



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/04545/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 30th September 2019**

**Decision & Reasons Promulgated
On 9th October 2019**

Before

**UPPER TRIBUNAL JUDGE HANSON
UPPER TRIBUNAL JUDGE KEITH**

Between

**'TTN'
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**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 her or any member of her family. Failure to comply with this direction could lead to contempt of court proceedings.

Representation:

For the appellant: Mr M Allison, Counsel, instructed by JD Spicer Zeb
Solicitors

For the respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

This is an appeal by the appellant against the decision of First-tier Tribunal Judge Davidson (the 'FtT'), promulgated on 28 June 2019, by which he dismissed the appellant's appeal against the respondent's refusal in a decision dated 30 April 2019 of her protection and human rights claims.

In essence, the appellant's claims involved the following issues: that by virtue of her attendance at demonstrations on 20 March; and 3 and 5 November 2015, the appellant and her father came to the adverse interest of the authorities in Vietnam, her country of origin. She therefore feared persecution on the grounds of her political beliefs, as a result of attending demonstrations in Vietnam and also as a result of '*sur place*' activities in the United Kingdom, specifically her attendance at a demonstration on 28 April 2019 outside the Vietnamese Embassy in the UK. She also claimed no longer to be in contact with her father in Vietnam as a result of his detention by the authorities.

The core points taken against the appellant by the respondent related to an inconsistency in the date on which the demonstration took place in March 2015, as objective external evidence (a media report) suggested that the demonstration had taken place on 22 March 2015, not 20 March as the appellant claimed; the implausibility of the appellant's account that her father would have been detained following the demonstration on 5 November 2015, as the objective evidence suggested that low-level protests against the visit of the Chinese Premier were tolerated; inconsistencies in her account of where a notice had been attached to the family home; and, finally, the respondent regarded as speculative the appellant's concerns about her father, for which she relied solely on what she had been told by his business partner.

The FtT's decision

The FtT was not impressed by the credibility of the appellant's evidence. The FtT accepted that a demonstration may have taken place in 20 March 2015, but in his words, at [37], there was no evidence that the appellant had been the subject of adverse attention as a result. The appellant had provided no explanation for why she would be detained, aged 15, for taking part in a demonstration in March 2015 attended by many people. The FtT did not regard as plausible her account of attending a demonstration with her father on 5 November 2015; and concluded, at [41], that she had not shown, to the lower standard of proof, that their attendance had resulted in her father's arrest and detention. The FtT found that objective country information supported the claim that political activists and human rights defenders were **at** risk of adverse attention, which could extend to family members, but there was no evidence that the appellant and her father were perceived as being critical of the Vietnamese government. The FtT also found that her credibility was damaged by her lack of follow-up with the International Red Cross in tracing her father; and her giving a rental property as a contact address to the International Red Cross, which was likely to result in him not being found.

Having considered the evidence as a whole, the FtT found that the appellant's account of adverse interest in Vietnam and fleeing from there as a result, was

not credible, and she would not face any risk of adverse interest on her return. He regarded her participation in demonstrations in the UK as designed to bolster her claim. The FtT dismissed her asylum and humanitarian protection appeals and also dismissed her appeal by reference to article 8 in respect of her right to a private life.

The grounds of appeal and grant of permission

The appellant lodged grounds of appeal on 11 July 2019, which are essentially:

- (1) the FtT had failed to explain why the appellant's account of attending the demonstration on 5 November 2015 was inconsistent with objective evidence;
- (2) the FtT had erred in finding that there was no evidence that the appellant had attended the demonstration on 20 March 2015. In contrast, the appellant had given evidence on that very point. Not only was there an error in equating a lack of corroborative evidence with a lack of evidence; but there was in fact objective evidence suggesting that the protests had taken place;
- (3) the FtT had improperly made adverse credibility findings in relation to the appellant's contact with the International Red Cross, when this was not an issue relied on in the refusal decision, and there was no compliance with rule 24(2) the Tribunal Procedure (First-tier Tribunal) (IAC) Rules 2014, in order for the respondent to rely on any new ground not included in the refusal decision;
- (4) the FtT failed to explain why he preferred the respondent's Country Policy and Information Note ('CPIN'), that risk was limited to high profile activists, to extensive external evidence submitted by the appellant which suggested risks beyond high profile activists.

1. First-tier Tribunal Judge Parkes granted permission to appeal against the FtT's decision on 6 August 2019. While he regarded brevity as a virtue, he concluded that there was arguably some merit in the assertion that the FtT did not adequately explain his preference for the CPIN, as opposed to evidence adduced by the appellant; and the findings about the appellant's attempts at tracing had arguably not been properly considered. While Judge Parkes regarded the appeal in relation to '*sur place*' activity as having less merit, the grant of permission was not limited in its scope.

The hearing before us

Both representatives agreed that the FtT's reference to there being no evidence that the appellant had been the subject of adverse interest must properly be read as there being no evidence corroborating the appellant's oral evidence. Mr Allison and Mr Lindsay relied on the grounds of appeal and the refusal decision respectively.

