



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2023-005157**  
**First-Tier Tribunal Nos:**  
**PA/52215/2022**  
**IA/05831/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 19 March 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**HAP**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Ms C Robinson (Counsel)

For the Respondent: Mr T Melvin (Senior Home Office Presenting Officer)

**Heard at Field House on 18 January 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.**

## **DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Rothwell, promulgated in July 2023, following a hearing at Hatton Cross on 18<sup>th</sup> July 2023. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matters comes before me.

### **The Appellant**

2. The Appellant is a male, a citizen of Vietnam, and was born on 12<sup>th</sup> July 2003. He appealed against the decision of the Respondent dated 31<sup>st</sup> May 2022 refusing his application for asylum and humanitarian protection.

### **The Appellant's Claim**

3. The essence of the Appellant's claim is that he practises Pure Hòa Hảo Buddhism ("PHHB") which is forbidden in Vietnam. He is an only child. Both his father and mother are dead. He arrived in the United Kingdom as an unaccompanied minor on 25<sup>th</sup> January 2020 and claimed asylum on 28<sup>th</sup> January 2020. This was refused on 31<sup>st</sup> May 2022. He claims to have been detained on three occasions by the Vietnamese authorities. In Vietnam he had attended demonstrations in 2017 and 2018 organised by the PHHB followers. He had distributed invitation cards to a religious ceremony. He came to the attention of the authorities and was imprisoned for five months. He was told that if caught again, he would face ten years' imprisonment.

### **The Judge's Findings**

4. The judge began by treating the Appellant as a vulnerable witness in accordance with the Joint Presidential Guidance Note No. 2 of 2010 (see paragraph 15). The judge had regard to the extra report of Dr Johnson, who had assessed the scarring on the Appellant by reference to the Istanbul Protocol, and Dr Johnson had found that the Appellant had three scars, and that "He finds that these scars are consistent with the appellant's account" (paragraph 20).
5. Consideration was given by the judge also to the report by Dr Galappathie, who had accepted that the Appellant was a vulnerable witness and suffered from PTSD, depression, and general anxiety disorder (at paragraph 23). The background evidence in relation to the Hòa Hảo groups had been brought to the attention of the judge by the Respondent in the CPIN reports and it was accepted that some of the "PHHB had been arrested and detained and harassed by the Vietnamese authorities", although it is a case that "The background information states that this not just because of their faith but because they are perceived as a threat to the government due to political activities, such as land/environmental issues or advocating democracy in Vietnam" (paragraph 28).
6. The judge first considered whether the Appellant had been arrested and detained (see paragraphs 29 to 32) before concluding that when in the CPIN Report, the fact-finder spoke to leaders of the PHHB "they had no information that children were detained" (paragraph 33). Moreover, the Appellant's account that he had attended two demonstrations in 2017 and 2018 organised by the

PHHB, where people were holding banners declaring their desire for freedom of religion in front of the police station, was an account that did not fit in with the objective material (paragraphs 35 to 36). In particular, the judge found that she could:

“not accept that the police would allow the appellant and other others to stand outside the People’s Committee’s Office and then the police station with banners for a number of hours and then on two separate occasions, just ask them to move or they would be arrested” (paragraph 37).

In coming to these findings, the judge had regard to the reports of Dr Johnson and Dr Galappathie, but found there to be “an alternative cause for the scarring as the appellant was beaten and worked digging potatoes for a week” (paragraph 38). Ultimately, the Appellant was not someone who had “told the truth about his situation”, and it was not accepted that his parents had passed away (paragraph 39). Finally, with regard to Article 3 of the Human Rights Convention, it was not accepted that this would be breached by the Respondent’s decision. Nor was it the case that on the basis of the Appellant’s mental health the risk of such a breach arose given the decision in **AM (Article 3 health cases) Zimbabwe [2022] UKUT 131** (see paragraphs 44 to 45). The Appellant’s Article 8 rights were equally rejected because there would be no very significant obstacles to his returning to Vietnam (at paragraphs 49 to 50).

### **Grounds of Application**

7. Permission to appeal was given by the First-tier Tribunal on 30<sup>th</sup> November 2023 on the basis that, although the judge had stated that there had been “no information that children were detained” (at paragraph 33) when referring to the CPIN Report, that overlooked the fact that the Appellant’s claim also was that he had been arrested, and in this respect this was contrary to what the fact-finding mission report had found (at page 78) that children were arrested and detained. Permission was not granted on the ground that sufficient account had not been taken of the Appellant’s vulnerability as contended.

### **Submissions**

8. At the hearing before me on 18<sup>th</sup> January 2024, Ms Robinson submitted that what appeared in the Country Expert Opinion Report on the Socialist Republic of Vietnam, which had been compiled on 9<sup>th</sup> January 2023, by the country expert by the name of Dr Tran Thi Lan Anh, had been misunderstood by the judge. The expert points out how the Home Office’s own account of the background information confirms that when the Hòa Hảo Buddhist managers of the pure sect were questioned. They had not confirmed that children were not subject to detention. This is because “asked to confirm whether there had been any children (under the age of 18) charged with offences the Hòa Hảo Buddhist managers stated they did not have any information on this” (at page 110 of the bundle). For the judge to have said (at paragraph 33) that she preferred other evidence given such a misunderstanding of the objective evidence was a material error of law. In fact, if one looks further in the report of the expert, it is made clear that:

“According to the Article 12 (Vietnam criminal code 2015) above, the young person who was from 14 years of age to 16 years of age still shall bear

criminal responsibility in some listed crimes. They also can be detained for investigation according to Article 419 ..." (At paragraph 1.4).

