



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003384
First-tier Tribunal No:
PA/53012/2021
LP/00157/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 16 July 2023

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

SDT (VIETNAM)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Syed-Ali, Counsel, instructed by Morden Solicitors LLP
For the Respondent: Mr D Clarke, Senior Presenting Officer

Heard at Field House on 30 June 2023

Order Regarding Anonymity

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.

DECISION AND REASONS

Introduction

1. This is an appeal by the appellant against a decision of Judge of the First-tier Tribunal Williams ('the Judge') sent to the parties on 22 June 2022, dismissing his asylum and humanitarian protection appeal.

Anonymity

2. The Judge made an anonymity order. Neither representative sought for the order to be set aside. I observe that this matter concerns an application for international protection, and I am satisfied that at the present time the appellant's rights protected by article 8 ECHR override the public interest in knowing about the contents of the appeal, the latter right protected by article 10.
3. The anonymity order is detailed above.

Brief Facts

4. The appellant is a national of Vietnam and presently aged 26.
5. He states that he was a member of the Brotherhood for Democracy in Vietnam, attending demonstrations and distributing leaflets for the organisation. He further states that he was arrested for filming a demonstration in 2016, detained for two weeks and ill-treated. He continued to distribute leaflets until he was discovered by security on an industrial site in 2016. He managed to escape and soon afterwards left Vietnam. He arrived in this country by lorry and claimed asylum the next day.
6. Whilst in the United Kingdom he asserts that he has undertaken *sur place* activities with the Brotherhood.

Discussion

7. The appellant has raised several grounds of appeal. As indicated to Counsel at the hearing certain grounds lacked merit. However, ground 2 challenged the Judge's approach to the evidence of Professor Christoph Bluth, asserting that it was fundamentally flawed. I note that the Judge proceeded on the basis that Professor Bluth is an expert in matters relevant to this appeal, though no initial finding was actually made as to expertise: *Kennedy v Cordia (Services) Ltd* [2016] UKSC 6; [2016] 1 WLR 597, at [38] - [61]. I take judicial note that the respondent has previously accepted before the Upper Tribunal that Professor Bluth is qualified to give expert opinion on the political situation in Vietnam: *TN HU/00351/2018*, unreported (8 July 2021).
8. In respect of this ground, Mr Clarke conceded that there was a material error of law in the Judge's approach to the expert evidence. He noted that the respondent was not represented at the hearing and the Judge should properly have had in mind the *Surendran* guidelines, as evolved: *SW (Somalia)* [2005] UKIAT 00037. It was accepted that concerns as to the expert report should properly have been detailed by the Judge to the appellant's representatives at the hearing.
9. Additionally, the respondent was satisfied that the Judge adopted an unlawful, adversarial approach to the expert's evidence at [64] to [68] of the decision.
10. In the circumstances, the respondent conceded that the materially erroneous approach infected general findings as to credibility, as well as the approach adopted to the evidence of a lawyer involved with the Brotherhood.
11. Having accepted the respondent's concession and her acceptance of a material error of law, it is proper that I set aside the decision of the Judge as a whole.

Renewed Hearing

12. Both representatives requested that the matter be remitted back to the First-tier Tribunal. I observe the presumption that a resumed hearing will take place in this Tribunal. However, the parties are both in agreement that there will be substantial evidence to be considered at the resumed hearing, coupled with a previous failure to properly and adequately consider expert evidence. I consider that fairness requires that this matter be remitted back to the First-tier Tribunal sitting in Birmingham for the resumed hearing.

Notice of Decision

13. The decision of the First-tier Tribunal sent to the parties on 22 June 2022 is subject to material error of law and is set aside.
14. No findings of fact are preserved.
15. The appeal is remitted to the First-tier Tribunal sitting in Birmingham to be heard by any Judge other than Judge of the First-tier Tribunal H L Williams.
16. An anonymity order is confirmed.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 July 2023