Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: RP/00026/2019**

THE IMMIGRATION ACTS

Heard at Field House **Decision & Reasons Promulgated**
On 8 November 2019 **On 14 November 2019**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

V T
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Uddin, Counsel, instructed by Kataria Solicitors
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

Anonymity

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 his/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.

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DECISION AND REASONS

Introduction

1. This is the remaking of the decision in this appeal following my previous decision, promulgated on 18 September 2019, that the First-tier Tribunal materially erred in law when allowing V T's appeal.

2. Although it was the Secretary of State who appealed to the Upper Tribunal, at this stage of proceedings it is now appropriate to refer to V T once more as the appellant, and to the Secretary of State as the respondent.

3. This appeal concerns two principal issues. First, has the respondent shown that the appellant is no longer a refugee because the circumstances in connection with which he had been recognised as such have ceased to exist? (the cessation issue). Second, is the respondent's decision to refuse the appellant's human rights claim on the basis that he is a foreign national criminal and should be deported, unlawful, with reference to Article 8 ECHR and section 6 of the Human Rights Act 1998? (the deportation issue).

Background

4. The appellant is a national of Vietnam, born on 25 October 1955. It is not entirely clear when he left that country, but it is common ground that he arrived in Malaysia in February 1989, whereupon he resided in what was very probably a refugee camp catering for compatriots who had also fled the regime as members of the cohort referred to as the "Vietnamese boat people". The appellant came to the United Kingdom on 19 June 1991. The precise basis upon which this occurred is a matter to which I will return: was he a refugee in his own right, or what his entry by way solely of a family reunion policy (the appellant's brother had already come to the United Kingdom and was a refugee)? Once in this country, the appellant was granted indefinite leave to remain as a refugee on 29 January 1992. His wife and children subsequently joined him here under a family reunion policy.

5. Over the course of his lengthy residence in the United Kingdom, the appellant has accrued the following convictions:

   a) 6 March 1997: driving a motor vehicle with excess alcohol, fined £200 and disqualified from driving for 3 years;
   b) 2 November 2001: driving a motor vehicle with excess alcohol, sentenced to 60 days' imprisonment and disqualified for 4 years;
   c) 15 August 2005: conspiracy to produce a Class C drug, namely cannabis (my error of law decision erroneously referred to "Class B drugs"). On 13 February 2006, he was sentenced to 15 months' imprisonment;
   d) 20 June 2011: driving a motor vehicle with excess alcohol, given a 12 month community order (with a 260 hours unpaid work requirement) and disqualified for 40 months.

6. On 4 October 2016, the appellant was served with two notices: the first was a decision to deport, with reference to the UK Borders Act 2007; the second related to notification of intention to cease refugee status, with specific reference to Article 1C(5) of the Refugee Convention ("the Convention") and paragraph 339A(v) of the Immigration Rules ("the Rules"). The next action taken by the respondent was by way of a decision to deport, dated 22 April 2018. However, this decision was subsequently withdrawn on the basis that it relied on the UK Borders Act 2007, which had not been in force at the time of the relevant conviction and sentence relating to the drugs offence. It took the respondent another relatively substantial period of time to issue a legally correct decision to deport on 30 January 2019, this time relying solely on section 3(5)(a) of the Immigration Act 1971. On 13 March 2019, the respondent issued a "cessation of refugee status" decision letter, again relying on Article 1C(5) of the Convention and paragraph 339A(v) of the Rules. On the same date, the respondent made a decision to refuse the appellant's human rights claim, which had been constituted by a series of representations submitted in 2016 and 2018. These last two decisions were both appealable.

7. In allowing the appellant's appeal, the First-tier Tribunal essentially concluded as follows. First, that the respondent had failed to show that there had been a sufficiently significant and durable change in the nature of the Vietnamese government since the appellant left that country, and that the respondent failed to undertake verification checks in respect of any potential risk to the appellant on return. Second, that the respondent's delay in taking deportation action against the appellant was such that it outweighed the public interest.

8. My error of law decision is appended to this remaking decision. In summary, I found that the judge had failed to adopt an individualised approach to the cessation issue, focusing instead simply on the objective aspect (in other words, the human rights record of the government). There had been a misunderstanding as to what "verification" meant in respect of a cessation case. Finally, although the delay issue was clearly relevant, the judge had failed to other material factors such as deterrence and public confidence when undertaking the Article 8 balancing exercise.

<u>The respondent's case in summary</u>

9. The respondent asserts that the appellant came to the United Kingdom solely on the basis of family reunion, and that he did not have, and currently does not have, any political profile that might place him at risk from the Vietnamese authorities. On the basis of country information cited in the cessation decision letter of 13 March 2019, it is said that the situation in Vietnam has "fundamentally and durably changed" since the appellant left in 1989. It is noted that the appellant had made four visits to Vietnam over the course of time, and this was indicative of an absence of risk to him in that country.

10. In respect of Article 8, it is said that the appellant is unable to meet any of the relevant Rules. He separated from his wife, and his current partner, also a Vietnamese national, has no status in the United Kingdom. The appellant children are all adults, and there is no evidence of particular dependency. The appellant is not

more than half of his life in this country and would, in all the circumstances, be able to reintegrate into Vietnamese society. There are said to be no very compelling circumstances over and above those set out in paragraphs 399-33A of the Rules and section 117C(4) and (5) of the Nationality, Immigration and Asylum Act 2002, as amended ("the 2002 Act").

The appellant's case in summary

11. On the basis of the representations submitted over time, the appellant's three witness statements, and his oral evidence, he asserts that there had been a personalised risk to him when he left Vietnam: he had been imprisoned by the regime on two occasions and held anti-regime beliefs. Whilst he has not been politically active in the United Kingdom, he still holds anti-regime beliefs. This would be the case upon return to Vietnam. He would not dare to express those beliefs on return due to the risk of being targeted as a result. The appellant asserts that the Vietnamese regime continues to have a very poor human rights record. The visits to Vietnam are explained by way of important family occasions (including his father's funeral) and that these events do not show that he would be safe.

12. As to Article 8, the Appellant asserts that the time spent away from Vietnam, the ties established in the United Kingdom, and, most importantly, the respondent's delay in taking deportation action, combine to significantly reduce the public interest and tip the balance in his favour.

The law

13. The relevant legal provisions are well-known, and I do not propose to rehearse their content in full. It suffices to set out the primary materials.

14. Article 1A(2) of the Refugee Convention states:

> "A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:
>
> …
>
> (2) […] owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country …"

15. Article 1C(5) of the Convention states (insofar as relevant to this appeal):

> "C. This Convention shall cease to apply to any person falling under the terms of section A if:
>
> …
>
> (5) He can no longer, because the circumstances in connexion with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of his country of nationality; …"

16. Paragraph 339(v) of the Rules reflects Article 1C(5).

17. Section 117C of the 2002 Act reads (insofar as relevant to this appeal):

> "117C Article 8: additional considerations in cases involving foreign criminals
>
> (1) The deportation of foreign criminals is in the public interest.
>
> (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
>
> (3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
>
> (4) Exception 1 applies where—
>
> (a) C has been lawfully resident in the United Kingdom for most of C's life,
>
> (b) C is socially and culturally integrated in the United Kingdom, and
>
> (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.
>
> (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.
>
> (6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2."

