



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09653/2018

THE IMMIGRATION ACTS

Heard at Field House
On 6 November 2018

Decision & Reasons Promulgated
On 29 November 2018

Before

UPPER TRIBUNAL JUDGE ALLEN
UPPER TRIBUNAL JUDGE MCWILLIAM

Between

N V D
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Gilbert instructed by Rahman & Co Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Vietnam. He appealed to a Judge of the First-tier Tribunal against the Secretary of State's decision of 24 July 2018 refusing a claim for asylum and humanitarian protection/leave to remain on the basis of Articles 2 and 3 of the European Convention on Human Rights.
2. The appellant claimed to be at risk from loan sharks and also from the State for reasons connected with support for Catholicism and the church.

3. There was at the outset of the hearing before the judge an issue concerning an adjournment application. Counsel for the appellant applied for an adjournment for eight weeks for a document verification report to be obtained on a document that had been produced on the day which was an attachment to an email consisting of a summons concerning the appellant in Vietnam. It appeared that the document had been received on 26 August 2018, a few days before the hearing. The judge granted a brief adjournment so that Counsel could take instructions about when the document was received by the solicitor and who had sent it, and how it was known that it was needed and how it had been obtained and how it was sent to the solicitor and where the original was. This resulted in the document being produced through an email in the name of a person who had emailed the document to the solicitor.
4. The judge refused to adjourn. He appreciated fully the short timeframe for the appeal and considered that the points he had raised were basic points of concern and indicated that he would not promulgate a decision for seven days during which time further documents could be sent to him about the purported summons. No documents were received within the seven day period and the judge proceeded to determine the appeal. As will be seen, there is a challenge to the decision based on the refusal to adjourn, though we shall come on to that matter in due course.
5. The appellant claimed to fear return as he said he was at risk from loan sharks who had lent £80,000 to his father. He was also in fear of return as his father had organised a demonstration and was attempting to raise funds to build a church which the communist authorities opposed. He had been sending money to Vietnam to help pay his father's debts but the authorities thought the money was sent to support building the church and as a consequence he said he was now wanted for questioning. The judge observed that the appellant asserted fear from the loan sharks since 2014 and had not sought asylum despite that asserted fear and had been working illegally all the time. He said that this was to enable him to send money back but he had sent money on only four occasions, once of £1,000 the other three of lesser sums, £200 to £600. The judge considered that had he been in genuine fear he would have been more likely to have claimed protection both for his own sake and so he might work legally and therefore be able to send more money.
6. The judge noted that there was no corroboration of any significant factor, and, while none was needed for an asylum case, considered that that meant the focus had to be on the account of the appellant. He considered that the account suffered from the assertion of fear from loan sharks for years with however no claim being made. There was no evidence from the man who he had said had taken money to Vietnam for him on two occasions and who obtained the document for him. There was no reason for this as this person was in the UK, living in Bolton. The appellant had not telephoned him or asked him to attend.
7. The judge noted that there was also no evidence produced of the claimed bankruptcy and considered that the term implied a formal process, which had been accepted by the appellant at the hearing. On the appellant's account the loan would have

featured in a formal bankruptcy procedure and the absence of any information about the bankruptcy was a point regarded as damaging to credibility.

8. The judge did not accept that the appellant was genuinely in fear of loan sharks. He had remained in the United Kingdom illegally, working as much as he could. He had not studied to any significant extent, the judge commented, as he was to study English but after five years spoke and read none and the judge observed that it was clear that the appellant was not using an interpreter from caution but from total necessity. He considered it to be clear that the appellant understood little or no English.
9. The judge observed that the appellant asserted that if he did not pay them the lenders would harm him, but his brother had lived unaffected by the debt for the five years since 2014, as the judge put it, and the appellant mentioned no threat to his brother from the lenders.
10. He said he had only found out about the danger a few days before he was encountered and detained by the authorities in the United Kingdom in May 2018. His mother had told him that his father had disappeared and he himself was at risk. The judge considered this to be unlikely.
11. As regards the purported summons, the judge did not find it reliable, applying the Tanveer Ahmed guidance to it. On instructions Counsel had said that the friend who had obtained it had been to Vietnam to obtain it, but the appellant said the man had been to Thailand on holiday. It was unknown how this person had known a document was needed or how he had obtained it, and the appellant had spoken to this man on his return from holiday on 18 August 2018 but had not asked about it and had not telephoned him and asked him how he obtained it. He had not known the man was getting it. How the document was obtained was unexplained and the man had not been asked to attend the hearing although the solicitor had the means of contacting him to ask. The absence of any explanation for the questions that were raised at the hearing led the judge to conclude that there was a greater lack of reliability in respect of the documents.
12. As regards his claim that the State wanted to arrest him for providing money to the church for unlawful purposes, the appellant, the judge concluded, could not account for why the State might think he was supporting the building of the church financially. There was no evidence to show he had been sending money to Vietnam and there was no reason for the authorities to think that he was sending money to anyone. If the money was paid to lenders, then it was implausible the lenders would tell the authorities that he was paying the church. The judge observed a discrepancy in that at one point the appellant said that the money that went from him to Vietnam was carried for him whereas elsewhere he said he paid people in the United Kingdom and they transferred it for him. The judge also noted that the appellant said he was able to speak to his mother who had fled after the money lenders came, and he had lost touch with her, but there was no reason why she would not keep a means of communication with him (and the same for his siblings, especially as his

