IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000441
UI-2023-005483
First-tier Tribunal No: PA/50895/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 05 November 2024

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

[P T B]
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr A Swain, instructed by SN & Co Legal Services
For the Respondent: Ms S Rushforth, Senior Home Office Presenting Officer

Heard at Field House on 18 October 2024

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 against the decision of First-tier Tribunal ('FtT') Lester, ('the judge'), promulgated on 28th November 2023 dismissing the appellant's appeal.

2. The appellant is a Vietnamese national born on 15th May 1993 and claimed asylum on the basis that he is a member of the Brotherhood of Democracy. He

entered the UK in 2018 and his then claim for asylum was refused and his appeal dismissed on 29th January 2019. He made further submissions which were refused on 23rd January 2023 and are the subject of the present appeal. It was asserted that there was evidence of the appellant's support of Brotherhood for Democracy and evidence from his father of the appellant's former persecution in Vietnam.

Grounds of Appeal

3. The grounds for permission to appeal were submitted on the following grounds:

(i) Failure to consider the expert report of Professor Bluth on the specific risks to the appellant which had implications for the appellant's claim.

(ii) Failure to consider the risk to the appellant that failed asylum seekers on return will be subject to interrogation by the Vietnamese authorities and will be required to disclose the basis of their protection claim and the sur place activities and thus expose the appellant's involvement with the Brotherhood for Democracy and Viet Tan considered a terrorist organisation by the Vietnamese. It was submitted before the FtT that even if his claim was found not credible, on disclosing the basis of his claim for asylum to the authorities on return he would be at risk.

(iii) Inadequate findings and unsafe findings in relation to the appellant's sur place activities. The judge failed to consider the photographs of the appellant's activities outside the Vietnamese Embassy including holding flags from the Viet Tan organisation. This corroborated the appellant's membership of and activities with the Brotherhood of Democracy and also was a source of risk independent of the appellant's own interrogation.

(iv) Failure to consider the evidence in the expert report and the CPIN which revealed the extensive surveillance resources of the Vietnamese authorities, and in the light of WAS (Pakistan) [2023] EWCA Civ 894 at [84]. In view of the evidence before the FtT of the extensive surveillance capabilities of the Vietnamese authorities and its hair trigger sensitivity to political dissent especially in the diaspora together with the evidence of the appellant's attendance at demonstrations outside the Vietnamese Embassy this was a material error of law.

(v) Failure to consider that the appellant's sur place activities (notwithstanding they were found not to be genuine) may be considered to be criminal in Vietnam. There was evidence from Professor Bluth that support of Viet Tan and the Brotherhood outside Vietnam was subject to prosecution and this should have been considered.

(vi) Findings that some aspects of a witness' evidence is not credible should not in a protection claim be generalised to all of his evidence. WAS (Pakistan) (87).

Hearing

4. At the hearing Mr Swain expanded on his grounds of appeal and took the Tribunal through the expert evidence from Professor Bluth. Mr Swain pointed

out that the appellant became a member of the Brotherhood of Democracy subsequent to the last decision and the judge had failed to approach the appeal in accordance with Devaseelan v The Secretary of State for the Home Department [2002] UTIAC 00702 particularly paragraph 39(2). Extensive evidence of the appellant's membership and activity was effectively ignored by the judge and the witness statement and evidence of Mr VD, a leading activist, was sidelined owing to one sentence in the statement which referred to former membership of the Viet Youth. That did not adequately explain the effective rejection of the extensive witness evidence of direct and personal engagement with the appellant in relation to his political activities.

5. Nor had the judge properly addressed the risk on return following sur place activity in the UK. There was evidence of surveillance and monitoring by the Vietnamese authorities and there was photographic evidence of the appellant outside the Vietnamese Embassy. The judge had not addressed the risk posed to the appellant as a failed asylum seeker who had undertaken sur place activity in the UK. The expert confirmed that there was a likelihood of interrogation on return. Nor had the targeting of the appellant's father, as reported, been assessed against the background identified in the CPIN and in the expert evidence of the targeting of family members. The assessment of credibility was not a 'seamless robe' and the findings on credibility were unsafe.

