



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

Appeal Number: PA/02600/2017

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 27 November 2017

On 13 December 2017

Prepared 27 November 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

**TMN
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Warren, Counsel instructed by Messrs Duncan Lewis & Co Solicitors

For the Respondent: Mr N Bramble, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Vietnam, born on [] 1999 appeals with permission against a decision of Judge of the First-tier Tribunal Asjad who in a determination promulgated on 24 May 2017 dismissed her appeal

against a decision of the Secretary of State to refuse her claim for asylum made on 20 February 2017.

2. The appellant asserted that she was a Catholic and had attended the “Van Phan” Church joining the Youth Catholic Church Group in 2014. She asserted, moreover, that because of her fundraising activities for the Youth Catholic Group she had been placed under surveillance and that she, some of her friends and her boyfriend were part of the “Viet Tan” party which criticised the government and advocated human rights.
3. She further asserted that in March 2015 a Taiwanese company called “Formosa” was given a lease of 70 years to build a factory on the land on which her church stood which was an area which relied on the fishing industry. It was ordered that the church relocate to another area. The local population could not relocate and therefore there had been a demonstration in which she had taken part on behalf of the Youth Catholic Group. As a result her church was demolished without notice and the congregation had to rebuild a “church” to continue their worship.
4. She stated that in April 2016 the Taiwanese company, Formosa, had dumped toxic waste in local water which killed a lot of fish, therefore further damaging the livelihoods of local people. She and three other members of the church had taken photographs of the dead fish and samples of water to check if it was safe. When they were returning home they were attacked by six or seven men who destroyed their camera and other evidence.
5. The appellant was told not to return to the area. She reported the issue to the local police who recorded it but took no action. She stated that she then felt unsafe because she believed she was being monitored by the government. She was placed under house arrest but managed to leave her home to go to a friend’s house and then leave the country with the benefit of money raised by her adoptive parents.
6. She asserted that she would face persecution if returned to Vietnam because she would be monitored by the government and would be captured and tortured as other members of the Youth Catholic Group had been.
7. The Secretary of State accepted the appellant was Catholic but stated that the existence of the Van Phan Church could not be externally verified. It was not accepted that she would have come to the adverse attention of the authorities or had a high profile because of her religious activities. It was stated there were a number of inconsistencies in the core of her claim. Her claim was refused and she appealed.
8. In paragraphs 12 onwards of the determination the judge set out her findings of fact and her decision. She stated that much of the appellant’s evidence was conflicting, particularly with regard to whether or not she

had friends who are part of the Viet Tan party, and that she had little evidence of what had happened to other members of the church.

9. The judge pointed to the fact the appellant said that she had attended a YCCG (Youth Catholic Group) conference when she had said that the government prevented the group from attending meetings but said that she had organised a demonstration. The judge did not accept that that could have been the case pointing to the appellant's young age. She did not accept the appellant's story of how she had been able to escape from house arrest at her home and pointed to other ways in which the appellant's evidence was inconsistent. She therefore found the appellant's claim was incredible and dismissed the claim.
10. The grounds of appeal asserted that the judge had erred in making no findings regarding the "Formosa incident" - the incident when she said, that having taken samples and photographs, she and others had been attacked by six or seven men and beaten up. It was submitted that this was a primary plank of the appellant's claim and the judge should have made findings on whether or not the appellant had been involved in the collection of data and photographs, whether or not she had been attacked upon her return and whether or not she had been deprived of attention.
11. It was also asserted that the appellant had referred to the demonstration and to the "Formosa incident" and the evidence of pollution by that company and that she had given that evidence before evidence regarding the pollution by Formosa was in the public domain.
12. Ms Warren relied on the grounds of appeal amplifying them somewhat. In reply Mr Bramble pointed out that the "Formosa incident" had not been emphasised by the appellant's representative at the appeal and there was no evidence that the appellant would be in any difficulty on return to Vietnam now.

Discussion

13. The reality is that the "Formosa incident" is the central plank of the appellant's claim and it was incumbent on the judge to make a finding thereon. It may well have been open to the judge to find, taking into account the appellant's age and the lack of evidence as to what had happened to demonstrators - there is evidence in the bundle that demonstrators may have been beaten up or detained briefly - but there is no evidence of any further ill-treatment of demonstrators or any indication that they are detained - that the appellant would not be at risk on return. It may, indeed, be that the judge was correct to be sceptical about the appellant's claim to have been under house arrest and somehow to have escaped. Indeed, it may well be that internal relocation would be open to the appellant even if her claim was accepted at its highest. Be that as it may, however, the judge has not made a finding on the material parts of the evidence and that is an error of law. Having found that error of law it

is appropriate for me to set aside the determination. I therefore set aside the determination and, taking into account the provisions of the Senior President of Tribunals' directions I consider that it is appropriate that this appeal should be remitted to the First-tier Tribunal for a hearing afresh.

Notice of Decision

The judgment of the First-tier Tribunal is set aside.

This appeal is remitted to the First-tier Tribunal for hearing afresh.

Signed 

Date 11 December 2017

Deputy Upper Tribunal Judge McGeachy