18. Section 117C(6) also applies to those who have been sentenced to less than four years but are unable to satisfy either of the two exceptions.

19. Paragraphs 398-399A of the Rules essentially reflect section 117C.

<u>The evidence</u>

20. By way of documentary evidence, I have considered the contents of the respondent's original appeal bundle and the appellant's recently served consolidated bundle, indexed and paginated 1-N16. It is to be noted that the UNHCR letter contained in the respondent's and appellant's bundle is apparently incomplete. It has not been possible to acquire a full copy, but, in the circumstances, neither party suggested that this should prevent the appeal from being determined on the basis of what is before me.

21. The appellant and his brother, Mr V S T, attended the hearing and gave oral evidence with the assistance of a Vietnamese interpreter. A full note of their evidence is contained in the record of proceedings.

22. The appellant adopted his three witness statements. He told me that he did not like the communist regime in Vietnam. He would not dare to express any anti-regime news if in that country because of the consequences. He had attended a single demonstration in this country, in the year 2000, against a group of Vietnamese singers whom the appellant regarded as being pro-regime. The appellant said that if in Vietnam, he would want to be involved in an anti-regime group. Overall, the appellant told me that he did not like Vietnamese people who were in favour of the regime. The only relative in Vietnam that he knows about is a nephew, but he has had no contact with this individual since 2011. The appellant told me that he no longer drinks alcohol and that his health is "OK".

23. The appellant's brother confirmed that he and his family had lost everything to the communist regime in Vietnam. He told me that he did not like the regime. He believed that the appellant held the same anti-regime views as himself. He did not believe that he could assist the appellant financially if the latter returned to Vietnam. This was because the witness only work part-time and has three children to support. There was rare communication with a nephew who lives in Vietnam.

The representatives' submissions

24. At the outset, Mr Bramble expressly stated that the respondent was not asserting that the appellant had never been a refugee. This statement was made in response to a concerned raised by Mr Uddin in respect of what is said in [84]-[90] of JS (Uganda) [2019] EWCA Civ 1670. There, the Secretary of State had sought to withdraw a concession which had accepted that JS had been a refugee. The Court of Appeal permitted the concession to be withdrawn. In the present case, Mr Bramble acknowledged that the position he has adopted means that the Appellant had been a refugee.

25. Mr Bramble relied on his skeleton argument. In response to an issue I had raised in my error of law decision, Mr Bramble submitted that the case of Dang (Refugee - query revocation - Article 3) [2013] UKUT 43 (IAC) has no impact in this appeal because the respondent always intended to revoke the appellant's refugee status in light of Article 1C(5) of the Convention, and not solely under the Rules. In respect of the claim that the appellant's family had had all of their property and land confiscated, Mr Bramble acknowledged that it appeared to be plausible, given the history of the Vietnamese regime. However, it was submitted that the appellant had no political profile in his own right. There had been no relevant activity in the United Kingdom and Mr Bramble did not accept that the appellant would seek to protest against the regime if returned to Vietnam. The fact of the four visits showed that the authorities had no active interest in the appellant. On an individualised approach, the objective position was that the regimes approach to people like the appellant had significantly changed, and from a subjective perspective, the appellant had no real interest in anti-regime political activism.

26. As to Article 8, Mr Bramble emphasised the high threshold of the "very compelling circumstances" test. He accepted that the respondent's delay was relevant, but

emphasised the appellant's inability to meet any of the Rules and the absence of any genuine medical issues.

27. Mr Uddin relied on his skeleton argument. He too submitted that Dang has no real application in this case. This is because the particular basis of cessation relied on by the respondent was not considered in that case and in any event there is no material difference between the basis of cessation under the Convention and revocation under the Rules.

28. In acknowledging the need for an individualised approach to the cessation issue, Mr Uddin submitted that the objective circumstances relating to the country in question was a more weighty consideration than the circumstances relating solely to the appellant. The country information relied on by the respondent in this case (contained in the letters dated 4 October 2016 and 13 March 2019) was insufficient to discharge the burden of proof. I was also referred to pages 81 and 85 of the appellant's bundle. In terms of the appellant's own circumstances, Mr Uddin relied on the fact of two imprisonments, the genuine anti-regime beliefs held, and the unwillingness to express such beliefs on return only because of the consequences of doing so. The fact of the visits did not show that there was no risk to the appellant.

29. Both representatives accepted that I was entitled to look at the latest Fact Finding Mission undertaken by the respondent in February and March 2019, with the consequent report being published on 9 September 2019. At the hearing I was specifically directed to pages 29 and 30 of the report. Mr Bramble also referred me to page 9 of the Country Policy Information Note entitled "Vietnam: Opposition to the State", published by the respondent in September 2018.

30. On Article 8, Mr Uddin submitted that the appellant would not be considered an insider if he returned to Vietnam now. There were no meaningful familial ties in that country, and the appellant himself had nothing there by way of assets. In addition, the registration system in Vietnam meant that the appellant would probably be unable to access amenities and essential services. In respect of his offending, the appellant was not persistent and represented a very low risk now. He is socially and culturally integrated in this country. What was described as the "egregious" delay in this case meant that the important public interest in deportation was "entirely diluted". The deterrence factor was also undermined by the delay.

Findings of primary fact

31. Before turning to my conclusions on the relevant issues in this appeal, I need to make a number of factual findings. Some of these are based upon common ground between the parties, whilst others are contentious (at least to the extent that they are not expressly agreed).

32. It is clear that the appellant did travel from Vietnam to Malaysia at some point. It is likely that this occurred relatively shortly before his arrival in the latter country in February 1989. I find that the appellant's brother had made his own way to the United Kingdom, was recognised as a refugee here, and duly granted indefinite leave to remain at some point prior to May 1991.

33. By virtue of the passage of time and the lack of detailed information, it is difficult for me to determine precisely on what basis the appellant came to this country and was then himself recognised as a refugee. The term "family reunion" is repeated throughout the papers before me. It appears as though there was a particular policy in place at the time, but I have not been provided with it by the respondent. Nor do I have any other Home Office records. It is plausible that there was an application made under a policy in order for the appellant to join his brother in this country. It is a fact that the appellant was at all material times an adult and there is nothing in the evidence states that the appellant was only granted refugee status "in-line" with his brother. In my view, there is nothing inconsistent between the appellant's entry to the United Kingdom being facilitated through a family reunion policy on the one hand, and the appellant having been a refugee inn his own right on the other, despite the assertion to that effect made in [10] of the cessation decision letter dated 13 March 2019.

34. Before reaching my finding on this particular question, I address certain other aspects of the evidence. Both the appellant and his brother assert that their family's property and land were confiscated by the Vietnamese regime prior to their departure from that country. There has been no challenge to this evidence, and I find it to be both reliable and accurate. Further, the appellant has been consistent in asserting that he's been jailed by the authorities on two occasions: for 1 ½ years in 1982; and a month in 1987. Both of these terms were for unsuccessful attempts to flee the country illegally. This evidence to has not been challenged by the respondent and again I find it to be reliable and accurate. It fits well with other aspects of the appellant's evidence, together with the well-documented actions of the Vietnamese regime at the material time.

