



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

Appeal Number: UI-2022-002317
(PA/52511/2020); IA/02126/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 30 November 2022**

**Decision & Reasons Promulgated
On 12 February 2023**

Before

**UPPER TRIBUNAL JUDGE FRANCES
DEPUTY UPPER TRIBUNAL JUDGE FROMM**

Between

**B V N
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Stuart King, Counsel

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Vietnam born in 1991. His appeal against the refusal of his protection claim was dismissed by Designated Judge of the First-tier Tribunal Shaerf (“the judge”) on 22 March 2022. His decision was set aside for the reasons given in the decision of Upper Tribunal Judge Frances (the ‘UTJ’) dated 14 October 2022. The appeal was adjourned for re-hearing before the Upper Tribunal.

Relevant facts

2. The appellant's immigration history can be summarised as follows. He left Vietnam on 30 June 2018 and travelled to the United Kingdom via a number of countries, including China, Russia and France. He entered the United Kingdom clandestinely on 13 July 2018 and he claimed asylum on 30 July 2018. He gave an account of becoming interested in politics and the Viet Tan party. He was arrested at a demonstration in Hanoi on 1 May 2016. He was detained for a month and interrogated before being released with a warning that, if he were caught demonstrating again, he would be imprisoned.
3. The appellant said he attended two more demonstration in Hanoi in early 2017. He was not arrested but his father was arrested. The appellant agreed to distribute leaflets for the Viet Tan party, which he did on two occasions without being caught. His house was searched twice in September 2017 but the police did not find anything. The appellant became a member of the Viet Tan party on 15 October 2017. On 5 June 2018 the appellant was chased by a man who saw him sticking leaflets to a lamppost. He escaped and a local Viet Tan leader helped him to leave Vietnam. While he was in hiding the police visited his home. He believed he would be imprisoned or killed on return to Vietnam.
4. The respondent rejected the appellant's claim and the only part of the claim accepted was the appellant's nationality. The respondent also rejected the appellant's claim to have been active with the Viet Tan party in the United Kingdom since his arrival. The respondent's reasons are set out in the reasons for refusal letter, dated 23 October 2020. The appellant appealed on grounds which the judge described as "entirely generic". The appellant's appeal skeleton argument set out the appellant's claim on protection grounds only. The respondent was not persuaded to change her mind and her review states that the appellant's evidence should be tested at a hearing.
5. The respondent was unrepresented at the appeal before the judge. The appellant attended and gave evidence through a Vietnamese interpreter. He was assisted by counsel. He maintained his account was true and he also said he had attended three demonstrations in the United Kingdom as part of his activities with the Viet Tan party. He provided photographs of these. His friend also gave evidence to confirm the appellant's activities with the Viet Tan party in the United Kingdom. The appellant provided copies of his postings on Facebook as additional evidence of his sur place activities.
6. The judge broadly accepted the appellant's account of events up to December 2016. However, he did not find the appellant credible about events after that. He rejected the appellant's account of the third demonstration he attended in Hanoi and of his father's arrest. He also rejected his claim concerning distributing leaflets and being caught sticking leaflets to a lamppost. The judge did not believe the appellant was

forced to leave Vietnam due to his fear of persecution. He regarded the appellant's sur place activities as minimal and not likely to place him at risk on return. He regarded the appellant's association with the Viet Tan party in the United Kingdom as either designed to bolster his claim or as a means of social networking.

The issues

7. The judge's findings at [26] to [37] were preserved by the UTJ:

"26. I have considered with care all the written and oral evidence of both the Appellant and his friend, Duc Van as well as the SSHD's review and the skeleton argument for the Appellant. The Appellant has made no claim and there is no indication in his account that he has been trafficked in any way. On his own admission he left Vietnam in 2013 for economic reasons and was returned by the French authorities. His claim is that he left Vietnam on 30 June 2018 for a Refugee Convention reason, actual or imputed political opinion.

27. Paragraph 4.2 of the CPIN on Opposition to the State at page 234/589 of the Stitched Bundle refers to an article in the Mercury News of 7 October 2016 which describes the antecedents of the Viet Tan and the then attitude of the Vietnamese authorities to it as a terrorist organisation although it also reported that the United States authorities have not seen any evidence to support this. Paragraph 6 deals with the general approach of the Vietnamese authorities to opposition and human rights activists and demonstrations and protests. Paragraph 6.1.1 notes a 2017 report that in practice, the Vietnamese Government does not tolerate political expression against the Communist Party of Vietnam, the government or its policies. The Viet Tan is in favour of increased democracy in the state.

