



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

Appeal Number: PA/00974/2017

THE IMMIGRATION ACTS

**Royal Courts of Justice
On 15 May 2017**

**Determination Promulgated
On 24 May 2017**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

**MINH OH LE
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Smith of Counsel, instructed by Wilsons Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant challenges the determination of First-tier Tribunal Judge Kainth dismissing his appeal on asylum, human rights and humanitarian protection grounds. He is a Vietnamese national born on 1 January 1989 and was encountered by the police in the UK on 14 March 2015, having arrived illegally. He then claimed asylum.

Previously he had been in Lithuania and claimed to have been returned to Vietnam. The appellant maintained that he feared money lenders if he returned to Vietnam. He then absconded and his asylum claim was treated as withdrawn. On 29 November 2016, he was re-arrested and detained. On 8 December he made a further asylum claim but this time maintained that he feared the authorities because he was a Catholic and because he and his family had supported the Viet Tan Party. He claimed to have been beaten by the police. He claimed his father had been killed by police in 2011. He conceded that his first claim was untrue and claimed to have been afraid and confused at the time he had made it. The present claim was refused on 25 January 2017.

2. The appellant's appeal came before the First-tier Tribunal on 21 February 2017. It was dismissed. The appellant sought permission to appeal and that was granted by First-tier Tribunal Judge Keane on 31 March 2017.

The Hearing

3. At the hearing before me on 15 May 2017, I heard submissions from the parties.
4. Ms Smith argued that there were two errors in the judge's determination. The first was that he had erred in his consideration of the country material and the second that he had failed to accord weight to the Rule 35 report.
5. Ms Smith submitted that the judge had cited extracts from country material in his determination but failed to provide any references and the content was at odds with what was contained in the COIS guidance. She submitted that the latter material supported his claim to be at risk because of involvement in the VT Party and had not been taken into account. With respect to the second complaint, she maintained that the judge had erred in his approach. She submitted that the doctor's conclusions were not undermined by taking the appellant's account at face value and that some weight should have been given to the report.
6. In response, Mr Clarke submitted that the grounds were misconceived. The judge had properly directed himself. He pointed out that the country material referred to in submissions contained a caveat in that it was said that the risk for political involvement "may" extend to family members. He submitted that the judge had taken that qualification into account when assessing the risk to the appellant. With respect to the issue of Catholicism, he submitted that all the evidence had to be considered in the round. He referred to the evidence cited in the decision letter and pointed out that any risk largely involved political activists of unregistered religious groups. He

submitted that it was not true that the judge had failed to consider the evidence. The fact was that the appellant was not a member of a non registered religious group and he had no political profile. On that basis, the judge's findings were sustainable. On the Rule 35 issue, Mr Clarke submitted that the submissions had departed from the grounds which had maintained that no weight had been given to the report. In fact, the judge accorded it little weight and for the reasons given in the determination he was entitled to do so.

7. Ms Smith replied. She maintained that it was incorrect to claim that only unregistered religious group members were targeted. The evidence showed that Catholics were at risk despite being a registered group. The judge had failed to properly consider the evidence.
8. Both parties agreed that if errors of law were found, the matter would have to be remitted to the First-tier Tribunal for fresh fact finding.
9. At the conclusion of the hearing I reserved my determination which I now give.

Findings and conclusions

10. The judge commenced his findings at paragraph 40 having properly directed himself as to the law and the approach to be taken in asylum cases at paragraphs 37-39. The judge was plainly concerned about the complete change in the basis of the appellant's asylum claim between 2015 and 2016. Whilst his initial claim had been based on a fear of money lenders and he had denied ever having been arrested and detained, his second claim was on the basis of his faith and the political involvement of his family and an account of detention. A different date of birth had also been provided. The judge did not accept the explanation that the appellant was confused and afraid. He was of the view that as the first claim had been made soon after the alleged events, the appellant would not have forgotten to mention his ill treatment and fear of the authorities had that claim been true. That was a finding entirely open to him to make. Ms Smith did not seek to make any submissions on the serious discrepancies between the two claims and no explanation was offered.
11. The judge also took account of the appellant's conduct. He arrived illegally, made an asylum claim after his arrest and then absconded and failed to comply with reporting conditions. The judge did not accept that the appellant's explanation that he had got lost. He noted that the appellant had had the services of an interpreter and that reporting conditions would have been explained to him. He noted that when he was re-arrested, the appellant had been working at a nail bar. The judge also noted that under cross-examination, the appellant

stated that he had left Vietnam in order to seek a better life and that he had not had any problems at the time of his departure in 2012.

12. The judge then takes account of the country material and assesses the appellant's claim in that context. He also considers the letter from a pastor and gives reasons for rejecting its reliability (at paragraph 44). At paragraph 48, the judge further considered the country material he was referred to and to which reference was made before me. He noted that the appellant himself had never claimed to have been a member of the VT Party and he did not accept that he would be a person of interest to the authorities. He noted that even taking the claim at its highest, there was a lengthy period without any difficulties from the authorities. The judge was entitled to conclude that this did not accord with the appellant's claim that he was wanted by the police. The matter is further considered at paragraphs 46 and 53. The judge pointed out inconsistencies in the appellant's accounts with regard to the alleged ill treatment he suffered. No explanation for these discrepancies is offered.
13. The judge noted that the appellant's claim that he was a Catholic had not been challenged. He took account of the evidence before him on religious minority groups in Vietnam, noting that 7% of the population was Catholic; some 6 million adherents all across the country and increasing. He noted that Catholicism was a registered and recognized religion and that religious freedom was enshrined in the constitution. It was on that basis that he made the statement at paragraph 52 which has been given such emphasis in the grounds. It was, however, entirely open to the judge to find that Catholicism was an integrated and growing faith. It is disingenuous to complain that no references to this citation of evidence was given when it plainly refers to the report the judge cited at paragraph 50. Certainly, the country evidence does not suggest that all 6 million Catholics in Vietnam are at risk or that they are targeted by the authorities. If the complaint is against the judge's finding that the authorities tend to focus on political activists of unregistered political groups, that is also without justification as the Country Information and Guidance report supports such a conclusion (at 2.2.2 and 2.2.5). Whilst I do not condone the actions of the authorities towards members of religious minorities, it should be noted that the number of prisoners of conscience are a tiny proportion of the total number of adherents to other faiths (2.2.3).
14. The judge was also criticised with respect to the Rule 35 report. It was maintained in the grounds that he had erred in not giving weight to the report. In submissions, Ms Smith argued that he had not given enough weight to it. The weight to be accorded to evidence is a matter for the judge. He took account of the fact that the medical examiner had accepted the appellant's claim at face value but it is misleading to assert that was the only reason for rejecting it. As is

plain from paragraph 45, the judge also noted that the examiner made no reference to other possible causes.

15. The appellant's claim must be assessed in the round and that is what the judge did. His late claim for asylum, his previous absconding, the complete change in the basis of his claim and the discrepancies in his accounts must all be considered. Sections of the country evidence and the rule 35 report cannot be read in isolation.
16. Having considered all the evidence and the submissions made, I am satisfied that the judge did not make errors of law when assessing the appellant's claim. The challenge to his determination is not made out and his decision is sustainable.

17. Decision

18. The decision does not contain any errors of law.
19. The appeal is dismissed on all grounds.

20. Anonymity

21. There was no request for an anonymity order and I see no reason to make one.

Signed

A handwritten signature in black ink, appearing to read 'R. Keir' with a small dot at the end.

Upper Tribunal Judge

Date: 23 May 2017