account was of sending money to them). It was not said that the authorities were after the family. The judge regarded that to be a further adverse credibility point. He concluded that the appellant was an economic migrant and did not accept the credibility of the claim.

13. The appellant sought and was granted permission to appeal on the basis, as noted above, first that the judge erred in not granting an adjournment, and secondly that there were significant errors of fact in his decision which were relevant to the credibility findings in the determination. The first point was that he had not claimed to be in constant fear of the loan sharks, bearing in mind that payments had been made, but it was a relatively recent matter. Also, though the judge found that the appellant had not claimed his brother was threatened, his evidence was that his brother was threatened in 2018. As regards the issue of contact with the appellant's mother, it was argued that the evidence of the appellant which he clarified in re-examination was that he had had two mobile phones and the i-phone had been taken in accordance with the detention centre rules and he was left with only one, more basic, phone. The effect of this was that he did not have all the same communication methods still available to him in the detention centre in order to contact his mother.
14. It was also argued that the judge erred in finding the appellant was inconsistent in his evidence as to how money was sent to Vietnam to pay off the loan sharks in that the evidence had been that he never knew how the money got to his family in Vietnam and it was not claimed that people physically took it there. It was also said that the judge erred in considering the impact of an absence of documents proving bankruptcy since there were credible reasons for the lack of evidence in the fact that the appellant would not have had them with him from four years ago in Vietnam when he was in immigration detention, and secondly that the judge had made an assumption that foreign law was the same as English law and that the documents would be available in the same way as in the United Kingdom. It was also argued that the judge erred in regard to the appellant's abilities in English in inferring from the fact that he used an interpreter that he had no English language ability, and this was procedurally unfair.
15. Permission to appeal was granted on all grounds.
16. In his submissions Mr Gilbert provided helpful clarification with regard to the purported summons. It appeared that there were in fact two purported summonses, only one of which had been seen by the judge. It was clear that Mr Thuan, the person who obtained the summons had not been asked to attend the hearing. As regards Ground 1, Mr Gilbert argued that the appellant had been in detention and there were documents that on their face were capable of belief and the requirement of anxious scrutiny required more than had been done, albeit the role of the judge was not inquisitorial. The judge's failure to grant the adjournment request to enable the production of the document verification report was unfair and had a direct bearing on the appellant's credibility and the outcome of the appeal.

17. Otherwise the judge had committed factual errors that were referred to in the grounds for example with regard to the point at which the fear of the loan sharks arose. There was a discrepancy as to problems for the appellant's brother, and the point about contact with his mother also. The judge had also erred with regard to inconsistencies as to how the money was sent to Vietnam and that was clearly material to the credibility assessment. Reasons had been given for the absence of documents with respect of the father's bankruptcy, and it was wrong to assume such documents must exist in the absence of expert evidence or agreement between the parties. The point about the appellant's English had not been tested in evidence.
18. In his submissions Mr Melvin adopted and relied on the points made in the Rule 24 response. As regards the adjournment request, the application to adjourn had been made late, and Counsel had been given time at the hearing to make enquiries from the solicitors and then the seven day period. The appellant had overstayed for three or four years and produced the document very late and the adjournment request was unreasonable and there was no error of law. The judge had properly applied Tanveer Ahmed to his assessment of the document.
19. Otherwise the judge was entitled to find as he did with respect to the other issues in contention. If there was an error it was not material. It was relevant to note that there was no witness statement from the person who had taken money to Vietnam. That evidence could have been provided. It was open to the judge to conclude as he did about the appellant's lack of English. As regards the issue of documentation and the bankruptcy, it should be noted that at paragraph 54 the appellant had accepted at the hearing that there was a formal process with regard to bankruptcy in Vietnam.
20. By way of reply Mr Gilbert argued that the document had come very late and the translation date was the date before the hearing. The other matters were points of materiality with regard to errors in the judge's decision. There was evidence of loss of contact with his family and the surrender of a telephone was relevant to his ability to obtain documentation.
21. We reserved our determination.
22. We address first of all the adjournment issue. Clearly the matter has become complicated subsequently due to the fact that it has become clear that there are two summonses, only one of which was seen by the judge, but we must consider the lawfulness or otherwise of his refusal to adjourn in the context of the evidence and the situation as it appeared to be before him. Clearly he did not know that there were two purported summonses but simply addressed the situation on the basis of the summons and the translation and other documents which were put to him.
23. The judge, in our view very properly, first of all granted a brief adjournment and then waited a further seven days in order to enable a response to questions he raised about when the document was received by the solicitor, who had sent it, how that person had known it was needed, how that person had obtained it and how it had been sent to the solicitor and where the original was. There was no response to any

