



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2021-001869

First-tier Tribunal No:
PA/00667/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 8th of October 2024

Before

UPPER TRIBUNAL JUDGE SMITH

Between

D V N
[ANONYMITY DIRECTION MADE]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Khan, Counsel instructed by Thompson & Co

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

Heard at Field House on Wednesday 25 September 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant (D V N) 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.** By a decision promulgated on 25 October 2023, Deputy Upper Tribunal Judge Chamberlain found errors of law in the decision of First-tier Tribunal G. A. Black itself promulgated on 8 November 2021 dismissing the Appellant's appeal against the Respondent's decision refusing his protection and human rights claims in the context of a decision to remove the Appellant to his home country, Vietnam. Judge Chamberlain set aside Judge Black's decision for a decision to be re-made with no findings preserved. So it was that the appeal came back before me.
- 2.** Although the Appellant gave oral evidence before me, the facts of his protection claim are largely accepted. It is accepted that he is from Vietnam and that he was a minor when he arrived in the UK in July 2019. It is accepted that the Appellant is a follower of the pure Hoa Hao religion as were his parents. It is accepted that the Appellant and his parents have come to the attention of the Vietnamese authorities previously. It is also accepted that the Appellant, his father and mother were arrested and detained by those authorities. The Appellant was arrested on 26 November 2014, 25 February 2016 and 1 December 2018. The Respondent also does not dispute that the Appellant was told that his father had died in police custody. The Appellant's mother raised a complaint regarding his death and was herself harassed as a consequence.
- 3.** The Appellant and his mother left Vietnam on 10 May 2019 with the assistance of an agent. The Appellant was separated from his mother on his journey. Since his arrival in the UK, he has been cared for by the local authority. Although he is now aged 22 years, he remains a former looked after child.
- 4.** Since his arrival in the UK, the Appellant has attended demonstrations against the Vietnamese authorities. The nature and extent of the Appellant's sur place activities is disputed to some extent as is the ability of the Vietnamese authorities to conduct surveillance of protesters on UK soil.
- 5.** The issue between the parties is mainly the risk which flows from the facts as agreed and the facts as I find them about the Appellant's sur place activities. There is no dispute between the parties regarding the legal issues. The issue is whether the Appellant faces a real risk of ill treatment on return. The risk, if found, emanates from the Vietnamese authorities and therefore no issue arises as to sufficiency of protection or internal relocation. The risk, if found, arises due to the Appellant's religious beliefs and activities and accordingly would be for a Refugee Convention reason. Accordingly, if I find that the Appellant is at risk on

return to Vietnam, he is entitled to be recognised as a refugee. The claims that Articles 2 and 3 ECHR would be breached on return are therefore makeweights.

6. An Article 8 ECHR claim is not pursued save insofar as it overlaps with the protection claim (ie that there would be very significant obstacles to the Appellant's integration in Vietnam).
7. The Appellant also relies on the principles set out in HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31 ("HJ (Iran)"). He says that he would be unable freely to practise his religion on return to Vietnam as he would wish, and this is an additional reason why he should be recognised as a refugee.
8. I had before me a bundle of documents running to 183 pages filed by the Appellant's solicitor ([AB/xx]), a supplementary bundle also filed by the Appellant's solicitor running to 82 pages ([ASB/xx]) and the Respondent's bundle ([RB/xx]).
9. The Appellant's supplementary bundle includes a further statement from the Appellant dated 10 September 2024 ([ASB/1-2]) and a report from Professor Christopher Bluth dated 20 February 2024 ("the Expert Report") ([ASB/7-48]). The Expert Report and Appellant's second witness statement were not filed or served until September 2024. However, they were admitted without objection from Ms McKenzie. Both parties also made reference to a Country Information and Policy Note dated January 2024 entitled "Vietnam: Hoa Hao" ("the CPIN") ([ASB/50-82]).
10. Having heard evidence from the Appellant and submissions from Ms McKenzie and Mr Khan, I indicated that I would reserve my decision and provide that in writing which I now turn to do.

EVIDENCE, FINDINGS AND DISCUSSION

11. The Appellant gave evidence via a Vietnamese interpreter. There were no difficulties with interpretation.
12. The Appellant adopted his two statements dated 10 May 2021 ([AB/14-23]) and 10 September 2024 ([ASB/1-2]).
13. As I have already indicated, there is limited dispute as to the facts which I have set out above.
14. The Appellant was asked about contact with his mother. He said that he had tried to make contact with her via the Red Cross and social services. He had lost contact with her en route to the UK. He believes her to be in China but so far efforts to make contact have not succeeded. He said that efforts were still continuing. I have no reason to doubt the Appellant's evidence in this regard. He said he was "not

sure” whether he has other family in Vietnam. That issue would only be relevant in any event if I find that he can safely return to Vietnam.

