



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: PA/06932/2019**

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On the 18 May 2022**

**Decision & Reasons Promulgated  
On the 19 July 2022**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**HCN  
(Anonymity direction made)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Read instructed by Duncan & Lewis Solicitors.

For the Respondent: Mr McVeety, a Senior Home Office Presenting Officer.

**DECISION AND REASONS**

1. In a decision dated 24 April 2020 the Upper Tribunal found an error of law in the determination of the First-tier Tribunal and directed that the matter be listed for a Resumed hearing.
2. There are a number of preserved findings, being the appellant's nationality as a citizen of Vietnam, his date of birth 20 January 1982, his attendance at the Formosa demonstration in Vietnam, and in relation to his sur place activities in the United Kingdom.

3. All parties were served with a notice of hearing setting out the date, time, and venue, on 7 April 2022. There is no suggestion that those notices were not received or that any party was unaware of the hearing. Despite that the appellant failed to attend the hearing without explanation.
4. An application to adjourn was made by Mr Read who attempted to contact the appellant on the telephone without success. It was refused as I am satisfied that the interests of justice and fairness do not require this hearing to be adjourned. There is no reason for the appellant's failure to attend. There is no medical evidence to justify or account for his actions. There is within the tribunal papers a comprehensive documents bundle, and the appellant was represented by Mr Read who was able to make submissions on his behalf. A direction made at the error of law stage provided that the witness statements shall stand as evidence in chief of the maker. I accept, however, that the appellants actions prevent the Senior Presenting Officer from cross-examining the appellant on the content of his statements which is a relevant factor.
5. Previous applications for an adjourned, made as a result of the unavailability of counsel previously instructed, were refused as there was no basis for granting an adjournment for that reason. In any event, Mr Read, an experienced advocate in this area of law, was able to attend.
6. Mr Read was able to provide a copy of his skeleton argument digitally and the hearing commenced, on a submissions only basis, from 11:20 AM, by which time the appellant had still not attended.

## Discussion

7. In his skeleton argument at [17] Mr Read identified the issues at larger as being whether:
  1. The Appellant is at risk of persecution or serious harm in Vietnam due to his political opinion or imputed political opinion;
  2. The Appellant is at risk of serious harm from a loan-shark in Vietnam to whom he is indebted;
  3. There is insufficiency of protection in Vietnam;
  4. Internal relocation would be unreasonable or unduly harsh;
  5. The Appellant's removal to Vietnam would breach Arts 2, 3 or 8 ECHR;
  6. There are very significant obstacles to A's reintegration into Vietnam in accordance with para 276 ADE(1)(vi) of the Immigration Rules (IR).

8. It is one of the preserved findings from the First-tier Tribunal that the appellant attended the Formosa demonstration in Vietnam. In relation to this aspect the First-tier Tribunal Judge found:
  - “53. The Appellant has lodged photographs which he says depicted in the process of participation in the Formosa demonstrations. The Appellant is seen in a small number of photographs taken in Vietnam. These are found in the Appellant’s supplementary bundle commencing at page 18. I accept those photographs are genuine and I attach weight to them. I find that the Appellant attended the demonstrations but was a minor participant.
  54. The Formosa demonstrations were about the ecological marine disaster and were not directly an anti-government politically motivated demonstration. Formosa is a Taiwanese company. Protesters were unhappy at both the Taiwanese company and the Government’s response. I find that the Appellant had no political persuasion against the Government. He was motivated by the effects of the ecological disaster only.”
9. There is insufficient evidence to support claims that the appellant faces a real risk for his attendance at the demonstration as a result of an adverse profile. There is insufficient credible evidence to show that the appellant has come to the attention of the authorities for his political beliefs or activities in Vietnam or that he had any contact with, or role as, a leader or organiser of the demonstration.
10. I accept Mr McVeety’s submission that the appellant would have had to travel to the demonstration as it was not a demonstration that took place in his home area.
11. The appellant has not provided sufficient evidence to establish that he was arrested at the demonstration or that there would be sufficient evidence to enable him to be identified as a risk to the authorities, in light of the absence of any material showing a credible adverse profile, so far as the authorities in Vietnam are concerned.
12. At paragraph 2.4.11 of the Country Policy and Information Note (CPI) Vietnam: Opposition to the State, Version 3.0, September 2018, it is written:
  - ‘2.4.11 Whilst people have been arrested and detained for their involvement in ‘Formosa’ protests the treatment incurred is not sufficiently serious by its nature and repetition as to amount to persecution or serious harm. Some high-profile activists, who have been responsible for raising awareness of the disaster and organising demonstrations have been subjected to ill treatment and if they can demonstrate that they have come to the adverse attention due to the nature of their profile/involvement in demonstrations then they are likely to be at risk of persecution and/or serious harm. Each case however, must be considered on its facts.’
13. I have considered all the material provided on the appellant’s behalf but find this does not establish, even looking at this matter on a case-by-case basis, that the appellant has established a real risk. I accept

