



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07487/2018 (V)

THE IMMIGRATION ACTS

Heard at: Field House
On: 22 January 2021

Decision & Reasons Promulgated
On: 09 February 2021

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

LVN
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Reid, instructed by Thompson & Co Solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was skype for business. A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing.
2. The appellant is a citizen of Vietnam, a Roman Catholic, born on 10 October 2000. He has been given permission to appeal against the decision of First-tier Tribunal Judge Kinch dismissing his appeal against the respondent's decision to refuse his asylum and human rights claim.

3. The appellant arrived in the United Kingdom on 30 March 2015, clandestinely, at the age of 14 years. He claimed asylum on 1 December 2017. His claim was refused on 1 June 2018. His appeal against that decision was dismissed in the First-tier Tribunal on 4 February 2019. Whilst permission to appeal to the Upper Tribunal was granted and the First-tier Tribunal's decision was upheld in the Upper Tribunal, it was subsequently set aside by the Court of Appeal and the matter was remitted to the First-tier Tribunal to be heard by a different judge. First-tier Tribunal Judge Kinch heard the appeal on 25 February 2020 and dismissed it in a decision promulgated on 24 March 2020.

4. The basis of the appellant's claim was that he feared being arrested and put in prison, or being killed, by the Vietnamese authorities if he returned to Vietnam. The appellant claimed that he attended a protest with his father on 3 September 2013 outside the People's Committee Building of Nghi Phuong Commune, the purpose of which was to demand the release of two priests. The protest was dispersed by the police and he and his father were both arrested and taken to the police station. The appellant said that he was detained there for a month and was beaten until he signed a document confessing to committing public disorder and then released on reporting conditions. His father was not released and he had not seen him since. On 19 May 2014 he attended another protest at Xa Doai Church with his mother, objecting to the disruption caused to Vietnamese fishing by the operation of a Chinese oil and gas platform called Haiyang Shiyou, a matter which directly affected his family. The protest was again broken up violently by the police and he was captured again, although his mother got away. He was detained again in the police station, for two months, and was beaten so badly that his arm was broken. He was transferred to a youth offender detention camp where he was held for another month and he was released after signing a confession admitting to breaking public order, and was taken to hospital by his mother. He continued reporting to the police, but after a month the police delivered a summons to his mother to attend the police station, as they suspected that she had been at the protest. As a result of this, his mother took him and fled to stay with a friend. They stayed there for two days and then an agent took them to a safe place from where they fled the country, on 10 October 2014.

5. The appellant claimed that they were taken to Russia, but he then became separated from his mother when travelling on to Poland, France and then the UK. He was encountered by the police after entering the UK and was placed in the care of social services, but he absconded and went to stay with a Vietnamese man for three months, then a Chinese group for two years and then with another Vietnamese man for six months. Finally, another Vietnamese man approached the authorities on his behalf and he then claimed asylum. Since that time, he had attended two demonstrations outside the Vietnamese Embassy in London, on 8 and 30 April 2018, which he feared would put him at additional risk from the government in Vietnam.

6. The respondent, in refusing the appellant's claim, accepted that he was a Vietnamese national, that he was a practising Roman Catholic and that he had attended two demonstrations in the UK, but rejected his account of having attended two protests in Vietnam and of being arrested and detained. The respondent accepted that the appellant

had given a detailed account of both protests but noted that information about both was widely available in the public domain. The respondent accepted that there had been a protest outside the People's Committee Building of Nghi Phuong Commune on 3 and 4 September 2013 but considered that the appellant's account of the events was inconsistent with the objective evidence. The appellant's account was of his arrest at a large demonstration on 3 September 2013 which was attacked by the police, whereas the background evidence referred to a larger, peaceful demonstration on 3 September 2013 followed by a smaller protest on 4 September 2013 which turned violent and was broken up by the authorities. Likewise, the respondent considered that the appellant's account of the 19 May 2014 protest was inconsistent with the background evidence. The respondent considered further that the timing of the appellant's claim, only after being arrested on 30 March 2015 under an immigration provision and then absconding for two years, further undermined the credibility of his claim. Accordingly, the respondent did not accept that the appellant had a genuine subjective fear of persecution in Vietnam. The respondent considered that the appellant would not be at risk in Vietnam on the basis of his religion or otherwise.

