



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

005051

No: UI-2022-

First-tier Tribunal No:  
PA/55829/2022, IA/17283/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 14 July 2023**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**  
**DEPUTY UPPER TRIBUNAL JUDGE PARKES**

**Between**

VLM

Appellant

**and**

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr J Martin (Counsel)

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

**Hear at Birmingham on 9<sup>th</sup> May 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's immigration history and the basis of his claim are set out in full in the Tribunal bundle of 370 pages. The Appellant's asylum application, on the basis of his religious activities and the state response, was refused. The Appellant's appeal was heard by First-tier Tribunal Judge Juss at Manchester on the 4<sup>th</sup> of August 2022 and the appeal dismissed in his decision of the 5<sup>th</sup> of August 2022.
2. By Grounds of the 15<sup>th</sup> of August 2022 the Appellant sought permission to appeal to the Upper Tribunal. The grounds assert that the Judge failed to properly consider the special approach of Hoa Hoa Buddhists, having referred to the basic principle of standing up against dictatorship the Judge did not adequately consider the extent to which this would bring him to the attention of the authorities. HJ (Iran) is also relied on. The second ground is a variation on the first on the status of the branch and the risk of practising it, the point of membership compared to the numbers involved.
3. The third ground is that the Judge failed to reach a conclusion on whether the Appellant had been detained and tortured by the authorities in Vietnam. Ground four is that the Judge erroneously recorded that the Appellant's sister had died and placed weight on the absence of a death certificate. The Appellant's case had always been that she had been detained. The grounds also address the Judge's credibility findings and his explanation for his 2014 application being completed by an agent and the Appellant's sur place activities and the dangers that those would create. The final grounds related to the Appellant's risk on return and his status as a failed asylum seeker.
4. The grounds were considered by First-tier Tribunal Judge Sills who granted permission to appeal in his decision of the 5<sup>th</sup> of October 2022. Judge Sills noted that the ground relating to the Appellant's sister were correct, there was no reference in any documentation to her having died and it was not suggested that the Appellant had been inconsistent on this point. That ground being arguable permission was granted on all grounds.
5. At the hearing on the 9<sup>th</sup> of May 2023 we commenced the hearing with our preliminary observation that the Judge had clearly erred on that point and had made findings based on it and the absence of supporting documentation in the form of the death certificate. It was agreed by Ms Rushforth that the observations in the Grounds were correct. It was accepted by both representatives that the decision contained material errors of law. We indicated that the decision would be set aside and would be remade in the Upper Tribunal in due course. This decision sets out our reasons for findings.
6. Although not the first point raised in the grounds the approach of the Judge to the position of the Appellant's sister involved a bald assertion on an important point that was factually incorrect, the absence of a death certificate was a significant finding that was similarly incorrect. The Judge proceeded on a factually incorrect basis and made adverse findings based on that position. We agree with the Appellant and Respondent that that was a material error which necessitated setting the decision aside.

7. The first ground is that the Judge had not properly considered the special approach of Hoa Hoa Buddhists the Judge having recorded that the basic principle is to stand against dictatorship. It is argued that the Judge had not considered the extent the Appellant practised his religion would bring him to the attention of the authorities or his position on return. As with the remaining grounds, although we did not hear submissions on the points raised we find that they are made out in the light of the pleadings and the Respondent's concession.
8. The second ground, a variation on the first, relates to the particular status of the Appellant's religion and the risk on return in the light of the expert report and the background evidence. The Judge found that sect had only 400 members and the Appellant's activities were conducted a long way away from the heartlands of the group.
9. Thirdly it is argued the Judge had not made findings on the Appellant's claims of torture and imprisonment. The fifth ground concerned the Appellant's sister. The sixth relates to credibility findings and the Judge's rejection of the Appellant's assertion his visa application had been completed by the agent. The final grounds relate to the Appellant's sur place activities, the finding low level opposition supporters are not at risk on return and the risk as a failed asylum seeker.
10. Given the fundamental error at the heart of the decision it is appropriate to set the decision aside. We have had regard to the guidance relating to the remittal of hearings to the First-tier Tribunal for re-hearing following a finding of an error of law and setting aside a decision. In this case there are no preserved findings and the decision is to be remade in its entirety. In the circumstances we are satisfied that it is appropriate to remit this appeal to the First-tier Tribunal for re-hearing, it may be heard by any Judge except Judge Juss.

### **Notice of Decision**

11. The decision is set aside and the appeal is remitted to the First-tier Tribunal for re-hearing with no findings preserved.

Judge Parkes

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

26<sup>th</sup> May 2023