9. There is further reference to the fact (at page 114) that on 28<sup>th</sup> May 2019, a local policeman "handcuffed a girl 12 years old and beat her terribly due to suspecting her to have stolen money from her neighbour" resulting in the girl being admitted at hospital for intensive care. Indeed, although the expert (at paragraph 1.7) observes that "it is not a common practice in Vietnam for a young person who is under 16 years old" to have been detained for five months as the Appellant contended, "However, it might be a genuine claim as [the Appellant] has been arrested twice before due to similar religious disputes" (at paragraph 1.7).
10. Read as a whole, Ms Robinson submitted, it was clear that the expert was broadly supportive of the Appellant's claim. He had explained why this longer period of detention was entirely plausible, as contended for by the Appellant, even though it was not a common practice, because the country expert had taken the context here into account. It is a misunderstanding of the country expert's report to construe it in any other way. Second, submitted Ms Robinson, the Appellant is a vulnerable witness and the judge had not applied the guidance for vulnerable witnesses, although the reference is made in the body of the decision to her having done so, because due account has not been taken of the Appellant's mental health in his ability to answer the questions put to him. Third, the judge had transgressed into the territory of the medical practitioner, whose conclusion had been that the Appellant's PTSD stems from his experiences in Vietnam, but the judge rejected those experiences whilst accepting the condition of the PTSD, on the grounds (at paragraph 38) that it was the Appellant's journey from Vietnam that had led to his condition. Yet, the medical doctor had said the opposite.
11. For his part, Mr Melvin relied upon the Respondent's skeleton argument and the Rule 24 response. He pointed out that the grant of permission was limited to the judge having taken the wrong approach on the country guidance information. The managers of Hòa Hảo Buddhist sect were clear that even if young children were arrested, they were not detained unless they were political, and the Appellant in this case had never been political. Therefore, even the grant of permission in this case proceeds on a misguided premise. The Appellant has never had an anti-government stance. There are only some 400 Hòa Hảo Buddhist members of the pure sect in Vietnam. At best, all the country expert has been able to say is that the Appellant may have been detained for a longer period of five months on the basis that this was his third detention. However, the judge has disbelieved this. An error of law cannot be deduced from that. As for the other grounds, these are not strong at all. The Appellant alleged vulnerability but the judge rejected this. The Appellant had not gone to his GP and there is well-established case law that the lack of GP records can be decisive.
12. In her reply, Ms Robinson submitted that given that the Respondent had accepted that the Appellant was a genuine adherent of his specific faith (see also page 65 of the doctor's report) the misunderstanding of the evidence in the way explained by her, could not simply be treated as immaterial.

## **Error of Law**

13. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law. My reasons are as follows. First, the Appellant has been accepted as being a genuine adherent of his faith. The Country Expert Report by Dr Tran Thi Lan Anh is broadly supportive of his claim. It is clear from this that the managers of the Hòa Hảo sect did not have any evidence of the detention of young persons, and yet it remains highly significant that in the same report he is able to point to the fact that there have been young children who have been subjected to considerable mistreatment. It is not appropriate to conflate the data on arrest with the data on detention, particularly when the latter is not shown in evidence. Second, the judge gave due consideration to the reports of Dr Johnson and Dr Galappathie, but concluded that “there is an alternative cause for the scarring as the appellant was beaten and worked digging potatoes for a week”.
14. go into sufficient depth of such evidence to enable her to have concluded in the way The judge goes on to say that the Appellant, during his journey to the UK “was ill-treated and was often not given food”, and that whilst it is accepted that he suffers from PTSD, depression and anxiety, this was “not because he was detained and ill treated by the Vietnamese authorities”. However, Dr Galappathie’s report (at paragraph 73) refers to the Appellant “experiencing a number of highly traumatic events”, with a reference to his being detained and tortured by the Vietnamese authorities. It explains why it is that the Appellant “has been avoidant to inform his GP or his lawyers about his poor mental health” (paragraph 74) and attributes his “severe PTSD” to fears of being returned to Vietnam. It points out how the PTSD “is likely to have significantly affected his memory” (at paragraph 87). Dr Tran Thi Lan Anh also points out that “It is notable that victims of abuse and trauma are often unable to place their experiences within chronological order” (paragraph 87). The decision by the judge, whilst otherwise clear and comprehensive, does not go into sufficient depth of such evidence to enable her to have concluded in the way that she has. The rejection that the Appellant’s PTSD (at paragraph 38) was not on account of these experiences does not comport with the analysis of the medical evidence.

### **Notice of Decision**

15. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal to be heard by a judge other than Judge Rothwell, pursuant to Practice Statement 7.2.(b) because the nature or extent of any judicial fact-finding, which is necessary in order for the decision in the appeal to be remade is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal.

**Satvinder S. Juss**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

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**18<sup>th</sup> March 2024**