7. As for Article 8, the respondent considered that there were no very significant obstacles to integration for the appellant in Vietnam and that his removal from the UK would not breach his human rights. As for section 55 of the Borders, Citizenship and Immigration Act 2009 and the duty of family tracing, the respondent noted that the appellant had claimed to have lost contact with his mother on the journey between Vietnam and the UK and considered therefore that it would not be possible for the Home Office to trace her. Furthermore, the appellant had claimed that his father was incarcerated and that he had no idea where he was. Accordingly, his family could not be traced using the information and family tracing steps available to the Home Office. Since the appellant was 17½ years of age, he did not qualify for leave to remain under paragraph 352XE of the immigration rules as an unaccompanied asylum-seeking child.

8. The appellant's appeal was initially heard by First-tier Tribunal Judge Davidson, who did not accept his account of the two demonstrations in Vietnam, in particular the first one in September 2013, found that his claim was not credible and concluded that he was at no risk of persecution in Vietnam. The judge's decision was upheld in the Upper Tribunal by Deputy Upper Tribunal Judge Woodcraft, but was subsequently set aside by the Court Appeal on the basis of a lack of adequate reasoning in relation to the adverse credibility findings, and was remitted to the First-tier Tribunal to be heard afresh.

9. The appeal then came before First-tier Tribunal Judge Kinch on 25 February 2020. The appellant gave oral evidence before the judge. The judge had before her an expert, medico-legal report from Professor M R Graham, dated 14 November 2018, which provided an opinion on the appellant's scarring and mental health. The judge accepted that the appellant attended the demonstration on 3 September 2013 but rejected his account of having been arrested and detained with his father. She reached the same finding in relation to the second protest, on 19 May 2014, and rejected the appellant's account of his mother being summonsed. The judge accepted the appellant's account of having attended four demonstrations outside the Vietnamese Embassy in London but

noted his evidence that he was not an organiser and concluded that no adverse interest would have been taken in him as a result of his attendance. The judge noted further that the appellant was not claiming to be at risk in Vietnam on the basis of his religion and she concluded that he was not at any risk on return. The judge found, in relation to Article 8, that the appellant could not meet the requirements of the immigration rules under Appendix FM and paragraph 276ADE(1) and that there were no compelling circumstances outside the rules. She accordingly dismissed the appeal on all grounds, in a decision promulgated on 24 March 2020.

10. Permission was sought by the appellant to appeal to the Upper Tribunal. Permission to appeal was refused in the First-tier Tribunal, but was subsequently granted by the Upper Tribunal on renewed grounds: firstly, that the judge failed to adopt a child-sensitive application of the lower standard of proof when making her adverse credibility findings in regard to the appellant's involvement in the protest of 3 September 2013; secondly, that the judge failed to make findings in relation to the appellant's mother; thirdly, that the judge had erred in her consideration of the respondent's duty to endeavour to trace family members; and fourthly, that the judge had failed to consider the impact upon the appellant of being an unaccompanied asylum-seeking child, in the context of both Article 3 and Article 8. Permission to appeal was granted on 13 August 2020 and the matter then came before for a hearing, by way of skype for business.