35. The First-tier Tribunal considered the circumstances in which the appellant came to United Kingdom in very brief terms in [37] of its decision. Whilst it is said there that the appellant had not had to demonstrate any "personal targeted risk fear", it was also stated that a risk to the appellant on return to Vietnam would have been on grounds of "actual or imputed political opinion". That assessment is somewhat ambiguous.

36. Bringing what I have said in the preceding three paragraphs together, I find that it is more likely than not that the appellant was recognised as a refugee not simply "in-line" with the status of his brother, but because it was accepted that the appellant himself would be at risk on return on account of his illegal departure, views, history of detentions, and the nature of the Vietnamese regime at the time.

37. Based on the evidence as a whole, including that which was not available to the First-tier Tribunal, I find that the appellant holds genuine contempt for the Vietnamese regime, given what befell his family when the last resided in that country. The holding of this view is not inconsistent with the fact, as I find it to be, that the appellant has not engaged in any meaningful anti-regime activities in the United Kingdom.

38. At one point in his oral evidence, the appellant appeared to suggest that he might get involved in an anti-regime group if returned to Vietnam. I have to say that I do not accept this. I am not clear whether the appellant in fact meant to say that he would some way become a political activist, but if this was the intention, it does not sit well with the absence of any such activity whilst in the United Kingdom. What there is, however, is an underlying genuinely held hatred for the regime. The absence of expression of this in the United Kingdom does not in my view detract from the strength with which it is held. I am willing to accept, in light of the evidence as a whole, that the appellant would wish to express his views of the regime if returned to Vietnam, albeit not in the context of belonging to a particular group or organisation. I also accept that the appellant would regard himself as living as a "prisoner of conscience" in that country, simply because he would be residing under the authority of a regime that he so dislikes.

39. The appellant has told me that he would not speak out against the regime because of the consequences of so doing. I accept that this represents a truthful position.

40. I find that the appellant has visited Vietnam on four occasions: in 2007, 2008, 2009, and 2010. There is no challenge to his evidence that all the visits related to family matters. I find that the first two visits were to see his elderly parents, the third was to attend his father's funeral, and the last was the first anniversary of the father's death. I find that each of the visits lasted for 41 days and that there were no problems from the authorities.

41. Turning to the appellant's circumstances in the United Kingdom, I find that his criminal history is as set out in paragraph 5, above. There have been no further criminal proceedings after the 2011 conviction. I accept the unchallenged evidence that the appellant no longer drinks alcohol.

42. I find that the appellant separated from his wife many years ago. His four adult children reside in the United Kingdom. There is virtually no evidence about them before me. Whilst I accept that the appellant has a good relationship with his children, I find that there is no particular dependency of the former upon the latter.

43. I accept that the appellant is in a relationship with a Vietnamese national in this country, and has been for some time. It is accepted that this individual does not have status in the United Kingdom. I note to that she did not attend the hearing before me.

44. I find that the appellant does have a good relationship with his brother, who has supported him to an extent in recent times. Again, however, there is no evidence of any particular dependency and I find that there is none.

45. I find that the appellant suffers from hypertension, although the medical evidence does not indicate that this is a significantly debilitating condition. The evidence does not disclose any other conditions of note.

46. I find that the appellant has worked in the United Kingdom in a variety of jobs including hospitality, a nail shop, a restaurant, and a supermarket. I accept the

appellant's evidence that he is not educated and only ever worked as a fisherman whilst in Vietnam.

Conclusions on the cessation issue

47. The burden of showing that the cessation clause in question applies to the appellant rests with the respondent, and the standard of proof is that of a balance of probabilities.

48. In addressing this issue, I have directed myself to the clutch of recent judgments of the Court of Appeal, including MM (Zimbabwe) [2017] EWCA Civ 797, MA (Somalia) [2018] EWCA Civ 994, KN (DRC) [2019] EWCA Civ 1665, JS (Uganda) (cited above), and Mosira [2017] EWCA Civ 407.

49. Before setting out my central conclusions, I deal with the Dang point. Although the matter is not entirely clear-cut, both representatives are adamant that that decision does not determine the outcome of this appeal, despite the fact that the appellant was granted refugee status prior to 2004. In all the circumstances, I agree with this position. I do so because the particular ground upon which cessation/revocation is advanced by the respondent is not that under consideration in Dang, and there is no material difference between Article 1C(5) of the Convention 339A(v) of the Rules. Both provisions are cited in the various decision letters issued by the respondent, but it is clear enough that the Convention is specifically relied upon: in other words, this is not a case in which only the Rules are invoked against the appellant.

50. Moving on, I conclude that in light of my findings of fact, the appellant's case is not one concerning simply a "derivative" basis for recognition of refugee status: the appellant was a Convention refugee in his own right.

51. The individualised assessment of whether the cessation clause in question applies involves consideration of "the circumstances" which led to the appellant being a Convention refugee. As now clearly established by the case-law, "the circumstances" has a broad meaning and include matters related to the general political conditions in the country of origin and relevant aspects of the individual's personal characteristics. There are, then, objective and subjective elements. I disagree with Mr Uddin's submission that the objective element is inherently more important than the subjective aspect. Both start from a position of equality, although, depending on the facts of a case, one may ultimately attract greater significance than the other.

52. Before addressing the country information relied upon by the respondent, I record that there is no dispute that the Vietnamese authorities had a very poor human rights record at the time the appellant left his country and subsequently had his refugee status recognised in the United Kingdom.

53. The cessation decision letter cites a Reuters article published on 9 March 2015, and entitled, "40 years after escaping war, "boat people" find fortune back in Vietnam". The entire text of this article is set out. In summary, the piece is based upon the stories of three former "boat people" who had returned to Vietnam and made a success of their lives. The article makes reference to "many former refugees and their

offspring" having returned and benefited from Vietnam's "booming emerging market and middle-class growth", although no statistics are provided as to the actual numbers. In my view, this item of evidence is unpersuasive. Aside from it now being 4 ½ years old, it is purely anecdotal and self-evidently very limited in scope. It says nothing about the government's overall attitude towards political dissent and the consequences for those who seek to express their dislike of the status quo.

54. The second item of country evidence cited in the decision letter is an extract from the United States Department of State Country Reports on Human Rights Practices 2015. The short passage simply states that the Vietnamese constitution provides for freedom of internal movement, and that there was cooperation with UNHCR in respect of IDPs and, amongst others, returning refugees. Again, this limited extract does little to advance the respondent's case to show that there has been a fundamental and durable change in the relevant circumstances pertaining to the Vietnamese government's attitude towards political opposition.

55. Mr Bramble has relied on a passage in the recent Fact-Finding Mission report in which it is said that political activists returning to Vietnam may be interviewed and/or detained, depending upon their profile. This evidence is not strictly speaking relevant to the appellant's case because he has not been, even on his own evidence, a political activist in the United Kingdom.

