



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005423

First-tier Tribunal No: PA/53009/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 11 May 2023

Before

UPPER TRIBUNAL JUDGE SHERIDAN
DEPUTY UPPER TRIBUNAL JUDGE METZER QC

Between

T C L
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms Revill, instructed by Gulbenkian Andonian Solicitors
For the Respondent: Ms Nolan, Senior Home Office Presenting Officer

Heard at Field House on 6 March 2023

Order Regarding Anonymity

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

1. The appellant is appealing against a decision of First-tier Tribunal Judge Field ("the judge") dated 4 April 2022 dismissing his protection and human rights appeal.
2. The appellant is a citizen of Vietnam who came to the UK in 2010 as a student. In 2012 he spent several months visiting Vietnam before returning to the UK to continue his studies. His leave as a student ended in 2014. Since then, he has remained in the UK unlawfully. He claimed asylum in

January 2019.

The appellant's claim

3. The appellant claims that he faces a real risk of persecution in Vietnam for three reasons.
4. The first reason concerns his religious belief and practice. The appellant claims that in 2007 and 2009 he was arrested and detained, but released without charge, on account of attending Pure Hoa Hoa Buddhism ceremonies. He submits that although he does not have a leadership or significant role in Pure Hoa Hoa Buddhism he nonetheless faces a risk of persecution on account of his faith, as indicated by his experience of being arrested and detained in 2007 and 2009.
5. The second reason concerns a risk of arrest and detention because of illegal political activity in Vietnam. In 2012 the appellant, whilst in the UK as a student, visited Vietnam for several months. He claims that during this visit he and a friend distributed leaflets that were critical of the Vietnamese regime. He claims that after he returned to the UK in August 2012 his friend was arrested, police searched his family home, and the authorities detained his father for 4 days. He claims that that there is a real risk that the authorities continue to have an interest in him.
6. The third reason concerns activities in the UK. The appellant claims that whilst in the UK he has attended anti-regime demonstrations thereby potentially coming to the adverse attention of the Vietnamese authorities.

Decision of the First-tier Tribunal

7. Although the judge made several adverse credibility findings, she accepted core parts of the appellant's claim, including that:
 - a. the appellant was arrested in 2007 and 2009 for attending religious ceremonies;
 - b. in 2012 he distributed antiregime leaflets with a friend who was subsequently arrested; and
 - c. he left a leaflet at his family home that was found by the police shortly after he returned to the UK in 2012 and his father was arrested and detained for 4 days.
8. Despite these findings, the judge did not accept that the appellant would be at risk on return.
9. The judge did not accept that the appellant has a well founded fear of persecution on account of his religion. She gave two reasons. First, the appellant's decision to travel to Vietnam for several months in 2012 (as well as the answers he gave to questions at the hearing) indicated that he did not fear the authorities on account of his religion. Second, the judge considered that the respondent's Country Policy and Information Note on Hao Hao Buddhism ("the Buddhism CPIN") indicates that only those with a significant profile in Hao Hao Buddhism (which the appellant does not have) face a real risk of persecution on account of their religion or religious activity.

10. With respect to distributing antiregime leaflets in 2012, the judge gave several reasons for finding that the Vietnamese authorities would not have an ongoing interest in the appellant. These are set out in paragraphs 37 and 39 of the decision. At paragraph 37 the judge found that:

- a. It was incongruous that the appellant's friends who were involved in the leaflet distribution with him did not contact him to tell what happened after the friend's arrest.
- b. It was inconsistent that the appellant's friends had not maintained contact with him since 2012.
- c. It was inconsistent that the police released the appellant's father after only 4 days if the leaflet had the significance the appellant claims. The judge also drew an adverse inference from the absence of evidence that the appellant's father was ever questioned or detained again.
- d. The judge noted that there was no evidence of the appellant's friend being charged with any offence.