28. The US Department of State Report for 2020 at page 117 of the Stitched Bundle notes the authorities routinely mistreat, harass and assault activists; those demonstrating against the government and at page 110 that freedom of speech is restricted and activists are visited and harassed with a view to intimidation and at page 115 that there is a special unit in the Ministry of National Defence to monitor the Internet and that on-line expression is suppressed by direct action against bloggers. The 2020 US Department of State report at pages 96 and 102-106/589 notes that arbitrary arrest and detention, particularly of political activists and individuals protesting land seizures or other injustices, remained a serious problem. Some activists also reported the authorities used routine police interrogations to obtain incriminating information on other activists and also used varying degrees of arbitrary house arrest. It also refers to impunity for those ordering extended pre-trial detention. Reference is made to the sentencing to 10 and 11 years' imprisonment on charges of "terrorism" including alleged membership of the Viet Tan of two environmental activists. The UN's Special Rapporteur's note of 3 February 2022 details the circumstances of some 39 human rights activists, many of whom have been subject to detention and imprisonment.

29. The timeline of the Appellant's narrative is confused. Looking at the evidence as a whole, I find it appears to show as follows: –

April 2016 : escape of toxic waste from a plant owned by Formosa

1 May 2016: the Appellant attends demonstration about the escape of toxic waste when he is arrested and detained for a month

2 September and 11 December 2017: the authorities visit the Appellant's home and conduct a search during which they find nothing of an incriminating nature

19 January 2017: the Appellant attends the Memorial meeting for the soldiers killed in the Hong Sa Incident

5 March 2017: the Appellant and his father attend a demonstration to protest against the limited compensation offered by Formosa to those affected by the escape of toxic waste. He claims his father is arrested

5 June 2017/5 March 2018: the Appellant is spotted by a local policeman distributing leaflets near his old school. He goes into hiding for 3 weeks

30 June 2018: the Appellant leaves Vietnam. His travel arrangements are made by the Viet Tan.

30. I accept the escape of toxic waste will most likely have damaged the livelihoods of the Appellant and his father since they bought and sold fish, as the Appellant states in his 2018 statement. This would have been sufficient motivation to attend the demonstration on 1 May 2016. The Appellant claims he was arrested at the demonstration and detained for a month. His evidence about the frequency with which he was interrogated is inconsistent: see interview replies 16 and paragraph 10 of his 2018 statement. In September and December 2016 he states the police visited his family home. I find the Appellant attended the demonstration. In his 2018 statement at Stitched Bundle page 579/589 he states he was released after a month, having been interrogated twice, and subject to a reporting condition. In his 2021 statement at page 36/589 he adds that he was released on a friend paying VND5M (about £177 using HMRC monthly exchange rates). There was no explanation how or why he forgot to mention payment of a bribe in his 2018 statement. Giving him the benefit of the doubt I am prepared to accept his claimed 2016 detention and the subsequent interest of the police up to December 2016 to be credible.

31. I do not consider attendance at a Memorial Meeting for the soldiers who were killed by Chinese troops on Hong Sa which is an archipelago in the Gulf of Tonkin disputed between China and Vietnam to be material to his claim to be in fear of the Vietnamese authorities. The meeting was to acknowledge the loss sustained in defending what the Vietnamese state perceives to be Vietnamese territory. I accept that there would have been some police involvement if only for crowd control.

32. The Appellant states that the third demonstration he attended in Vietnam was on 5 March 2017 to protest against the inadequate compensation offered by Formosa at which his father was arrested according to his 2018 and 2021 statements. He had initially stated that there were two subsequent visits by the police to the family home on 2 September and 11 December but has later confirmed that these visits were subsequent to his arrest on 1 May 2016. He has stated that he last saw his mother on that day: see hearing reply 118. At paragraph 25 of his 2021 statement he confirmed that he had last seen his mother on 5 June 2017, just before he left Vietnam. But he claims he left Vietnam a year later on 30 June 2018. There were no explanations for these apparent inconsistencies.