56. In its letter of 26 February 2018, UNHCR cites the 2016 Human Rights Watch report: "… Vietnam's record on civil and political rights remained dismal." UNHCR's position in this case is that there has not been the requisite fundamental change in the country situation. I regard this view as worthy of considerable weight.

57. The Country Policy and Information Note contains the following in the "Analysis" section:

> "2.4.5 The government does not permit independent, local human rights organisations to form or operate. Furthermore, the government does not tolerate attempts by organisations or individuals to criticize its human rights practices publicly (see Treatment by the state and Human rights groups).
>
> 2.4.6 Those who openly criticise the state or who protest against the government are likely to attract adverse attention from the authorities. Treatment will vary depending on a person's level of involvement, the nature of the activities, the persons role in those activities and their profile. Where a person is perceived to be a low level protester/ opposition supporter they may be subject to intimidation by police and may be arrested and subsequently released but this is not sufficiently serious by its nature and repetition as to amount to persecution or serious harm."

58. Later in the document extracts from the 2017 United States Department of State Country Reports on Human Rights Practices is cited: "The law prohibits physical abuse of detainees, but suspects commonly reported mistreatment and torture by police…" (6.3.4)

59. Under the sub-heading of "Civil society", the report of the Fact-Finding Mission contains evidence indicating that whilst some academics/intellectuals may have limited scope to challenge government policies, activists do not.

60. Taken as a whole, the country information does not show that the circumstances relating to the Vietnamese government's attitude towards political dissent has fundamentally and durably changed since the appellant left that country some thirty years ago. The respondent has therefore failed to discharge the burden in respect of the objective element of the individualised assessment.

61. Turning to the subjective element, it is clear, as I have already stated, that the appellant has never been a political activist in the United Kingdom. It is also clear that he was not a political activist prior to his departure from Vietnam. In this sense, there has never been a risk to the appellant on the basis of proactive, public behaviour. The ability of the appellant to have undertaken the four visits without being detained at any time is powerful evidence that there is no existing adverse interest in him. In fairness to Mr Uddin, he has not sought to suggest the presence of any such risk profile.

62. Yet that is not the whole picture. The appellant has, on my findings, consistently held avowedly anti-regime beliefs from when he and his family had their property confiscated to the present day. Nothing has changed in this respect. It was these beliefs, together with the consequent actions of fleeing Vietnam, which made the appellant a Convention refugee upon his departure. The question is, has the respondent shown that the subjective element of the appellant's circumstances no longer give rise to a well-founded fear in Vietnam, given what I have said about the objective situation and the absence of any change in the anti-regime beliefs?

63. The answer to this question is "no". I have found that if returned to Vietnam, the appellant would hold a genuine wish to speak out against the government as a result of his personal history. This would not be in the context of organised, political activism, but as an aggrieved individual. I have also accepted that the appellant would not express anti-regime views for the reason that the consequences of so doing would be adverse to him. The country information provides strong objective support for his reticence. Whilst there would be a greater risk to members of opposition groups, the information before me, when seen in light of the facts of this case, is sufficient to show a real risk of ill-treatment to an individual intent on speaking out against the regime. The circumstances of this case therefore engage the well-known principles set out in HJ (Iran) [2010] 3 WLR 386: the individual holds genuine beliefs that they would wish to express, but will not do so in order to avoid the risk of persecutory treatment.

64. When the objective and subjective elements of the overall individualised assessment are brought together, I conclude that the respondent has failed to show that the circumstances in connection with which the appellant had been recognised as a refugee have ceased to exist. I emphasise that my assessment is, by its nature, highly fact-specific.

65. It follows that the appellant succeeds in respect of the cessation issue and the ground of appeal under section 84(3)(a) of the 2002 Act is made out.

Conclusions on the Article 8 issue

66. The appellant undoubtedly has established a private life in the United Kingdom over the course of his lengthy residence in this country.

67. I accept that the appellant has also established family life with his current partner. In all the circumstances, I do not accept that there is family life as between the appellant, his adult children and brother. Although they have good relationships, there has been nothing to show any relevant dependency or ties going beyond the norm.

68. The respondent's decision clearly constitutes an interference with the appellant's private life. The same is not true of the family life. The appellant's partner has no status in this country and no argument has been put forward as to why she would not simply follow the Appellant to Vietnam, thereby avoiding any interference in the couple's relationship.

69. It is common ground that the respondent's decision to refuse the human rights claim is in accordance with the law and was made pursuant to the legitimate aim of preventing disorder or crime.

70. In reaching the proportionality stage, there is a wealth of relevant case-law, in addition to the legislative and other provisions referred to earlier in my decision. I do not propose to cite cases here, but I direct myself with reference to the following general propositions:

    a) cases are inherently fact-specific;
    b) the appellant's case must be assessed through the prism of the relevant Rules and with regard to the mandatory factors set out in section 117C of the 2002 Act;
    c) as an overarching factor, there is a very strong public interest in deporting foreign criminals;
    d) this public interest is essentially comprised of three facets: the risk of reoffending; deterrence; and public confidence in removing offenders;
    e) the individual's entire offending history is relevant;
    f) a failure to satisfy the relevant Rules is relevant to, but not determinative of, the success of an appeal;
    g) ultimately, the question for a tribunal is whether a fair balance has been struck between the competing interests of the individual and the public.

71. Certain matters are not in dispute and can be dealt with very briefly. By virtue of section 117D(2)(c)(i) of the 2002 Act and para 398b of the Rules, the appellant is a "foreign criminal" by virtue of the 15 months' sentence imposed in February 2006. The appellant cannot meet the exceptions set out in section 117C(4) and (5) of the 2002 Act and paras 399a – 399A of the Rules: there is no relevant partner or children

involved in this case, and, leaving aside issues of social and cultural integration and very significant obstacles, the appellant has not spent most of his life in United Kingdom.

72. In light of the above, and with reference to section 117C(6) of the 2002 Act, the Appellant must show "very compelling circumstances over and above" those described in the two exceptions. Factors pertaining to the exceptions may also be relevant to the very compelling circumstances test. That test is self-evidently very stringent indeed.

73. I turn to the balancing exercise.

74. First and foremost, I reiterate that the public interest is a very powerful overarching composite factor.

75. In considering the appellant's overall offending history, I deal first with the "index" offence for which he was convicted on 15 August 2005 and sentenced on 13 February the following year (that being the sole basis upon which deportation proceedings were instigated by the respondent). I have no sentencing remarks or a pre-sentence report. The certificate of conviction confirms that the appellant entered a guilty plea. I am assuming that the offence related to what is commonly referred to as a "cannabis farm". I have not been provided with details as to the specifics of the appellant's involvement in the conspiracy. Although I have not been provided with the relevant sentencing guidelines, the sentence of 15 months' imprisonment must be reflective in part of the guilty plea and either a lower level of participation by the appellant, the relatively small scale of the conspiracy, or other matters of which I cannot speculate upon. Having said that, the production of any illegal drugs is clearly contrary to the public interest.

