

IN THE HIGH COURT OF THE HONG KONG

SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

ADMINISTRATIVE LAW LIST

IN THE MATTER OF an application for
leave to apply for judicial review
pursuant to Order 53 rule 3 of the
Rules of the High Court

AND

IN THE MATTER OF a decision of the
Refugee Status Review Board to
refuse to grant the appeal against
the decision of the Director of
Immigration

BETWEEN

LE TUONG TRINH

Applicant

and

THE REFUGEE STATUS REVIEW BOARD 1st Respondent

THE DIRECTOR OF IMMIGRATION 2nd Respondent

Coram : The Honourable Mr. Justice Yeung in Chambers

Date of Hearing : 17th November 1997

Date of Handing Down of judgment : 21st November 1997

JUDGMENT

This is an application by the applicant, Le Tuong Trinh for a judicial review of the decision of the Refugee Status Review Board refusing to grant him refugee status.

The applicant was born on 30th of December 1959. Having finished education in 1973, he joined the South Vietnamese Army (ARVN) when he was only 14.

The applicant claimed to have been interrogated and re-educated after the reunification of Vietnam for about 8 months from April to December of 1976 followed by 12 months post release monitoring and restriction.

He claimed to have been persecuted because of his religious belief and his service with the South Vietnamese Army.

The applicant claimed to have joined two anti-Communist organisations, one in 1979 called Mat Tran Phuc Quc (Country Revival Front Line) which aimed at bringing about freedom and basic human rights in Vietnam and one in 1990 called in English the Vietnam Unification and Liberation Front (Vulf) which aimed at freeing the country and its people from Communist rule.

Because of his affiliation with those anti-Communist organisations, the applicant claimed to have been repeatedly persecuted.

Having arrived in Hong Kong, the applicant said he discovered a small branch of Vulf in Hong Kong and he became the head of its publication section.

Because of his involvement with Vulf, he became well-known and he had been warned by returnees to Vietnam that the Vietnamese authorities were interested in him as they knew what he did in Hong Kong and that he should not return to Vietnam.

The applicant had been interviewed by the Board in March 1994 and his claim for refugee status was rejected. It is not necessary to refer in details to the finding of the Board on that occasion. He was found not to be credible at all because of the many inconsistencies in his accounts.

The applicant was again interviewed by the Board on 23.7.1997 after an agreement was reached to re-screen him by a freshly constituted Board. The freshly constituted Board again refused to screen in the applicant as a refugee.

In this application, the decision of the Board is attacked on its findings pertaining to the alleged affiliation with Vulf by the applicant and his "sur place" claim only.

The Board did not find the applicant's alleged affiliation to Vulf to be credible at all. The Board noted the response of the applicant in answering simple questions, his hesitant and disconcerted demeanour, the many inconsistencies and disparities in what he said. The Board found his alleged affiliation to Vulf a fictitious account. The Board found the applicant untruthful.

In relation to Vulf, the Board made the following further observation:-

"Given the discrepancies in his evidence over the security group and the issue/non-issue of a badge this Board finds that there is no credible evidence that the second group (Vulf) ever existed.

The Board does not speculate on the true motive for his exodus."

On the "sur place" claim, the Board made the following findings:-

"The Board is aware of the published statement from UNHCR that 'despite particularly careful follow-up of delicate cases,..... monitors have never uncovered any convincing cases of judicial harassment linked to.....activism in the camps' (Refugees- Focus:Regional Solutions No. 99, 1-1995, p.13). The Board has sought the assistance and advice of UNHCR in regard to this published statement. The UNHCR stated that the statement was still valid. The UNHCR stated that there might be isolated cases of problems, but they were not aware of any general policy to target political activists on return to Vietnam, and knew of not one single specific case of harassment to date.

