



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/13601/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 8 June 2017

Decision &

Promulgated

On 19 June 2017

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

BVL

(ANONYMITY DIRECTION MADE)

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr R. Singer, Counsel instructed by Arona St James Solicitors

For the Respondent: Ms K. Pal, Home Office Presenting Officer

Anonymity

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

DECISION AND REASONS

1. The appellant is a citizen of Vietnam born on 8 December 1995 who came to the UK as a student in September 2013 with a visa valid until January 2014. After his visa expired he remained in the UK without leave to remain.
2. In May 2016 he was arrested as an overstayer. He then claimed asylum on the basis that he would be at risk on return to Vietnam of being taken hostage or otherwise harmed at the hands of both the authorities and non state actors because his parents owe a significant debt and have been threatened, with the threats extending to him.
3. The respondent rejected the appellant's application. His account was not considered to be truthful.
4. The appellant appealed to the First-tier Tribunal where his appeal was heard by Judge Callender Smith. In a decision promulgated on 16 January 2017, the judge dismissed the appeal on the basis that he did not find the appellant credible. At paragraphs [30] - [32] the judge stated:

30. Looked at with the most generous eye, in the round, I still cannot find [the appellant's] account in any way credible. It is very vague and unsupported by any kind of objective evidence.

31. For all these reasons, his claims must be dismissed.

32. He has not given a credible or substantial account and I do not believe that he is at any risk on return

5. The appellant is now appealing, with permission, against the decision of the First-tier Tribunal.
6. Three arguments are advanced in the Grounds of Appeal.
 - a) Firstly, it is argued that the judge applied the wrong standard of proof as the judge referred to "substantial grounds" rather than "reasonable degree of likelihood".
 - b) Secondly, it is submitted that the judge failed to give reasons for rejecting the claims made by the appellant.
 - c) Thirdly, it is argued that the judge failed to adequately consider objective evidence relating to debt bondage in Vietnam which was pertinent to the plausibility of the appellant's account.
7. Before me, Mr Singer advised that he would not be pursuing the standard of proof point as articulated in the grounds of appeal. However, he made an alternative argument. At paragraphs [24] and [25] of the decision the judge stated:

"24. He was asked the key question in cross examination and it was asked in an inquisitive rather an interrogative fashion: "is it correct that you chose not to claim asylum because you realise that your claim was not strong". The answer to that was a simple "yes".

25. *This is the problem with his asylum claim.*

8. Mr Singer argued that the reference to “strong” indicates that the judge placed too a high a standard of proof on the appellant.
9. The focus of Mr Singer’s submissions was the adequacy of reasoning in the decision. He maintained that the decision is lacking in reasoning and although the judge has correctly stated that Section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 is only a factor taken into account it is in fact the main reason the judge gives for finding against the appellant.
10. Mr Singer also argued that although the judge stated at paragraph [17] that he had read the objective material, there is no consideration of it in the decision.
11. He also argued that the judge has in effect demanded corroboration, without explaining why this is a case where lack of corroboration is unacceptable. Mr Singer also argued that the judge failed to recognise that there was corroboration in the form of the objective evidence, which demonstrates that the appellant’s account is consistent with what is known to occur in Vietnam.
12. Ms Pal argued that the findings were sufficient and that the judge had done “just enough”. She observed that the judge had referred to the objective material and therefore was clearly aware of it. She argued that the judge was entitled to make findings on credibility.

Consideration

13. The approach to the standard of proof taken by the judge is set out at paragraph [26], where he states that “*even to the **lowest possible standard** that is appropriate in asylum claims [the claim] is not credible*” (emphasis added). That is the correct standard, and reading the decision as a whole it is clear that the judge has not only correctly stated the standard of proof (at paragraph [26]), but also applied it, rather than a more stringent standard. When summarising his conclusions at paragraph [30] the judge stated that he did not accept the appellant’s account when looking at it “*with the most generous eye*”.
14. The judge did not, as suggested by Mr Singer, expect the appellant to show he had a “strong” case. The reference to the claim not being strong at paragraph [24] is a recounting of a question posed to the appellant in cross examination and the appellant’s response to that question.
15. Having regard to how the judge has described his approach to the standard of proof in paragraphs [26] and [30], as well as the judge’s overall approach, I am satisfied that the correct standard of proof has been applied.
16. I am also satisfied that the judge’s reasoning is adequate. The judge did not find the appellant lacked credibility solely because of the delay in

making the asylum application. Other reasons given by the judge were that:

- a) the appellant's sister in Vietnam appeared to not be at risk;
- b) the appellant acknowledged his case was not strong; and
- c) there is a discrepancy between the appellant's claim that he did not apply for asylum until he was arrested because he was not aware until then that he could and his response to a question in oral evidence which indicated that the real reason he did not apply for asylum before he was arrested was that he believed he did not have a strong case.

17. The judge has given reasons to explain why he found the appellant to not be credible. These reasons, although brief, are sufficient – and sufficiently clear – to understand why the judge reached the decision he did. This is not a case where a judge has made a bare assertion that an appellant is not believed such as in MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC) and I am satisfied that the judge has reached a decision about the appellant's credibility – and therefore the merits of his asylum claim – that was open to him based on the evidence and which is adequately reasoned.

18. The third ground of appeal maintains that the judge failed to consider the objective material about debt bondage. Although the evidence was not discussed in detail, the judge made clear, at paragraph [17], that he had considered the evidence. And although not stated explicitly, it is apparent from the decision, when read as a whole, that the judge has reached the conclusion that the appellant is not credible even though it is objectively the case that debt bondage and corruption exists in Vietnam such that the appellant's account is not inherently implausible. The fact that objective material shows that the appellant's account is plausible does not mean the judge was not entitled to reject the appellant's account for the reasons he gave, as summarised above at paragraph [16].

Decision

The appeal is dismissed. The judge has not made a material error of law and the decision of the First-tier Tribunal stands.

Signed



Deputy Upper Tribunal Judge Sheridan

2017

Dated: 16 June