



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

**Case No: UI-2022-002577**  
**First-tier Tribunal Nos:**  
**PA/52817/2020**  
**IA/02662/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 23 April 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**H L**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Moriarty, counsel instructed by JD Spicer Zeb solicitors  
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

**Heard at Field House on 20 March 2024**

**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 is a national of Vietnam born on 5 December 1981. He arrived in the UK on 15 November 2019 and claimed asylum five days later. The basis of his claim is that he was an adherent of the Pure Sect Hoa Hao Buddhist Sect and on 18 May 2016 the police raided a prayer ceremony at his home and arrested a number of people including him, subsequently he was held for three weeks without charge. The Appellant further stated that his father had been detained on 25 November 2016 and he was informed on 1 April 2017 that his father had died in custody. The Appellant then raised a complaint; he was then threatened to withdraw the complaint and he was detained by the authorities on 30 August 2017 and held for six weeks. The Appellant states he was subsequently arrested again on 14 February 2019 whilst collecting signatures demanding freedom of religion and he was held until he was able to escape due to collapsing as a result of ill-treatment and lack of food, whereupon he was transferred from a medical centre outside the prison estate and escaped on 10 October 2019.
2. The Appellant fled Vietnam ten days later. He was interviewed but his asylum application was refused on 1 December 2020. He appealed against that decision and his decision came before First-tier Tribunal Judge Abdar at a hearing on 28 January 2022. In a decision and reasons dated 29 March 2022 the judge dismissed the appeal.
3. An application for permission to appeal to the Upper Tribunal was made which asserted that:
  - (i) the judge erred in his assessment of the Appellant's claim in that he found the Appellant would not be targeted and detained because such treatment was reserved for activists, but this finding was flawed because it ignores the judge's own earlier finding that the Appellant was not a mere adherent of the religion and had an imputed political opinion and further contradicted his finding at [23] where the judge found the Appellant's continuation to follow the Pure Sect was in keeping with the broad statement of standing up to dictatorship;
  - (ii) the judge failed to make proper findings on key parts of the evidence. The Appellant's father was also an adherent and had been arrested, detained and died in custody [27] but the judge failed to make any findings on this material matter, nor whether the Appellant had lodged an official complaint with the authorities and requested an investigation and how this might be viewed by the authorities;
  - (iii) the judge materially erred in that his finding on the background evidence as to the specified length of detention that Pure Sect Hoa Hao followers is flawed in that the judge misdirected himself in considering there was a specified sentence of imprisonment for supporting the faith whereas the CPIN at 5.27 recognises that harassment of followers includes short term detention and beatings by police.
4. Permission to appeal was granted by FtTJ Woodcraft on 12 February 2024.

*Hearing*

5. At the hearing before the Upper Tribunal Mr Moriarty sought to rely on the grounds of appeal and a skeleton argument that he had lodged in advance of the hearing, dated 11 March 2024. He highlighted the fact that Judge Abdar had made some positive findings including the fact that he accepted the Appellant as a follower of the Pure Sect faith and that had not been challenged. The judge also made findings in relation to Vietnam at [37] and [38] including procedures such as charge and prosecution of those of the Pure Sect faith. Mr Moriarty submitted the judge concluded that the Appellant would have a political opinion imputed to him as a result of his faith and that he would be at risk on return for this reason. This finding is based on [24] which provides:

*“On the lower standard of proof, I accept the Appellant’s account of being a follower of Pure Sect Hoa Hao and predominantly praying at home. I also find it credible that the Appellant was not political, per se, nevertheless and insofar as religion has been politicised by the Vietnamese authorities, the Appellant is political to the extent of refusing to acquiesce to relinquish his religion”.*

6. Mr Moriarty further relied upon ground 2 and the judge’s failure to make findings on specific material issues. He submitted that there was no clear distinct finding either way as to whether the judge accepted the Appellant’s father was a member of the Pure Sect faith and had been arrested and died in custody. Secondly and relatedly, whether he accepted the Appellant had complained to the authorities, there was no finding as to whether or not a complaint had been made, and thirdly whether the Appellant had been forced to withdraw that complaint due to threats. Mr Moriarty submitted that this would set the Appellant apart as a normal Pure Sect follower and would place him at risk on return. He submitted that the judge had failed to provide adequate reasons in relation to corroboration of the Pure Sect faith and whether members of that community helped each other. Mr Moriarty relied on [7] of his skeleton argument and submitted that the judge erred in failing to provide sufficient reasons for rejecting the Appellant’s account of detention. It was accepted at [37] that the Vietnamese State acts with total impunity and in light of this finding and complete disregard for the rule of law it was not right that the state would act in a consistent and uniform way towards detainees.
7. Mr Moriarty submitted that the judge, in effect, finds that the Appellant would have been prosecuted and held for a number of years in prison. Mr Moriarty submitted that this was a classic error in assuming that unpredictable regimes act in a predictable manner, particularly in light of the fact the Appellant’s account was corroborated by findings from Dr Munro in the medical legal report where he found that the Appellant had injuries and scars typical of torture, for example there were injuries to the back of his head which are unusual and were unlikely to have been caused by accident. At [18] of the decision the expert’s findings were unchallenged and the judge accepted these but found he was not bound to follow Dr Munro’s findings. Mr Moriarty submitted the judge’s reasons for so doing were inadequate and unsustainable.
8. In relation to ground 3, Mr Moriarty submitted that the Secretary of State’s own country information as set out in the CPIN on Hoa Hao Buddhism, February 2020 accepts that members of the Pure Sect are subject to adverse ill-treatment and that contrary to the judge’s finding that the Appellant would have been prosecuted, that evidence shows there is a certain arbitrariness of detention.

