



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

Appeal Number: PA/00614/2017

THE IMMIGRATION ACTS

**Heard at Glasgow
on 6 July 2017**

**Decision & Reasons Promulgated
on 11 July 2017**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

B

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss A Darvishzadeh, of Ethnic Minorities Law Centre,
Edinburgh

For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS


1. The appellant appeals against a decision by First-tier Tribunal Judge Bradshaw, promulgated on 19 April 2017, dismissing her appeal against refusal of asylum.
2. The case was based on risk arising from insult to the royal family, a matter taken very seriously by the authorities and by many members of the public in Thailand. The judge accepted the appellant's account, but did not find her experiences to amount to persecution. He held that the

authorities had not gone beyond, and were not likely to go beyond, intimidation tactics.

3. The appellant sought permission to appeal to the UT on extensive grounds, but on the bulk of them permission was not granted; unsurprisingly, as the decision is plainly fair, thorough, and well considered.
4. Permission was granted due to one omission. The judge noted and accepted evidence of threats from non-state actors, but made no finding about risk from such actors.
5. Mr Matthews correctly accepted that there was an omission. He argued that it was immaterial, because the evidence did not support such a risk, so that the decision should not be set aside; alternatively, for the same reasons, remaking should have the same outcome.
6. Miss Darvishzadeh founded on two points in the summary of conclusions in *Bagdanavicius v SSHD* [2003] EWCA Civ 1605:
 - “(5) The effectiveness of the system provided is to be judged normally by its systemic ability to deter and / or to prevent the form of persecution of which there is a risk, not just punishment of it after the event ...
 - (6) Notwithstanding systemic sufficiency of state protection in the receiving state, a claimant may still have a well-founded fear of persecution if he can show that its authorities know or ought to know of circumstances particular to his case giving rise to his fear, but are unlikely to provide the additional protection his particular circumstances reasonably require ...”
7. Miss Darvishzadeh referred to online threats, to reports of popular vigilantism against anti-monarchists, and to a news report that the justice minister said that those insulting the monarchy should best be punished by being “socially sanctioned”, but vowed to pursue people who violate the law (p. 227, appellant’s FtT bundle). She said that the reports showed that such vigilantism was against the law, but encouraged rather than discouraged by the authorities, and that they would not enforce the law, particularly to protect a person of high profile whom they had already targeted in this context, even if not to the extent of past persecution.
8. Mr Matthews submitted that online threats were only empty bombast; there was nothing to show that perpetrators might act against the appellant; such threats did not materialise during the time she spent in Thailand; reports of vigilantism were from the time when feelings were high soon after the death of the king; reports from official sources were to the effect that they would act against vigilantism, not to the contrary; and the evidence did not reach the level of a real risk, or show lack of legal protection.
9. I reserved my decision.
10. I find that the error by way of omission does require the decision to be set aside. A significant part of the appellant’s case was left unresolved, when there was material on which it might have been resolved either way.
11. It is not an issue to be decided, but is relevant, that the appellants’ husband would clearly be at risk of he were to re-enter Thailand, based on

risk arising from insult to the royal family, from the authorities and from non-state actors.

12. The appellant does not have nearly as high a profile as her husband, but she does have a quite significant profile by association, which was well publicised during the difficulties she encountered. Although reports also show that her husband disassociated her from his publications, that does not clear away all risk of prejudice against her.
13. The appellant apprehends the consequences of returning to Thailand, to the extent of a genuine subjective fear (as Mr Matthews was prepared to accept). I note that she has leave to remain and a clear likely path to maintaining such leave, based on her relationship with her UK citizen husband and child (although that is not a factor which helps to prove objective risk).
14. There was some force in the arguments for the respondent. Although the official attitude is very pro-monarchy, and against any expression of criticism, I do not read the minister's pronouncements as encouraging vigilantism, but rather to the contrary.
15. If the appellant were to re-enter Thailand, the evidence supports the proposition of a risk from vigilantes. The appellant's fear is objectively more than fanciful; she has sensible reasons to be afraid. Given her relatively high profile, I find that the possibility that some fanatic might identify and target her is not remote, but real.
16. I think that the government of Thailand, despite its entrenched attitudes towards criticism of the monarchy, would not be likely to condone such behaviour, and would be likely to take action, including prosecution, if it occurred.
17. Applying *Bagdanavicius* to the evidence: The evidence shows that punishment might follow after the event. It falls short of systemic ability to deter or prevent the form of persecution of which there is a risk. The authorities know the circumstances particular to the appellant's case giving rise to her fear. Those circumstances would reasonably call for additional protection. Although their past behaviour amounted to intimidation but not to persecution, it is less than likely, against that background, that they would provide the additional protection which her particular circumstances would reasonably require, were she to re-enter Thailand.
18. The decision of the First-tier Tribunal is **set aside**. The following decision is substituted: the appeal on asylum grounds, as originally brought to the FtT, is **allowed**.
19. An anonymity direction was made in the FtT. The matter was not addressed in the UT, so anonymity is preserved herein.



Upper Tribunal Judge Macleman

7 July 2017