33. The Appellant states variously that the incident of distributing leaflets and being seen by the police happened on 5 June 2017 and on 5 March 2018: see interview replies 20 and 37. At interview replies 231-235 he confirms he distributed leaflets on only one occasion, on 5 June 2017. At interview replies 210 and 211 he makes it clear that he was not involved in any activities between March 2017 or June 2017 and his departure from Vietnam on 30 June 2018 because the police had seen him distributing leaflets on 5 June 2017: see hearing reply 20. There was no explanation for the apparent inconsistency about the claimed date he was seen leafletting.

34. Prior to the hearing the Appellant was well aware of problems with the timeline he had previously given since this resulted in the letter of 13 September 2018 sent by the Appellant's solicitors in response to the screening of the Appellant by an Immigration Officer.

35. The Appellant's explanation why he is unable to contact his mother at interview replies 111-118 is vague and evasive. At interview replies 113 he stated that he believes, notwithstanding paragraph 14 of his statement of 4 December 2018 that she had been arrested. At hearing replies 16-19 he made no mention of her arrest and spoke about fearing that if he contacted her it will be a bother for her and the local state authorities would learn of it. Again, there was no explanation for these apparent inconsistencies.

36. At screening reply 2.5 the Appellant stated that he used an agent to leave Vietnam and amplified his reply by saying that it was a friend and he did not know who had paid. At paragraph 14 of his 2018 statement the Appellant states that arrangements for his departure were made by the Viet Tan. There was no explanation why on his own evidence of his minimal involvement and recent membership, the Viet Tan considered he was at such risk that the Party should make arrangements and pay for his departure from Vietnam. He has not supplied any party membership card or correspondence from party officials in Vietnam or in London to confirm his role. He has simply supplied his membership card of the Viet Tan Friendship Association issued on 1 May 2021 in London.

37. I have already dealt with events in 2016 at paragraph 30 and find the Appellant's account of them credible. However, for the reasons given in subsequent paragraphs and bearing in mind that as early as

2018 the Appellant had realised there were problems with his timeline of events, I do not find him to be a credible witness. He remained in Vietnam until June 2017 or 2018, depending on which timeline is correct. The Appellant has given no credible evidence or explanation why he was forced to flee Vietnam for fear of persecution or of serious harm so long after the last police interest in him in December 2016 or why his journey was paid for by the Viet Tan.

8. However, the UTJ found the judge failed to properly consider the risk to the appellant on return given he had accepted the appellant had attended two demonstrations in Vietnam, was arrested, was released on reporting conditions and had attended three demonstrations in the United Kingdom.
9. At the hearing before us, the representatives made submissions on the risk on return. The appellant attended but was not called to give evidence because the appeal would turn on the background evidence and, in particular, the expert report filed on behalf of the appellant by Professor Christoph Bluth, dated 21 November 2022. This report was not filed in accordance with the time limits set in the UTJ's directions. However, Ms Stuart King explained that the report, having been obtained in a timely manner, had had to be revised. Mr Walker had no objection to our admitting the report. He accepted that the report was comprehensive as regards the appellant's sur place activities, the Viet Tan party and the difficulties which the appellant would face on return. He said he could not concede the appeal but he would not make any further submissions.
10. Ms Stuart King provided a helpful note of the main passages from the report on which she would rely and she made brief submissions highlighting some of those passages.
11. We reserved our decision.

Relevant law

- 12 The burden of proof is on the appellant to show that there are substantial grounds for believing that (1) he meets the requirements of the Qualification Regulations, in that he has a well-founded fear of persecution for a reason recognised by the Refugee Convention; (2) he meets the requirements of entitlement to humanitarian protection under paragraph 339C of the Immigration Rules, because he faces a real risk of being subjected to serious harm; and (3) that his removal to Vietnam will cause the United Kingdom to breach its obligations under the Human Rights Convention because he faces a real risk of being subjected to ill-treatment such as to infringe his rights under article 3. We are required to look at the position as at today's date.

