



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

Appeal Number: PA/05855/2019

THE IMMIGRATION ACTS

**Heard at Cardiff Civil Justice Decision & Reasons Promulgated
Centre
On 9 January 2020 On 28 January 2020**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**A P L
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Dieu, instructed by NLS Solicitors

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure of publication of any matter likely to lead members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. The appellant is a citizen of Vietnam who was born on 20 May 2001. She is, therefore, 18 years of age.
3. The appellant claims to have left Vietnam by lorry on 15 February 2018 and from there, travelled to China where she remained for two months. She then flew on a false passport to an unknown country where she remained for a short period of time before travelling to France by lorry and from there on to the UK. She claims to have arrived in the UK, therefore, probably sometime in late March or early April 2018.
4. On 18 April 2018, the appellant claimed asylum. She claimed that she was a Hoa Hao Buddhist and was at risk of persecution as this was an unregistered religion in Vietnam. She claimed that in December 2014, she and her parents were arrested and detained by the police following a memorial service for a deceased aunt in their home. They were released after eighteen days. Subsequently, she claimed that in 2016, her step-father had been killed by the authorities having been stabbed during a protest which he had organised against the Government's persecution of their religion. Finally, she claimed that she was again arrested by the authorities on 10 August 2017 and detained for five months during which time she was subject to a number of beatings. She claimed she had been arrested because the police had discovered that she was distributing leaflets in her village which protested about the actions of the authorities, including the killing of her step-father. She was released in February 2018, she believes, because her mother paid a bribe. She claims that she was told to report to the police twice a week but, instead, decided that it was too dangerous to remain in Vietnam and her mother arranged for her to travel to the UK.
5. On 9 June 2019, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under Arts 2, 3 and 8 of the ECHR. Whilst the Secretary of State accepted that the appellant was a Hoa Hao Buddhist, the Secretary of State did not accept the appellant's account of what she had claimed had happened to her in Vietnam.

The Appeal to the First-tier Tribunal

6. The appellant appealed to the First-tier Tribunal. Judge O'Rourke dismissed the appellant's appeal. He accepted, as the respondent conceded, that the appellant was a Hoa Hao Buddhist. He also accepted that she and her family may have suffered harassment by the authorities in Vietnam. However, he did not accept the appellant's claim that she had been arrested and detained on the two occasions in December 2014 and August 2017, or that her step-father had been killed by the authorities.
7. The judge's reasons for his adverse findings are principally found in paras 22 and 23 of his determination as follows:
 - "22. Credibility. I do not find the Appellant a credible witness because she was inclined, when confronted with apparent inconsistencies, or gaps in her evidence, to change or add to her evidence, on the 'spur of the moment', as follows:

i. When challenged as to whether she should have had documentation from the police as to her reporting conditions, she, for the first time, said that she had, in fact, been issued with such documentation and had brought it with her, from Vietnam, to UK, but, on arrival here had lost it. This query followed on from questions as to whether she had any documentation about her step-father's death. It appeared to me that she clearly felt (although not a strict legal requirement) somehow 'obliged' to answer in the affirmative to at least some of the questioning of this nature and hence made up her account of having brought the police documents with her to UK, but then, somewhat conveniently, losing them. She was first interviewed within, on her account, two days of her arrival in UK, having promptly been able to stay with her mother's friend and having had legal representation immediately arranged for her [Q.3.3 screening interview] and it seems inherently unlikely, with that prompt care and advice that the importance of such documents, if she in fact had them, would not have been at the forefront of her mind and that of her advisors. She was asked, at Q.6.2, if she had any documents to support her claim and she said she had none, making no reference to having had some, but them being lost.

ii. When the inconsistency as to her distributing the leaflets at night to avoid detection, but yet their contents making reference to her father-in-law was pressed on her, she, for the first time, said that in fact the leaflet made no direct reference to him, in direct contradiction of her earlier evidence.

iii. She, for the first time in her statement completed days before this Hearing, makes reference to having phoned home '*shortly after arriving in UK*' and speaking to a stranger. While she asserted that she had provided this information before, it is not in her earlier statement, or in her interview notes, both of which lost post-date this alleged event and I consider that her belated reference to it is an attempt to embellish her account.

iv. I note her age and relative immaturity, but both the Respondent and this Tribunal is entitled to expect any witness, even of this relatively young age, to tell the truth.