6. Ms Rushforth relied on the Rule 24 response which opposed the appeal. She accepted the judge had not considered the expert report but submitted that was not material as the judge had found the appellant not credible and the report was predicated on the appellant's credibility. She relied on Azizi (Succinct credibility findings; lies) 2024] UKUT 65 (IAC) and considered the approach in Mibanga not applicable in this case. In relation to ground 2 there was no record that it had been argued before the FtT that the appellant's sur place activities would place him at risk even if he were found not to be genuine. The judge did not need to refer to every piece of evidence but had done enough and given adequate reasons. The judge noted the appellant had been found not credible but had considered the evidence in the round. The grounds were not broad enough to include a challenge on the approach to the evidence of Mr VD but if they were it was simply a disagreement with the treatment of the evidence.

7. *Where an appellant accepts that he has told lies during his immigration history it will be appropriate to consider his explanation for telling those lies, and whether that explanation is accepted, as part of the fact finding process.*

Conclusions

8. In relation to ground (i) I find a material error of law in the decision. I accept that the judge does not need to refer to every piece of evidence but an expert report which was adequately sourced, which acknowledged that it was not for the expert to determine credibility and which set the context on the political situation in Vietnam should have been addressed. It was not even mentioned.

9. It is axiomatic that evidence should have been considered in the round and I do not accept that Mibanga applies only to medial evidence. At [38] the judge stated that 'I have seen the objective evidence provided however, it only becomes relevant if the core claim is credible. Unfortunately the judge did not appear to realise that the background evidence might throw light on the credibility of the account of the appellant or related to events subsequent to the

previous determination. The judge addressed neither the CPIN nor the expert evidence.

10. As held in QC (verification of documents; *Mibanga* duty) China [2021] UKUT 33 (IAC) and in relation to the Mibanga duty

'(2) Credibility is not necessarily an essential component of a successful claim to be in need of international protection. Where credibility has a role to play, its relevance to the overall outcome will vary, depending on the nature of the case. What that relevance is to a particular claim needs to be established with some care by the judicial fact-finder. It is only once this is done that the practical application of the "Mibanga duty" to consider credibility "in the round" can be understood (Francois Mibanga v Secretary of State for the Home Department [2005] EWCA Civ 367). The significance of a piece of evidence that emanates from a third party source may well depend upon what is at stake in terms of the individual's credibility.

(3) What the case law reveals is that the judicial fact-finder has a duty to make his or her decision by reference to all the relevant evidence and needs to show in their decision that they have done so. The actual way in which the fact-finder goes about this task is a matter for them. As has been pointed out, one has to start somewhere. At the end of the day, what matters is whether the decision contains legally adequate reasons for the outcome. The greater the apparent cogency and relevance of a particular piece of evidence, the greater is the need for the judicial fact-finder to show that they have had due regard to that evidence; and, if the fact-finder's overall conclusion is contrary to the apparent thrust of that evidence, the greater is the need to explain why that evidence has not brought about a different outcome.'

11. The judge anchored his assessment of the claim on the previous adverse credibility findings (made in a decision of Judge Sangha on 3rd January 2019) without adequately engaging with the subsequent sur place activities of the appellant and contrary to Devaseelan. There was a failure to acknowledge that findings on some aspects of an appellant's evidence are not credible cannot necessarily be extended to all aspects of the account, WAS (Pakistan). The previous adverse credibility findings may be relevant [18] but they are not determinative.

12. The observation on WAS applies to the assessment of the evidence of Mr VD. The judge focussed almost entirely on one sentence in the statement of Mr VD in relation to being a member of the AVYD (youth group) In effect the judge did not engage with the direct evidence of Mr VD in relation to the appellant's activities. I consider the grounds broad enough to encompass a challenge to the treatment of Mr VD's evidence.

