



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11441/2017

THE IMMIGRATION ACTS

Heard at Field House.
Provided Orally at the Hearing.
On 25 July 2018

Decision & Reasons Promulgated
On 8th August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

TTP
(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: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. By way of a decision given extempore on 20 March 2018 I had found that there was an error of law in the decision of First-tier Tribunal Judge Cameron. I had then ordered that there be a resumed hearing which has taken place today and I had made various directions in readiness for today's hearing. Unfortunately, the Appellant's side did not comply with the directions which I had made. I had ordered that there be a bundle of documents filed and served in readiness for today's hearing no later than fourteen days before today and that a skeleton argument was to be filed and served. I have had

no proper explanation as to why the directions were not complied. Firstly, there is no bundle but instead there is a witness statement which has been forwarded late by Thompson & Co Solicitors and secondly there was no skeleton argument. Mr Khan has drafted that today and I had put the case back to enable that to be completed. Mr Melvin did file and serve written submissions well in advance of the hearing indeed they are dated 3 April 2018. I make it clear in the head of this decision that compliance with the directions ordered by the Tribunal are not an optional extra. Directions have to be complied with. It makes the task of the Tribunal very difficult if directions and orders are not complied with. On this occasion I take it no further but there has to be compliance I make that abundantly clear for Thompson & Co to see.

2. I turn then to the basis of today's hearing. I had made it clear in my error of law decision what the scope of today's hearing would be:

“In my judgment there is a material error of law in the decision it is clear from **RT (Zimbabwe), KM (Zimbabwe) v SSHD [2012] UKSC 38, [2013] 1AC 52** whereby the Supreme Court made clear that it is not only the issue of what activities may or may not have been undertaken here in the United Kingdom, it is also necessary to consider what the Appellant may or may not do on return to his or her country of nationality. Will such activities bring the Appellant to the attention of the authorities in his or her home country? In this case, the judge had evidence of political activity on the part of the Appellant both in her country of nationality and here in the United Kingdom. Indeed, the Appellant had made clear in paragraph 21 of her witness statement that she was going to resume her political activities in Vietnam if she was to be returned there. In my judgment therefore, it was incumbent upon the judge to deal with this important aspect of the case. He did not do so. In the circumstances that aspect of the appeal still remains to be considered.”

3. I of course remind myself that this is an asylum claim and that therefore the lower standard of proof applies. I am very familiar with the test. I have to consider the evidence in the round, I have to consider the background material and I have to give the case the most anxious scrutiny. Insofar as the further evidence is concerned there is a witness statement from the Appellant now provided dated 18 July 2018. In part what the Appellant says is as follows:

“4. If I was returned to Vietnam I would continue my political activities. I would still do what I can in the fight for democracy. I took the risk before and have been arrested but would be willing to take the risk again. I believe that if I am too scared to fight for freedom in Vietnam that I will suffer anyway ... “

Then at paragraph 5 she says she will seek to re-establish contact with the Assembly of Vietnamese Youth for Democracy (AVYD). And then she says at paragraph 7 that distributing leaflets is very important in Vietnam that is because the Vietnamese authorities control the media and do not let the truth about their treatment of people get out and therefore leaflets are important to educate people about the cruelties of the Vietnamese authorities. Then the Appellant says at paragraph 10:

“I am well aware of the risk of engaging in such behaviour. I have been arrested and detained before. I am glad that the Immigration Judge has accepted this.

Anyone caught doing any of the things that I did before, and would do again, will end up with the police and authorities putting them on a blacklist. They will be a person of interest to the authorities. In my case I fear that I will be arrested and may be put in prison and may be tortured. However, I would risk doing this because fighting for democracy, freedom and human rights is so important. It is the only way to end the suffering of my family and other Vietnamese people."