15. As regards attendance at demonstrations in the UK, the Appellant in his first statement refers to demonstrations (plural) which he has attended in front of the Vietnamese Embassy in London ([39] at [AB/19-20]). The date of the demonstration is not given. I accept that the first photograph appears to show the Appellant holding a photograph of a boy or man who it is said is “Master Huynh Phu So”. The identity of this person is not explained. The Appellant is shown standing alongside a few other people holding a banner which is not translated within a group of many other people (numbers are unclear). The second photograph also shows a large group. The Appellant is not identified within that group (he is said to be the person who took the photograph). The date of the demonstration is not given, and the evidence does not show that this photograph was taken on a different occasion from the first. Based on this evidence, I find that the Appellant has attended one demonstration but no more. That demonstration must have been prior to May 2021 as that was the date of his statement.

16. The Respondent in her decision dated 22 October 2020 at [69-70] ([RB/17-18]) refers to the Appellant’s claim that he had attended one demonstration by that time. That would be consistent with his May 2021 statement. As the Respondent there points out, the Appellant provided information about this protest and his other sur place activities in his asylum interview as follows ([RB/95-97]):

“Q221: Do you [do] anything else in terms of the religion in this country?
A221: No nothing else.
Q222: Are you politically active in the UK in relation to Vietnam?
A222: No.
Q223: The photos [you] are going to submit in 5 working days what do they show?
A223: Those photos about my participation demos in front of [Vietnamese] embassy.
Q224: So how often have you [been] demonstrating in front of the embassy?
A224: So far only once in December last year but whenever it is organised I will participate.
Q225: Why was it important for you to go in December?
A225: Because that [December] demo was organised by pure Hoa Hao followers And that demo was not only for religious reason it is combined religious and political reasons.
Q226: And what did you [do] during demo? What role did you have personally?
A226: I was simply attending demonstrator. There’s organiser who ask us what to do, for example, shouting or showing plaque or slogans. I was only attending.
Q227: How many were there attending?
A227: Quite many about 2000.

- Q228: How did you find out about this demo?
A228: I came to know through different forms eg on internet and other friends.
- Q229: Are you part of any organisations groups about Vietnam?
A229: No.
- Q230: And are you active [on] social media with regards to your religion and political views?
A230: No I'm not active on social media but in UK I just take part in one religious organisation for same religions.
- Q231: And did you get in any trouble due to your role at the embassy at the demo?
A231: The organiser told us to follow but don't think someone gave any attention to me or my role. I don't have any specific roles."

17. At the hearing before Judge Black, it was confirmed that the photograph bearing the Appellant's image was at a demonstration in 2019. I am therefore satisfied that, at the time of the First-tier Tribunal hearing in October 2021, the Appellant had only attended one demonstration.

18. In his supplementary witness statement, the Appellant says this about his sur place activities ([ASB/1]):

"4. I still attend demonstrations in order to show my support for anti-government activities. The last demonstration I attended was on the December [sic] 2023. The demonstration took place outside the Vietnamese embassy. I was protesting against the Vietnamese authorities and to demand freedom for the prisoners of conscious [sic] in Vietnam. After this, I wasn't informed of any more demonstrations so I was aware [sic] if any more demonstrations have occurred since then. I don't use social media often which is why I haven't posted/shared anything on there."

19. When asked about his sur place activities in oral evidence, he said he could not remember the date of the last demonstration he attended but agreed that it was in December 2023, that is to say nine months before the hearing before me. He gives no evidence about any other demonstrations which he has attended. I find therefore that he has attended only two demonstrations since being in the UK, one in December 2019 and one four years later in December 2023.

20. The Appellant said that the demonstration in December 2023 was attended by about 200 people. The protest was asking for the release of prisoners practising Hoa Hao. He agreed that he was just an attendee albeit he was holding a banner. As Ms McKenzie pointed out, there is no documentary evidence of this demonstration. I accept that the Appellant's evidence is consistent with the attendance at the earlier demonstration. However, in common with the earlier demonstration, the Appellant's motivation is his religion and not any political views.

21. I come then to the evidence about the capabilities of the Vietnamese authorities to monitor the activities of protesters. This is contained in

the Expert Report. Ms McKenzie did not take issue with the expertise of Professor Bluth but did submit that I should give limited if any weight to the report, partly based on the date of some reports relied upon and partly because some of it, particularly in relation to surveillance, is unsourced.

