



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

Appeal Number: PA/08471/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 7 February 2018**

**Decision & Reasons Promulgated
On 1 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

**[H D]
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Khan, Counsel, Thompson & Co Solicitors

For the Respondent: Mr T Wilding, HOPO

DECISION AND REASONS

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge McLaren dismissing his appeal against the decision of the respondent refusing to grant him asylum in the United Kingdom and leave to remain under the humanitarian protection provisions.
2. The appellant is a citizen of Vietnam born on [] 1998. He entered the United Kingdom on 26 October 2016 under a Tier 4 Student visa. On 30 September 2016, he was granted further leave to remain under the same

capacity until 30 August 2017. Prior to its expiry, he claimed asylum on 20 February 2017.

3. The appellant's evidence is that he is currently a political activist. This is due to the physical abuse received by his grandfather at a protest that his grandfather and the rest of the family attended in order to protest against family land being confiscated by the authorities. The family believed that the injuries his grandfather suffered from the police on that day in 2012 caused his grandfather's death. This early experience gave him a desire to seek justice for his family.
4. He confirmed to the judge that in February 2015 he was introduced to a party called the Assembly of Vietnamese Youth Democracy (AVYD). The party's aim is to promote democratic principles in Vietnam and promote human rights by organising demonstrations, creating and distributing leaflets and spreading the word about the party.
5. He became a supporter in April 2015. He distributed leaflets four to five times a month at various places. In his witness statement he explained that on 2 October 2015 the friend who first told him about the organisation took him to meet a group of people from the AVYD. He took an oath in front of the group and on that day became an official member.
6. The appellant explained that he attended three demonstrations in 2015 on 8 November, 15 November and 10 December. He produced photographs showing him with various individuals holding what were stated to be slogans protesting variously about state acquisition of individual's land and protests against the death penalty for one individual.
7. The appellant said on 20 March 2016 an event took place in the Mai Xuan Thuong flower garden in Ha Noi. On that occasion, he was not involved with any demonstration, which was again by those who had lost their land, but he brought food and water to these people. He was seen talking to people in the garden and two non-uniformed police officers saw him and arrested him. He was taken to the police station and detained for a week during which he was interrogated two to three times. He was threatened and hit when he did not cooperate. He was not charged with any offence but he was accused of being a member of the AVYD. Upon his release, he was told not to attend any more demonstrations and he was banned from the flower garden.
8. Despite this warning on 15 May 2016 the appellant and his group attended another demonstration against the Chinese taking Vietnamese islands. They went on from this to a second demonstration held to demand the release of political prisoners. He produced photographs of this event.
9. On 20 June 2016, the appellant obtained a student visa and travelled to the United Kingdom. He had no difficulties in leaving Vietnam or obtaining the visa.

10. While at university in the UK the appellant joined demonstrations in front of the Vietnamese Embassy. He was asked at his asylum interview whether he had continued working for the AVYD since coming to the UK. He said he had tried to find other members of this group but could not find any in the UK and had therefore joined demonstrations organised by other groups or parties in the UK, in particular Viet Tan and Con Duong Viet Nam. He explained in his witness statement that he met with members and supporters of AVYD at these demonstrations, that they had joined other groups and participated in other group's activities. It was later submitted by the appellant's Counsel that the group no longer existed.
11. The appellant said in evidence that no issues had arisen after March 2016 while he remained in Vietnam. He was contacted by his parents in February 2017. His parents told him that on 1 February 2017 police went to their house and searched it because one of the members of the AVYD had been arrested and had disclosed that the appellant was a member of that group. The police search uncovered what the appellant described in answer to cross-examination questions was a locked box that he had left on the desk of his bedroom at his parents' home. Once opened it contained material relating to the political organisation and photocopied sections of a book on human rights which was a banned text in Vietnam. The appellant explained that a copy of the book had been sent to the leader of the group and that he had made copies from that person. The judge noted that this detail was not contained in his witness statement.
12. The appellant explained that until this point the police had no evidence to connect him to the AVYD but following a tip off from a member of the group they searched and produced evidence that he was a supporter and this put him at risk on return to Vietnam. It was following this incident that he applied for asylum in the United Kingdom on 20 February.
13. The appellant explained that since this visit his parents had been subject to persecution and harassment. They had been arrested by the police, albeit subsequently released. The appellant confirmed that the copy of the document had been left with his parents but he had not been able to produce a copy of it to the court.
14. The judge noted that the appellant's bundle contained photographs which the appellant said showed him attending demonstrations in the UK on 11 December 2016, 30 April 2017, 21 May and 20 August 2017. The photographs showed the appellant in front of what appeared to be an embassy building with other protestors.
15. In the appellant's bundle the judge noted was an article about the demonstration in London on 30 April and shows that it was reported in a Vietnamese newspaper. It did not name the appellant.

