



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11368/2017

THE IMMIGRATION ACTS

Heard at Field House
On 26th April 2018

Decision & Reasons Promulgated
On 22nd May 2018

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

THL
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Khan of Counsel, instructed by Thompson & Co Solicitors
For the Respondent: Ms A Holmes, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Woolf promulgated on 11 February 2018, in which the Appellant's appeal against the decision to refuse his protection and human rights claim dated 22 October 2017 was dismissed.
2. The Appellant is a national of Vietnam, born on 6 August 1993, who claims to have arrived in the United Kingdom clandestinely on 10 November 2014 and made a claim for asylum on 25 April 2017 having been encountered working illegally earlier that month. The Appellant's claim to asylum was on the basis that he feared persecution on return to Vietnam because of his political opinion, having previously

refused to carry out orders whilst in the army pursuant to which he claimed to have been detained and escaped.

3. The Respondent refused the application on 22 October 2017 on the basis that the Appellant's claim was not credible, his account was vague, inconsistent and implausible as to how he escaped from detention in Vietnam. The Respondent also applied section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 to find that the Appellant's credibility had been damaged by the delay in his claiming asylum of nearly 3 years and only doing so after being encountered working illegally. The Appellant had also travelled through France and the Czech Republic without claiming asylum in those safe third countries. The claim for humanitarian protection and under Articles 2 and 3 of the European Convention on Human Rights were similarly refused.
4. The Appellant's private and family life was also considered by the Respondent but it was found that he had not meet the requirements of the Immigration Rules for a grant of leave to remain on either basis and there were no exceptional circumstances. Although there was a medical claim, there was a lack of evidence of the Appellant's medical condition and in any event treatment was available for the claimed condition in Vietnam such that discretionary leave to remain on health grounds was also refused.
5. Judge Woolf dismissed the appeal in a decision promulgated on 1 February 2018 on all grounds. Although it was accepted that the background evidence submitted by the Appellant was consistent with the initial part of his claim that while serving in the Army he was called upon to intervene in a demonstration, the remainder of the claim relating to his incarceration and escape from military detention was rejected because it lacked credibility. The Appellant's claims were so inconsistent and implausible that they were not credible and as such there was no risk on return to Vietnam and his protection claim was dismissed. In relation to the health claim, this was made only under Article 8 of the European Convention on Human Rights but on the facts this article was not engaged as the Appellant did not rely upon any family or private life having been established in United Kingdom.

The appeal

6. The Appellant appeals on two grounds. First, that when making adverse credibility findings against the Appellant on the basis of his account being implausible, the First-tier Tribunal erred in law in finding that his account as to his escape from detention was inconsistent, whereas in his evidence to the First-tier Tribunal he was merely giving additional information. Secondly, that the First-tier Tribunal also erred in law in relying on the improbability of support being given to the Appellant by strangers in Vietnam following his escape from military detention.
7. Permission to appeal was granted by Judge Macdonald on 26 February 2018 on all grounds.
8. At the oral hearing, Mr Khan relied on the written grounds of appeal, emphasising the consistency of the Appellant's claim with background material available and the

lack of internal inconsistency in his claim regarding his escape from military detention. Although it was accepted that he had expressed the event differently, the accounts were said to complement each other adding additional information rather than being inconsistent.

9. In relation to the reliance on the inherent implausibility of the First-tier Tribunal when making adverse credibility findings as to assistance after his escape from detention, Mr Khan relied on the Court of Appeal's decision in HK v Secretary of State for the Home Department [2006] EWCA Civ 1037, but accepted that this of itself would not show a material error of law if the Appellant was not successful on his first ground of appeal.
10. In response, Ms Holmes submitted that there were clear discrepancies in the Appellant's account of his escape from military detention that the differences could not be categorised merely as just adding detail. There were fundamental aspects of the account which were different, including basic details which should be remembered clearly such as whether the Appellant climbed out of the window or not. It was submitted that if there was no error of law in relation to the first ground, then whether or not there was any error in relying on implausibility as to what happened after the escape, it could not be material to the outcome of the appeal. In any event it was submitted the conclusion of the First-tier Tribunal on this point was also lawful.