of these questions. In those circumstances we consider that it was properly open to the judge to conclude that it was not appropriate to adjourn the hearing. The lack of explanation of significant matters concerning the production of this document was of clear relevance, and we consider that the judge properly exercised his discretion in concluding that in the absence of any explanation or response to any of the matters he raised it was not appropriate to adjourn.

24. He subsequently went on to consider the document that had been produced, at paragraph 58 of his decision, and we have paraphrased above his concerns about this. These matters were: a lack of explanation as to how the document was obtained in the absence of the person who had obtained it from the hearing, not having been asked to do so, the contradiction between what was said by Counsel on instructions that the friend had been to Vietnam to obtain it whereas the appellant said he had been to Thailand on holiday. It was unclear how this person knew the document was needed and the appellant on his return from holiday had not asked him about it and had not telephoned him and asked him about it. In these circumstances it is hardly surprising that the judge found the purported summons to lack weight entirely and as a consequence concluded that it did not identify any risk to the appellant on return.
25. As regards the claimed risk from the loan sharks, the appellant referred at page 7 of his statement to the lenders coming to his home and demanding money, subsequent to his father's bankruptcy. He did not say when his father became bankrupt. It would seem that it may have been some time in 2014 as it was at the beginning of that year that the farm animals died which the appellant said led to his father becoming bankrupt. In the circumstances it seems to us not unreasonable for the judge to have assumed (as he did since the appellant referred at paragraph 7 of his statement immediately after the reference to the appellant's father becoming bankrupt to lenders coming to his home and demanding money) that the threats existed from that time, bearing in mind that he went on say his family could not make the payments and they were threatened by the lenders.
26. It was also relevant for the judge to note that there was no evidence from the person who the appellant said had taken money to Vietnam for him on two occasions. This also brings in the discrepancy found by the judge as to how the money was taken to Vietnam. Paragraph 17 of the appellant's witness statement refers to him sending money through private individuals by giving them payment in cash in the United Kingdom and in return they would make payment to his father. This is in our view ambiguous. That would either mean that they were travelling to Vietnam to pay his father or they were making payment to his father from the United Kingdom through banks or money exchange companies. There is reference at 25.2 of the appellant's evidence that he was not sure why there was no statement from the men who had taken money to Vietnam for him. In our view it was open to the judge to interpret the words at paragraph 17 of the witness statement as implying that payments had been made by bank transfer, but the matter is not a major issue in any event.

27. As regards the issue of risk or threat or otherwise to the appellant's mother, the judge recorded that the mother had been unaffected by the debt and that the appellant had mentioned no threat to his brother from the lenders. Clearly however at paragraph 23.6 the judge had noted that the appellant's brother and sister ran away when the lenders slapped their mother, and also at 25.1 the appellant said the evidence was the loan sharks had also demanded money from his brother. That said though, we do not think the discrepancy is a real one. The evidence, even taken at its highest, falls some way short of indicating a real risk to the appellant on return. We therefore consider the judge was perfectly entitled not to consider that the appellant faced any real risk from the loan sharks. Threats had been made, but the debt is his father's debt, and no harm beyond threats and his mother being slapped was ever meted out to immediate members of the family.
28. Bringing these matters together, we consider that the judge was well within the proper exercise of his discretion in refusing to adjourn the appeal. It was fully open to him to find that the purported summons was not a reliable document, and in this regard it is relevant to note also as the judge found at paragraph 59 that there was no reason for the authorities to think that the appellant was sending any money to anyone, as a further support for the judge's conclusion that he did not face a real risk on return in that regard. As regards the claimed risk from the loan sharks, we consider the judge was fully entitled to find there was no real risk to the appellant, in light of the fact of no more than threats and minimal physical harm. Accordingly we do not consider that any error of law in the decision has been identified and as a consequence the judge's decision dismissing the appeal is maintained.

Notice of Decision

The appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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.



Signed
Upper Tribunal Judge Allen

Date 20 November 2018