



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004957

First-Tier Tribunal No: PA/54642/2022
IA/11030/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 18th March 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE SKINNER

Between

**NMT (VIETNAM)
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Sood, counsel, instructed by Qualified Legal Solutions Ltd
For the Respondent: Ms Everett, Senior Home Office Presenting Officer

Heard at Field House on 11 March 2024

ORDER REGARDING ANONYMITY

**PURSUANT TO RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL)
RULES 2008, THE APPELLANT IS GRANTED ANONYMITY.**

**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.**

DECISION AND REASONS

Introduction

1. The Appellant is a citizen of Vietnam. She appeals the decision of First-tier Tribunal Judge Howorth (“the Judge”) dated 21 September 2023 (“the Decision”) by which he dismissed her appeal against the Respondent’s refusal of her claim for asylum. The Appellant’s claim was, in short summary, that she is at risk of persecution at the hands of the Vietnamese authorities by reason of her anti-government and pro-democracy political opinions.
2. The hearing before me took place via MS Teams. Although there were technical problems at the Tribunal, which delayed the start of the hearing, once the hearing began I was satisfied that everyone could hear each other and that the parties were able fully to participate in the hearing. Although the Appellant has studied for her Masters degree in England, she had the assistance of a Vietnamese interpreter, who was able to explain to the Appellant at various points during the hearing what was being discussed, though she was not asked to translate everything that was said.
3. Given the nature of the claim, I consider that publishing the Appellant’s identity would, if it is true, materially increase any risk that she faces on return, and as such, and notwithstanding the importance of open justice, I consider it appropriate to maintain the anonymity order in this case. I have also, for that reason, kept the potentially identificatory facts of the Appellant’s case to a minimum in this decision.
4. The Judge’s findings can be summarised as follows:
 - a. It was accepted that the Appellant’s father was a director of the local police force;
 - b. The photographs on which the Appellant relied purporting to be of her arrest in Vietnam were staged. This was because: (i) the photos in the family home show the police officer with shoes removed, which was inherently unlikely in a situation where a police officer was entering a home for an arrest; (ii) the Appellant claimed not to have known the photos were being taken, but she is in some of them looking directly at the camera; (iii) while it is not for the FTT to assess plausibility, it is at least unusual for police officers in most countries to agree to be photographed whilst arresting a person.
 - c. The police in the photos are, as the expert said in their report, real Vietnamese police officers. The summons and arresting documents are also genuine documents, in that they were issued by the authorities. However, the likelihood is that the Appellant’s father has sufficient sway to arrange for staging of photographs with the police force and for the issuing of documents. The circumstances in Vietnam were concocted for the purpose of the Appellant’s asylum claim; she has created a claim with the use of her father’s position to assist her to evidence the claim.
 - d. It was accepted that the Appellant has engaged in some political activities in the UK and that the Appellant is a low-level supporter of a

Vietnamese pro-democracy organisation. However, there was no suggestion that she had an organisational role.

- e. It was accepted that the Vietnamese authorities have a well-developed facial recognition system which makes it likely that the events outside the Vietnamese embassy attended by the Appellant were recorded and that she could be recognised by them. However, the examples relied on by the expert witness did not justify a conclusion that it was very likely that the Appellant would be persecuted as a result of her attendance (the people used as examples were in a different position to the Appellant). While as a low-level supporter, she may face some discrimination, this would not be such as to amount to persecution.
- f. The Appellant's Facebook account does not appear to have a far reach and does not appear to have been hacked. It is therefore unlikely that her posts have come to the attention of the authorities, and even if they had, she does not have a significant following so as to be of interest to them.
- g. In respect of Article 8, having regard to the weight to be afforded to the Respondent in an effective immigration system, any interference with her private and family life in the UK resulting from her removal would be proportionate.

5. The Appellant sought to appeal the Decision on a number of grounds. However by a decision dated 8 November 2023, First-tier Tribunal Judge Monaghan granted permission only in respect of some of them and there was no application to renew the permission application to the Upper Tribunal in respect of the others. The grounds on which the Appellant has permission (which I have renumbered) are accordingly as follows:

- a. Ground 1: it was procedurally unfair for the Judge not to put to the Appellant her view that there had been a fraudulent conspiracy between herself and her father in producing staged photographs of her arrest;
- b. Ground 2: the Judge failed to deal with the evidence of the Appellant's private life in the UK set out in a supplementary witness statement.