that those with an adverse profile and those such as organisers or those who arranged the demonstrations were arrested and some ill-treated, but the appellant has not establish he will face a real risk if returned to Vietnam for this reason on the basis of either an actual or imputed adverse political opinion.

14. The appellant also claims a real risk based on another adverse political opinion, mainly this association with the Brotherhood for Democracy. He has provided a number of copy document which he suggested in his statement support his claimed risk. These include:
  - a. A document described as a Summons (second request) dated 26<sup>th</sup> May 2017 requesting the presence of the appellant at the headquarters of the Bureau of investigation security, Ha Tinh province, for providing information about joining Brotherhood for Democracy that organised public disorder against the state.
  - b. A document described as a Decision to Prosecute the Suspect dated 12 June 2017 purporting to show that pursuant to a decision to institute a criminal case there were sufficient grounds to determine that the appellant should be charged with a crime of organising public disorder in order to oppose the state pursuant to Clauses 34 126 of the Criminal Proceedings Law of the Socialist Republic of Vietnam. And that the decision should be sent to the Ha Tinh People's Court.
  - c. A third document described as a Summons (first request) dated 13 August 2019 addressed to the appellant's wife indicating the need for her to attend the Bureau of investigation to provide information regarding her husband fleeing abroad.
15. The appellant claims that if he is returned to Vietnam he will be arrested and imprisoned.
16. It is known that documents can be obtained easily in Vietnam but that is not a reason to reject any document provided by an appellant per se. Reference was made in the submissions to the fact that the appellant has previously demonstrated he is able to access documents which were not genuine.
17. I also note the record of the evidence relating to these documents given before the First-tier Tribunal. That decision still stands as a record of the evidence given even though the decision itself has been set aside.
18. There is also reference to the documents in the reasons for refusal letter dated 2 July 2019 which is in the following terms:
  - "48. You state that the commune police delivered to your house a summons in May 2017 to invite you to speak to them at their office (AIR 74-78). You state that the police officer did not make any enquiries, he just handed you a document and told you the time and date to talk to the police (AIR 79). You later state that you enquired about why you have been summonsed, to which the officer told you that they suspected you of attending demonstrations and opposing the government (AIR

85). This is inconsistent as you initially state that the police officer present to summon you only told you the time and date to talk to the police and later you state he provided you the reason as to why you are summonsed. Moreover, it is discredited further as you have provided no evidence of this apart from stating you were summonsed with a document by a police officer. The case law of TK (Burundi) 2009 found that where evidence to support an account given by a party is or should be readily available, a judge is entitled to take into account the failure to provide that evidence and explanation for that failure to provide that evidence and explanations for that failure. It is viewed that you have failed to provide any evidence of your supposed summonsing. In this instance it would be reasonable to expect you to provide some evidence of the event and the fact you have not damages your credibility, given also that you have been able to provide evidence of your attending the demonstration. Therefore, the notion of you being present with a document by a police officer summonsing you has been rejected in its entirety.”