Hearing and Submissions

11. Both parties made submissions on the error of law issue.

12. With regard to the first ground, Ms Reid submitted that Judge Kinch had made the same error as the previous judge in relation to the issue of 3 or 4 September 2013 protest. The appellant was only 19 years of age at the hearing and was recounting events which took place when he was a child of 12 years at the first protest and 13 years at the second. He should have been treated as a vulnerable witness, particularly as he had been diagnosed as suffering from PTSD. The judge failed to do that and failed to consider if he could have been at the demonstration on 4 September, where it was accepted that people were arrested, instead of 3 September. The judge put too much weight on the date and ought to have taken a child-centred approach, particularly where there was evidence of scarring consistent with the injuries claimed. As for the second ground, Ms Reid submitted that the judge had failed to make a finding on whether the appellant attended the second protest with his mother. She had dismissed the appellant's account of the summons on the basis of implausibility without considering the matter in the proper context, yet there were a number of reasons why the appellant's mother would not have fled earlier. With regard to the third ground, Ms Reid submitted that the respondent had failed in her duty to trace family members. The appellant had provided all the details of his parents. It was perverse for the respondent to cite reasons, based upon an account she had not accepted, as an answer to not being able to attempt to trace the appellants' parents. The judge ought also to have accepted the appellant's claim that he had made attempts to trace through the Red Cross. As for the fourth and last ground, Ms Reid submitted that the judge had not taken proper account of the appellant being an unaccompanied asylum-seeking child, which fed

into the question of risk under Article 3, as well as the issue of very significant obstacles to integration under Article 8. Ms Reid asked that the matter be remitted to the First-tier Tribunal again for a fresh hearing.

13. Ms Cunha submitted that the grounds were simply a disagreement with the judge's decision. The judge had taken into account the appellant's age and vulnerability when making her findings. The fact that the judge did not make a finding whether the appellant's mother was present at the second protest was immaterial. The judge was entitled to conclude that the expert's opinion, that the appellant's scars were consistent with his account, was not sufficient, as they could equally have been caused by other means. The judge was entitled to find that the appellant had given an inconsistent account of events. As for family tracing, the respondent could only undertake tracing on the information given by the appellant, as was the case with the Red Cross, and those details may not have been credible.

14. Ms Reid reiterated some of the points previously made, in her response.

Discussion and Conclusions

15. I am in agreement with Ms Cunha's submissions that the grounds are little more than a disagreement with the judge's decision. The grounds assert that the judge erred in the same way as Judge Davidson had done previously, by making adverse credibility findings against the appellant, a young and vulnerable 19 year old who was only 12 years of age at the time of the relevant events and only 17 years of age when interviewed, on the basis of what was simply a confusion about dates, and accorded too much weight to the matter. If that had indeed been the case, I would have no hesitation in agreeing that the judge was in legal error. However, that is not the case.

16. Firstly, when the judge assessed the appellant's evidence, it is plain that she did so with careful regard given to his particular circumstances, being mindful of his age at all relevant stages including at his interview and his vulnerability in accordance with the Presidential Guidance Note (at [36]), his mental health status (at [39] and [40]) and the reports of scarring on his body, assessed by Professor Green as being consistent with the injuries claimed. Secondly, the judge also had regard to the discrepancies in the news articles about the demonstrations, at [46] and [47], and considered the fact that the appellant could have confused the dates and circumstances of the protests on 3 and 4 September 2013. Thirdly, the judge gave further reasons, aside from the appellant's evidence of the date of the incident, for concluding that his account was inconsistent with the background information, and fifthly it cannot be said that the judge erred by according too much weight to the appellant's evidence of the protests, given that that was the basis of his claim and the events from which the claimed risk of persecution arose.

17. The judge's findings were based upon a careful consideration of the appellant's evidence in the context of the reports, in the background information, of the events of 3 and 4 September 2013, with clear and cogent reasons given for concluding that the accounts could not be reconciled and that the contradictory evidence could not be

explained simply on the basis of confusion as to dates. The contradiction in the accounts is set out clearly at [45] to [47] of the respondent's decision, whereby the respondent found that it could not be the case that the appellant attended a large demonstration attended by about 1000 people carrying banners and chanting slogans, where the police intervened and attacked the crowds and arrested many people including himself and his father, as that did not (according to all the country reports) occur on either 3 or 4 September 2013, but was a conflation of the events of the two days. That was precisely what the judge found at [45] to [47] and what she properly concluded could not be explained by the appellant's age, mental health or other vulnerabilities. The judge also went on to give further reasons as to why the appellant's account was inconsistent with the background information, aside from the date of the protest, at [48] to [53], on the basis of the profile of those arrested and the period of time for which those arrested were detained. All of those reasons given by the judge for rejecting the appellant's account to have been arrested and detained with his father were, in my view, fully and properly open to her.