23. Events in Vietnam. The Appellant's account of events in Vietnam is broadly externally consistent with objective evidence as to the State's treatment of unregistered Hoa Hao Buddhists. The CPIN sets out that they can face restrictions on religious freedom and if they come to the attention of the authorities, for perceived anti-government activities, be subject to persecution [36]37], to include unfair trial and detention [54]. The Amnesty International report 'Prisoners of Conscience in Vietnam' May 2019 gives several similar examples of mistreatment of Hoa Hao followers, who have sought to protest against the State's treatment [77, 81]. However, whether or not it can be concluded that such similar events happened to the Appellant must be dependent on

the credibility of her account and as I have found, I do not consider her a credible witness. While it is accepted by the Respondent that she is a member of the Hoa Hao sect, that of itself is not enough to found a claim for protection. The CPIN refers to harassment and restrictions on religious practice, but unless individuals have previously come to the attention of the authorities, for perceived anti-government activity, Hoa Hao are not subject to persecution or at risk of serious harm, sufficient to engage the Convention. It is possible, I accept that she and her family may have suffered some harassment from the authorities in the past, but based on, firstly, her lack of credibility and secondly, the inherent implausibility of her account of the leaflet incident, I do not accept that she has been subject to arrest and detention by the authorities. I find the leaflet incident account to be implausible because, firstly, despite up to fifteen people being involved in this incident, only she carried out the distribution and nobody else was apparently arrested and secondly that she should be concerned about detection, distributing them at night, when, however, the leaflet apparently directly linked to her father-in-law. As she was, at the time, aged just over sixteen and living with her mother, it is, even without attempting to 'second-guess' the actions of the Vietnamese police, inherently implausible that at very least, her mother too would have been arrested, bearing in mind her stated previous record with the authorities. I consider this account to be an effort to embellish her assertion as to the authorities' perceived interest in her."

8. At para [24], the judge concluded:

"The Appellant is simply, as accepted, a Hoa Hao Buddhist which, of itself, does not engage the Convention. I do not accept that she is at enhanced risk, due to any previous involvement with the authorities."

The Appeal to the Upper Tribunal

9. The appellant sought permission to appeal to the Upper Tribunal. On 10 November 2019, the First-tier Tribunal (DJ Shaerf) granted the appellant permission to appeal.
10. On 26 September 2019, the Secretary of State filed a rule 24 notice seeking to uphold the judge's decision.

Discussion

11. Mr Dieu, who represented the appellant, sought to focus the somewhat discursive grounds under three main headings to which he added a further three points, arising from the grounds, as a result of my raising with him whether those points were still relied upon. Mr Howells, who represented the Secretary of State, made submissions on each of the six points in support of upholding the judge's decision. I will take each of the points (number (1)-(6)) in order.
12. Point 1: Mr Dieu submitted that the judge had failed properly to take into account the background evidence which was consistent with, and

supportive of, the appellant's account before reaching his adverse credibility finding. He submitted that the judge made his adverse credibility finding in para [22] but only considered the background evidence in para [23] and as was clear from his use of the words "as I have found" in para [23], he had already reached an adverse credibility finding before considering the supportive background evidence.