4. In her evidence today (via an interpreter), the Appellant adopted her witness statement as being true and during cross-examination she gave me extensive evidence including the following. She said she was still be a member of the AVYD. She said that the reason Mr Melvin may not have been able to find any record of the AVYD existing after 2009 was because that there was action taken against the group and some members were arrested and so that they had to work in secret. Asked about what contact she had had with the group since 2013 she said she had lost contact. She said some had been arrested and maybe they were not working. She agreed that she had lost contact since 2013. She was asked whether she had attempted to contact pro-democracy groups since coming here to the United Kingdom and she said she had tried to find something. She was asked whether there was any tangible evidence that she was going to produce to me and she said in response that she had joined demonstrations and meetings and that she had told the Home Office about that in her Home Office interview. She said after that she had had a baby and that she was still watching but that she was very busy with her baby. She said there were photographs of her from December 2016 when she had attended a demonstration. She was asked whether there were any activities since December 2016. Had there been any evidence of political activity since that date? She said "no" she had just joined and did not take any photographs. She was asked whether there was any activity since 2016 and she said she joined a demonstration on 30 April 2017. The Appellant was asked whether anybody was attending today's hearing that could vouch for any political activity since she arrived in the United Kingdom. She said she had just joined that she was not a member and that the organisations could not prove that she was a member. She said that her baby was born on 5 August 2017 and that she has not been politically active since. She was asked whether it would be fair to say that she had had no interest in politics since her baby was born and the answer was yes. She was asked how old her baby would have to be before she returned to being active in politics and she said perhaps when her baby was in nursery at the age of 3 and then "I will join more". It was asked that therefore for the next two years she had no intention of any political activity in the UK? The reply was "I still join but it depends on my baby it depends if I can find people to look after my baby". She was asked about any internet blogs where she was expressing anti-government Vietnam views. She said sometimes someone reported her Facebook activity and it got blocked on Facebook. She was asked whether there was any evidence that she had been putting anti-government items on Facebook and she said she had submitted all of the evidence. She was asked why there was nothing in her latest witness statement about Facebook being blocked. She said they had blocked it but I can get it back. She said when she posts something and it was not correct they would report it and block it. She was asked whether she had engaged in any articles or radio or television interviews in relation to anti-government views. She said that sometimes I write sometimes I share posts of other bloggers. She said about

joining demonstrations but there was police crackdowns on them. Again, she was asked whether there was any evidence for me to look at in terms of the articles she had written. She said it was those that she had sent in for the previous hearing. She agreed that she had said in her witness statement that she would distribute anti-government leaflets on return to Vietnam. She was asked where she would get these from. She said she will find the other members and she would get the leaflets from them. It was put to her this may be difficult in view of the fact that the last contact she had with the other members was five years ago, that they were students, how would she find them again. She said she would go to the place where they had meetings before. It was put to her that a lot would have changed in the intervening period. She was asked what makes her think that she could find this particular person that she said she would be able to find. She said that was because most of the members were students and it was put to her whether it really could be the case that this person would still be a student after five years. She said no but they may "join extra classes."

5. It was put to her that she was only saying that she would protest against the government of Vietnam to bolster her asylum claim. She replied that it was not just because of her asylum claim and that she could have had more evidence than had been provided. She said she had joined the anti-government movement because she wants better for her country and a better life for Vietnam. She agreed she had left Vietnam on a student visa using her own passport.
6. In re-examination she said her Facebook account was blocked "when they think it is incorrect they block it". She was asked what they means and she meant by "they" the government of Vietnam wanted to hide it and so they report it to Facebook for it to be blocked. The Appellant also dealt with my questions in relation to her daughter who was born on 5 August 2017 and that she was at home as this was an important hearing today. She initially said it was her boyfriend and then she clarified to say it was a friend who was a boy and she referred to the name of the father of her daughter and that he is British. She confirmed that she has discretionary leave to remain at the moment.
7. I then heard submissions firstly from Mr Melvin. He referred firstly to his very helpful and detailed written submissions where he said in part at paragraph 7 that the previous findings of Judge Cameron included the following. It was accepted that the Appellant was detained at a demonstration in Vietnam and released after stating that she had no involvement with no charges. It was accepted that she attended two demonstrations in London and meetings of Viet Tan Party. It was not credible that post-detention that the Appellant continued to distribute leaflets. It was not credible that the authorities came to the parents' house one year after she had left. It was not credible that the authorities visit the parents' house monthly. It was not credible that they found government opposition leaflets. It was not credible that the Appellant only found out about asylum in 2016 nor that she only became aware that protest was OK in the UK. It was not credible that she did not know about asylum until 2016 or that there were opposition groups in the UK prior to 2016. It was accepted that she attended demonstrations but there was no indication that she plays a leading role or that the attendance has come to the attention of the Vietnamese authorities. If the authorities are aware of her activities that would have been mentioned to the parents.