11. The judge stated at paragraph 39:

"A leaflet was found at his home, and he states that he believes his friend named him as the organiser of the distribution of such leaflets. However, this occurred almost 12 years ago and there is no cogent evidence before me that the authorities continue to have any interest in the matter. By his account the only consequence arising from the leaflets was the arrest of [his friend], who was apparently later released, and the search of the family home in 2012. I am satisfied that in circumstances where detention and imprisonment of Hoa Hao Buddhists who participate in political activities is not widespread, and is generally focused on leaders, there is no reasonable likelihood that the appellant currently faces persecution because of the historic and limited distribution of leaflets"

12. With respect to the appellant's *sur place* activity, although the judge accepted that the appellant had attended two demonstrations in London he found that he would not have attracted any adverse attention as a consequence.

13. The judge also rejected the appellant's article 8 ECHR claim as she was not satisfied that he would face very significant obstacles integrating in Vietnam or that the consequence of his removal would be unjustifiably harsh.

Grounds of Appeal

14. There are three grounds of appeal.

15. Ground 1 submits that the judge's finding that the appellant would not be at risk of persecution due to his religion is undermined by a failure to have regard to the previous persecution he suffered on account of his religious belief. It is submitted that the judge failed to apply paragraph 339K of the Immigration Rules, which provides:

The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of

persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

16. Ground 2 submits that the judge erred by treating the respondent's assessment in the Buddhism CPIN as evidence, when it merely sets out the respondent's view on the evidence. Reliance is placed on paragraph 301 of *KK and RS (Sur place activities: risk) Sri Lanka CG* [2021] UKUT 00130 (IAC), where it is stated:

In general terms, we regard the "Assessment" section as constituting a statement of the respondent's guidance to her caseworkers on a number of thematically-arranged issues. The CPIN is simply evidence of the respondent's position as it was at the date of its publication in May 2020. The guidance to caseworkers may be relevant in any given case where the respondent seeks to put forward an argument that is inconsistent with it.

17. Ground 3 concerns the judge's assessment of whether the appellant would face a risk because he distributed antiregime leaflets in 2012. It is argued that the judge erred by not taking into consideration that the appellant faces a risk on return of being punished for a crime and by considering the leaflets "only through the prism of the appellant's religion rather than with reference to their anti-government content". Reference is made to the respondent's CPIN on opposition to the state which at paragraph 5.1.4 cites a report referring to a criminal offence punishable by a lengthy prison sentence of "propaganda to slander the People's government..."

Risk of persecution on account of being a Pure Hoa Hua Buddhist (Grounds 1 and 2)

18. We consider grounds 1 and 2 together because they both concern the judge's assessment of whether the appellant faces a risk on return to Vietnam on account of his religious belief and practice.
19. The judge found that the appellant did not have a subjective fear of persecution on account of his religion. This is clear from paragraph 33 of the decision where the judge stated:

"I am satisfied from the appellant's account that it was only after he understood that the authorities had learned of his distribution of leaflets that he came to fear persecution from the authorities as a result of his religion and his anti-government activity in distributing leaflets"

20. The judge also found that the appellant's decision to return to Vietnam for several months in 2012 was consistent with him not, prior to that time, fearing the authorities.
21. Ms Revill argued that the judge erred by not considering paragraph 339K of the Immigration Rules and by not making a finding as to whether the treatment of the appellant in 2007 and 2009 when he was arrested amounted to prosecution. The difficulty with this argument is that in order to fall within the scope of the Refugee Convention a person must have a subjective fear of being persecuted and the judge was entitled, for the reasons she gave, to find that the appellant did not have a subjective fear on account of his religion and religious practice. In the light of the judge's

finding about the absence of a subjective fear, there was no need to address paragraph 339K or whether what occurred in 2007 and 2009 was sufficiently serious as to constitute persecution as in any event the appellant would not fall within the scope of the Refugee Convention due to a well-founded fear of being persecuted for reason of his religion.