9. Mr Moriarty submitted that there were material errors of law in the decision and reasons of the First-tier Tribunal Judge and that the decision should be set aside.
10. In her submissions, Ms Isherwood submitted that there was no material error of law. She submitted it had never been asserted that the Appellant had any sort of profile that would bring him to the attention of the authorities and that the finding of the judge at [24] was not to that effect either. She submitted that the judge found the Appellant was not political so much as refusing to relinquish his religion. The Appellant had never said that he was a leader and it was not his case that he is an unregistered group seeking to challenge or criticise the state. She submitted that, given it has not been asserted that the Appellant has a political or other profile, there was no reason to think that he will be subjected to long term detention.
11. In relation to the Appellant's father, Ms Isherwood submitted that there was no evidence the Pure Sect community tried to find him in the four months between November 2016 and April 2017. Whilst at [32] the judge accepted that the Appellant had been detained for six months and forced into hard labour, there was no evidence of any ongoing interest in him. In relation to the medical evidence at [35] Ms Isherwood submitted that Dr Munro does give an alternative explanation, i.e. that the Appellant could have fallen to the ground or had shrapnel wounds and she submitted the judge was entitled to make his finding at [38] on the evidence presented. She submitted the highest the case gets is that the Appellant practises his religion at home.
12. In his reply, Mr Moriarty submitted it was not strictly accurate that the Appellant does not claim to have any form of profile, he has provided a detailed and quite nuanced account that he and his family members have come to the attention of the authorities, see [10] to [14] of his witness statement at AB 44, and this is corroborated by the medicolegal report. Mr Moriarty submitted that the judge found that the Appellant practised his faith predominantly, albeit not entirely, at home which is in keeping with what the judge held to be in terms of the Appellant standing up to a dictatorship. Mr Moriarty submitted that even on the judge's findings there were positive findings as to the Appellant's manifestation of his religious beliefs. He submitted if the Appellant was practising predominantly at home but has practised in a group and refused to acquiesce then there will be a real risk of persecution to him. Mr Moriarty submitted that the CPIN was mixed, the suggestion that mere followers would not face persecution is not consistent throughout the evidence relied on and that there was a grey area between activists who would face a real risk of persecution and followers who would not. Mr Moriarty submitted the judge had failed to make findings on significant material matters and his decision could not stand.

### *Decision and Reasons*

10. I found material errors of law in the decision and reasons of First-tier Tribunal Judge Abdar at the conclusion of the hearing. I now provide the reasons for my decision.
11. Firstly, I agree with Mr Moriarty that the judge's findings were not wholly consistent, which casts doubt on the safety of his findings. At [23] and [24] the judge held *inter alia* as follows:

*“23.... I agree with Mr Burrett and on a holistic view, I find that the Appellant has demonstrated sufficient and detailed knowledge of Pure Sect Hoa Hao, which the Respondent accepts with reference to the background evidence, albeit not all of the sections of the CPIN: Hoa Hao Buddhism referred to by the Respondent exists. I also find the Appellant’s intent not to cower and accept the state recognised Hoa Hao Buddhism and continue to follow Pure Sect Hoa Hao to be in keeping with what I consider to be a broad statement of ‘standing up to dictatorship’.*

*24. On the lower standard of proof, I accept the Appellant’s account of being a follower of Pure Sect Hoa Hao and predominantly praying at home. I also find it credible that the Appellant was not political, per se, nevertheless and insofar as religion has been politicised by the Vietnamese authorities, the Appellant is political to the extent of refusing to acquiesce to relinquish his religion.”*

12. However, the judge went on to make the following findings at [32], [36]-[39]:

*“32. At the prison, the Appellant was detained for six months in poor conditions and forced into hard labour before being released on 1 October 2018 with conditions, A:18 including to report every Monday, and a warning that if the appellant were to be caught again, the Appellant would face life imprisonment. I have no evidence of any on-going investigations or prosecutions subsequent to the said charge...*

*36. On a holistic view and on the lower standard of proof, I do not find the Appellant’s account of the detentions and the level of interest in the Appellant from the Vietnamese state to be credible. I accept Dr Munro’s professional opinion and diagnosis. However, I am not persuaded to find a ‘medically plausible’ account to be a reliable account of the Appellant of past persecution.*