Expert report

13. As said, Ms Stuart King's submissions were confined to highlighting passages from Professor Bluth's report. Mr Walker accepted the report was comprehensive. We accept that the report was prepared by a country expert. Professor Bluth has researched the persecution of political activists in Vietnam since 2010. He has prepared over 100 reports for tribunals. The report is detailed and the sources for Professor Bluth's assertions are footnoted and listed in an annex.
14. We have considered the report in line with the guidance in MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) [23] - [28], which Professor Bluth also says he has had regard to. We have some concerns about the report. It is written without any apparent regard to the fact that the judge had disbelieved much of the appellant's account. Ms Stuart King alluded to the report requiring revisions but we cannot see that any revisions have addressed this important point. The report is in large part generic and sets out materials in a repetitive and unchronological fashion apparently in order to show that the entirety of the appellant's account is plausible. Some of the references to source materials are extremely elderly, such as reliance on a 2005 US State Department report at [5.4.2] and examples of arrests on return dating back to 1996 at [5.4.4]. Some of Professor Bluth's comments on the respondent's assessment are couched in language which might suggest a lack of understanding of the respondent's role: "common tactic" at [5.2.18], "the claim frequently made" at [5.2.20] and the references to the respondent's questioning as being "not relevant" and her conclusions having "no merit" at [5.3.9]. Had we been concerned with making primary findings of fact about the appellant's historical account, we have to say that this report would have carried little weight.
15. However, as said, we are only concerned in this appeal with the risk to the appellant on return as a result of what was accepted by the judge in terms of his previous arrest, ill-treatment and detention in 2016, coupled with his limited sur place activities. As regards those issues we do consider that Professor Bluth's report provides considerable assistance. We have noted the following passages:

"5.4.1 ... At arrival at the airport in Hanoi or Ho Chi Minh City, returned Vietnamese are interrogated by immigration officials. Questions are asked about where they have been, their activities and contacts abroad, their reasons for return and their destination in Vietnam. This "self-statement" amounts to a form of interrogation which according to a programme officer of the International Organisation for Migration (IOM) in Hanoi occurs before they go through immigration and can take an hour. However, in the case of failed asylum seekers, interrogation will be more thorough and take longer. There is no doubt that asylum seekers (or returnees in general) will be questioned or examined about their political loyalties or activities upon return. ...

5.4.2 There is clear evidence that failed asylum seekers can be arrested upon return for alleged crimes which can include anti-government activities. ..."

“5.4.4. ... Indeed, the Vietnamese authorities operate special detention centres where failed asylum seekers are detained, interrogated and mistreated. Vietnamese asylum seekers returned by the Australian authorities have been charged, prosecuted and imprisoned on their return despite assurances given by the Vietnamese government that [there] would not be any retribution. ... I also refer to my own experience with asylum seekers who were returned to Vietnam from the United Kingdom and arrested on return, and members of political movements such as Viet Youth or the Brotherhood for Democracy who returned to Vietnam and then gave details of asylum seekers in the United Kingdom to the Vietnamese authorities.”

“5.4.7 ... There is little doubt that the Vietnamese authorities will make every effort to identify persons protesting outside the London embassy or active in opposition movements in the United Kingdom. The use of cameras, hidden observers and electronic surveillance equipment by the Vietnamese authorities is routine in relation to all demonstrations. Facial recognition technology is now ubiquitous worldwide and embedded in mobile phones. Like China, Vietnam is deploying facial recognition surveillance for societal control and Vietnamese companies have developed facial recognition techniques that can identify faces even when persons are wearing masks. For example, Ho Chi Minh City has an integrated system of 1200 surveillance cameras and is deploying artificial intelligence for community surveillance. Vietnamese intelligence services will employ facial recognition technology to identify those participating in protests outside their embassies abroad and employ substantial intelligence resources (including surveillance of social media and intelligence agents that penetrate anti-Vietnamese protest groups as well as ordinary, non-political social events and organisations) to identify and keep track of opponents of the government in foreign countries such as the United Kingdom. The universality of the monitoring of protests by the Vietnamese authorities and the penetration of the Vietnamese diaspora with agents that report to Vietnamese intelligence mean that activists will be known to the authorities. Vietnam has expanded its cyber intelligence operations in foreign countries substantially in recent years. ... Demonstrations outside Vietnam are also usually filmed by the demonstrators and their videos posted online. Vietnamese authorities conducted intelligence activities to identify bloggers against the regime and in February 2018 it was reported that a blogger had been sentenced to 14 years in prison for live streaming protests against the pollution caused by the Formosa company in Vietnam. The Vietnamese authorities also have agents (both professional intelligence officers and informants in the diaspora) that infiltrate the Vietnamese community in the United Kingdom and reports of individuals involved [in] anti-regime activities are compiled and informants are debriefed on return to Vietnam.”