19. Those documents were subsequently provided as shown by the appellant’s appeal bundle.
20. In relation to the documents it is stated on the appellant’s behalf in the skeleton argument:

“[40] The Appellant has now been able to retrieve documentation from Vietnam, which is officially stamped and translated, pp 70-78 AB. It has been served on R and A is able to give oral evidence of its authenticity. The Appellant made reference to his summons in his asylum interview and stated that he would endeavour to obtain it, p 135 AB at [Q 6]. It is submitted that in all the circumstances, A has established that his documents are reliable in accordance with Tanveer Ahmed and MT (Credibility).”

21. While it is not disputed the appellant has produced the documents which can be physically examined the appellant did not give oral evidence regarding the authenticity and could not be cross-examined upon the same, denying Mr McVeety the opportunity to explore with the appellant some of the clear issues of concern in relation to such documentation.
22. Providing documents and referring to them in an asylum interview, as part of the overall picture to be considered, does not establish those documents are genuine per se. A person can refer to documents in an asylum interview they have produced which are forgeries.
23. When assessing the evidence I have drawn a distinction between the evidential weight that I can attach to the summons documents and the reliability of the same and the question of whether the documents are a forgery. Where party seeks to rely upon a document in support of their claim the burden of proof lies upon them to show that the document can be relied upon.
24. There is no specific allegation of forgery in his case and so the burden of proof does not shift to the Secretary of State.
25. It was submitted by Mr McVeety that the appellant had admitted to previously using forged/false documents. At [12] of his second witness

statement, dated 28 August 2019, the appellant admits to using what he knew was a false passport with a Visa to enter Ukraine in a false name and false date of birth, but with his photograph on it, for the purposes of illegally entering Ukraine, from where he travelled to France. It is clear evidence that the appellant has had the means in the past to get access to documents that are not genuine for the purposes of achieving his desired immigration goal.

26. When considering the evidence as a whole, including that relating to the police documents, I find that the appellant has failed to establish that weight may be placed upon the same. There are too many issues at large which have not been dealt with by the appellant both before and during the date allocated for this hearing. I find the appellant has not established that the documents are reliable. I attach no weight to such documents and as such find that as evidence they add nothing either way to the case.
27. I do not find the appellant has established a real risk on the basis of an actual or imputed adverse opinion on the basis of this issue of the appeal, either.
28. The third matter raised by Mr Read in his submissions is the question of whether the appellant will face a real risk on account of his debt to a particular loan shark and whether there is a sufficiency of protection and internal relocation would be unreasonable or unduly harsh.
29. The appellant's case in this regard is set out in the supplementary bundle, second witness statement, dated 28 August 2019, in the following terms:
  - "12. I realise that things are getting worse and worse for me and I need to leave Vietnam as quickly as possible. My wife asked some friends to help find an agent for fleeing abroad. A few days later the people of the agent met me to take pictures for making passports and visas and they said they would take me to European country for US\$20,000. There was no other way, my wife became a guarantor for my credit and promised to pay for them so that I could leave Vietnam quickly."
30. It is known that illegal money lenders are widespread in Vietnam with people able to borrow money by providing little or no personal information or just a guarantee of an acquaintance with only the borrower's signature in some cases. It is therefore not implausible that a person within the family may have been able to borrow money on the basis of the guarantee provided by his wife.
31. Before the First-tier Tribunal the appellant was questioned about this matter in which his evidence was that his wife borrowed US\$20,000 with interest being applied at the rate of US\$4,000 per annum.
32. In his original witness statement, which is undated, the appellant states at [14 - 15] the following:
  - "14. When I was in Vinh City, I was looking for opportunities to leave Vietnam. A friend of mine told me about an agent to could help me leave Vietnam. I contacted the agent and he said he could help but he wanted \$20,000 which was a lot of money.

