



IAC-FH-CK-V1

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

Appeal Number: AA/00426/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 23 December 2015**

**Decision & Reasons Promulgated
On 15 January 2016**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR CVD
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Ms A Brocklesby-Weller, Home Office Presenting Officer

For the Respondent: Miss C Record, Counsel instructed by David A Grand

DECISION AND REASONS

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.

1. I shall refer to the respondent as the appellant as he was before the First-tier Tribunal. The appellant is a citizen of Vietnam and his date of birth is 3 September 1974.

2. The appellant committed a number of criminal offences between 1993 and 1995. Following his conviction at Aylesbury Crown Court on 24 July 2009 on two counts of production of a class C drug (the trigger offence) the appellant was sentenced to 30 months and 23 months to run concurrently. The offences were committed in 2006. The Secretary of State made a decision on 18 December 2014 to deport the appellant pursuant to paragraph 32(5) of the UK Borders Act 2007 having decided that he was excluded from protection of the Refugee Convention pursuant to section 72 of the 2002 Act (section 33 (2) of the Refugee Convention). In a decision of 19 December 2014 the Secretary of State ceased the appellant's refugee status pursuant to paragraph 339 A (v) of the Immigration Rules (Article 1 C (5) of the 1951 Refugee Convention).
3. It is a fact that the appellant came to the UK on 1 July 1989 with his siblings as a dependant of his father, who had been granted refugee status in Hong Kong. The appellant was granted refugee status on arrival here.
4. The appellant appealed against the decisions of the Secretary of State and his appeal was allowed by Judge of the First-tier Tribunal C A Parker in a decision that was promulgated on 23 July 2015 following a hearing at Taylor House on 7 July 2015. Permission was granted to the Secretary of State by Deputy Upper Tribunal Judge Archer on 21 September 2015. Thus the matter came before me.

The Decision of the First-tier Tribunal

5. Judge Parker made extensive findings. In relation to Section 72(2) of the 2002 Act the judge made the following findings:
 - "53. Whilst these are all matters to which I must have regard, and upon which the respondent places weight, I must also take into account that the most serious offence of which the appellant was convicted, and in respect of which he received a sentence of 30 months, was committed in October 2006. Generally, in deportation appeals, the assessment of whether an offender represents a danger to society, is a matter of speculation on the basis of available evidence. That evidence may include the offender's attitude to their offending; evidence of steps taken towards rehabilitation; continuing presence of events or circumstances which gave rise to the offending; views and/or reports prepared by an offender manager. In this case, however, rather than making an assessment of whether the appellant may reoffend, and thus represent a danger to the community, I can make conclusions based upon the appellant's actual behaviour since his last offence was committed in October 2006. He was released from custody in April 2010 and there is no evidence that he reoffended, before or after deportation proceedings were belatedly commenced in mid 2014. Nor is there evidence that he reoffended between October 2006 and his arrest in 2009. In short, there is no evidence that the appellant has reoffended since October 2006. He was in custody for approximately 18 months but was otherwise at liberty. Whilst the appellant may still present some risk to the public, I am not satisfied that he could now be

described as a 'danger to the community'. Having considered all the evidence in the round, including the offence for which he received a sentence of 30 months (in excess of two years) and the absence of evidence of further offending since October 2006, I find that the presumption in s72 of the NIAA is rebutted. I do not uphold the certificate."

6. In relation to the cessation of refugee status the judge made extensive findings and for the purposes of this decision it is necessary to quote the following:

- "67. I have had particular regard to the absence of evidence concerning the reason for the grant of refugee status to the appellant's father, to which reference was made by UNHCR in their letter of 26 September 2014. The respondent stated, in her letter of 19 December 2014: 'the specific reason for the grant of refugee status to you is not recorded on your Home Office files, however it assumed to be the prevailing country situation in Vietnam at the time your family left'. The respondent cites no evidential basis for this assumption. Refugees are generally recognised on a case by case basis. In the absence of any evidence of a policy being in place at the time of the appellant's admission under which certain categories or groups of Vietnamese nationals were being admitted as refugees there was no evidence to support the claim that the appellant and his family was admitted on the basis of the 'prevailing country situation in Vietnam at the time his family left'. Miss Barrow confirmed at the hearing that the respondent had no record of the basis upon which the appellant and his family was granted refugee status.
68. In its background paper UNHCR states that even if there were fundamental and durable changes in the country of nationality, those changes may not have removed the basis of the refugee's fear of persecution and such fear would continue to exist. UNHCR points out that even regime change may not always produce a complete change in the attitude of the population. In other words, a refugee's circumstances may be such that, even if there were significant and permanent changes in the conditions in the country of nationality, it may still not be safe for the particular person to return.
69. The appellant was too young to have known about the family's circumstances when he left Vietnam in 1981, at the age of 7. He has not returned to Vietnam since he arrived here. I remind myself that the respondent bears the evidential burden for establishing that circumstances are such that refugee status should be ceased. The appellant's father passed away in 2009, but the respondent has not requested information from the appellant's older siblings about the family's circumstances in Vietnam nor established whether the appellant's siblings have returned to Vietnam. Such evidence may have shed light upon whether it would safe for this appellant to return. However, there is no evidence as to the basis upon which the appellant's father and the family was granted refugee status or whether their circumstances are such that they could safely return.
70. Changes in country conditions in Vietnam since the appellant left may well be such that it would now be safe for many to return. However, this must depend upon the circumstances of the individual and the

