Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04635/2019

THE IMMIGRATION ACTS

Determined Without a Hearing	**Decision & Reasons Promulgated**
At Field House	
On 6 July 2020	**On 31 July 2020**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

DVT
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make this order because the appellant is an asylum seeker.
2. This is an appeal brought with permission of Upper Tribunal Judge Coker against a decision of the First-tier Tribunal dismissing the appellant's appeal against a decision of the respondent on 2 May 2019 refusing him asylum.
3. A listed hearing was vacated because of the well-known national lockdown and on 22 April 2020 Upper Tribunal Judge Gill gave special directions raising the possibility of the appeal being determined without a hearing. I remind myself of my powers and obligations under Rule 34 of the Tribunal Procedure (Upper

Tribunal) Rules 2008. Most of the business of the Tribunal *may* be conducted without a hearing but before deciding not to have a hearing I am obliged to have regard to the wishes of the parties. There was already a skeleton argument on the papers from Ms A Fijiwala of the Senior Presenting Officers' Unit but in response to directions further submissions were sent by the respondent. The appellant sent outlined further submissions consolidating points made in the existing grounds but, for present purposes still more importantly, expressly requested the appeal to be dealt with without a hearing.

4. It is well understood but for the record I make it clear that the "Covid-19 crisis" has placed exceptional demands on the Tribunal's resources and it will be impossible to arrange "socially distant hearings" or "remote hearings" for all the cases in the system without causing unconscionable delay which is contrary to the obligations under Rule 2 of the Procedure Rules. I do not need the consent of the parties but the fact that there is overt consent from the appellant and no opposition from the respondent makes it easier to decide this is a case where I should and do exercise my powers to make a decision without a hearing.

5. At the risk of oversimplification and by way of introduction it is the appellant's case that he risks persecution because he is associated with a political group in Vietnam. He has already been in trouble with the authorities there because of his support and he has fled to the United Kingdom. He fears persecution in the event of his return. In similarly summary form it is the respondent's case that the appellant is untruthful and indeed the First-tier Tribunal did not believe the appellant.

6. The core of the case is that the reasons given for disbelieving the appellant do not stand up to scrutiny. When she gave permission Judge Coker described the grounds as "just about arguable".

7. I begin by considering how the First-tier Tribunal analysed the case.

8. The judge set out, probably in full, the statement of the appellant and the skeleton argument of his representative. There was a general adverse credibility finding at paragraph 20 and an explanation for that finding in subsequent paragraphs.

9. There is nothing in the Decision and Reasons to suggest that the order in which the judge sets out his findings is an indication of the findings being made sequentially beginning with the finding that is recorded first.

10. The first point noted was the appellant's claim to have been beaten by undercover police officers when he attended a demonstration. The judge noted there was "no evidence" to confirm that the people who attacked him were any kind of state official, police officer or otherwise, and the appellant was indulging in conjecture.

11. He claimed he had been protesting against the actions of the Formosa Company as well as the Vietnamese government but the judge found no independent evidence to support that claim.

12. He was particularly unimpressed with the appellant's claim that when he returned home from the demonstration he was told by his friend TAN that

mutual friends had been arrested. The judge was concerned because TAN was the person the appellant had said had spoken to him about the Formosa Company and had attended the demonstration with him and, according to the appellant, had taken the appellant to hospital to have stitches in his head wound. The judge could not understand how if the appellant had been spending his time with TAN at hospital, TAN could have been in a position to be told about mutual friends being arrested but even if that were the case why he had to wait until the appellant went home before TAN told him. If the situation were as described TAN could have told him in hospital and he could have fled from there.

13. There were no details of the friend who the appellant said entertained him before he was able to leave the country and after he left his parents' home.

14. The judge was unimpressed with the arrest warrant. The appellant said his mother had sent it to him by post. No envelope had been kept but it arrived in December 2018. He said it had been issued to the home of a friend where he had stayed before he left Vietnam.

15. He did not know how the police had found out he had stayed at that address. He speculated that somebody had told them. He could not explain how the warrant had got to the hands of his mother. He had not been told. He suggested a friend must have taken it. He did not know what had happened to the friends who had been arrested.

16. The judge found it revealing that he did not claim to have asked his mother. The judge found that a truthful person would have been concerned, the judge found. The judge noted the supporting letter from the Brotherhood for Democracy but noted that the author had not attended the hearing to support the appellant.

17. Perhaps more significantly, the appellant could offer no explanation for there being no address or contact details or any other feature to enable verification. The judge found it significant that the appellant had not produced the warrant before the hearing so that the Secretary of State could check it or investigate it.

18. Overall, the judge was unimpressed with the documents. There were no security marks or anything on them to stop them having been produced on a home computer.