6. I address these grounds in that order.

Ground 1

7. Where a party alleges that the procedure adopted before the FTT was unfair, the analysis on appeal must proceed in two stages. First, an appeal court needs to determine what in fact occurred before the lower court and then, second, it must decide whether what occurred was unfair. In many cases, what occurred may not be in dispute and/or it may be tolerably clear from the lower court's decision what occurred (or did not occur) that one can pass straight to the second stage.

8. As to what occurred before the FTT, the Appellant's grounds and Ms Sood's skeleton argument stated that the "point as to a fraudulent conspiracy over the photos...was not directly put to the Appellant". Given this careful language by experienced counsel, and the fact that the Judge, at para. 27 of the Decision, records that it was put to the Appellant that the photos appeared staged, I asked Ms Sood to clarify whether what she was saying was that the genuineness of the

photos was not challenged, or that there was some narrower omission, either being limited to there being a fraudulent conspiracy in relation to them and/or that the issue had been raised in cross-examination, but indirectly. She quite properly accepted in response that it was suggested to the Appellant in cross-examination that the photographs were not genuine. Her point was rather that her father's involvement in their facilitation was not put. I accept Ms Sood's evidence on this point, which is consistent with the Judge's own description, as noted.

9. Turning to the second stage of the analysis, it is elementary that, in general, a party is required to challenge in cross-examination the evidence of a witness if he wishes to submit to a court that that evidence should not be accepted. This is particularly so where a party is alleging that the witness is being dishonest. See TUI UK Ltd v Griffiths [2023] UKSC 48, [2023] 3 WLR 1204, applied to proceedings before the FTT in Ullah v SSHD [2024] EWCA Civ 201. Equally elementary however is that what procedural fairness requires is context dependent. In HA v SSHD (No 2) [2010] SC 457, [2010] CSIH 28, it was held that in the context of proceedings before the FTT, as an expert body it is entitled to reject evidence notwithstanding that the evidence has not been challenged before it. Further while fairness may require it to disclose its concerns about the evidence so that the parties have an opportunity to address it, there will in general be no unfairness in not putting discrepancies to an appellant where he or she can be expected to be aware that the Tribunal will have to assess his credibility. This applies equally where, as here, further material is adduced on appeal that was not put before the Respondent when he took his decision, which it is obvious gives rise to issues of credibility which the appellant can be expected to realise needs to be addressed in any event: see WN v SSHD [2004] UKIAT 00213, recently cited by the Court of Appeal without any apparent disapproval in Abdi v Entry Clearance Officer [2023] EWCA Civ 1455 at [32]. As Phipson on Evidence (20th ed.) also notes at 12-12,

“there may be no unfairness [in not challenging a particular aspect of a witness' evidence] because, looked at more generally, the procedures adopted in the litigation mean that a party and the relevant witness(es) have had ample opportunity to comment on the other side's case. It may also be the case that a particular matter does not have to be specifically put to the witness because it is obvious from other evidence which he or she has given what his or her response will be.”

10. Applying the above, I am unable to accept that the failure to put her father's involvement in the staging of the photographs to the Appellant in cross-examination was procedurally unfair. This is essentially for two reasons:
- a. First, it is clear that the Respondent's suggestion that the photos were staged was put to the Appellant and that in answering questions about that she had the opportunity to give her account of how the photos came into being. At the very least implicitly, in giving evidence (I assume) rejecting the suggestion that the photos were staged at all, the Appellant was also necessarily denying that they were staged with the assistance of anyone else, whether her father or otherwise. In those circumstances, it is obvious as a matter of logic what her answer would have been to a further question about her father's involvement.