13. At ground (iii) it was specifically stated in the grounds that important evidence corroborating the appellant's membership and opposition activities was not considered by the judge. To my mind this would include the evidence of Mr VD. It was incumbent upon the judge to consider the statement of Mr VD in the light of the expert report but the judge merely stated in relation the witness' oral statement that 'no evidence is provided to confirm what the witness says'. Bearing in mind the witness' position, wholesale rejection of that evidence was a material error and additionally did not engage with, for example, the photographic evidence and evidence of meetings featuring the witness and the appellant nor the evidence in the CPIN that prominent activists are monitored (ie

Mr VD) and the supporting evidence of the expert that even low level activists can be monitored.

14. It may be that on proper engagement the expert report and evidence of Mr VD are rejected but a lawful approach should be adopted to the evidence and adequate reasoning given for its rejection. It is not clear from the decision that the judge was even aware of the expert report.

15. In relation to ground (iv) and (v) and the perception of the authorities in Vietnam, the grounds of appeal to the FtT clearly flagged the risk to the appellant of the perception of the authorities as to his sur place activities. At 6.2 the grounds clearly stated that 'the respondent does not believe that the appellant had been subject to either past persecution in Vietnam or would in future be subject to persecution there' and it was specifically raised that 'The Respondent accepts, at least, that some opposition activists are treated with hostility by the Vietnamese state. The question for the Tribunal is whether the Appellant's profile or history is such that he would be persecuted in this way'. The skeleton argument presented to the FtT (and which Ms Rushforth accepted was a fair reflection of the grounds to the FtT) recorded at [12] of the skeleton argument 'The Appellant would also risk being perceived as a member of an opposition political party'. As stated at [16] 'even a failed asylum seeker is likely to be interrogated on return to Vietnam and the appellant's history is very likely to be identified.' 'The appellant is accordingly someone likely to come to the adverse attention of the authorities in Vietnam'. It is trite law that it is the *perception* of authorities to the profile of the appellant which is relevant when a risk on return is raised. This was not adequately addressed.

16. Critically as stated at [39(2)] of Devseelan

'Facts happening since the first Adjudicator's determination can always be taken into account by the second Adjudicator. If those facts lead the second Adjudicator to the conclusion that, at the date of his determination and on the material before him, the appellant makes his case, so be it. The previous decision, on the material before the first Adjudicator and at that date, is not inconsistent.'

The judge, in error, effectively halted his analysis on credibility after considering the previous determination, the prosecution or otherwise by Vietnamese authorities hitherto and the BFD membership card but relied on Tanveer Ahmed [2002] UKIAT 00439 to reject the plausibility or credibility of subsequent events. The sur place activities were effectively dismissed out of hand. Although findings might be succinct Azizi also confirms in the headnote in relation to credibility that

'Where an appellant accepts that he has told lies during his immigration history it will be appropriate to consider his explanation for telling those lies, and whether that explanation is accepted, as part of the fact finding process.'

17. Overall, I find a material error of law and that the grounds are made out. Bearing in mind my findings on grounds (i), (iii) (iv) and (v) and that essentially the grounds are intertwined I make no further observations on the specific remaining grounds.

18. In view of the nature and extent of the findings required and in the light of Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC) and noting the submissions of the parties on this matter I conclude that the appeal should be remitted to the FtT.

Notice of Decision

19. The decision is set aside with no preserved findings. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement

Directions

20. The hearing is to be listed at Newport on the first available date after 4 weeks from the date of this decision and in accordance with the availability of Mr A Swain whose clerks can be contacted on 020 7404 0875

21. The hearing is listed for 3 hours

22. A Vietnamese interpreter should be booked.

23. Any further evidence from the appellant should be filed and served at least 21 days before the hearing date and any reply or further evidence should be filed and served by the Respondent at least 14 days prior to the hearing date.

24. Skeleton arguments should be filed at least 7 days prior to the hearing.

Helen Rimington

Judge of the Upper Tribunal
Immigration and Asylum Chamber

4th November 2024