



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

Case No: UI-2023-003847  
First-tier Tribunal No: PA/55770/2022

**Extempore**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

12<sup>th</sup> February 2024

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**T V N**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr N Ruddy, Jain, Neil & Ruddy solicitors

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

**Heard at Edinburgh on 20 December 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**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Prudham promulgated on 11 August 2023 dismissing his appeal against a decision of the Secretary of State of 24 November 2022 to refuse his claim for asylum and remove him to Vietnam.
2. This is a case in which a number of facts were accepted. The appellant is a Vietnamese national. On 14 February 2017 he took part in a demonstration in Vietnam against a company known as Formosa. He was then arrested, detained, he says he was beaten, and the police attempted to force him to sign a confession. He then moved away from his area towards the border between China and Vietnam to look for work and whilst there met a man who introduced him to some Chinese people who with that man known as Hung, and trafficked him to the United Kingdom. He escaped from his traffickers in 2019 and claimed asylum and since then his wife has been visited by the Vietnamese police who were looking for him. She has also been threatened by associates of the traffickers who were looking for the appellant. The Secretary of State accepted that the appellant had been exploited to the United Kingdom and accepted that he had attended the demonstration against the Formosa Corporation but did not accept that he was a high-level activist and would be at risk, nor did she accept his risk of re-trafficking as his traffickers did not know his identity.
3. The appellant gave evidence at the First-tier Tribunal with the assistance of a court interpreter. That is set out in significant detail in the decision of the First-tier Tribunal and no real issue is taken as to the recording of the evidence. The judge came to a number of conclusions. Broadly speaking he did not find the appellant to be credible which led him to doubt firstly that the account of whether he had or had not been put under pressure to sign a confession, and did not accept that the authorities were still looking for him. He did not accept that the appellant had any role in opposition other than taking part in a demonstration, nor did the judge accept the account of how the appellant had been trafficked from the north of Vietnam by Chinese traffickers to the United Kingdom or that the wife had been threatened by the traffickers, nor did the judge accept that he was at risk of re-trafficking on return.
4. The appellant sought permission to appeal against that decision. The grounds are somewhat verbose and overdetailed running to over eight pages. Permission to appeal was granted by First-tier Tribunal Judge Athwal for the reasons given in her decision of 11 September 2023.
5. I deal with the grounds in turn. The first ground is that the judge at paragraph 26 reached adverse credibility findings unfairly because of the delay in the appellant correcting what he had said in interview, specifically that in his screening interview as confirmed in a later statement from his solicitors in 2019 that he had been forced to sign a confession, later changing that saying attempts had been made to force him to sign a

confession. I consider that in the context of the latter from the appellant's solicitors of 7 November 2019 confirming that he had been forced to sign a letter that the judge was entitled to treat with a significant degree of scepticism the change in the evidence and I do not consider that he erred in his approach to that specific point.

6. Similarly, in ground 2 it is on the same point and again it is difficult to see that the judge had erred in law by holding a credibility issue, it certainly does not come to the high threshold necessary to do so.
7. Ground 3, the judge drew inferences adverse to the appellant for a failure to produce arrest warrants or charge sheets. I find that this is an error of law. It is predicated on an assumption that the documents existed, there is no indication of what basis the judge thought that that was the case, nor is there any indication that he was asked to provide them or provide an explanation for that. In the circumstances I consider that that was unfair and an irrational approach to assessing credibility.
8. Similarly, ground 4 adverse credibility findings are made regarding a failure to produce phone records for a phone call which took place in Vietnam. Even allowing for the fact that the appellant had said that he is still in contact with relatives in Vietnam there is no indication he was asked to provide these or provide an explanation for not doing so and again it is predicated on the assumption that the phone in question would have produced an accessible record in the way that saying, for example, a Pay As You Go phone would not.
9. Ground 5 adds little in that it effectively is saying that the judge did not properly assess the evidence from the Country Policy and Information Note. This is simply not relevant to the assessment of credibility because it does impact on the assessment of credibility. It is clear that the judge did have regard to the CPIN and it cannot be properly argued that the judge's assessment was flawed.
10. There is no merit in ground 6. The judge was entitled to note that the appellant had no major role in Vietnam, again that is what is said. It is difficult to see that what the judge was saying at paragraph 30 is an inference drawn from a lack of interest in him and the conclusion is one fairly reached at that point.
11. Paragraph 7 of the grounds is more problematic. The judge drew inferences adverse to the appellant for a failure to mention who Hung was given his centrality in the narrative by the time that the appeal had reached him. I consider that the judge was fairly entitled to say that it was surprising that the name and actions had not been mentioned given the centrality of the role as later developed when asked about who this person was in interview at questions 184 to 188. The evidence in that is to an extent evasive. When asked who the person was the appellant said it was someone who introduced him to the Chinese traffickers.

12. I now turn to the grounds which deal more specifically with the narrative regarding the traffickers and their actions. I consider that the judge has made a material error at paragraph 32 of his decision. He states that certain elements of the account stretched credibility, in particular that the traffickers in China decided to visit the appellant's wife in her village. That is not what was said. What was said in the witness statement was that people connected to the traffickers had attended and this is a clear error of fact and a significant part of the findings at paragraph 32 are predicated on the assumption that they had made a long and arduous journey which is not borne out by the evidence. Similarly, dealing with ground 9 the judge refers to the appellant being trafficked. That is another statement of fact from which an adverse inference was drawn.
13. In the circumstances I consider that these errors taken together and cumulatively are such as to undermine the overall findings of credibility on which this case turned. I consider that the errors are material and accordingly for these reasons I am satisfied the decision of the First-tier Tribunal did involve the making of an error of law in the assessment of credibility, even taking into account the high threshold that has to be established in order to set aside a finding of credibility by the First-tier Tribunal which after all had the opportunity to see and hear the evidence being given but for the reasons given there are a significant number of mistakes of fact and unfair inferences drawn such as to undermine the credibility findings.
14. Given that the error of law in this case relates to a finding of credibility I consider that the only fair way in which this case can be disposed of is for it to be remitted to the First-tier Tribunal for a fresh hearing on all issues.
15. I have made an anonymity order in this case, given the trafficking allegations given the provisions of section 2 (db) of the Sexual Offences Amendment Act 1992

#### Notice of Decision

- (1) The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
- (2) I remit the appeal to the First-tier Tribunal for a fresh hearing on all issues.

Signed

Date: 9 February 2024

Jeremy K H Rintoul  
Judge of the Upper Tribunal