76. The appellant has three convictions for driving motor vehicles with excess alcohol. These offences are clearly contrary to the public interest. Whilst there is no evidence to show that serious harm was in fact caused by the offences, the risk of such harm is inevitably present when an individual drives a vehicle with excess alcohol in their system. The fact that the appellant committed three such offences is clearly relevant and adds to the weight of the overall public interest.

77. There is a clear public interest in deterring foreign nationals from committing offences whilst in the United Kingdom.

78. It is also in the public interest that society has confidence in the ability of the authorities to deal with foreign nationals who have committed offences in this country by taking deportation action.

79. The third specific facet of the public interest is that of the risk of reoffending. There are no formal assessments in evidence before me. On what I do have, and in light of my findings thereon, it is clear that the appellant represents a very low risk of reoffending as regards any drugs-related activity. I take into account the fact that he pleaded guilty to the single offence back in 2005, and that there have been no similar offences since. The risk of the appellant driving a vehicle with excess alcohol is likely

to be higher, but in all the circumstances I nonetheless regard it as being low. The last such offence occurred in 2011 and I have accepted that the appellant no longer drinks alcohol.

80. The appellant is unable to bring himself within either of the two exceptions under the 2002 Act and the Rules. The reasons why he cannot satisfy the family life-related exception are clear-cut. In respect of the private life exception, it is a fact that he has not spent most of his life in the United Kingdom. The other two limbs of the exception require further consideration.

81. The Appellant does not appear to speak particularly good English and it seems as though his life in this country has been largely focused within the Vietnamese community. However, he has been in United Kingdom for a very significant period of time. He has been involved in the upbringing of his four children here, with what I consider to be a likely consequence that he did engage with wider society around him. I note too that not all of his employment relates to jobs which would, on the face of it, only have led to him interact with members of the Vietnamese community in this country. Finally, I do not regard the offending history as a reason to conclude that there has been no social and/or cultural integration. On the facts of this case, the offending has not been persistent, when its place within the appellant's lengthy residence in this country is taken into account. Overall, I conclude that the appellant is sufficiently socially and culturally integrated in the United Kingdom.

82. With the high threshold in mind and carrying out a broad evaluative assessment, I conclude, by a narrow margin, that the appellant would face very significant obstacles to reintegration into Vietnamese society. It is of course the case that the appellant spent the majority of his life in Vietnam, speaks the language, has visited on four occasions since his departure thirty years ago, and will have at least some familiarity with cultural norms in that country. In addition, the appellant does not suffer from significant health issues and would, in theory, be able to work. On the other side of the equation, I have taken account of the following factors. The time spent away is very significant. The appellant has no assets or other meaningful ties to Vietnam. Indeed, he holds a strong dislike of the regime and whether or not this would lead to any risks, in my view he would regard himself as an outsider. The four visits will have given him some experience of life in the country since his departure, but this cannot be said to represent an accurate reflection of permanent life there. the Appellant is uneducated and his only previous work in his home country was as a fisherman.

83. Although I have concluded this issue in the appellant's favour, the fact that it is a close call means that it cannot play a material part in the "very compelling circumstances" assessment.

84. There are two factors arising from section 117B of the 2002 Act. The appellant's limited level of English counts against him in the balancing exercise. His indefinite leave to remain throughout his residence in the United Kingdom has not been "precarious" (see para 44 of Rhuppiah [2018] 1 WLR 5536).

85. This brings me finally to the issue of delay. It is worth reiterating the periods in question. No deportation action was instigated following the appellant's first two convictions for driving with excess alcohol: the sole basis for such action was the 2005 conviction (although it is the 2006 sentencing which is referred to in the relevant decision letters). That action was only begun in October 2016 when the legally flawed stage 1 decision to deport letter was issued. That delay amounted to over 11 years from the date of conviction. It then took the respondent a further 18 months to issue what transpired to be another flawed decision letter on 22 April 2018. The final decision (legally sound) letter was not issued until 30 January 2019, just under *13 years* from the sentencing for the index offence and some months over that figure in respect of the conviction. Even were one to regard the 2011 conviction for the driving offence as a relevant trigger for the deportation action (a position that would, to say the least, be extremely generous to the respondent, given the fact that the action was based solely upon the drugs offence), there was still an initial delay of 5 years before the flawed decision of October 2016 was issued, followed by a further period of 2 ¼ years until the letter of 30 January 2019 was produced, making a total of 7 ½ years.

86. At the hearing I informed the representatives that I was aware of two judgments of the Court of Appeal relating to delay in the deportation context. The first is MN-T (Colombia) [2016] EWCA Civ 893, a case involving a delay of 5 years between the individual's release from prison (following an 8-year sentence) and the start of deportation action by the respondent. At [35] the Court held,

> "I agree that rehabilitation alone would not suffice to justify the Upper Tribunal's decision in this case. If it had not been for the long delay by the Secretary of State in taking action to deport, in my view there would be no question of saying that "very compelling circumstances over and above those described in Exceptions 1 and 2" outweighed the high public interest in deportation. But that lengthy delay makes a critical difference. That lengthy delay is an exceptional circumstance. It has led to the claimant substantially strengthening her family and private life here. Also, it has led to her rehabilitation and to her demonstrating the fact of her rehabilitation by her industrious life over the last 13 years. This is one of those cases which is on the borderline."

87. At [40] to [42] of MN-T, the Court rejected the respondent's submission that the issue of delay, in the context of a deportation decision, was incapable of reducing the public interest. It was also held that, if during a lengthy period the criminal becomes rehabilitated and shows himself or herself to have become a law-abiding citizen, he/she poses less of a risk or threat to the public, that the deterrent effect of the policy is weakened if the respondent does not act promptly, and that public confidence in the need to take appropriate action is undermined if nothing is done for many years.

88. The observations in MN-T was cited with approval by the Court of Appeal in Saif Ullah [2017] EWCA Civ 1069, at [61].

89. The second judgment of the Court of Appeal is RJG [2016] EWCA Civ 1042. At [54] the Court stated:

> "I would accept that, in principle, a substantial delay on the part of the Secretary of State in pursuing the deportation of a person convicted of serious crime could be an important factor in determining the proportionality of the deportation, both because it might reflect on the weight to be given to the public interest in deportation and because of its effect on the individuals concerned. In the latter regard, I have firmly in mind the observations of Lord Bingham of Cornhill, made in another context, in *EB (Kosovo) v Secretary of State for the Home Department* [2009] 1AC 1159 at [14]–[16]."

90. Whilst on the facts of that case, the appellant did not succeed, the potential significance of delay in the deportation context is clearly established.

91. The delays set out in paragraph 85 above are inordinate and extraordinary. There has never been any explanation from the respondent, let alone one capable of carrying any weight. In particular, it has not been suggested that it was only the 2011 conviction which prompted deportation action.

