



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000473

First-tier Tribunal No: PA/51597/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 29 May 2023

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

V S T
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Dr R Wilcox of Counsel

For the Respondent: Ms S Rushforth, Senior Home Office Presenting Officer

Heard by remote video at Field House on 26 April 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) 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 (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant, a citizen of Vietnam, has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Chong) promulgated 19.1.23, dismissing his appeal against the respondent's decision of

11.4.22 refusing his claim for international protection made on 14.5.99, on grounds of political opinion.

2. In granting permission by the decision dated 27.2.23, the First-tier Tribunal considered it arguable that, “the judge gave “little weight” to the expert opinion of Dr. Tran on the basis that the judge rejected the appellant’s claim that his involvement in protests was a manifestation of genuine political interests. Arguably, however: Dr. Tran’s opinion was that the appellant was at risk merely because of his apparent involvement in protests *sur place* (consolidated bundle, p. 68: Dr. Tran’s report, para. 3.17), Dr. Tran did not say it was relevant (and it would seem not to be relevant) whether that involvement reflected a genuine political interest; so that the appellant’s involvement being a simulation (rather than sincere expression) of political belief was not a proper basis to discount this aspect of the expert’s opinion; and, there was no other relevant basis given for discounting it.”
3. The respondent’s Rule 24 reply, dated 7.3.23, states that the respondent, “does not oppose the appellant’s application for permission to appeal and invites the Tribunal to determine the appeal with a fresh oral (continuance) hearing to consider whether the appellant’s claim is made out. While the weight accorded to any piece of evidence is always a matter for the Judge hearing it, it may be the case that the learned Judge of the First Tier may have misapprehended the tenor of the expert report at its paragraph 3.17, as detailed in the grant of permission. That possibility would benefit from full and frank discussion and submission at an error-in-law hearing.”
4. At the hearing before me, Ms Rushforth clarified the respondent’s position, asserting that there were no errors in relation to the other adverse findings of fact, including in particular that the finding that the appellant’s *sur place* activities were not genuinely motivated, so that they should be preserved when the appeal is remade.
5. In his submissions Dr Wilcox argued that none of the findings should be preserved. He concentrated on ground 6, the submission that at [42], [45], [49] and [61] of the decision the judge made findings of implausibility based on unsupported assumptions as to how a reasonable person would behave and ignored information in the background material, such as that the Vietnamese authorities are recognised to be deeply corrupt and may well have connections to gangsters or thugs, as the appellant feared.
6. In considering the grounds and in particular the respondent’s Rule 24 concession, I note that at [58] of the impugned decision, the First-tier Tribunal Judge stated, “For the reasons give above, I also rejected his claim as a member of the Viet Tan and I do not find that his association with the Viet Tan and involvements in the protests to be genuine political interests. Hence, little weight had been attached to the expert opinion provided.”
7. However, as has been pointed out and as accepted by the respondent, the judge discounted the whole of the report, including that part which opined that the appellant would be at risk on return on basis of his *sur place* activities, giving rise to suspected association with the Viet-Tan. As asserted at [5] of the grounds: “There is clear evidence within Dr Tran’s expert report, and more generally in the CPIN, that the Vietnamese Party-State has little or no tolerance for opposition whether genuine or suspected, that they will be particularly sensitive to any association or claimed association with the Viet Tan (which they categorise as a terrorist organisation and for which they display zero tolerance), and that there

will be intensive monitoring of any and all sur place activities amongst oppositionist groups and questioning of returnee failed asylum seekers.”

8. It follows that by rejecting the expert evidence almost in its entirety, the judge failed to take it into account and properly consider whether the appellant would be at risk on return even if his claimed association with the Viet Tan is not genuine and merely adopted or asserted to bolster an otherwise false or weak asylum claim.
9. In the circumstances, I agree with both representatives that the decision of the First-tier Tribunal is flawed for a material error of law and cannot stand but must be remade afresh.
10. In the circumstances, I do not consider it necessary to make any finding in relation to any of the other grounds, including ground 6, except to the extent to state that I am persuaded by Dr Wilcox’s argument that the error conceded by the Rule 24 reply may also suggest a failure on the part of the judge to properly understand the background information. I am satisfied that such an error can be regarded as also potentially undermining the basis of other findings, including those alleged assumptions identified in ground 6, and that if not practically impossible to separate out unsafe findings from those which are safe to retain, it would so severely tie the hands of the judge tasked with remaking the decision that it would be inappropriate to do so.
11. Both representatives agreed that if no findings were to be preserved, the appropriate course would be to remit the appeal to be remade in the First-tier Tribunal.
12. In all the circumstances, at the invitation and request of both parties, I relist this appeal for a fresh hearing in the First-tier Tribunal, I do so on the basis that this is a case which falls squarely within the Senior President’s Practice Statement at paragraph 7.2. The effect of the error has been to deprive the appellant of a fair hearing and that the nature or extent of any judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 to deal with cases fairly and justly, including with the avoidance of delay, I find that it is appropriate to remit this appeal to the First-tier Tribunal to determine the appeal afresh.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law such as to require it be set aside.

The appeal is remitted to the First-tier Tribunal to be remade de novo with no findings of fact preserved.

I make no order for costs.

DMW Pickup

DMW Pickup

Appeal Number: UI-2023-000473

Judge of the Upper Tribunal
Immigration and Asylum Chamber

26 April 2023