19. The appellant had previously worked in the United Kingdom and found it easy to get work. The judge found this gave him an incentive to return. He had not claimed asylum until he had been arrested and detained for illegal working. The appellant had not claimed asylum on his way to the United Kingdom although he had passed through France and Poland and the judge found this undermined his credibility. The judge did not believe the appellant had any kind of political profile.

20. The judge found nothing to support any fear that the attendance at a rally in the United Kingdom being brought to the attention of the authorities in Vietnam.

21. I considered the written submissions.

22. I see no error in the judge's findings that the arrest warrant and supporting letter from the political party are not impressive documents. It is rather surprising, or at least it was open to the judge to find it rather surprising, that the appellant did not know more about the origin of the arrest warrant. Somehow it had gone from the place where he stayed before escaping, he thought privately, to the home of his mother and then to the United Kingdom. I do not regard it as particularly significant that the appellant speculated that somebody had handed it over. Clearly if there was any truth in the story somebody *had* handed it over but the appellant's lack of interest in the topic combined with the limited value of the document itself, entitled the judge to attach little weight to it.

23. Similarly, the supporting letter does not say very much and there is nothing against which it can be authenticated.

24. The late production of the arrest warrant is something which the judge was entitled to take note. It should have been produced at the earliest possible opportunity and that would have given the Home Office an opportunity to examine it. If they chose to squander that opportunity then that is a point that could have been made in submissions but that route was not left open.

25. Clearly the late asylum claim and the failure to claim in Poland or France are relevant considerations. They cannot be determinative. To my mind a person who has already had some experience of living in the United Kingdom (albeit unlawfully) and enjoyed life there or at least managed there may well want to claim asylum there. I do not find that illuminates the claim but the failure to claim asylum until arrest is something to which the judge was entitled to and did attach significant weight. It does undervalue the integrity of the claim that it was not made until prompted in such a drastic way.

26. I do have difficulty with the findings about the men said to be attacking the appellant. There is background evidence that suited people attack demonstrators in the presence of the police with apparent impunity. It is speculation to say precisely what status the attackers have. I do not see how it can be used as a reason to disbelieve the appellant that he claimed to have been beaten up in a way that seems to be consistent with the background material.

27. I am also concerned about the finding that the appellant told an unbelievable story which depended on his friend being with him at all material times. It would have been perfectly simple to have asked him how that came about. The answer raised in the pleadings, namely that he did not stay with the appellant after taking him to hospital is hard to discount. It is likely that the appeal would have been decided in a different way even if the same conclusion was sustained. It is not an error of law to resolve an ambiguity in a particular way but that is not the complaint. The complaint is that the judge should not have taken the point without putting it to the appellant to give him an opportunity to respond. I have read paragraphs 8 and 9 of the witness statement dated 17 June 2019. They certainly support the appellant's contention that he was taken to hospital by TAN but he returned on his own. It is not explicit but he refers in paragraph 8 to "we" being attacked and said that "we" hit back and that "I" was taken to hospital by TAN and "I" left hospital

and went home and when “I” got home I was told “from TAN” that two named friends had been arrested.

28. I am satisfied that illustrates the error in law in making findings without putting things to witnesses.

29. I now have to ask if that was material. It was clearly part of the judge’s reasoning that led to the conclusion that the appellant could not be believed but it does not impact at all on the late claim for asylum or the failure to claim on the way to the United Kingdom. The documents were found to be unreliable. That means they can be given little or no positive weight in the appellant’s favour but that is not the same as a finding that they are positively discreditable.

30. I am satisfied that the appellant’s case has many gaps that are independent of the impression created by the possibly wrong belief that TAN had stayed with him at the hospital.

31. Having reflected on everything I have decided that the error that has been established is not material. It was the appellant’s case that he went to a demonstration once and was injured sufficiently severely to attend hospital. He says that people get beaten up at demonstrations like that and he drew support from background material. He thought it was a police officer that beat him. The background material does not support that but the fact of the beating and the lack of police concern is what matters rather than the identity of the person that administered the beating.

32. If that had been accepted the appellant would have established some degree of commitment to political activity. There was no evidence that he had been identified and so risked further ill-treatment as a result of things that happened that night except the unsatisfactorily explained arrival of the summons on a later occasion. The judge gave proper reasons to be unimpressed by that document.

33. The evidence does not support a finding that the appellant is committed to a particular cause or active in the United Kingdom in a way that would support a finding that he would carry on being active in Vietnam. The damaging effect of the late claim remains the same. The evidence about the warrant does not become better if in fact the appellant was beaten up as claimed.

34. I have decided that I am not persuaded there is any material error and I dismiss the appellant’s appeal.

Notice of Decision

35. The appeal is dismissed.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 21 July 2020