16. The judge found that it was not disputed that the appellant had attended demonstrations while in Vietnam on three occasions in 2015 and on 15 May 2016. It was also not disputed that he attended demonstrations in the UK, one in December 2016 and on four occasions in 2017. He had produced some evidence in the form of photographs to support his position. The dispute was whether he was or was not a member of the ADKY (I believe it to be the AVYD) and whether he had come to the attention of the authorities.
17. The judge noted that the respondent's own policy set out in the country guidance makes it clear that where a person is perceived to have taken part in opposition political parties and has come to the adverse attention of the authorities, they would face a real risk of persecution. It was accepted that such persecution would be on political grounds and carried out by a state actor so that if it were to be established, it was accepted that the issues of country protection and internal relocation would not be relevant.
18. The judge went on to assess the appellant's credibility. She noted that on the appellant's own account his need for asylum did not arise until 1 February 2017 and had made the application for asylum on 20 February 2017. He did so while he had a legitimate immigration status which had not expired. She found that he had in fact made a claim for humanitarian protection at the earliest opportunity.
19. The judge noted what the respondent said were inconsistencies in the appellant's evidence. She found that there was no inconsistency at the date on which the appellant stated he became a member of the political group. She accepted that the appellant gave information about the group's activities and gave some weight to this.
20. The judge did not find the issue raised by the respondent as to the answer at the screening interview at 5.3 and in a more detailed asylum interview as to whether the appellant has ever been accused of an offence to be an inconsistency. The apparent inconsistency as to whether he described the document produced by the police in February as an arrest warrant or invitation letter was, she found, partly caused by the way in which the interview questions were put to the appellant. The discussion of it being an arrest warrant was introduced by the Home Office questioner. The appellant referred to it as a search warrant.
21. The judge said the respondent also questioned the appellant's credibility on the basis that his description of the human rights book that he had apparently read was vague and one would have expected him to have a better knowledge of human rights. The judge found that the appellant had given a reasonable explanation of what was in the book and why he was not able to have a detailed recollection of it.

22. The judge accepted the appellant's evidence that he was detained by the police in March 2016. The description he gave was consistent with the information available. His account of the incident has not varied throughout the asylum process. The judge noted however that on the appellant's own case he could not be in fear of persecution following this detention. He continued his political activity, attending a demonstration on 15 May and even on his own account that did not bring him to the attention of the police. Furthermore, he was able to obtain a proper visa in June without any issues. She found that he was not subject to police scrutiny because of his activities despite the detention in March. The judge found that at the time of his entry to the UK the appellant had every intention of returning to Vietnam.
23. The judge concluded therefore that none of the events that occurred in Vietnam prior to his departure put the appellant at risk of persecution by the state. While there may have been some suspicion of connection with a political movement, on the appellant's own evidence, the police had no proof of his involvement and he clearly was not being monitored by them. His activities had not in reality brought him to the attention of the state such that there was a real risk of persecution.
24. The judge then considered the incident which the appellant said occurred on 1 February which caused him to claim asylum. The judge said the Immigration Rules at 339L provide that the duty of the person to substantiate the asylum claim and that where aspects of a person's statement are not supported by documentary or other evidence, those aspects will need confirmation if all of a number of conditions are met. This includes the condition that all material factors at a person's disposal had been submitted and a satisfactory explanation regarding a lack of material has been given. The judge said it appears from the evidence given by the appellant in cross-examination that a copy of the document left by the police was still held by his parents. He has not provided this and his explanation was that they were not sufficiently technology savvy to be able to send documents to him. The judge did not find it a satisfactory explanation since his parents are able to use FaceTime and he would be well-able to explain how to send him a document. The judge therefore found that he has not provided appropriate corroboration for this incident. Applying the lower standard of proof, the judge did not find that this incident occurred.
25. Turning to the London activity, the judge did not accept the Home Office position that the screenshot of the television appearance was inadequate evidence because no original was provided. The judge said it is difficult to see what original could be provided of this moment. Based on her finding however that the appellant has not come to the notice of the Vietnamese authorities as a member of a political group, the judge did not accept that a brief appearance on a TV screen and a newspaper article were sufficient to bring him to the attention of the authorities. Whilst she accepted that he has taken part in these activities, as he has not come to the attention

of the authorities, she found that there was no risk of persecution at this time.

