



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000062
First-tier Tribunal No:
PA/50131/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 12 March 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE WELSH

Between

DTN
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A. A. Khan of Counsel, instructed by Thompson & Co Solicitors

For the Respondent: Ms S. McKenzie, Senior Home Office Presenting Officer

Heard at Field House on 12 February 2024

DECISION AND REASONS

Anonymity Order:

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the Appellant or members of her family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I make this order because the Appellant seeks international protection and is therefore entitled to privacy.

Introduction

1. This is an appeal against a decision of First-tier Tribunal Judge Hussain (“the Judge”), promulgated on 5 October 2023. By that decision, the Judge dismissed the Appellant’s appeal against the decision of the Secretary of State to refuse her protection and human rights claim.

Proceedings in the First-tier Tribunal

2. The Appellant is a national of Vietnam. Her protection claim was made on the basis of the risk arising from her practising the Pure Hoa Hao religion. Her case was that she had suffered past persecution by reason of her religious beliefs and activities (she had been arrested and detained on three occasions) and that there is a real risk of such persecution on return to Vietnam.
3. The fact of the Appellant's religious belief was not an issue at the hearing but her account of past persecution, and her claim of future risk, were in dispute. The Judge dismissed the appeal for the following reasons:
 - (1) In relation to her claim to have been arrested and detained on 18 May 2014 and 2 August 2018, the Judge found that this was inconsistent with the country evidence. At the relevant time, the Appellant would have been under the age of 12 and the country evidence demonstrated that children under the age of 12 are immune from criminal liability [33].
 - (2) In relation to her claim to have been arrested whilst leafleting on 4 May 2019 and then released on police bail conditions, the Judge rejected her account because "she claimed on the one hand that this leaflet was to promote her religion and now claims that this was against the Communist Party. Whilst I cannot discount the possibility that there could be a link between the two, the Appellant has not produced a specimen of the leaflet" [36] and nor had she produced the bail conditions document, which the Judge found were important documents that should have been retained and would have been in the possession of either the Appellant or her mother. The Judge rejected the Appellant's account that she had lost contact with her mother.
 - (3) Having found that the Appellant had not demonstrated past persecution, the Judge adopted the reasoning of the Respondent in the refusal decision in concluding that she did not face a real risk of persecution on return by reason of her religious beliefs [42].

Grounds of appeal and grant of permission

4. The grounds of appeal plead that the Judge:
 - (1) failed to take into account relevant evidence, namely the country evidence which demonstrates that one of the defining characteristics of the particular sect of the Hoa Hao religion followed by the Appellant is for adherents to publicly taking a stand against the authorities. This evidence was relevant both to the assessment of the credibility of the Appellant's account to have suffered past persecution and to the assessment of future risk (Ground 1);
 - (2) failed to take into account relevant evidence, namely the country evidence relevant to the approach of the authorities to the arrest and detention of children (Ground 2);
 - (3) gave inadequate reasons for concluding that the Appellant ought to have adduced corroborative documentary evidence (Ground 3);
 - (4) Ground 4 pleads the same matters as contained in Ground 1;
 - (5) Ground 5 pleads the same matters as contained in Ground 3.
5. Permission was granted by First-tier Tribunal Judge Sills. The grounds upon which permission was granted were not restricted.

Upper Tribunal proceedings

6. I heard oral submissions from both advocates to whom I am grateful. During the course of this decision, I address the points they made.

Discussion and conclusion

Grounds 1 and 4

7. Mr Khan directed me to the relevant material that was in the bundle of evidence before the Judge, namely:

- (1) country evidence, including evidence contained within the relevant Home Office Country Policy and Information Note, which supported the Appellant's case that (i) her particular sect is anti-government and (ii) the approach of the authorities to her sect varies but those who take a political stance can face harassment, including physical assault, arrest and property destruction; and
- (2) that part of the Appellant's skeleton argument which drew these submissions and evidence to the attention of the Judge.

8. There is no reference to this evidence in the decision of the Judge. It is important evidence and the Judge should have made findings in relation to it. Indeed, it appears that the Judge was unaware of it because he was of the view that there was an apparent conflict in the Appellant's account when she described her leafleting as both religious and political. This evidence is plainly relevant to the assessment of the credibility of the Appellant's case to have been arrested and detained as a result of her religious activities and also to the risk of that persecution continuing in the future. It follows that I find that the Judge erred as pleaded in grounds 1 and 4 and that these errors are material.

Ground 2

9. Mr Khan submitted that the Judge erred in his analysis in two ways:

- (1) The Appellant was not in fact under the age of 12 years when she was arrested in 2018, she was 15 years old.
- (2) Whilst the country evidence does demonstrate that children under the age of 12 are immune from prosecution, the evidence also demonstrates that the approach of the authorities can depend on the individual police officer. People can be detained without being formally arrested and without charges following. In particular, he drew my attention to the relevant Home Office Guidance, which specifies the need to carefully assess the circumstances if a minor states that they were arrested, as it might mean that they were detained but not formally arrested. He further directed me to the paragraphs in the Appellant's skeleton argument that was before the Judge, in which the Judge's attention was drawn to the relevant evidence.

10. The Judge did make a mistake in relation to the Appellant's age and therefore his reasoning in relation to the credibility of the Appellant's account about one of the occasions when she was arrested is flawed. More importantly, the Judge has failed to take into account that part of the country guidance that assists the Appellant's case; instead, the Judge focuses exclusively on that part of the country evidence that undermines the Appellant's case. In doing so, the Judge has failed to take into account relevant evidence. The error is material because it formed an important part of the credibility assessment of the Appellant.

Grounds 3 and 5

11. My conclusion in relation to grounds 1, 2 and 4 is such that none of the findings of fact can be retained. I therefore do not need to address grounds 3 and 5.

Notice of Decision

12. The decision of the First-tier Tribunal involved the making of a material error on a point of law and so I set aside the decision.
13. I remit this appeal to the First-tier Tribunal (not to be listed before Tribunal Judge Hussain), to be heard de novo with no findings of fact preserved. In reaching this decision, I apply paragraph 7.2 of the Senior President's Practice Statement and the guidance in Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC).

C E Welsh
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

7 March 2024