- b. Second, the reliability of documents, such as the photographs, is always a matter which an appellant must prove: Tanveer Ahmed [2002] UKIAT 439. Where there are obvious difficulties with documents, an appellant has a forensic choice in preparing her case whether to confront them or hope that in focusing on other aspects of the case, the difficulties might be overlooked: Maheshwaran v SSHD [2002] EWCA Civ 173; [2004] Imm AR 176 at [5]. It is not the role of cross-examination to provide an opportunity to give evidence on a point that an appellant could have dealt with in chief, but who has chosen not to do so. Given the obvious question marks that would arise in relation to an arrest being permitted to be photographed in the way the Appellant was claiming (from various angles, at home, by someone unconnected with the police (here, the Appellant's mother)), it must in my judgment have been obvious to the Appellant (on advice) that the circumstances of the photos would require explaining in order for her to show that weight could be placed on them. The Appellant had the opportunity to do so in preparing her witness statement, and was not required to be given a second bite of this cherry in cross examination.
11. Ms Sood sought to emphasise that the Respondent had, as she put it, changed tack, in that in the original Refusal Letter, the Respondent was alleging that the Appellant's father was not in the police at all, whereas on appeal it was accepted that he was but the Respondent then sought to impugn the photos' reliability. I cannot see that there is anything in this point. It is commonplace for appellants, as here, to obtain further evidence that was not put before the Respondent when he made his decision and for this to answer criticisms that have been made in the Respondent's decision. It does not however follow from this that the new evidence falls simply to be accepted or not considered critically by the FTT, such that the Appellant did not require to deal with any obvious issues with it.
12. I therefore reject Ground 1.

Ground 2

13. As to Ground 2, the Appellant submits that the Judge left out of account her supplemental witness statement in determining her Article 8 claim. It was common ground before me that the statement was mentioned by the Judge in para.19 of the Decision in setting out the documents he had before him, but that it is not expressly mentioned again in para.40 when the Judge addressed the Appellant's Article 8 claim.
14. There are in my judgment two answers to this ground.
15. First, an appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into consideration; the mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it: Volpi v Volpi [2022] EWCA Civ 464, [2022] 4 WLR 48 at [2(iii)]. There is no compelling reason to depart from this assumption here. The only basis on which Ms Sood suggested the statement had not been taken into account was its absence in the paragraph dealing with Article 8, but, as noted, that is insufficient.
16. Second, even if the Judge did fail to take the statement into account in the Article 8 assessment, I accept Ms Everett's submission that this is immaterial. On

the materials that were before the FTT, any tribunal properly directing itself would have dismissed the Article 8 claim, even taking the supplemental statement at face value. The Appellant came to the UK in 2016, aged 22, to study for a Masters degree. Her initial visa expired in July 2017 (when the Appellant returned to Vietnam), a further visa was granted in September 2017 (at which point she returned) and that visa expired in 2019, since when the Appellant has remained in the UK unlawfully. Any private life developed during the Appellant's time in the UK is accordingly required by s.117B(4)-(5) of the Nationality, Immigration and Asylum Act 2002 to be given little weight. The Appellant's witness statement is fairly described as very thin. In it she claims not to have had any contact with her family in Vietnam since April 2018 and that she has been living with her friend and her friend's family since 2019 whom she considers to be her new family now. Her friend is married and has an adult son and daughter, both of whom have been good friends to her. The Appellant's statement goes on to note that she has been working for this same friend's nail salon. Her friend and her friend's family are also said to have supported the Appellant, though the Appellant does not give any specifics. While the Appellant describes her friend and her friend's family as "my family during my time in the UK" and "my new family now", the Appellant's evidence taken at its highest comes nowhere near establishing that she enjoys family life with them within the meaning of Article 8. No doubt these relationships form part of her private life, but as noted, the FTT would have been required to give little weight to it given her immigration status. On the other side of the scales, significant weight would have been required to be given to the public interest in immigration control and to the fact that the Appellant does not meet the requirements of the Immigration Rules. In those circumstances, it is in my judgment inconceivable that the Judge would have, on the basis of this supplemental statement taken with the rest of the Appellant's evidence, allowed her Article 8 appeal.

17. In light of the above, the appeal is dismissed.

Notice of Decision

The decision of First-tier Tribunal Judge Howorth dated 21 September 2023 does not involve the making of a material error of law and shall stand.

Paul Skinner

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 March 2024