22. Professor Bluth is a Professor of International Studies at the University of Bradford. He sets out in the Expert Report his knowledge of the situation in Vietnam. He says he visits frequently and has taught about the country for over twenty-five years. He has provided evidence in over ninety asylum cases. I have no doubt that he is qualified to comment on the situation in Vietnam, albeit he does not say when he was last in Vietnam and much of the opinions expressed rely on background country information. That is not however a criticism as it is important that opinions are sourced either from documentary evidence or an expert's specific knowledge of the situation.

23. That brings me to what Professor Bluth says about the capabilities of the Vietnamese authorities to monitor protests and social media in relation to activities in the UK. At [5.4.7] of the Expert Report, Professor Bluth says this:

“It is important to understand the extent of the efforts that the Vietnamese authorities engage in to monitor dissidents and potential opponents of the government. In particular, ‘Vietnamese security forces employ both a widespread territorial surveillance network and sophisticated electronic monitoring technology to identify and surveil individuals and groups that are considered politically subversive.’ The report states that individuals or groups are subjected to harassment and intimidation and that surveillance on the activities of political activists is conducted at district and city ward levels which includes the extensive use of local informants.”

24. As that passage makes clear, it is dealing with monitoring and surveillance within Vietnam and not outside it. Although I have found that the Appellant is motivated to demonstrate by his religious views and not political ones, I accept Professor Bluth's opinion that, by the nature of the Appellant's religious views, he would be seen as opposed to the Vietnamese authorities. So much is confirmed by the evidence on which Professor Bluth relies ([5.3.16-5.3.20] at [ASB/22-29]). It is in any event consistent with the Appellant's own case and the accepted facts that he and his family were arrested and detained because of their religious views on three previous occasions and that his father died in police custody.

25. I cannot however give weight to Professor Bluth's opinion in relation to the capability of the Vietnamese authorities to monitor and conduct surveillance of demonstrators in the UK. He accepts at [5.4.9] ([ASB/37-38]) that “for obvious reasons”, the Vietnamese authorities cannot monitor activities as they would in Vietnam. I accept that they may have reasons for wishing to do so. However, he offers no evidence

for his assertion that the Vietnamese authorities “expend considerable effort in the surveillance of dissident groups”. Moreover, the examples he gives relate to “internet traffic, bloggers and dissidents active abroad”. I can readily accept that the authorities of foreign countries may be able to monitor social media undetected. However, that has no relevance to this case as the Appellant admits that he does not post or share posts on social media.

26. Professor Bluth provides no detail about the cases where he says that the Vietnamese authorities were shown to be “well informed” about activities of political activists abroad. He appears to suggest that the Vietnamese authorities employ “cameras, hidden observers and electronic surveillance” but offers no evidence of this nor that they have the capability to use facial recognition technology from mobile phone images. I reject the suggestion that, just because individuals in the UK can monitor events outside their homes by the use of door-cams and such like that I should accept that the Vietnamese authorities are routinely monitoring demonstrations outside their embassy in London and using facial recognition technology to identify even low-level protesters attending those demonstrations. The evidence of Professor Bluth is speculative.

27. I bear in mind what is said by the Court of Appeal in YB (Eritrea) v Secretary of State for the Home Department [2008] EWCA Civ 360 as follows:

“18. As has been seen (§7 above), the tribunal, while accepting that the appellant's political activity in this country was genuine, were not prepared to accept in the absence of positive evidence that the Eritrean authorities had ‘the means and the inclination’ to monitor such activities as a demonstration outside their embassy, or that they would be able to identify the appellant from photographs of the demonstration. In my judgment, and without disrespect to what is a specialist tribunal, this is a finding which risks losing contact with reality. Where, as here, the tribunal has objective evidence which ‘paints a bleak picture of the suppression of political opponents’ by a named government, it requires little or no evidence or speculation to arrive at a strong possibility – and perhaps more – that its foreign legations not only film or photograph their nationals who demonstrate in public against the regime but have informers among expatriate oppositionist organisations who can name the people who are filmed or photographed. Similarly it does not require affirmative evidence to establish a probability that the intelligence services of such states monitor the internet for information about oppositionist groups. The real question in most cases will be what follows for the individual claimant. If, for example, any information reaching the embassy is likely to be that the claimant identified in a photograph is a hanger-on with no real commitment to the oppositionist cause, that will go directly to the issue flagged up by art 4(3) (d) of the Directive.”

28. However, first, Professor Bluth has provided an opinion on this issue which must be assumed to be the most that can be provided by way of

evidence. Although he says that the Vietnamese authorities appear to be well-informed about the activities of opponents abroad, he provides no detail about cases where this has occurred. Further, the sources which Professor Bluth identifies as potentially providing information such as the internet are not used by the Appellant.

