-tier Tribunal to be remade. The full reasons for my decision are set out below.

Error of law decision

6. It was conceded by Ms. Cunha at the outset of the hearing that the Judge had erred in failing to make findings in relation to the Appellant’s sur place activity. She further conceded that the Judge had erred in her treatment of the summons. It was confusing and there were insufficient findings, especially given the date of the summons. However, Ms. Cunha submitted that there was no error in the Judge’s findings relating to the three demonstrations in Vietnam, and submitted that those findings should be preserved.
7. In relation to the Appellant’s sur place activity, I find that the Judge has failed to give this proper consideration. She has failed to make a finding as to whether the Appellant attended the demonstrations in the United Kingdom. Further, she has failed properly to consider the

evidence of the witness. When she states at [21] that the witness “merely claims to have shown the Appellant the way to the demonstration”, this is contrary to the evidence in his witness statement. The witness states that he travelled with the Appellant to the demonstrations and attended the demonstrations with him. On both occasions they stayed for between two and a half and three hours outside the Vietnamese embassy before leaving together. The Judge has failed properly to consider this evidence. She states that she has given little weight to the witness evidence as a “more cogent witness” would have been someone who held political support for the BFD. The witness had been granted political asylum, although it was not known who he supported. However, irrespective of this, the Judge has recorded his evidence incorrectly in her decision. She has also failed to give reasons for rejecting the evidence of the Appellant and the witness that the photographs were taken outside the Vietnamese embassy.

8. The Judge considers the summons at [22]. She states that she is looking at the summons “in the round”. However, she has not done so. It appears from her findings at [22] that she has not appreciated that the summons postdates the Appellant’s departure from Vietnam, as she states that she finds it implausible that the Appellant could have left the country if there was a summons issued. The summons was issued in 2020, after the Appellant had left Vietnam. I find that the Judge has failed to consider this summons properly. She cannot have looked at it in the round together with the evidence of his sur place activity in the United Kingdom if she has made a mistake of fact as to the date of the summons. She has failed to give it proper consideration as an independent document.
9. In relation to the Judge’s findings regarding the demonstrations in Vietnam, I find that she has failed to give sufficient reasons for why she did not accept that the Appellant attended these demonstrations. It had been accepted by the Respondent that the Appellant had attended the first demonstration, and the Judge did not go behind this concession in her decision.
10. In relation to the other two demonstrations, the Judge states at [12]:

“I do not find the Appellant attended the second and third demonstrations, was detained, suffered ill treatment as claimed and released on conditions”.

She does not explain here why she does not accept this part of the Appellant’s claim, but at [13] states:

“It was noted that the Appellant could provide consistent answers including knowledge about the BFD which is more consistent with someone who showed initial support for the BFD.”

The relevance of this is not clear to the preceding paragraph, and in the subsequent paragraph she continues with the Appellant's knowledge of the BFD, and the fact that it does not accord with someone who was a team leader.

11. It was submitted that the Judge made assumptions as to what it would mean to be a team leader. Ms. Harris submitted the Appellant was not saying he was a team leader because of knowledge that he held, but rather that he was appointed as a team leader as a test. I find that this ground is made out, and that there was no evidence before the Judge on which to base this finding. There was no evidence before her as to what would amount to sufficient knowledge to be a team leader.

12. At [15], having made this adverse finding, which has no basis, the Judge turned to consider the second demonstration. She states:

“The Appellant claims that despite signing a pledge not to demonstrate again, he left Vietnam and was deported back to his country by the French authorities in early January and yet soon after attended the second demonstration. Whilst the Appellant gave consistent answers with what happened at that event with the external evidence, the information can be gained from the internet.”

13. This is the extent of her findings relating to the second demonstration. The Respondent considered that the Appellant's claim in relation to his attendance at this demonstration was “unsubstantiated”. The Respondent accepted that the Appellant's evidence was internally and externally consistent. The only reason that the Respondent did not accept this evidence was because she found it inconsistent that the Appellant continued to put his life at risk by attending further demonstrations having been returned to Vietnam.

14. The Judge has merely repeated the Respondent's statement that the information could be gained from the internet, but she has not gone any further or made findings as to why this means that the Appellant's claim to have attended the demonstration is not credible. She does not appear to adopt the Respondent's position that it was implausible that the Appellant would attend a second demonstration as she makes no finding that it is implausible that the Appellant would have done so. I find that she has failed to give sufficient reasons as to why she has rejected the Appellant's claim to have attended the second demonstration in Vietnam, having accepted that his answers were consistent.

15. At [16] the Judge turns to consider the third demonstration and states:

“Although the Appellant gave an account consistent with the objective evidence about the third demonstration, the information can be found on the internet. The Appellant's claim is that he

pledged not to attend a demonstration after the Formosa demonstration, and if he had attended the second demonstration he was detained and ill-treated and only released upon payment of a sum of money, and had to report weekly to the police station and not demonstrate again.”

16. It is difficult to know what the Judge means by this second sentence, but it contains no findings. Again the Judge found that the Appellant’s account was consistent with objective evidence, which is what the Respondent had also accepted. But once more, she does not make any finding that it is implausible that the Appellant would attend a further demonstration.
17. At [17] to [19] the Judge considers the Appellant’s evidence of his fleeing to South Vietnam, and considers an inconsistency in this evidence. This is her only finding of inconsistency in his evidence relating to the demonstrations in Vietnam. She then states at [19] in relation to the lack of other evidence:

“I find that if the authorities in Vietnam are so co-operative to political prisoners having such visits the Appellant could have collected more cogent evidence in the form of statement to substantiate his membership and role as team leader of the BFD in Vietnam, either from the BFD in the country, or the BFD UK office liaising with the BFD Vietnam.”
18. The Judge has not explained what cogent evidence should have been expected. Neither has she indicated that the Appellant has given an unsatisfactory explanation as to why he had not provided such evidence. It is not clear that she has given the Appellant the opportunity to explain why he did not provide further evidence.
19. I find that the Judge’s consideration of the Appellant’s claim is insufficiently well reasoned. She has not properly considered the Appellant’s claim, nor the evidence which was before her. The decision lacks coherence. I find that the decision contains errors of law which, given that they go to the core of the Appellant’s claim and to his credibility, are material.
20. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party’s case to be put to and considered by the First-tier Tribunal. Given the nature and extent of the fact-finding necessary to enable this appeal to be remade, as the credibility findings cannot stand, and having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

Decision

21. The decision of the First-tier Tribunal involves the making of material errors of law. I set the decision aside.
22. The appeal is remitted to the First-tier Tribunal to be reheard de novo. No findings are preserved.
23. The appeal is not to be listed before Judge S. J. Clarke.

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: Kate Chamberlain

Date: 19 December 2021

Deputy Upper Tribunal Judge Chamberlain