“5.4.9 With these capabilities and a national database of all identity cards, the Vietnamese intelligence officers can run a simple reverse image search to identify anyone whose photo has been taken during a demonstration. It will take the Vietnamese intelligence officers less than 24 hours to verify the identity of every single person who has participated in a demonstration outside the embassy using the computerised data systems in Vietnam. Vietnamese intelligence agents closely observe, monitor and record all public demonstrations outside their own embassy. ... The Vietnamese government will be fully aware of the appellant’s activities in the UK due to

the fact that other Vietnamese report to the authorities as well as a result of Vietnamese intelligence officers operating in the United Kingdom. Individuals are at risk due to any links to Viet Tan, Vietnam Path, Brotherhood for Democracy, Viet Youth for Democracy or similar groups which can lead to serious prosecution in Vietnam, whether the individual is a member or not, and whether the links are genuine or not. ... The appellant would be at serious risk if returned. In my expert opinion, the appellant faces serious risks of long-term detention and torture if forced to return to Vietnam.

5.4.10 ... According to Article 91 of the Vietnamese penal code as applied until recently, “fleeing abroad or defecting to stay overseas with a view to opposing the people’s administration” is a serious offence for which Vietnamese nationals have been imprisoned. The experience of asylum seekers who have been arrested and charged (according [to the] practical experience of asylum seekers who have been returned from the UK and arrested on arrival) confirms that the risk is real. Moreover, the law has been tightened, and the range of offences broadened in the Criminal Code 2015 which came into force in January 2018. ... The Vietnamese authorities consider Vietnamese dissidents in the UK a threat because their activities damage the reputation of Vietnam and human rights issues of Vietnam can affect commercial negotiations with the Vietnamese government, as has been the case in relations between the United States and Vietnam.”

Conclusions and reasons

16. The respondent has not filed evidence presenting a different opinion on the risks of sur place activity. The respondent has characterised the appellant's activities as low level. Professor Bluth addresses such considerations at [5.2.8] and explains that they misunderstand the widespread nature of surveillance and the evidence that such surveillance catches more people than high-profile dissidents. In any event, the fact that the Viet Tan is considered a “terrorist organisation” would bring the appellant into the area of interest of the security services (5.3.1).
17. As explained in cases beginning with the landmark decision in HJ (Iran) and HT (Cameroon) v SSHD [2010] UKSC 31, careful findings of fact must be made on the genuineness of a political opinion; the future conduct of an individual on return in relation to the expression of genuinely held beliefs; the consequences of such expression; and, if the beliefs would be concealed, why this is the case. It is also well-established that a returnee cannot be expected to lie about genuinely held beliefs (RT (Zimbabwe) v SSHD [2012] UKSC 38).
18. We have concluded, applying the low standard of proof applicable, that there is a real risk that this appellant would be interrogated on return to Hanoi at which point the fact he is a failed asylum seeker would become known. Questioning by the authorities would cover any political activity in the United Kingdom, a matter about which the Vietnamese authorities are extremely sensitive. The appellant’s association with the Viet Tan party or

group has not been extensive but it was suspected in 2016 and the appellant's presence at demonstrations in London is reasonably likely to come to light for the reasons explained in Professor Bluth's report.

19. The consequence of disclosure or discovery would be, as the expert report explains, persecutory. The appellant is likely to face a period of detention and ill-treatment of sufficient seriousness to reach the threshold of serious harm. He may be prosecuted and face imprisonment.
20. Accordingly, we find the appellant has established that he has a well-founded fear of persecution on the basis of his political opinions. The appellant's appeal therefore succeeds on protection grounds (Refugee Convention and article 3 of the Human Rights Convention). He cannot also succeed on humanitarian protection grounds.
21. We allow the appellant's appeal.

Notice of Decision

Appeal allowed

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

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

Signed

Date: 7 December 2022



Deputy Upper Tribunal Judge Froom

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **“working day”** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is **“sent”** is that appearing on the covering letter or covering email.