29. Second, the Court of Appeal specifically identifies as an issue the extent of involvement of the individual relying on sur place activities. The Appellant himself said when interviewed that he did not think his attendance at the demonstrations had been monitored or even seen by those in the embassy. Further, he has only attended two demonstrations and only as an attendee.

30. Third, this Tribunal has, since YB (Eritrea) given guidance regarding sur place activities in BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 as follows:

“4. The following are relevant factors to be considered when assessing risk on return having regard to sur place activities:

(i) Nature of sur place activity

· Theme of demonstrations – what do the demonstrators want (e.g. reform of the regime through to its violent overthrow); how will they be characterised by the regime?

· Role in demonstrations and political profile – can the person be described as a leader; mobiliser (e.g. addressing the crowd), organiser (e.g. leading the chanting); or simply a member of the crowd; if the latter is he active or passive (e.g. does he carry a banner); what is his motive, and is this relevant to the profile he will have in the eyes of the regime?

· Extent of participation – has the person attended one or two demonstrations or is he a regular participant?

· Publicity attracted – has a demonstration attracted media coverage in the United Kingdom or the home country; nature of that publicity (quality of images; outlets where stories appear etc)?

(ii) Identification risk

· Surveillance of demonstrators – assuming the regime aims to identify demonstrators against it how does it do so, through, filming them, having agents who mingle in the crowd, reviewing images/recordings of demonstrations etc?

· Regime’s capacity to identify individuals – does the regime have advanced technology (e.g. for facial recognition); does it allocate human resources to fit names to faces in the crowd?

(iii) Factors triggering inquiry/action on return

· Profile – is the person known as a committed opponent or someone with a significant political profile; does he fall within a category which the regime regards as especially objectionable?

· Immigration history – how did the person leave the country (illegally; type of visa); where has the person been when abroad; is the timing and method of return more likely to lead to inquiry and/or being detained for more than a short period and ill-treated (overstayer; forced return)?

(iv) Consequences of identification

· Is there differentiation between demonstrators depending on the level of their political profile adverse to the regime?

(v) Identification risk on return

Matching identification to person – if a person is identified is that information systematically stored and used; are border posts geared to the task?”

- 31.** As I have already found, the Appellant has participated in only two demonstrations since being in the UK. Both were linked to his religious beliefs. Whilst I have accepted Professor Bluth’s opinion that the Vietnamese authorities view those with certain religious beliefs as a threat “because it involves the allegiance to an authority other than the government”, the Appellant has not voiced any overtly anti-government rhetoric online. He does not profess to hold political, anti-government views. He is not a member of any political party or group opposed to the Vietnamese authorities. His participation in the two demonstrations he has attended was motivated by his religious beliefs. He has participated only as an attendee, in one holding a photograph and another a banner. He accepts himself that he saw no evidence of any monitoring of the demonstration by those in the embassy. I cannot give weight to Professor Bluth’s opinions about the capabilities of the Vietnamese authorities to monitor such protests. The Appellant does not use social media to post or share anti-government views.
- 32.** For the foregoing reasons, I find that the Appellant would not be at risk of identification or ill-treatment on return in consequence of his surveillance activities. The position is however different in relation to the Appellant’s past activities.
- 33.** It is accepted that the Appellant was arrested and detained with other family members on three previous occasions. The position of the Respondent appears to be that, whilst there was a risk to the Appellant in 2019, that risk would no longer exist in 2024.
- 34.** The Appellant was clear when asked about his practice of Hoa Hao, that he has continued to follow his religion whilst in the UK. He attends a pagoda about twice per month or when he has time. Although he accepted that others of different religions also attend that pagoda, I accept that he continues to follow pure Hoa Hao and is committed to that religion. He said that those who follow Hoa Hao in Vietnam do not have the freedom to follow the religion.
- 35.** Ms McKenzie drew my attention to [10.1.1] of the CPIN as follows ([ASB/68]):
- “The UK FFT 2019 asked the Hoa Hao Buddhist managers of the ‘pure sect’ whether in general Hoa Hao members outside of Vietnam would be at risk if they were returned. They stated: ‘Probably not. The government only targets those who are struggling for the legitimate interests of the Pure sect. If the government thinks that the person

returning may cause a risk, they may not grant entry or deny entry. The government may grant entry and monitor the person and escalate [issues] later.'