92. I acknowledge that the appellant did not lead a blameless life after the 2005 conviction, and in some respects he did not develop additional ties in the United Kingdom during the delay (for example, starting a family, marrying a British citizen, or suchlike). However, there was only one incident of misconduct during the 11 years since *any* actions whatsoever was instigated and the 13 years between the 2005 conviction and the belated, lawful deportation decision. I have found that he represents at most a low risk to the public in respect of reoffending. The appellant had continued to live his life in this country with settled status as a refugee and without there being any indication that the authorities were intent on revoking his leave and seeking to remove him under the deportation route.

93. Whilst I do not go so far as to find that the delay "entirely" diluted the public interest in this case, it does have the effect of so significantly undermining the deterrence factor, the public's confidence in action being taken against foreign criminal, and the overall public interest, that it constitutes, on a truly exceptional basis, a "very compelling circumstance" over and above those described in the two exceptions. Put another way, the delay carries such weight in the appellant's side of the scales as to tip the balance in his favour, notwithstanding the very stringent nature of the "very compelling circumstances" test and the powerful factors ranged against him. It is, to borrow a term used in MN-T, a "critical" feature of this case.

94. The appellant therefore succeeds on the Article 8 issue and with reference to the ground of appeal under section 84(1)(c) of the 2002 Act.

Anonymity

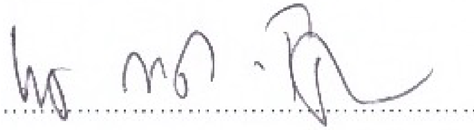
95. I continue the order I made in respect of the error of law decision.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

The decision of the First-tier Tribunal has been set aside.

I re-make the decision by allowing the appeal on the grounds that the respondent's decision to revoke the appellant's protection status breaches the United Kingdom's obligations under the Refugee Convention, and that the decision to refuse the appellant's human rights claim is unlawful under section 6 of the Human Rights Act 1998.

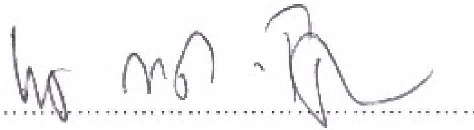


Signed .... Date: 13 November 2019

Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.



Signed .... Date: 11 November 2019
Upper Tribunal Judge Norton-Taylor

APPENDIX: ERROR OF LAW DECISION

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: RP/00026/2019**

THE IMMIGRATION ACTS

Heard at Field House **Decision & Reasons Promulgated**
On 13 September 2019

....

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

V T
(ANONYMITY DIRECTION MADE)

Respondent

Anonymity

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 original Appellant (referred to as the Claimant in this decision). This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:

For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer
For the Respondent: Mr B Bedford, Counsel, instructed by Kataria Solicitors

DECISION AND REASONS

Introduction

1. For ease of reference, I shall refer to the Appellant in the proceedings before the Upper Tribunal as the Secretary of State and to the Respondent as the Claimant.

2. This is a challenge by the Secretary of State against the decision of First-tier Tribunal Judge Fowell (“the judge”), promulgated on 28 May 2019, in which he allowed the Claimant’s appeal against the respondent’s decisions, both dated 13 March 2019, with revoking the Claimant’s refugee status and refusing his human rights claim.

3. The Claimant, a national of Vietnam, arrived in the United Kingdom in June 1991, having already been recognised as a refugee two years previously whilst residing in a camp in Malaysia. The basis of this recognition appears to have been that the Claimant’s brother was already in this country and so the policy (as it then was) of family reunion applied. The Claimant was granted indefinite leave to remain in January 1992 and later that year was joined in this country by his wife and children, who themselves came under the family reunion policy.

4. Whilst in this country, the Claimant accrued a number of convictions. Three of these (in 1997, 2001, and 2011) were for driving with excess alcohol. However, the relevant conviction for the purposes of these proceedings was that obtained in August 2005, for conspiracy to supply Class B drugs, namely cannabis. In February 2006 he was sentenced to 15 months’ imprisonment.

5. No action of any sort was taken by the Secretary of State until October 2016, when a “Notification of Intention to Cease Refugee Status” letter was sent out to the Claimant. Representations from his then representatives were submitted and there was a further period of apparent inactivity by the Secretary of State until April 2018, when a decision was made to make a Deportation Order pursuant to the UK Borders Act 2007. This was subsequently recognised as being erroneous, as that Act had not been in force at the time of the Claimant’s sentencing in 2006. The decision was withdrawn. A new (unappealable) deportation decision was made on 30 January 2019, based this time on section 3(5)(a) of the Immigration Act 1971. As already noted, the cessation/revocation decision and refusal of the human rights claim followed in March 2019.

6. The specific basis relied upon by the Secretary of State for revoking the refugee status was Article 1A(C)(5) of the Refugee Convention (“the Convention”) and para 339A(v) of the Immigration Rules (“the Rules”). It was said that the circumstances of the basis upon which the Claimant was originally recognised as a refugee had ceased to exist.

7. The Secretary of State did not issue a certificate under section 72 of the Nationality, Immigration and Asylum Act 2002, as amended (“NIAA 2002”).

The judge’s decision

8. Having set out the legal framework, the evidence, and the submissions made by the representatives, the judge goes on to deal with the cessation issue. He concludes that the Secretary of State had failed to show that there had been a sufficiently significant and durable change in the nature of the Vietnamese government. He also concluded that the Secretary of State had not undertaken any “verification” in respect of ensuring that the Claimant would not now be persecuted on return.

9. In respect of the Article 8 claim, the judge notes that the Claimant could not satisfy the exception (contained in paragraph 399a or b of the Rules and section 117C(5) NIAA 2002) in respect of his partner or his children (all four of whom were adults).

10. The Claimant's private life is then assessed. The judge concludes that he had become socially and culturally integrated in the United Kingdom, and that his removal to Vietnam would involve very significant obstacles to reintegration in that country. However, as a matter of fact, the Claimant had not resided in this country lawfully for more than half of his life. Therefore, the "very compelling circumstances over and above" test applied. The judge took the view that the satisfaction of two out of three of the criteria under para 399A of the Rules not sufficient for the Claimant to succeed. He goes on to consider the issue of delay in this case and concludes that its length and nature was such that, when combined with the para 399A factors, the Claimant was able to meet the very high threshold. The circumstances of the Claimant's relationship with his partner was considered to be relevant, but the judge did not appear to rely on this for his overall conclusion.

The grounds of appeal and grant of permission

11. The Secretary of State's grounds of appeal rely on the Court of Appeal's judgment in MA (Somalia) [2018] EWCA Civ 994, and its interpretation of the CJEU's judgment in Abdulla [2010] 3 WLR 1624. It is asserted that the judge failed to treat the cessation issue as a "mirror image" of a decision determining refugee status. It is said that the judge failed to give proper consideration to the fact that the Claimant had returned to Vietnam on a number of occasions since his arrival in the United Kingdom.

12. The grounds assert that the judge failed to give adequate reasons in respect of the Article 8 conclusions, and failed to consider the public interest factors of deterrence and "revulsion".

13. Permission to appeal was granted by First-tier Tribunal Judge Osborne on 19 June 2019. Rather unfortunately, Judge Osborne does not specifically address the cessation issue in his grant, although it is clear that permission was being given on all grounds put forward.