15. My wife called Tuan Huu to borrow \$20,000. Everyone in the area knew of Tuan Huu who provided loans. She was given the money after one week. She gave the money to the agent. The load was organised by my wife completely and it was agreed that we would pay US\$4000 interest every year until the loan is paid off."
33. At [21] of his statement the appellant stated "*My wife and children have been threatened by Tuan Huu however they have not been harmed*".
34. There is therefore a further contradiction in the appellant's evidence between whether his wife asked friends to help the appellant find an agent so he could leave Vietnam and that he was later contact by those representing the agent and his claim that he contacted the agent after being recommended by a friend.
35. The CIPU speaks of repercussions for non-payment of the debt between [4.4 - 4.4.8] but the basis on which the appellant claimed he needed such support, namely to escape as he needed to flee Vietnam following receipt of the summons, has been found to be claim lacking credibility.
36. The Secretary of State has been denied the opportunity to explore whether what the appellant claims is true buy his failure to attend.
37. It also appears to be the appellant's case that the debt is a debt of his wife who is the guarantor and not the appellant himself, the material in the CIPU speaks of serious consequences for those who cannot repay the loans, including people being trafficked and forced into labour, sex work and other examples, yet there is no evidence of this.
38. The rate of interest charge also appears to be 20% per annum which is substantially below that referred to in the CIPU for credible loans provided by those who specialise in providing "black credit".
39. There are specific reference in the CIPU to lenders providing a specific figure rather than an interest rate with the interest rate on illegal loans been around 180% with some being as much as 225% or 300% [4.1.4], although I accept rates can depend on whether a lender is able to use collateral such as a house or car or whether they rely on personal papers or guarantees from acquaintances.
40. It is noted in Mr Read's skeleton argument at [54(2)] to be irrational for the lender to extinguish the chance of the money being paid in full by harming his wife as some interest payments had already been made. If there are facilities available within Vietnam to enable the loan to be repaid in the terms agreed it is not made out the appellant will face any real risk on return for this reason.
41. Considered the evidence holistically I do not find the appellant has established that is claim to face a real risk from moneylender is credible even if he did borrow some money to facilitate his journey to the United Kingdom, as many do from Vietnam for the purposes of economic betterment.
42. In relation to his sur place activities, the appellant writes in his second witness statement:

“14. In the meantime I met some Vietnamese friends who are living in the UK. After I told them about my situation, they invited me to join the Brotherhood for democracy. I was recommended by two friends, then I was admitted to the group on 30 October 2017 and my task was to encourage people to join and call on them to participate in demonstrations in front of the Vietnamese Embassy. Every year in London in May with the international organisation of Amnesty calling for immediate and unconditional release prisoners of conscience in Vietnam; and the International human rights day of 10<sup>th</sup> December every year asking Vietnamese authorities to respect the human rights treaties they have signed with the United Nations. I organised and participated in demonstrations on the following days: 11/12/2017, 20/5/2018, 9/12/2018.

After that, I took part in the training course of fighting democracy with non-violent method, trained by Chairman of the Brotherhood for Democracy – Lawyer Nguyen Van Dai on 05 – 06/08/2019.”

43. The appellant ties in the summons sent to his wife on 13 August 2019 with his activities against the State in the United Kingdom.
44. Whilst Mr McVeety questioned the appellant’s motives for such activities I accept that even if such motives are disingenuous it is how the appellant will be viewed through the eyes of a potential persecutor that is the key question.
45. I accept that there is an organisation known as the Brotherhood for Democracy in Vietnam founded by the named lawyer. I accept that on 16 December 2015 Troung Van Dung was arrested and taken into custody by the Vietnamese authorities and that on 5 April 2018 a Hanoi Court found him and some other members of the Brotherhood of Democracy guilty of carrying out activities aimed at overthrowing the People’s Administration, for which he received a 15 year prison sentence, although on 7 June 2018 he was released from prison after two years and exiled to Germany.
46. It is not made out the appellant has a similar profile to those arrested in Vietnam as a result of their activities for the Brotherhood of Democracy.
47. The constitution of Vietnam gives its citizens the right to enjoy freedom of opinion and speech, freedom of the press, of access to information, to assemble, form associations and hold demonstrations, and that the practice of those rights should be provided by the law. I accept, however, that the government uses specific laws to curb dissent.
48. I do not accept that the activities the appellant undertook in the United Kingdom represented genuinely held political views that he cannot be expected to lie about if returned to Vietnam, on the basis doing so would be contrary to the HJ (Iran) principle. I do not find the appellant has established that his profile is what he claims it to be in relation to his sur place activities on the facts.
49. The appellant’s account of the demonstrations indicate that he joined demonstrations organised by others, such as Amnesty International, in relation to the authorities in Vietnam respecting human rights treaties.