13. In response, Mr Howells submitted that the judge had applied the structured approach envisaged by the Upper Tribunal in KB and AH (credibility - structured approach) Pakistan [2017] UKUT 491 (IAC) by considering the sufficiency of detail of the appellant's claim; internal consistency; external consistency; and plausibility. Mr Howells submitted that the judge had considered the background evidence in para [23] and had noted that the appellant's account of events was "broadly externally consistent" with that evidence. The fact that it was so, Mr Howells submitted, did not oblige the judge to make a favourable credibility finding.
14. In my judgement, a fair reading of the judge's determination does not support Mr Dieu's submission that the judge failed to have regard to the background evidence in reaching his adverse credibility findings. In my judgment, paras [22] and [23] have to be read together. It would be an unduly myopic reading of the judge's determination to conclude that, despite the submission made about the background evidence and despite his clear statement in para [23] that the appellant's account was "broadly consistent with the background evidence, the judge nevertheless ignored that evidence in reaching his adverse findings. Of necessity, the judge had to, at least in part, compartmentalise his reasoning.
15. Leaving aside the integrity of that reasoning for the present, in para [22] he identified a number of inconsistencies and implausible aspects of the appellant's evidence. He repeated those points, in particular in relation to the leaflet incident, in para [23] after his reference to the background evidence and that it was "broadly ... consistent" with the appellant's account. The judge went on, in fact, in para [23] to accept that it was "possible" that the appellant and her family "may have suffered some harassment from the authorities in the past". I do not accept that this experienced judge failed to have regard to all the evidence, including the background documents when reaching his overall conclusion at the end of para [23] and also in para [24] that he did not accept the appellant's account of her previous involvement with the authorities in Vietnam and that she was as a result at risk of persecution on return. Consequently, I reject this ground relied upon by Mr Dieu.
16. Point 2: Mr Dieu submitted that the judge had failed to take into account the appellant's young age and maturity in assessing her evidence. He reminded me that she was 13 years of age when she claimed her home was raided and she was arrested in December 2014. She was 15 years of age at the time of the death of her step-father in 2016 and she was 16 years of age when she claimed that she was arrested when distributing

leaflets in her village. She was just 18 years old at the date of her interview. Mr Dieu acknowledged that in para [22(iv)] the judge noted “her age and relative immaturity” but, Mr Dieu submitted, he did so only to state that “even of this relatively young age” a witness could be expected “to tell the truth”. That, Mr Dieu submitted, missed the point which was that her age and immaturity was relevant in deciding whether her account, if it appeared inconsistent, might have been affected by her age.

17. It was undoubtedly incumbent upon the judge, so far as relevant to an assessment of the appellant’s evidence, to take into account her age and maturity (see *the Joint Presidential Guidance Note No 2 of 2010* and the *Senior President Tribunals’ Practice Direction: Child, Vulnerable Adult and Sensitive Witnesses*). That obligation not only arises in the context of a child but of a vulnerable adult. In the Upper Tribunal’s recent decision in *SB* (vulnerable adult: credibility) Ghana [2019] UKUT 398 (IAC), the Tribunal dealt with the issue in the context of an appellant who had been treated as a vulnerable witness and the submission was made that the judge had not given effect to the guidance when making findings of fact, in particular in relation to credibility. The President (Lane J) said this at [60]-[62]:

“60. ... The fact that a judicial fact-finder decides to treat an appellant or witness as a vulnerable adult does not mean that any adverse credibility finding in respect of that person is thereby to be regarded as inherently problematic and thus open to challenge on appeal.

61. By applying the Joint Presidential Guidance Note, No 2 of 2010, two aims are achieved. First, the judicial fact-finder will ensure the best practicable conditions for the person concerned to give their evidence. Secondly, the vulnerability will also be taken into account when assessing the credibility of that evidence.

62. So far as the second aim is concerned, the Guidance makes it plain that it is for the judicial fact-finder to determine the relationship between the vulnerability and the evidence that is adduced:

‘ ...

3. The consequences of such vulnerability differ according to the degree to which an individual is affected. It is a matter for you to determine the extent of an identified vulnerability, the effect on the quality of the evidence and the weight to be placed on such vulnerability in assessing the evidence before you, taking into account the evidence as a whole’.”

18. Applying that approach in this appeal, it is clear to me that the judge acted fully in accordance with that second aim.
19. The judge specifically noted the importance of taking into account that the appellant was of a “relatively young age” at para [22(iv)].