Discussion and conclusions

We agree with FtT Judge Parkes' observation that brevity is a virtue in the reasons for a judicial decision. We accept Mr Lindsay's submission that an

assertion that the FtT did not provide adequate reasons, sufficient to explain how he reached his decision, is a high hurdle for the appellant to meet, and that we should be wary of focussing on minor aspects of a decision, by which an attempt may be made to 'pick holes' in it. We were conscious of the recent guidance provided by the Court of Appeal in UT (Sri Lanka) v SSHD [2019] EWCA Civ 1095. Nevertheless, we concluded that the FtT's reasons were insufficient to explain his analysis and conclusions. Mr Allison submitted that if the brief conclusions in the FtT's decision were stripped away, there was very little by way of reasoning.

Taking two aspect of the decision, the first was at [40]. This was the conclusion that the appellant's account of her attendance at the demonstration on 5 November 2015 was inconsistent with the 'Radio Free Asia' article, which referred to government interventions in protests in Ho Chi Minh City and Hanoi. The FtT described the article as inconsistent with the appellant's account. The FtT's decision did not then explain in what way the account was not consistent and why the inconsistency went to the core of the appellant's credibility. The appellant is therefore unable to understand why her evidence was not accepted. That must amount to an error of law.

In relation to the same demonstration, the FtT then went on to state that even if the appellant were given the benefit of the doubt that she had attended the November 2015 demonstration with her father, she had not shown to the lower evidential standard that her father had been arrested and detained as a result. It is not entirely clear why the FtT reached this conclusion, although the implication appears to be at [41] to [43] because the appellant's father was not of sufficient political profile, which in turn leads on to the final ground of appeal in relation to the FtT's reasoning about why he preferred the respondent's CPIN evidence about risk of detention being limited to those with a high profile, as opposed to the external evidence referred to by Mr Allison in his skeleton argument before the FtT, including Amnesty International, Human Rights Watch and US State Department reports, which suggested more widespread adverse attention. The FtT's conclusion on the point, at [43], comprises a single sentence, which states that '*the objective evidence does not indicate that a person such as the appellant's father who is not a major political figure would be arrested and detained for four years.*' This begs the question of how the FtT reached that conclusion. Once again, we conclude that the absence of analysis and a basis for which the appellant can understand why her evidence was not accepted amounts to an error of law.

While the FtT considered whether the appellant might be at risk on return because of her involvement in '*sur place*' activities while in the UK, even if those activities were contrived for the purposes of bolstering a protection claim([47]), the FtT concluded that she did not '*meet the profile of a person who would be at risk.*' Once again, that begged the question of what such a profile would be, and whether FtT intended to refer to someone of sufficiently high political profile. If it did mean that, the FtT's analysis was then in turn weakened by the FtT's failure, as already discussed, to explain his resolution of external evidence about whether risk was limited to high-profile individuals.

We also accepted Mr Allison's criticism of the FtT's assessment of the appellant's account of her attendance and arrest at the demonstration on 20 March 2015. Setting aside the issue of the reference to there being 'no evidence' ([37]) (for which we must read no corroborative evidence), the reasoning is then limited to the fact of the appellant being only 15 years old; and the demonstration being attended by many people; and not objected to by the authorities ([38]). The FtT did not explain the relevance of the appellant's age and the fact that many people attended the demonstration as being factors damaging the plausibility of the account. The FtT also did not explain on what basis he reached the conclusion that the government tolerated the demonstration (for example, by reference to any evidence contradicting the appellant's oral account that there was such interest). The FtT's findings were not adequately explained or reasoned.

The FtT had also drawn adverse inferences against the appellant's credibility because of the fact that she had given a last-known temporary rental address to the International Red Cross for the purposes of attempts to trace her father, whom she believed to have been detained by the authorities ([44]). We accept Mr Allison's submission that it is unclear from the reasoning what more the FtT expected of the appellant to have done, such that she would not have adverse inferences against her credibility, even if we ignore that the issue was never referred to in the refusal decision. We also concluded that the FtT erred in law in treating the appellant's failure to follow-up on tracing enquiries with the International Red Cross or other agencies as damaging the appellant's credibility, without considering whether that responsibility lay with the local authority in whose care the appellant was, or the respondent, given that she was a 15-year old minor at the time of leaving Vietnam.

In summary, the adverse credibility finding on the basis of the International Red Cross tracing enquiries is very brief and it is not clear how much weight the FtT placed on what he regarded as an adverse factor. We were unable to say that it was a minor factor, in the absence of which the FtT would have reached the same conclusion.

For all of the above reasons, the FtT's analysis, which went to the core of the appellant's credibility, was insufficiently reasoned so that the FtT's decision cannot stand.

Decision on error of law

We conclude that there are material errors of law in the FtT's decision, which is set aside in its entirety, without any preserved findings of fact.

Disposal

2. With reference to paragraph 7.2 of the Practice Direction and the necessary fact-finding, this is a case that must be remitted to the First-tier Tribunal for a complete rehearing.
3. The remittal shall involve a complete rehearing of the appeal. All aspects of the claims must be addressed.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and we set it aside.

We remit this appeal to the First-tier Tribunal for a complete rehearing.

Directions to the First-tier Tribunal

- 1. This appeal is remitted to the First-tier Tribunal for a complete rehearing with no preserved findings of fact;**
- 2. The remitted appeal shall not be heard by First-tier Tribunal Judge Davidson.**
- 3. The anonymity directions continue to apply.**

Signed **J.Keith**

Date: 7 October 2019

Upper Tribunal Judge Keith