18. Likewise, with the appellant's account of his arrest and detention when attending the protest of 19 May 2014, the judge's rejection of his claim followed a careful analysis of the background country reports and was carefully and cogently reasoned. The grounds criticise the judge's findings on the appellant's account of the events, in that she failed to make a finding as to whether his mother attended with him and erred by basing her adverse findings about the summons on implausibility. However, I do not consider an absence of findings as to whether the appellant's mother attended with him was material and neither do I find the judge to have erred in her adverse findings about the summons. The judge gave detailed reasons, at [54] and [55], as to why the appellant's account was inconsistent with the country information, as regards his account of the police intervention and the treatment of low-level offenders of his age. In the light of that information, and having had regard to the findings of Professor Green in regard to the cause of the appellant's scars, at [56], when assessing the evidence as a whole, the judge was perfectly entitled to conclude that the appellant's account was not a credible one and was entitled to draw the adverse conclusions that she did about the timing of his mother's decision to flee the country.

19. Accordingly, I find no merit in the challenge in the grounds to the judge's approach to the appellant's evidence. It is clear that she accorded appropriate weight to the appellant's vulnerabilities in terms of his age and his mental health, that she followed a child-sensitive approach and that she gave appropriate weight to the background country information. She did not dismiss the appellant's claim simply on the basis of a difference in the appellant's evidence as to dates, and neither was she required simply to accept the appellant's account and give no weight to discrepancies because of his age and vulnerabilities, as the grounds appear to suggest. On the contrary, the judge made her findings on the basis of a detailed and careful analysis of all the evidence and accorded relevant weight to the evidence.

20. As to the issue of family tracing, the respondent asserts that the respondent's approach was perverse, in that she based her decision not to undertake tracing upon an account which she had found not to be credible, particularly with regard to the appellant's

father's whereabouts. However, it seems to me that the respondent was perfectly entitled to take the appellant's evidence about his family's whereabouts as a starting point in deciding to what extent she could undertake tracing. The respondent clearly had regard to the matter of tracing and I do not see any reason to conclude that the judge erred by making no further findings in that regard. In any event the judge did consider the issue of family tracing at [69], noting that the appellant claimed to have heard from the Red Cross following his application to them to trace his family, but had produced no evidence to show that he had received such a response, nor that he had attended an appointment.

21. The fourth ground of appeal asserts that the judge erred by not taking account of the impact on the appellant of having come to the UK as an unaccompanied asylum-seeking child at a young age, and with mental health issues, in an assessment of Article 3 or Article 8. However, the judge's record of the appellant's representative's submissions, at [65] and [66] of her decision, make it clear that that was not a matter pursued at the hearing. The judge in any event went on to consider the appellant's age and other relevant circumstances in the context of an Article 8 assessment, when considering whether there were any very significant obstacles to integration in Vietnam or exceptional circumstances outside the immigration rules. The findings she made in that regard were fully and properly open to her on the evidence before her.

22. For all of these reasons I consider that the grounds of appeal do not disclose any errors of law requiring the judge's decision to be set aside. The judge clearly had regard to all the evidence and was entitled to make the adverse findings that she did, for the reasons fully and cogently given. She was perfectly entitled to conclude that the appellant had not provided a genuine and credible account of his reasons for leaving Vietnam or of his circumstances on return to that country. She was entitled to conclude that he was at no risk on return and that his removal to Vietnam would not breach his human rights.

DECISION

23. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity

The anonymity direction made by the First-tier Tribunal is maintained.

Signed: *S Kebede*
Upper Tribunal Judge Kebede

Dated: 25 January 2021