20. In his submissions before the judge, Mr Dieu had relied upon the appellant's young age and lack of maturity in two respects of her evidence. First, it should be taken into account when determining whether the fact that she had given inconsistent evidence as to whether her step-father was referred to in the leaflets that she distributed was a matter that called into question the credibility of her account (see the submission at para [21(iv)(d)]). Secondly, Mr Dieu relied upon it as something the judge should consider when determining whether to take into account, as adverse to the appellant's credibility, that she had mentioned for the first time that she had spoken to her mother shortly after she arrived in the UK and a stranger had answered the phone (see para [21(iv)(f)]).
21. Both of these points were relied upon by the judge in assessing the appellant's credibility at para [22(ii)] and [22(iii)] immediately prior to the judge's self-direction that he should have regard to a relatively young age in para [22(iv)]. There is no doubt, therefore, that the judge was well-aware of the submissions made by Mr Dieu and the importance of not reaching an adverse credibility finding by relying on matters which might be explained by the appellant's relative young age. I am not persuaded that the judge fell into error.
22. As regards the leafletting issue, this was not a case where the appellant omitted to mention something which might be explained by her young age when the leafletting incident was claimed to have occurred when she was 16 years of age. While the point relied upon by the judge in relation to her first mention of the phone call to her mother shortly after arriving in the UK and speaking to a stranger is, potentially, a matter that might be seen as an oversight to which age might be relevant, it was, in my judgement, well within the range of reasonable conclusion for the judge to take the view that when the appellant came to the UK and was interviewed she was 18 years of age. He was reasonably entitled to take the view that her age did not explain the oversight. (I will return to whether it was indeed an oversight below.) In any event, it is not easy to see why her age at the date of interview could rationally explain an omission subsequently corrected in her witness statement two months later in July 2019. Consequently, I reject Mr Dieu's submissions on this point.
23. Point 3: Mr Dieu submitted that the judge had failed to engage with his submissions made on behalf of the appellant. Those submissions are set out at length by the judge at para [21(i)]-[21(xi)]. Mr Dieu submitted that as a result the judge's decision lacked adequate reasoning.
24. In reaching his decision, the judge was required to consider all the relevant evidence and reach findings on all relevant matters in determining the appellant's claim. It is axiomatic that the judge had to give adequate reasons for his findings. Here, the central issue was the appellant's credibility. The majority of Mr Dieu's submissions were directed to how the judge should assess the appellant's evidence. Many of the submissions were directed to countering reasons relied upon by the respondent in the refusal decision (see in particular para [21(iv)]). In fact,

as can be seen from the judge's reasons in para [22]-[23] set out above, the judge relied upon three matters, in particular, as being adverse to the appellant's credibility. Those are set out at sub-paras (i)-(iii) of para [22].

25. To the extent that Mr Dieu's submissions were directed to adverse points taken by the respondent in the refusal letter, but which were not relied upon by the judge, it is difficult to see why it could be an error of law for the judge not to engage with these submissions. The points relied upon by the respondent, and Mr Dieu's submissions in relation to them, played no part in the judge's eventual adverse finding in respect of credibility.
26. To the extent that Mr Dieu made submissions on the three points in sub-paras (i)-(iii) of para [22], it is plain to me that the judge did have well in mind Mr Dieu's submissions, albeit that he did not accept them and approached the assessment of the evidence in the way that he was urged not to do by Mr Dieu. It is also plain that the judge took into account, and indeed accepted, some of Mr Dieu's submissions. In particular, he accepted the submission noted at para [21(i)]-[21(ii)] that the appellant's account was generally consistent with the objective evidence. The judge specifically agreed with that submission and made a finding in line with it in para [23]. In his submissions before me, Mr Dieu did not identify any submission made by him to the judge, and recorded in para [21], which the judge had not dealt with in substance which was relevant to the reasons he gave for his adverse credibility finding in paras [22]-[23].
27. The point relied upon by Mr Dieu is, of course, not that the judge might have erred by rejecting his submissions but rather, it is said, the judge fell into error by not considering them. It will, in my judgment, be unusual for a losing party to be able to establish an error of law simply on the basis that a judge has not explicitly considered submissions made on that party's behalf. The judge's legal obligation is to give adequate reasons for his findings. The materiality of any submission must be determined by considering the reasons relied upon by the judge and whether those reasons, by not explicitly engaging with a submission, should be seen as 'inadequate'.
28. Here, the judge plainly took into account the submissions made by Mr Dieu that sought to provide positive support to the appellant's claim (such as the consistency of her account with the background evidence) and, to the extent that he relied upon aspects of the evidence which he considered adverse to the appellant's credibility, the judge clearly had well-in-mind the submissions made why those points should not be taken as a basis for an adverse credibility finding. He was not required to engage further with submissions that did not materially impact upon his adverse credibility finding. Consequently, I reject point 3 relied upon by Mr Dieu.
29. At the conclusion of his submissions on these three points, I enquired whether Mr Dieu relied upon three further points which were raised in the grounds. He indicated that he did and he made submissions on those points. I now turn to consider them.