*37. I accept that the Vietnamese state acts with total impunity and disregards the rule of law, including procedures concerning charge, detention and prosecution. However, the background evidence suggests that the persecution and the lengths of detention the Appellant claims to have endured are reserved for those who are political activists, not mere adherents of minority religions including Pure Sect Hoa Hao followers. Moreover, the Appellant’s account of being repeatedly arrested, detained for extensive periods of time and thereafter released without any further repercussions is not corroborated. In fact, the background evidence including CPIN: Hoa Hao Buddhism suggests to the contrary; those targeted by the state are prosecuted and imprisoned for between 3 to 12 years ...*

*38. In my view, the Appellant may have encountered the authorities for gathering in a group to practice Pure Sect Hoa Hao. However, the Appellant was not charged, was not detained as claimed and there is no on-going interest in the Appellant from the authorities. On that basis, upon return to Vietnam now, I am not satisfied that the Appellant’s fears of persecution are well-founded.*

*39. It is also common ground that the Pure Sect Hoa Hao community face discrimination in Vietnam and the state restricts their freedom of religion. The Appellant’s choice of practicing Pure Sect Hoa Hao is limited to praying*

*at home and the Appellant is not inclined to politicise the religion. As such, in my view, the limitations the Appellant may face in practicing Pure Sect Hoa Hao in Vietnam does not reach the threshold of persecution."*

13. I find that, having accepted that the Appellant is an adherent of the Pure Sect Hoa Hao Buddhist sect and apparently at [32] that he was detained and subjected to 6 months hard labour, as was pointed out by Ms Isherwood, the judge's subsequent findings at [36]-[39] as to the attitude of the State authorities towards that community and their treatment of the Appellant specifically are arguably contradictory and are insufficiently reasoned in finding it not credible that the Appellant was detained as he claimed, in light of the medical evidence and the judge's own acceptance that the State act with total impunity and ignore the rule of law.
14. There is merit in Mr Moriarty's second ground of appeal, given the central importance to the Appellant's claim of the arrest, detention and death of his father, which he claims led to his own arrest and detention. Whilst implicitly that was not accepted by the judge [see [36] I consider it was incumbent upon the judge to engage directly with this aspect of the claim and to make findings upon it, which he failed to do. Ms Isherwood's submission that that there was no evidence the Pure Sect community tried to find him in the four months between November 2016 and April 2017 is nothing to the point.
15. Ground 3 is on a narrow but also important point which was that the judge misdirected himself at [37] in considering there was a specified sentence of imprisonment for supporting the faith whereas the CPIN Hoa Hao Buddhism, February 2020 at [5.27] recognises that harassment of followers includes short term detention and beatings by police.
16. The background evidence as set out in the CPIN does state at 5.4.7. that:

*"The FFT asked the Hoa Hao Buddhist managers of the 'pure sect' whether there were cases where people were detained and released multiple times, to which they stated that this did not happen and that if you were arrested you would be tried and convicted. They stated that usually the verdict will be premediated, and they are held temporarily awaiting trial for about 3 months. The sentencing they receive will range from 3 to 12 years."*
17. However, the same report also states:

2.4.5 *Some members of unofficial Hoa Hao Buddhist groups have been subjected to arrest, detention and harassment, with a small number - between 10-20 - arrested, prosecuted and imprisoned for dissent or criticising the government. In general this is not solely due to their faith but the perceived threat they pose to the government due to their involvement in political activities, such as land/environmental issues or advocating for democracy in Vietnam or because they are deemed to pose a threat for other reasons".*

5.2.7 *The Hoa Hao Buddhist managers of the 'pure sect' stated that when the invitees try to attend the gathering, they are stopped by police and they have their papers taken away. If they resist, then the police would confiscate their vehicle. If the family try to argue then*

*the police will view that as them trying to incite a disturbance and they start to arrest people.*

*5.4.9 An October 2019 Radio Free Asia article noted 'Six members of an unauthorized sect of Hoa Hao Buddhism were beaten by plainclothes police ... while they were on their way to protest against the planned destruction of their temple in southern Vietnam's An Giang province, one of the men who were assaulted said'. See further 5.4.10 to 5.4.12.*

18. I find that whilst it was understandable that the judge placed reliance on 5.4.7 of the CPIN the evidence in the CPIN when considered overall is inconclusive as to the treatment of Pure Sect Hoa Hao adherents and the length of detention if arrested and it was an error to definitively state, given the facts that the judge accepted that the Appellant was not subjected to past persecution.

### **Notice of Decision**

19. I find material errors of law in the decision and reasons of the First tier Tribunal Judge and set that decision aside.
20. In light of the errors identified above, I have concluded that none of the findings can be preserved and that the appeal should be remitted for a hearing *de novo* before the First tier Tribunal.

Rebecca Chapman  
Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

14 April 2024