Findings and reasons

11. In his asylum interview, the Appellant was asked how he was released from detention. His answer was that the military discovered he had symptoms of hepatitis B so transferred him to a surgery to wait for court, where he was kept segregated for fear of others catching hepatitis B. When asked how he was released from surgery, the Appellant stated "*I was not released from surgery, I was being guarded there. But on an occasion there wasn't anyone and I took the opportunity and ran away*". The Appellant stated that guards did not want to be near his room, only nurses came into his room, but that there was always somebody on guard at the surgery gate around 30 metres from his room who only occasionally came over to check on him. The Appellant stated that the guards joined in with the island festival on 15 July 2014 and when he came out of his room to check, there was no guard and he took the opportunity to run away through the rear exit. He climbed over a fence which was about 2 metre high and went towards the residential area and into one of the houses. The Appellant stated that he was allowed out of his room to get food and drink.
12. In his written statement before the First-tier Tribunal, the Appellant's account of his escape from detention was as follows: "*I managed to escape detention before my court date was due. I did this by asking permission to go to the small medical centre/clinic were located within the detention. I then requested to go to the toilet where soldier was waiting outside of me. I then climbed out the window tried to escape by running through the forest. On my way I saw light in the distance which was coming from a house in the forest. ...*"

13. At the hearing before the First-tier Tribunal, the Appellant was asked about inconsistency between his description of his escape his asylum interview compared to that in his witness statement. The Appellant is recorded in paragraph 15 of the decision as saying that “... during the time he was at the local ward in the health centre he needed to go to the toilet and that is why your cigar. He said that the guard took him to the toilet and when he was there and finished he saw that the guard has gone outside the gate. It was when he saw the guard outside the gate that he managed to climb up to the window and went through the rear door.” Paragraph 16 of the decision continues as follows: “When asked why he had not provided that long account in his interview he said it was because during that interview he had not understood the interpreter and didn’t dare give a long answer. When asked why had not given this explanation in his witness statement, the appellant appeared confused by the question and did not answer so Ms Dogra moved on.”
14. In light of the Appellant’s account given at different times as set out above, Judge Woolf concluded as follows:

“38. The appellant was asked questions in his asylum interview about his incarceration and his escape from military detention. There are a sequence of questions beginning at q102. None of those responses accord with the claim made in the appellant’s witness statement that he asked to go to the toilet and the guard was waiting for him outside but he escaped from a window. His responses in interview were that there was only a guard at the gate and in answer to question 109 he said “I came out of my room to check if the guard was there and when I did not see him I took the opportunity to run away”. I disagree with Mr Jones that the statement made about going to the toilet is mere additional information and not in direct conflict with claims made by the appellant in his interview. It is a substantial discrepancy which is at the core of the appellant’s claims.

39. The respondent pointed out in paragraph 34 of the refusal letter that the appellant has not explained how he knew the guards left the post to join a festival held by the island native people and left the place nor is it plausible that the guards would abandon the duty and risk escape of the people they were supposed to be guarding. The appellant tendered no explanation in his witness statement as to how he knew that the reason for the absence of the guard was that the guard had chosen to attend the festival and leave his post.”
15. I find there is nothing irrational, perverse or against the evidence before the First-tier Tribunal in reaching those findings. When examining the evidence that was before it from the Appellant it is clear that the account given in his written statement and in oral evidence, was fundamentally inconsistent in material respects to his claim during his asylum interview of how he had escaped detention. The former could on no legitimate view be described as merely adding detail to the account given initially in interview, it was a different claim. The Appellant’s account differed as to whether he was personally guarded or not; whether he escaped through a window, out of a door, walked out of a gate or climbed over a fence; whether the surgery/ward was near a forest or residential area and whether he had been sent to the health centre or requested permission to go there.
16. For these reasons there is no error of law in the First-tier Tribunal’s conclusion that there were substantial discrepancies in the core of the Appellant’s claim for the

reasons given in paragraph 38 and 39 of the decision. That was the only conclusion reasonably open to Judge Woolf on the material before her.

17. The parties both accepted that if I found no error of law in the first ground of appeal, any error in the second ground of appeal as to inherent implausibility of the next part of the Appellant's account after he had escaped could not be material to the outcome of the appeal. By implication, it was accepted on behalf of the Appellant that even if that part of the account was not rejected because it was implausible, it was accepted that there were sufficient other reasons for the adverse credibility findings made such that the Appellant still would not have established any risk on return to Vietnam. Although it would not have been material in any event, I find no error of law in the conclusions reached in paragraph 40 of the decision for the reasons set out therein, which were perfectly rational and reasonable to rely on as one aspect of the overall credibility findings. In conclusion, there is no error of law in the First-tier Tribunal's decision promulgated on 1 February 2018 this appeal is therefore dismissed.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed



Date

17th May 2018

Upper Tribunal Judge Jackson