30. Point 4: this relates to the judge's reasoning in para [22(i)]. There the judge took into account, adverse to the appellant's credibility, that in the course of her oral evidence she said for the first time that she had been issued with documentation by the police in February 2011 when she was released from detention which included her reporting conditions but that she had lost those on arrival in the UK.
31. Relying on the grounds, Mr Dieu submitted that that answer arose because of a misinterpretation of a question by the interpreter, namely whether she had any documents. In para [8] of the grounds it is asserted, in effect, that the appellant must have misunderstood the question when her case throughout was that she did not have the documents in the UK but only in Vietnam.
32. Mr Dieu acknowledged that he was in some difficulty in relying upon this point in the absence of any supporting evidence either from the appellant or the appellant's legal representatives to establish that there was a misinterpretation by the interpreter. It is worth noting that Mr Dieu represented the appellant at the hearing but did not draft the grounds. In his oral submissions to the judge he clearly acknowledged that the appellant had said that she had lost the documents "on arrival in UK" (see para [21(ix)]). Mr Howells helpfully drew to my attention the Presenting Officer's notes where the appellant had been asked whether she had any paperwork when she was released confirming that she had to report. The appellant answered yes. She was then asked why she had not provided it and her answer was that when she got to the UK all the paperwork was lost.
33. In my judgement, and perhaps reflecting Mr Dieu's acknowledged difficulty with this point, it cannot succeed to the extent that it is based upon an asserted mistranslation. There is simply no evidence of that. As far as I can tell, as regards the appellant's representatives, only Mr Dieu was present at the hearing. As I have said, he did not draft the grounds and, therefore, the appellant's representatives could only have become aware of this point if the appellant explained it to them. However, in the absence of evidence the mistranslation is a pure assertion in the grounds.
34. In any event, both the Presenting Officer's notes and, as appears from his submissions, Mr Dieu's understanding of the appellant's evidence at the hearing, was that she said she had lost the documents in the UK. I see no proper basis upon which the judge can be criticised for proceeding on the basis that that was her evidence. She said in her screening interview in answer to a question as to whether she had any documents, namely question 6.2, "No". That, of course, is not inconsistent with what she said at the hearing. Nevertheless, the judge was entitled to take into account, having heard her give evidence, that she had sought to embellish her account by claiming now that she had documents but that they had been lost in the UK as he said at para [22(i)]:

"It appeared to me that she clearly felt (although not a strict legal requirement) somehow 'obliged' to answer in the affirmative to at least

some of the questioning of this nature and hence made up her account of having brought the police documents with her to UK, but then, somewhat conveniently, losing them. She was first interviewed within, on her account, two days of her arrival in UK, having promptly been able to stay with her mother's friend and having had legal representation immediately arranged for her ... and it seems inherently unlikely, with that prompt care and advice that the importance of such documents, if she in fact had them, would not have been at the forefront of her mind and that of her advisors. She was asked, at Q.6.2, if she had any documents to support her claim and she said she had none, making no reference to having had some, but them being lost."

35. I am unpersuaded that there is anything exceptionable in that reasoning based upon the answer which the appellant plainly gave in cross-examination when she was asked whether she had any documents, and if so what had happened to them, following her release by the police in February 2018.
36. Point 5: this point relates to the judge's reasoning in para [22(iii)]. Mr Dieu submitted that the judge had been wrong to state that the appellant had not, prior to her witness statement made shortly before the hearing on 19 July 2019, referred to her having phoned home "shortly after arriving in the UK" and had spoken to a stranger. He submitted that the appellant had referred to phoning home in her asylum interview at question 16 and in her earlier witness statement dated 16 April 2019 at para [15]. He also drew my attention to her 'Unaccompanied Asylum Seeking Children: Statement of Evidence' at page 20 of 45 where it is noted that the appellant "tried to contact family friends to contact mother".
37. Whilst Mr Howells initially sought to rely upon question 16 of the asylum interview, he resiled somewhat from that when what was recorded as said was explored.
38. At question 16 the appellant was asked "What family do you have in VNM [i.e. Vietnam]?". Her answer was as follows:

"My parents [father and mother] just my mum [where does she live] I do not know [when did you last speak to her] before I arrived here [where were you when you spoke to her] I was in China [how did you contact her] on the phone, so I borrowed someone else's phone to contact her, actually there was another time when I just arrived here [where was she each time you contacted her] at home [in VNM] yes [the same home you left] yes [how did you have her number] I remembered her number [what is her number] ... [is there a country code] +84 [how long ago did you last speak to your mother] more than a year [why have you not spoken to her in more than a year] because I was not allowed to use the internet or phone [who said you were not allowed] ... [why not] because he thinks I was trafficked and that is a safety measurement [is there any other reason for why you have not contacted your mother] I do not know where my mum is at

the moment and I do not want her to have any problems and I just want her to be safe.”

39. As can be seen from this answer, the appellant initially said that she had contacted her mother from China but then corrected herself stating there was “another time when I just arrived”. However, the appellant makes no mention of any contact with her mother from the UK by telephone resulting in a “stranger” answering the phone. The appellant also refers to having called her “mother’s friend” when she arrived in the UK at para [15] of her statement dated 16 April 2019. It does, therefore, seem that the judge was wrong to conclude in para [22(iii)] that the appellant had mentioned for the first time that she had telephoned home in her statement dated 19 July 2019 prepared for the hearing. She had previously mentioned it in her asylum interview and also in her April 2019 statement. The emphasis of the judge’s point is not that she failed to mention that she had spoken to a stranger when she made the phone call, but rather that she had made a phone call at all “shortly after arriving in the UK”. It seems to me, therefore, that the judge fell into error in relying on this as a reason for doubting the appellant’s credibility.
40. I am not, however, persuaded that this error was material to his adverse credibility finding taking his reasons overall in paras [22]-[23]. I am satisfied that the judge would have reached his adverse credibility finding even without reliance on the reason he gave in para [22(iii)].
41. Point 6: this concerns the judge’s reason in para [22(ii)]. There the judge relied on the inconsistency in the appellant’s evidence that she had previously stated that the leaflets that she had distributed, and which had led to her arrest, had identified her step-father when, in her evidence at the hearing, she stated that the leaflets made no direct reference to him. Mr Dieu did not press this point before me.
42. The point relies upon what was said by the appellant in answer to question 58 of her asylum interview. There she was asked “Do you know what information was on the leaflet?” to which she replied: “It says why did you kill these people, why you killed my uncle ...”.
43. Perhaps not surprisingly, the judge read this evidence as being a reference to the appellant’s step-father (or as he is sometimes referred to in the evidence, her uncle). The point made in para [10] of the grounds is that the first part of her response is a direct answer to the question to which she then provides clarity by stating that for her this is her uncle. There was a submission made at the hearing by Mr Dieu that there was “some lack of clarity” as to whether her step-father was directly referred to in the leaflets (see para [21(iv)(d)]).
44. In my judgment, that assertion is simply an attempt to explain, favourably to the appellant, the answer that she in fact gave. It was reasonably open to the judge to conclude that the appellant’s evidence was that her step-father/uncle was identified in the leaflet. That was entirely consistent with

what she said at para [11] of her witness statement dated 16 April 2019 that:

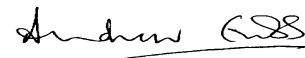
“My step-father had been executed by the Government and we wanted to deliberately tell the public that he had been executed because of his religion.”

45. Without reference to her step-father/uncle it is difficult to see how she could have intended to tell the public that he had been executed by the Government. For these reasons, I am satisfied that the judge was reasonably entitled to rely upon a contradiction in the appellant’s evidence concerning whether her step-father/uncle was named in the leaflets which she distributed.
46. For all these reasons, I am satisfied that the judge did not materially err in law in reaching his adverse credibility finding and therefore, in dismissing the appellant’s appeal.

Decision

47. The decision of the First-tier Tribunal to dismiss the appellant’s appeal did not involve the making of a material error of law. That decision, therefore, stands.
48. Accordingly, the appellant’s appeal to the Upper Tribunal is dismissed.

Signed



A Grubb
Judge of the Upper Tribunal

22, January 2020