Decision on error of law

The cessation issue

14. For the purposes of my decision I am going to proceed on the basis that the cessation issue was not academic because of the potential effect of Dang (Refugee – query revocation – Article 3) [2013] UKUT 43 (IAC) (but see my observations under "Disposal", below).

15. I have considered the judge's treatment of this issue in the context of the way in which the Secretary of State's case was put to him, namely that the sole basis for the cessation/revocation action was that elucidated under Article 1C(5) of the Convention and para 339A(v) of the Rules.

16. For the reasons set out below, I conclude that the judge has materially erred in law.

17. The judge was of course correct to have directed himself to Abdulla. However, the subsequent domestic authorities of MM [2017] EWCA Civ 797 and MA (Somalia) [2018] EWCA Civ 994, were both germane to the issue under consideration. MA (Somalia) in particular is of significance, as it represents binding guidance on the interpretation and application of Abdulla and the Qualification Directive 2004/83/EC, and cites MM with approval.

18. The overall view of the CJEU in Abdulla is stated in para 76 of the judgment:

> "76 In view of all the foregoing considerations, the answer to the first question is that article 11(1)(e) of the Directive is to be interpreted as meaning that (i) refugee status ceases to exist when, having regard to a change of circumstances of a significant and non-temporary nature in the third country concerned, the circumstances which justified the person's fear of persecution for one of the reasons referred to in article 2(c) of the Directive, on the basis of which refugee status was granted, no longer exist and that person has no other reason to fear being "persecuted" within the meaning of article 2(c) of the Directive; (ii) for the purposes of assessing a change of circumstances, the competent authorities of the member state must verify, having regard to the refugee's individual situation, that the actor or actors of protection referred to in article 7(1) of the Directive have taken reasonable steps to prevent the persecution, that they therefore operate, inter alia, an effective legal system for the detection, prosecution and punishment of acts constituting persecution, and that the national concerned will have access to such protection if he ceases to have refugee status; (iii) the actors of protection referred to in article 7(1)(b) of the Directive may comprise international organisations controlling the state or a substantial part of the territory of the state, including by means of the presence of a multinational force in that territory."

19. Three passages from MA (Somalia) are of most relevance here:

> "2. For the reasons given below, and in the light of the careful submissions that we have had on the important decision of the Court of Justice of the European Union ("CJEU") in Joined Cases C-175/08, C-176/08, C-178/08, C0179/08, Aydin Salahadin Abdulla, Kamil Hasan, Ahmed Adem, Hamrin Mosa Rashi & Dier Jamal v Bundesrepublik Deutschland, 2 March 2010 ("Abdulla"), I have concluded that:
>
> > (1) A cessation decision is the mirror image of a decision determining refugee status. By that I mean that the grounds for cessation do not go beyond verifying whether the grounds for recognition of refugee status continue to exist. Thus, the relevant question is whether there has been a significant and non-temporary change in circumstances so that the circumstances which caused the person to be a refugee have ceased to apply and there is no other basis on which he would be held to be a refugee. The recognising state does not in addition have to be satisfied that the country of origin has a system of government or an effective legal system for protecting basic human rights, though the absence of such systems may of course lead to the conclusion that a significant and non-temporary change in circumstances has not occurred.

> "49. Another way of putting the point is that the Refugee Convention and the QD are not measures for ensuring political and judicial reform in the countries of origin of refugees. The risks which entitle individuals to protection are risks which affect them personally and individually. It is an individualised approach. Just as it is no answer to an asylum claim that there is a legal system which might in theory be able to protect them, so conversely the absence of such a system is not an answer to a cessation decision if it is shown that the refugee has sufficient, lasting protection in other ways or that the fear which gave rise to the need for protection has in any event been superseded and disappeared.
>
> …
>
> 53. Mr Waite's overarching point is that the wording of the QD supports the contention that the applicable test is whether the circumstances which formed the basis for granting protection still exist and require protection to be given. In my judgment, this was the argument accepted by the CJEU. Paragraph 65 of the decision confirms that refugee status can be ceased. Paragraph 66 makes it clear that the reason for ceasing refugee status must be that because of a change in circumstances the refugee can no longer refuse to accept the protection of the country of origin. Paragraph 67 to 69 make it clear that the protection is "the same" as that previously lacking. Paragraphs 70 and 71 deal with the steps which the recognising state must take to check that there is the relevant protection, but it is to be noted that these checks are rooted in the QD and go no further than the QD itself provides. Thus, paragraph 70 states that when fulfilling their obligations under Article 7(2) the competent authorities of the recognising state must verify that the institutions of the state of origin "have taken reasonable steps to prevent persecution and that they therefore operate an effective legal system for investigating and punishing acts of persecution and that the individual will have access to that protection if he ceases to have refugee status". Likewise, paragraph 71 makes it clear the protection is to be considered on an individualised basis: the recognising state does not have to consider whether the institutions achieve a particular standard for all purposes."

20. Para 24 of MM states:

> "24. However, Article 1C(5) is framed more widely than this, and requires examination of whether there has been a relevant change in "the circumstances in connexion with which [a person] has been recognised as a refugee". The circumstances in connection with which a person has been recognised as a refugee are likely to be a combination of the general political conditions in that person's home country and some aspect of that person's personal characteristics. Accordingly, a relevant change in circumstances for the purposes of Article 1C(5) might in a particular case also arise from a combination of changes in the general political conditions in the home country and in the individual's personal characteristics, or even from a change just in the individual's personal characteristics, if that change means that he now falls outside a group likely to be persecuted by the authorities of the home state. The relevant change must in each case be durable in nature."

21. In light of these authorities, I am satisfied that the judge failed to adequately assess the cessation issue on an *individualised* basis and from the premise that it represented

a mirror image of a determination of refugee status. The judge's consideration of the issue is set out in paras 38 and 39 of his decision:

> "38. It is not simply a question of assessing whether it would be safe or relatively safe for [the Claimant] to return. As set out above at paragraph 15, the test in Abdulla v Germany involves a number of stages. Taking them in turn, there seems to have been a change in circumstances in Vietnam since people are returning and [the Claimant] himself felt that it was safe to do so on four occasions; or at least, he was prepared to run the risk. But it does not necessarily follow that the circumstances which justified his fear, i.e. the attitude of the government, no longer exist. I was not given a great deal of information, but I note the Human Rights Watch report quoted by the UNHCR stated that the fundamental character of the government has not changed. That is also reflected in the Amnesty International report for 2017/2018 which reported that:
>
> > "the crackdown on freedom of expression and criticism of government actions and policies intensified, causing scores of peaceful activists to free the country."
>
> 39. That aspect (sic) is not therefore appear to me to have been met."