22. The Buddhism CPIN includes a range of source material about the treatment of Hao Hoa Buddhists in Vietnam. It also includes the respondent's assessment of that evidence. Ms Revill argued that the judge erred by relying on the respondent's assessment of the evidence rather than the evidence (as set out in the source material) itself. The difficulty with this argument is that, as submitted by Ms Nolan, the respondent's assessment of the evidence, as set out in the assessment section of the Buddhism CPIN, is taken directly from the evidence contained in the source material section. Having considered the Buddhism CPIN for ourselves, we are satisfied that the respondent's assessment section accurately reflects the evidence collated in the source material section. Accordingly, any error is immaterial because by adopting the assessment in the Buddhism CPIN the judge made findings about the circumstances faced by Hao Hoa Buddhists that was consistent with the evidence.
23. Considering together the appellant's lack of subjective fear of persecution on account of religion (as indicated by his decision to spend several months in Vietnam in 2012) and the objective evidence, as set out in the Buddhism CPIN (which indicates that a person with the appellant's profile would not face a real risk of persecution on account of his religion), we are satisfied that it was open to the judge, for the reasons she gave, to find that the appellant does not face a real risk on account of his religion. Accordingly, we find that the appellant cannot succeed on grounds 1 and 2.

Risk of persecution on account of distributing political leaflets in 2012 (Ground 3)

24. Ms Revill argued that the judge's finding that the appellant would not be of ongoing interest to the authorities is undermined by her failure to factor into her assessment that the appellant committed a serious crime in Vietnam and therefore there is a reasonable degree of likelihood that he will face punishment for that crime on return. She also framed her argument as a "reasons" challenge, submitting that the judge failed to adequately explain how it could be concluded that the appellant would not face a risk when it was reasonably likely he had committed a crime and therefore would face arrest and punishment on return.
25. We do not agree that the judge failed to recognise that the appellant's conduct may have been criminal in Vietnam. This is clear from paragraph 37 where the judge stated:

"I also find it inconsistent that having found the leaflet at the family home, the police would detain but then release the appellant's father without charge after four days **if the leaflets and their distribution was of the significance the appellant claims.**" [Emphasis added]

26. It is, in our view, clear from this passage that the judge appreciated that the appellant's claim to fear persecution because of distributing leaflets is a claim that he would be punished for committing a crime. A fair reading of the decision

does not support the contention that the judge overlooked that the appellant's fear arising from the events of 2012 is a fear that he will face the consequences of having committed a crime in Vietnam.

27. We also do not agree that the judge failed to give reasons for not accepting that the appellant would face a risk because of the crime committed in 2012. The reason given by the judge, which is set out in paragraphs 37 and 39 of the decision, is that there was no evidence of the authorities having a continuing interest in the appellant. The judge noted that there was no evidence that after his initial arrest the appellant's father had been questioned or detained again; and that there was no evidence of the appellant's friend, with whom he had distributed leaflets, being charged with any offence after his initial arrest and release. These findings were made in the context of the judge expressing concern about the appellant's claim to have lost contact with his father and friend. The judge noted that the appellant's evidence was that he had maintained contact with his father until 2014 but there was no evidence from the appellant concerning ongoing interest by the authorities between 2012 and 2014 when he would have been in receipt of such information from his father. The judge's reasoning leaves the reader of the decision in no doubt as to why the judge reached the conclusion that the appellant would not be of ongoing interest to the authorities. We are satisfied that the judge's reasoning is adequate. Accordingly, the appellant's "reasons" challenge in ground 3 cannot succeed.

28. We have also considered whether the judge's conclusion that there was not a reasonable degree of likelihood that the authorities would have a continuing interest in the appellant was rationally open to her. It could be argued that having accepted that the appellant committed a political crime and that the appellant's father and friend were arrested as a consequence, it follows that there is a reasonable degree of likelihood that the appellant will be arrested, and face persecutory treatment, on return to Vietnam. We are in no doubt that many judges might have taken this view. However, it was not irrational for the judge to conclude that the Vietnamese authorities would not have an ongoing interest in the appellant in the light of the absence of evidence of the appellant's father and friend being charged or facing any repercussions (beyond their initial arrest and release). Accordingly, we are satisfied that the judge's conclusion about the risk to the appellant arising from his activities in 2012 was open to her, for the reasons she gave.

Notice of Decision

29. The appeal is dismissed. The decision of the First-tier Tribunal did not involve the making of an error of law that was material to the outcome and therefore stands.

Upper Tribunal Judge Sheridan

Judge of the Upper Tribunal Immigration and Asylum Chamber

14.3.2023