The accepted involvement in the activities in Vietnam and detention and release without charge needed to be noted and indeed the Appellant was able to leave Vietnam on her own passport. The Appellant had been released from detention without any conditions, she was not photographed or fingerprinted and the family was not subject to any problems.

8. It was submitted that the Appellant's lack of credibility and core matters and her assertion that she would demonstrate against the Vietnamese authorities was simply an attempt by her to bolster her asylum claim. There was reference to the background material including the Country Policy and Information Note on Vietnam Political Opponents version 2.0 of November 2016. There in summary it was said at paragraph 13 of Mr Melvin's written submissions that the Vietnamese authorities actively suppress political dissent and those that actively criticise the government to oppose a threat to the government or communist party. They are at risk of arbitrary arrest and detention on account of their political opinion. Mr Melvin made clear that the onus was on the appellant to show that it was reasonably likely that this would come to the attention of the authorities as a result of their political activity. Mr Melvin also noted that before coming to the UK the Appellant aged 18 years denied any involvement at a demonstration.
9. In his oral submissions Mr Melvin also submitted that the evidence which had been presented today really did not assist the Appellant's account it was vague and inconsistent. How would the Appellant be able to find the same people at the school that she had left some five years ago it was a statement which was very difficult for any Tribunal to accept. Since the birth of her child in 2017 the political activity has stopped and in any event, it is not going to be picked up for another two years. There is little or no evidence that the Vietnamese authorities have interest in the appellant. There was no objective evidence to show that there had been no demonstrations or postings which would lead to difficulties for the Appellant on return. In any event the Appellant had discretionary leave to remain and therefore the Refugee Convention claim falls to be dismissed.
10. I then heard submissions from Mr Khan he said he relied upon his skeleton argument. He explained that the factual matrix could be looked at, at paragraphs 81 and 83 of the First-tier Tribunal Judge's decision. As for whether the authorities in Vietnam would take an interest in the Appellant's activities there, Mr Khan said his submission was that they would. The past activities and the activities in this country needed to be considered. An issue was whether or not it was reasonably likely that this would bring the Appellant to the attention of the authorities. He referred to the CPIN particularly at 6.1.14 and 6.1.2 and it was said by Mr Khan that the Appellant's willingness to demonstrate and the fact that she had been detained for two weeks goes to show her commitment to anti-government sentiment. Since then there has been the birth of a child here in the UK and she has had far more pressing issues to address namely looking after her child. The evidence in respect of Facebook had been provided at the time and I was taken to the Respondent's bundle which contained that. It was said that the case was not being argued on the basis that she would come to the attention of the authorities just because of the Facebook activity. Mr Khan said that the

Appellant's actions showed a behaviour of rebellion and that thereby it can attract persecution at any time.

