



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-000749

First-tier Tribunal No: PA/50023/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 14th of June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

DDN
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Mair of Counsel by video link

For the Respondent: Mr Thompson a Senior Home Office Presenting Officer

Heard at Phoenix House (Bradford) on 5 June 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 was born on 7 May 1984. He is a citizen of Vietnam. He appealed against the decision of the Respondent dated 13 December 2022, refusing his protection claim. That appeal was dismissed by FtT

Judge Atkinson in a decision dated 29 November 2023. This appeal is against that decision. The brevity of the decision is due to the limited issue, and commendable focus of the representatives.

Permission to appeal

2. Permission was granted by FtT Judge Chowdhury on 28 February 2024 who stated:

“2. The First-tier Judge arguably erred in law in refusing to admit video evidence relied upon by the Appellant. At paragraph 5 in the grounds it is alleged that this evidence was notified to the Tribunal and a specific request was made for the video evidence to be adduced or viewed by the parties at the hearing and that the Tribunal had acceded to the request. However it is claimed that the judge refused to admit the evidence. It is arguable that this was procedurally unfair. It is also arguable that this error has infected the entirety of the findings with regard to the Appellant’s sur place activities and in particular where the judge found that the Appellant had not provided evidence from his Facebook page that he was involved in activities in the UK or that the videos that had been uploaded onto the VTFA Facebook which it is claimed had been viewed 2.5,000 times...”

The Representatives’ positions

3. The Respondent conceded in the Rule 24 notice on 31 May 2024 that the material error of law is made out in refusing to admit and evaluate video evidence for which express permission had been sought and obtained.
4. Given the Respondent’s concession, it is unnecessary to set out the detailed grounds or indeed the Judge’s decision.

Discussion

5. Both representatives agreed that given the material error of law which related to the core element of the Appellant’s account namely his sur place activity as evidenced in part by the video evidence which had wrongly been excluded, the only fair disposal was to set aside the decision in its entirety, despite the matter having been heard previously in the First-tier Tribunal. The appeal would need to be remitted again to the First-tier Tribunal for a de novo hearing, with the appeal not coming before Judge Atkinson or Hillis.

Notice of Decision

6. The Judge made a material error of law. I set aside that decision.
7. I remit the appeal to the First-tier Tribunal for a de novo hearing, with the appeal not coming before Judge Atkinson or Hillis.
8. The time estimate is 4 hours. A Vietnamese interpreter will be required. The previous direction for the playing of the video evidence remains.

Laurence Saffer

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 June 2024

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.