22. These passages indicate that rather than assessing the issue in light of both the objective situation relating to the Vietnamese authorities *and* the Claimant's particular circumstances (in other words, an individualised approach), the judge based his conclusion solely on what appears to be somewhat sparse evidence pertaining to the first of the two aspects. The particular facts of the case, together with the country information cited, reinforce the point. The country information referred to a crackdown on criticism of the government, leading to an exodus of activists from Vietnam. However, on the face of the evidence before the judge, the Claimant was only recognised as a refugee by virtue of his brother's recognition, had not been a political activist whilst in Vietnam, had never undertaken any political activities or expressed any political views whilst in the United Kingdom, and, as far as I can see, has never expressed any intention of voicing anti-government views if returned to his home country. Thus, when carrying out the exercise of assessing whether, in the words of Article 1C(5) of the Convention, "the circumstances in connexion to which [the Claimant] has been recognised as a refugee have ceased to exist", a close analysis of the objective and subjective aspects was required. In my view, paras 38 and 39 do not reflect such an undertaking.

23. In saying this, I have of course had full regard to Mr Bedford's submissions, in particular that the judge did have regard to the Claimant's specific circumstances, including the four visits to Vietnam. It is right that these visits are stated in para 38. However, the judge's error lies in separating them (and other subjective elements) from the objective country situation, thereby failing to undertake the assessment on an overall, individualised approach, as required by Abdulla and its interpretation in MA (Somalia).

24. The second basis upon which the judge concluded that the Secretary of State had failed to make out her case relates to verification. In his view, positive steps by the

Secretary of State were required, the example given being "communication with the [Vietnamese] government".

25. With respect, the judge has in my view misapprehended what Abdulla (as interpreted by MA (Somalia)) says on the question of verification. Direct communication by the recognising state (in this case, the United Kingdom) with the third country government about a particular individual's case is not expressly considered in the authorities. Such a possibility is, in any event, fraught with potential problems relating to confidentiality and suchlike.

26. What Abdulla does say is that "verification" steps to be undertaken by the recognising state may involve, for example, providing relevant country information on, "the conditions of operation of, on the one hand, the institutions, authorities and security forces and, on the other, all groups or bodies of the third country which may, by the action or inaction, be responsible for acts of persecution against the recipient of refugee status if he returned to that country." (see para 71 of Abdullah). I conclude that the judge has erred by failing to address the verification issue on a correct footing.

27. There are two errors relating to the cessation/revocation issue. They are material. To this extent, the judge's decision must be set aside.

The Article 8 issue

28. It is clear enough from the judge's decision that he allowed the Claimant's appeal on Article 8 grounds on the decisive basis that the Secretary of State had acted with such tardiness when initiating the deportation proceedings (and everything that flowed from this) that there were very compelling circumstances over and above those described in the exceptions under the Rules and section 117C NIAA 2002.

29. The delay was, on any view, inordinate, and the judge was fully entitled to take this into account. Contrary to what is said in para 4 of the grounds of appeal, the Secretary of State has not been able to identify any binding authority for the proposition that, "it is well established that delay or time elapsed carries little weight and the public interest in removing a foreign criminal hasn't been diluted." Having said that, it is not entirely clear that the judge has evaluated the delay issue in the deportation context, rather than simply the immigration context. The legitimate aim pursued by the Secretary of State in the former scenario is not simply the maintenance of effective immigration control, but public safety. I would not, though, necessarily find a material error of law on this issue alone.

30. I would also accept Mr Bedford's submission that the judge's reliance on the Claimant's partner was in reality simply an "add-on" and did not represent a material factor in the overall conclusion.

31. There is, though, a material error in respect of the judge's failure to have specific regard to deterrence and what is now described as public confidence in the ability of the Secretary of State to deport foreign criminals. These two elements of the public interest have been well-established in case-law over the course of time, and they

remain valid. On the facts of this case, it cannot be said that the judge's decision would have been the same even if these two issues had been properly considered.

32. Therefore, the judge's decision falls to be set aside on this basis as well.

Disposal

33. This appeal shall be retained in the Upper Tribunal.

34. Ordinarily, I would go on to remake the decision based upon the evidence currently before me. There has been no application by the Claimant under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 for further evidence to be adduced. My initial view was that there should be no further hearing.

35. However, reluctantly, I am persuaded that this appeal should be adjourned, and a resumed hearing held prior to the final resolution of this appeal. Notwithstanding the dearth of evidence relating to the Claimant's political views (if any), it would probably be prudent to properly canvas this issue.

36. There is a further issue which in my view requires consideration at the resumed hearing, albeit that neither the representatives nor the judge has addressed it. The Claimant was recognised as a refugee as far back as 1989 and was granted indefinite leave to remain as a refugee in this country in 1992. This of course was many years before the Qualification Directive came into force on 21 October 2004. The Secretary of State's cessation/revocation decision is based on para 339A(v) of the Rules, which in turn implement the relevant provisions of the Directive. Given this uncontroversial set of circumstances, there is a question as to the potential impact of Dang. The relevant part of the judicial headnote reads as follows:

> "A decision to revoke or refuse to renew a grant of asylum under paragraph 339A of the Immigration Rules only relates to the individual's status under the Qualification Directive (European refugee status) and not his status under the Refugee Convention; further, it can only apply to cases in which the asylum application was made on or after 21 October 2004 and at least one of the provisions in sub-paragraphs (i)-(vi) of para 339A of the Immigration Rules applies."

37. I note that no alternative basis of risk on return has ever been put forward by the Claimant, and there is no live issue in this respect, whether under the Convention or Article 3.

38. As to Article 8, this falls to be decided solely on the basis of whether the Claimant can show "very compelling circumstances over and above" those described in the exceptions under the Rules and section 117C NIAA 2002.

Anonymity

39. The First-tier Tribunal made an anonymity order. I continue that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

I adjourn this appeal for a resumed hearing in due course.

Directions to the parties

1. **No later than 4pm on 30 September 2019, the Secretary of State is to file with the Upper Tribunal and serve on the Claimant any further evidence relied on, together with copies of the authorities referred to in the error of law Decision and any other relevant case-law;**

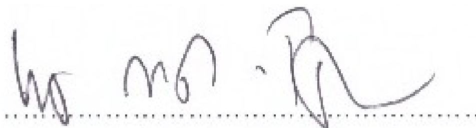
2. **No later than 4pm on 14 October 2019, the Claimant is to file with the Upper Tribunal and serve on the Secretary of State a consolidated bundle containing all evidence relied on in this appeal (and in light of the contents of the error of law Decision). This shall include an updated witness statement dealing with relevant matters (again, subject to what is said in the error of law Decision);**

3. **No later than 4pm on 21 October 2019, the Claimant shall file with the Upper Tribunal and serve on the Secretary of State a skeleton argument addressing all relevant issues in this appeal, with reference to what is said in the error of law Decision;**

4. **No later than 4pm on 28 October 2018, the Secretary of State shall file with the Upper Tribunal and serve on the Claimant a skeleton argument addressing all relevant issues in this appeal, with reference to what is said in the error of law Decision and the Claimant's skeleton argument;**

5. **Oral evidence will be permitted at the resumed hearing if, and only if, an updated witness statement is provided in compliance with direction 1, above. Even then, it will of course be limited only to relevant issues in the appeal**

6. **With liberty to apply.**

Signed  Date: 16 September 2019

Upper Tribunal Judge Norton-Taylor