11. I turn then to considering my decision. As I did for the error of law hearing, I again refer to the Supreme Court's judgment in **RT (Zimbabwe), KM (Zimbabwe)**. In my judgment Mr Khan puts it very well when he is summarised his submissions to say that the incidents and the activities of the Appellant show a behaviour of rebellion and that is likely to attract the attention of the authorities in Vietnam at any time. Is there this possibility to the required standard? In coming to that assessment, I consider the judgement of First-tier Tribunal Judge Cameron. The following was said:

"81. The appellant's evidence has therefore been consistent with regard to her membership of the party, the demonstration she attended and her detention. That does not of course mean that the evidence is a truth but applying the lower standard of proof I am satisfied that notwithstanding there are some issues when the appellant was unable to answer fully the questions put to her that she has shown to the lower standard of proof that she was a member of the AVYD, that she did attend two demonstrations and that she was detained.

82. The appellant has also given evidence with regard to two demonstrations that she attended in this country and the fact that she attended meetings of the Viet Tan Party she has produced documentary evidence in relation to the two demonstrations which clearly show her outside the Vietnamese Embassy in London on what would appear to be properly organised demonstrations.

83. I am satisfied to the lower standard of proof that the Appellant has therefore attended two demonstrations in this country and that she attended meetings of the Viet Tan Party."

12. Now, the updating witness statement that has been provided to me today has been the subject of rigorous cross-examination and I do take into account that the Appellant did indeed provide other evidence which is indeed within the Respondent's bundle including Facebook entries. That also tends to show this rebellious activity that Mr Khan has spoken about in his submissions. In my judgment to the lower standard there is a real risk that the Appellant's continued activities in Vietnam will bring her to the attention of the authorities. I am more than satisfied that she will continue in her rebellious way. I come to the view that she would do that because of the following factors. Firstly, on arrival in this country she was relatively young in her teenage years. She was found by Judge Cameron to have undertaken the anti-government activities which are referred to at paragraphs 81 to 83 of that decision. The Appellant undertook the Facebook activities. Whilst it is true that her activities have slowed down since around April 2017, I simply cannot ignore that her child was born in August 2017 therefore the Appellant would have been heavily pregnant in April 2017 and indeed after that giving birth she would have had to care for her child. As any person knows raising children is difficult and I cannot imagine for a second that it would have been any easier for this Appellant especially since it appears that she was seeking to raise a child in a constrained situation. In the circumstances in my judgment the Appellant has provided a more than sufficient explanation as to why her anti-government

Vietnam activities have been slower than they were previously and, in my judgment, she has provided a more than plausible explanation and reason as to when she aims to pick those things up again.

13. Having said all of that in my judgment the Appellant was very clear that even if she was removed to Vietnam sooner rather than later, she would pick up her anti-regime activities. She would seek to find those she had worked with in the past in her rebellious activity and indeed she would soon commence her leaflet distribution and such like very, very swiftly. In my judgment the background material which is referred to within Mr Melvin's written submissions but also referred to by Mr Khan in his oral submissions cannot be underestimated. Not least 6.1.2 and 6.1.4 which in summary makes it clear "the authorities continue to use vaguely worded offences and charge and convict peaceful activists mainly through article 258". Therefore, in view of the past persecution (even if merely viewed as being stopped and questioned) this Appellant has faced in Vietnam, it is simply too risky to conclude that she would somehow safely be the subject of free activity in Vietnam. In my judgment the Appellant will engage in anti-government Vietnam activity and in my judgment, that will come to the attention of the authorities very swiftly in Vietnam. The background material makes clear that such anti-government activity is not tolerated and that persecution follows. In the circumstances I conclude that the Appellant's asylum claim succeeds. I acknowledge the concern of the Respondent that an assertion by an Appellant that he or she will engage in anti-government activity is easy to make, but in my judgment, piecing together what this Appellant has done in the past and indeed here in the UK all point to there being a real likelihood that she will do so again. That will bring her to the attention of the authorities in Vietnam for which she will be at risk of persecution because of her beliefs.

Notice of Decision

The First-tier Tribunal Judge's decision contained an error of law that decision had previously been set aside.

I remake the decision.

The Appellant's appeal is allowed on asylum grounds.

An anonymity direction is made.

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: A Mahmood

Date: 25 July 2018

Deputy Upper Tribunal Judge Mahmood