reason that s/he fled Vietnam in the first place. In the absence of any evidence of why the appellant and his family left, the respondent has not established that it would be safe for him to return, even if a significant and permanent change in the conditions in the country of nationality had been established. The burden is on the respondent to establish that there are grounds for cessation and I am not satisfied that this has been established in this case.”

The Grounds of Appeal

7. I heard oral submissions from the parties. The first ground asserts that the judge erred because her findings were contradictory and reference is made to paragraph 53. The judge found that the appellant “may still represent some risk to the public” which contradicts the finding that he had rebutted the presumption that he constituted a danger to the community of the United Kingdom.
8. The second ground asserts that the judge erred in relation to cessation of the appellant’s refugee status because the appellant was aged 7 when he left Vietnam and he did not have a subsequent political profile. It is asserted in the grounds that the evidence pointed to his being one of the many ‘boat people’ who left Vietnam at that time and there was no evidence that supported the proposition that boat people would be at risk on return to Vietnam.

Conclusions

9. There is no merit in the first ground. The judge made clear and unambiguous findings and properly took into account that the trigger offence was committed in 2006 and that since the appellant’s release from prison (in 2010) he had not committed any further offences. Some risk to the public is not, by any account, the same as constituting a danger to the community. The findings were grounded in the evidence and adequately reasoned.
10. For the purposes of second ground, it is necessary to set out paragraph 339A (v), which is relied upon by the respondent (which faithfully transposes Article 1C(5) of the Refugee Convention):

“He can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of nationality.”
11. Whilst the grounds assert that the appellant was one of the many ‘boat people’ who left Vietnam at that time there was no persuasive evidence before the Tribunal that this was indeed the case and the judge was entitled to conclude, in the absence of such evidence, that the respondent had not established the circumstances under which the appellant had initially been granted refugee status. The appellant’s father died in 2009 and his mother died in 1981 and there was no evidence therefore from them in relation to the circumstances surrounding the grant of refugee

status to the family, and there was no evidence from the respondent on this issue. It was the appellant's evidence that his father had sided with the Americans during the war and the appellant believed that if he returned neighbours and friends in the local community would be against him as a result of his father's activities and a report would be made against him at any time (see paragraphs 29 and 35 of the decision).

12. The judge was entitled to attach weight to the UNHCR letter of 26 September 2014 in which it is concluded by UNHCR that although there had been some improvement regarding the situation in Vietnam the changes had not been fundamental or durable and that it should not be taken as conclusive that the appellant, whose case should be considered on an individualised set of facts, would not be at risk on return. It is also concluded that the human rights situation in Vietnam deteriorated significantly in 2013. The judge was entitled to conclude that there was uncertainty surrounding the circumstances of the grant of refugee status and in the absence of evidence why the appellant and his family had been granted refugee status it is difficult to see how the respondent could discharge the burden of proof.
13. It was not a matter for the judge to consider risk on return as though this were an asylum appeal and it was not incumbent on the appellant to establish that he would be at risk on return. The decision was one that was open to the judge and the findings were grounded in the evidence and adequately reasoned. The grounds amount to a disagreement with those findings but do not disclose an error of law. In the absence of error, the decision of the First-tier Tribunal is maintained. My decision was communicated orally to the parties at the hearing.

Notice of Decision

The decision of the judge is maintained. The Secretary of State's appeal is dismissed.

~~No anonymity direction is made.~~

Signed Joanna McWilliam

Date 14 January 2016

Upper Tribunal Judge McWilliam