26. For all these reasons the judge was not satisfied that the appellant has established to the required standard that he has a well-founded fear of persecution. It follows that no claim arises under Article 2 or Article 3.
27. Permission to challenge the judge's decision was given on grounds which argued that having accepted that the appellant was involved in political activities both in Vietnam in the UK, the judge failed to consider the position of the appellant on return to Vietnam pursuant to **RT (Zimbabwe) [2012] UKSC 38**. It was based on the argument in the grounds that a proper assessment of the appellant's case should have included an assessment as to whether the appellant would continue to engage in political activities or human rights advocacy on return to Vietnam and if he did, whether this would draw the adverse attention of the authorities. By failing to make this assessment, the judge arguably erred in law.
28. Mr Khan relied on these grounds. He submitted that the judge made positive findings in the appellant's favour. She rejected his evidence that the police visited his home in Vietnam in 2017.
29. Mr Khan drew attention to the judge's finding at paragraph 58 that while she accepted that the appellant has taken part in activities in London, he has not come to the attention of the authorities and therefore there was no risk of persecution at this time. Mr Khan submitted that given the appellant's past behaviour, it was imperative on the judge to find that the appellant was a political activist who could potentially come to the attention of the authorities were he to return to Vietnam. It was therefore likely that in the light of the respondent's own policy which was noted by the judge at paragraph 50 that the appellant was likely to be at risk of persecution on account of his past activities. Furthermore, the appellant said in evidence that he would engage in political activities on return to Vietnam. Therefore, if in doing so he came to the attention of the authorities, he was likely to be at risk of persecution.
30. Mr Wilding said that the judge noted that the appellant was arrested in March 2016 before he left Vietnam to come to the United Kingdom. There was no indication that the authorities had an interest in him at the time. He said the effect of this finding is that the authorities do not have an ongoing interest in the appellant and that was the finding made by the judge.
31. As to his activities since coming to the UK, these do not appear to be of a particularly high level. There was nothing to indicate that he would be of heightened interest to the authorities in Vietnam as a result of these activities in the UK.

32. Mr Wilding said the appellant left Vietnam two to three months after his arrest. He left the country with no difficulty which means that there was no particular profile on him. There was little to demonstrate that he would be at risk for his limited activities in the UK.
33. Mr Wilding submitted that the background material in the appellant's skeleton argument shows that in recent years there has been a decrease in arrests in Vietnam. This is confirmed in paragraph 6.3.3 of an Amnesty International Report at page 14 of the appellant's bundle. Mr. Wilding submitted that it is for the appellant to demonstrate an ongoing risk and he has not done so. At paragraph 56 the judge concluded that none of the events that occurred in Vietnam prior to his departure put the appellant at risk of persecution by the state. While there may have been some suspicion of connection with a political movement, on the appellant's own evidence the police had no proof of his involvement and he clearly was not being monitored by them. His activities had not in reality brought him to the attention of the state such that there was a real risk of persecution.
34. Mr Khan replied by saying that the test is in respect of future risk. If the appellant goes back to Vietnam and participates in political activities, he would be at risk of persecution. This is sufficient for him to seek international protection.
35. Having considered the submissions made by the parties, I found Mr Wilding's arguments persuasive.
36. I found that Mr. Khan was making a narrow point, which was this, given the appellant's past behaviour, it was imperative on the judge to find that the appellant was a political activist who could potentially come to the attention of the authorities in Vietnam, if he were to engage in further political activities. I find that this argument goes against the judge's finding at paragraph 56 that none of the events that occurred in Vietnam prior to his departure put the appellant at risk of persecution by the state. His activities had not in reality brought him to the attention of the state. This means that the appellant's activities were not of a particularly high level to lead to persecution of him by the state. As stated by the judge at paragraph 55 the appellant continued his political activity, attending a demonstration on 15 May and even on his own account that did not bring him to the attention of the police. He was able to obtain a visa to come and study in the United Kingdom and left Vietnam without any difficulty.
37. The judge rejected the appellant's claim that his parents were visited by the Vietnamese authorities.
38. The objective evidence in the report by Amnesty International states:

"While the number of arrests and prosecutions against human rights defenders and government critics decreased from previous years, physical attacks and restrictions on movement increased. Several activists were confined to their homes. Some of those wishing to

travel overseas to attend human rights-related events had their passports confiscated; several others who managed to leave were arrested and interrogated by the police on their return.”

39. I find that it is for the appellant to demonstrate an ongoing risk. I find that he has been unable to do so in the light of the findings that were made by the judge. He did not suffer any of the ill-treatment identified by Amnesty International. He has no particular political profile. He merely said in his witness statement that he would be a political activist on his return to Vietnam without explaining what he would do. Therefore I find that if he returned to Vietnam and engaged in the sort of activities he told the judge about, there is no real likelihood that he would be at risk of persecution by the authorities.

Notice of Decision

40. Accordingly, I find that the judge’s decision does not disclose an error of law.
41. The judge’s decision dismissing the appellant’s appeal shall stand

Signed

Date: 27 February 2018

Deputy Upper Tribunal Judge Eshun