- 36.** Professor Bluth at [5.2.12] of the Expert Report ([ASB/16-17]) criticises the distinction which is drawn at [10.1.1] of the CPIN. He says that the statement is vague, the distinction is not in accordance with other country evidence but that in any event this confirms a risk for those who participate actively in pure Hoa Hao Buddhism as does the Appellant.
- 37.** Although many of the examples given by Professor Bluth of ill-treatment of Hoa Hao adherents at [5.2.5] to [5.2.10] are somewhat dated, one at least post-dates the Appellant's departure from Vietnam (see footnote [13] at [5.2.10] – [ASB/45]). Furthermore, there are more recent examples of arrests and detentions of those who follow the pure Hoa Hao religion at [9.3.4] of the CPIN ([ASB/66-68]). As Mr Khan pointed out in his submissions although there is some disagreement with the figures given in the CPIN for those who practise pure Hoa Hao Buddhism, if the figure is as suggested around four hundred, then the risk of arrest and detention disclosed by the background evidence is if anything higher.
- 38.** The issue then becomes one of what treatment the Appellant would face on return to Vietnam. As I pointed out to Ms McKenzie, the evidence put forward by Professor Bluth about procedures at the airport in Vietnam is sourced. This issue is dealt with at [5.4.1] of the Expert Report ([ASB/32-33]). Professor Bluth candidly there accepts that "[r]eturn to Vietnam is complicated". As he says, the authorities are reluctant to accept those forcibly returned because they think that such persons will simply leave again, become a burden on society or cause trouble. If such persons are accepted, they are interrogated by immigration officials on return and asked about where they have been, their activities and contacts abroad and reasons for return. There and in the paragraphs which follow, he gives many examples of failed asylum seekers who have been returned who have been interrogated and arrested on return. Again, some of the examples are dated but some are more recent (2019).
- 39.** As Professor Bluth points out, and consistently with the judgment in HJ (Iran), the Appellant should not be expected to hide his religious allegiance if asked about it.
- 40.** Further, I have accepted what Professor Bluth says about the authorities' ability to monitor and conduct surveillance in Vietnam. At [5.4.5] of the Expert Report ([ASB/36]), Professor Bluth makes reference to the holding by the Vietnamese authorities of a database which permits verification of former residents "within seconds". Although the express reference there is to a tax database which would not include the Appellant himself as he was a minor when he left

Vietnam, it is likely that this would enable the authorities to identify his parents and the previous interest of the authorities in both the Appellant and his parents.

- 41.** I asked Ms McKenzie for the Respondent's position in relation to risk on return arising from the previous interest by the authorities in the Appellant and his family. She very fairly accepted that the evidence in this regard caused some difficulty for the Respondent. However, she said that the evidence showed only that the Appellant might be monitored (by reference to [10.1.1] of the CPIN) and action would only be escalated if the Appellant actively opposed the government.
- 42.** The difficulty with that submission is, as Mr Khan pointed out, that the Appellant continues to practise Hoa Hao and would continue to do so on return. His religious affiliation is not disputed, and it is not disputed that he is a genuine follower of that religion. There is no evidence that the Vietnamese authorities have ceased to be interested in active participants in that religion; in fact, as [10.1.1] of the CPIN confirms and as Professor Bluth points out, quite the contrary. Consistently with HJ (Iran), if the Appellant were to restrain from practising his religion on return, that would be because of fear of the repercussions of so doing. In other words, he would desist due to a fear of arrest and detention. His restraint would therefore be as a result of the fear of persecution. He would then also be entitled to be recognised as a refugee.
- 43.** Having considered the facts as accepted by the Respondent and the background evidence, I find that the Appellant would be at risk of identification at the airport as being a person in whom the authorities had a previous interest. There is then a real risk that he would be arrested and detained. It is accepted at [3.1.3] of the CPIN ([ASB/54]) that interrogation and detention may amount to persecution.
- 44.** Although I have not accepted that the Vietnamese authorities would be aware of the Appellant's attendance at demonstrations in the UK, his activities and those of his parents before he left Vietnam were clearly perceived as opposed to the government. That is why they were arrested on not one occasion but three times. That is sufficient to show that the authorities would be sufficiently interested in the Appellant on return to arrest and detain him now even though his activities are not overtly political.

CONCLUSION

- 45.** For the foregoing reasons, I find that the Appellant has a well-founded fear of persecution because of his religious beliefs. He is therefore entitled to be recognised as a refugee. His appeal therefore succeeds on protection grounds. Having reached that conclusion, there is no need for me to go on to consider human rights grounds which in any event overlap with the protection claim.

NOTICE OF DECISION

The appeal is allowed on protection grounds.

L K Smith
Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

4 October 2024