There is merit in the submission that these are not demonstrations that focused upon specific issue that will be deemed to threaten or challenge the authority of the government in Vietnam.

50. I accept there is some evidence of activities by the Vietnamese authorities in relation to individuals located outside Vietnam, for example in the US State Department Human rights Report 2021 where it is written:

**'Politically Motivated Reprisal against Individuals Located Outside the Country**

**Threats, Harassment, Surveillance, and Coercion:** There were reports of authorities harassing exiled individuals and their families.

In February the Committee to Protect Journalists, an international NGO, reported that the cyberespionage group known as OceanLotus, or APT32, continued to infringe on the privacy rights of citizens through spearfishing malware attacks targeting overseas Vietnamese journalists and human rights defenders, media organizations, and Catholic websites. The cybersecurity company Volexity determined the source of the attacks was in Vietnam but could not confirm a link between APT32 and the government.'

51. There is, however, no credible evidence that the appellant has been the subject of any harassment or activities in the UK of the type referred to in the country information. The appellant has failed to adduce sufficient credible evidence to establish he will be viewed as falling within any of the named groups of concern to the authorities in Vietnam.
52. I do not find the appellant has proved an established profile that will place him at risk for this reason. I do not find the appellant's motive for getting involved in such organisations as he has in the UK is because he has a genuinely held view similar to that represented by Amnesty and others, or an adverse political opinion that will be deemed to be threatening by the government of Vietnam.
53. The appellant's evidence is that he attended very few demonstrations and there is insufficient country material to establish that doing so creates a credible real risk for him. The appellant has not established he has a profile that will create a real risk for him on return to Vietnam. There is no credible evidence the appellant is a leader or organiser of events that will be deemed adverse to the interests of the authorities in Vietnam, or any credible evidence the authorities would even know who he is.
54. The submission by Mr Read that the authorities in Vietnam have facial recognition software that they could use if they had a photograph of the appellant at the demonstrations if he was returned is noted.
55. It is not disputed that facial recognition software exists and that it may be used by the authorities in Vietnam. Indeed there was a piece in the press in 2020 indicating the use of facial recognition software to pay for goods and services in Vietnam. That was however of commercial

- application as is the use of such software on many smart phones to allow individuals to login.
56. The scheme requires a central database to be retained of an image of the individuals face, from which relevant points of comparison can be made. It is not disputed that such technology can be found in airports around the world, to assist airlines and governments. What has not been provided is sufficient evidence to support the claim that even if such a system exists within Vietnam monitoring those coming into the country that this will create a real risk for the appellant on the facts of this appeal.
57. I do not find the appellant has established he faces insurmountable obstacles to return pursuant to paragraph 276ADE of the Immigration Rules, as a basis for his claim to do so was that he could not return as a result of the risks he faced. The basis for such a claim has been found to lack credibility.
58. I do not find the appellant has established any right to remain pursuant to ECHR. No real risk is made out sufficient to engage articles 2 or 3 and ECHR and his private life in the United Kingdom has always been precarious warranting little weight being placed upon the same. I find the Secretary of State has established that any disruption with such protective rights is proportionate especially when considering section 117B of the Nationality, Immigration and Asylum Act 2002.
59. Having very carefully considered the material made available and the advocates competing submissions, I find that the appellant is no more than a failed asylum seeker who can be returned to Vietnam without fear of breach of any of the U.K.'s obligations under any international convention, or otherwise.

## **Decision**

60. **I dismiss the appeal.**

Anonymity.

61. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

Signed.....  
Upper Tribunal Judge Hanson

Dated 27 June 2022