



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001232
PA/50224/2023
LP/01061/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 28 May 2024

Before

UPPER TRIBUNAL JUDGE L SMITH
DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

L (VIETNAM)
(ANONYMITY ORDERED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms V Easty, Counsel instructed by Barnes Harrild Dyer Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 14 May 2024

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

Introduction

1. This is an appeal by the appellant, a citizen of Vietnam who was born on the 5th December 2004, against the decision of First-tier Tribunal Judge Farmer to dismiss his appeal against refusal of his protection and human rights claims.

The appellant's claim

2. The appellant's protection claim can be summarised by saying that he claims to be at risk of persecution on return to Vietnam because (a) he is a practising member of the Hao Hao Buddhist [HHB] faith, and (b) he will be perceived as sharing the religious/political views of his late father, who was arrested and died whilst in Vietnamese detention in the winter of 2017.

The decision of the First-tier Tribunal

3. Having noted that it was accepted that the appellant's parents had been followers of the pure HHB sect, and that his father had died in prison due to his faith, the judge noted and found as follows.
4. The appellant does not claim a high level of involvement in his parent's religion [23]. Rather, he says that he prays silently for his family in his room. He also occasionally attends the Buddhist Temple in Croydon; the last such occasion being some 5 months prior to the hearing. The appellant was 13 when his father was arrested. His mother was not an avid member of the faith, albeit that she was a member. There was nothing in his evidence to suggest that he was a committed follower of his religion, that he took a political stance, or that he would actively seek to follow his family's religion on return to Vietnam. He had not established that he would be a target by virtue of his own religious practice or that he would refrain from such practices through fear [32, 33].
5. The judge further found that the appellant had remained in Vietnam with his mother for some months following the detention of his father without apparently suffering any adverse consequences. Whilst accepting that, as a child, the appellant might have had limited appreciation of what was happening, he would have been aware of such matters as (had they been the case) (a) not being able to attend school, (b) his mother having to close her shop, and (c) them being forced into hiding in Vietnam. None of those things appeared in fact to have happened. They were moreover able to leave Vietnam on their own passports without let or hindrance. There was no credible background evidence to suggest that the appellant would be of interest to the authorities because he had been the minor child of a person who was arrested and detained some 6 years before the hearing. Thus, whilst the authorities undoubtedly had the means to trace an individual of interest, the appellant had failed to establish that the authorities would have any interest in tracing, monitoring or pursuing him.

The grounds

6. The application for permission to appeal was made on three grounds. So far as material, these can be conveniently summarised as follows –
- (i) The judge failed to engage with country background evidence that, “meant the A’s father was likely to have been viewed by the Vietnamese authorities as a political opponent, or threat to the country, and that the A was at real risk of persecution as his family member”.
 - (ii) The judge failed to give the appellant an opportunity to address the gaps in his evidence that led to her concluding that the appellant had failed to substantiate his case (‘procedural unfairness’).
 - (iii) It was “irrational” for the judge to conclude that the appellant was not at risk of being ‘trafficked’ on the ground that he had not been ‘trafficked’ in the past.
7. The First-tier Tribunal granted permission on the first ground only. It expressly refused permission to appeal on the other two.

The hearing

8. At the outset of the hearing, we drew Ms Easty’s attention to the fact that there had not been a renewed application for permission to appeal in respect of the second and third grounds. Ms Easty responded by indicating that she would not in any event be seeking permission to argue the third ground. She did however say that she, “may” make such application in relation to the second ground at some point during the hearing. She did not indicate at what point she might make such an application, and she did not in the event make one.
9. We heard helpful submissions from both advocates. We shall refer to those submissions in the course of our analysis of the first (and only) ground of appeal that falls for determination.
10. We reserved our decision, which we now set out (below).

Legal analysis

11. Ms Easty focussed her submissions upon the following short passage at paragraph 36 of the judge’ decision:

“When looking at the background evidence and the appellant’s account of what happened, there is no credible evidence that the appellant would be of interest to the authorities on the basis that he was the minor child of a person who was arrested and detained in 2017. That was now 6 years ago.”

Ms Easty submitted that, in finding that there was no credible background country evidence to support the appellant's case, the judge had failed to take account of the following passages from the Country Policy and Information Note, 'Vietnam: Opposition to the State' -

" 2.4.23 When considering claims from [family members of activists] decision makers should give consideration to all relevant factors, including in particular:

- The relationship to the person;
- Actual or perceived support for, or facilitation of, the activities of the person
- Any previous adverse interest in the family member from the authorities, e.g. arrests, detention, harassment;
- The specific profile, history and activities of the person.

2.4.24 Family members of high profile activists, journalists, bloggers and those openly critical of the state, who can show that because of their family relationship with a person who is, or is perceived as opponent to the state, has come to the adverse attention of the authorities, which has led to severe harassment and/or arrests, are likely to be at risk of persecution and/or serious harm by the authorities on return on account of their imputed political opinion. Each case must be considered on its facts.

.....

10.1.1 HRW in their annual world report noted that 'Police regularly intimidated family members and friends ...'

12. In reply, Ms Everett invited us to consider the passage relied upon by Ms Easty within the context of the judge's decision as a whole. The judge had considered both the risk to the appellant arising from his own practice of the HHB faith on return and, separately, that arising from him being imputed with the religious and political views of his late father. The judge had been entitled to conclude that there was not a real risk of future adverse consequences given the absence of such consequence occurring between his father's arrest and him leaving Vietnam with his mother some months later. Moreover, such reasoning demonstrated that the judge had fully considered the risk of such adverse consequences occurring and had reached a conclusion that was reasonably open to her.

13. Given that she did not appear at the earlier hearing, Ms Easty was unable to confirm that the background country evidence that she now relied upon was argued as being supportive of the appellant's case in the First-tier Tribunal. We are not in event persuaded that the CPIN does anything more than provide general guidance concerning a conclusion that might follow from the making of certain findings of fact. We note that the judge made specific factual findings relating to each of the relevant factors set out in the non-exhaustive list under paragraph 2.4.43. We moreover note that the suggested conclusion at paragraph 2.4.24 - that members of certain groups of individuals, "are likely to be at risk of persecution and/or serious harm by the authorities on return on account of their imputed

political opinion” - is one that is conditional upon the individual in question being able to “show” that this is in fact the case. The reasoning leading to that conclusion is thus somewhat circular. Moreover, as the concluding sentence to paragraph 2.4.24 makes clear, each case ultimately has to be considered upon its own facts. That is precisely what the judge did in this appeal, and we are satisfied that she did not make any error of law in doing so.

Notice of Decision

The appeal is dismissed. The grounds do not disclose an error of law and the decision of the First-tier Tribunal therefore stands.

David Kelly

Deputy Judge of the Upper Tribunal
(Immigration and Asylum Chamber)
May 2024

16th