The Board finds, therefore, that mere membership, or even holding an official post in a political movement in the camp in Hong Kong cannot be, of itself, grounds for a sur place Convention claim. There must be specific evidence that a particular risk exists in the individual case. Merely suggesting that political activism of itself is not welcome to the authorities in Vietnam cannot be good enough.

The Applicant attempts to show that the authorities in Vietnam are interested in his Hong Kong activities by producing lettersfrom returnee friends. These hand-written letters have little value as by the time of their writing the Applicant had accepted an offer of re-screening and any returnee friend could write anything in a letter. Given the Applicant's general lack of

credibility it is possible that these letters have been written for the re-screening and do not contain genuine information. If the Board has erred in this viewpoint then the letters show only a general interest in the Applicant and the Board relies on the UNHCR statement about the treatment of political activists."

Mr. Gold, on behalf of the applicant does not challenge the findings of the Board that the applicant was not truthful and that his alleged affiliation to Vulf was a fictitious account.

But on the specific finding that there was no credible evidence that Vulf existed because of the discrepancies in the applicant's evidence over the security group and the issue-non-issue of a badge, it is suggested that the Board was disbelieving only the two elements of the applicant's history in relation to Vulf, and did not reject the rest of his evidence in relation to Vulf. The suggestion is that the Board had failed to take into account other relevant evidence put forward by the applicant pertaining to Vulf. Thus the conclusion of the Board was irrational.

Mr. Gold relies on the decision of Godfrey J. in Nguyen Ngoc Nhat v. The Refugee Status Review Board and the Director of Immigration Civil Appeal No 161 of 1997 when he said at Page 5 of the Judgment,

"It is the duty of the Board in all these cases to find the facts; and of course the applicant is entitled to a statement of the Board's findings. Generally speaking, I do not think it can properly be assumed, in relation to any material fact, that the Board has either accepted or rejected the applicant's evidence upon that matter when the Board has failed to state what its finding is. If it expressly rejects part of the applicant's evidence, it *may* follow that it rejects the rest of the applicant's evidence; but only if the applicant's evidence must either be accepted or

rejected as a whole. If there are discrete matters in the applicant's evidence which require to be considered separately, it cannot be assumed that a finding adverse to the applicant on one part of his story *must* be treated as a finding adverse to the applicant on the remainder of his story."

I must say I find the submission difficult to comprehend. We are not dealing with a situation whereby only parts of the evidence of the applicant's story is disbelieved. The Board had found the applicant to be untruthful and that his alleged affiliation with VULF was fictitious, findings which are not being challenged.

There is no dispute that the applicant was the only source of information pertaining to Vulf and his association with it. Once it is concluded that the applicant was untruthful and that his evidence about Vulf was fictitious, the conclusion that there was no evidence that Vulf ever existed is inescapable. There is no need for a point to point rejection of the applicant's assertion.

There are no discrete matters which require to be considered separately. The reference to the security group and the issue/non-issue of a badge was made just to highlight the discrepancies in the evidence of the applicant. The Board is justified in reaching the conclusion as it did.

On the applicant's "sur place" claim, the Board's decision is attacked on the basis that there was no evidence to support its conclusion that the letters from the returnees pertaining to the inquiries by the Vietnamese authorities about the applicant had little value as the applicant had not been questioned about them and that the Board's view about the credibility of the applicant should not be transposed to that of the authors of those letters.

It was also suggested that the conclusion that "the letters show only a general interest in the applicant" was factually incorrect.

It must be remembered that Refugee Status Review Boards are "specialist tribunals". They had built up immense knowledge not just about conditions in Vietnam, but patterns of behaviour of the Vietnamese asylum seekers in Hong Kong. So far as the present case is concerned, it is also important to bear in mind the background, including the primary findings by the Board that the applicant was not truthful and that his alleged affiliation to Vulf was fictitious.

The Board was entitled to conclude as it did that any returnee friend could write anything in a letter and that they might be written to assist the applicant in the re-screening and they did not contain genuine information.

Whether the letters show only a general interest in the applicant or not is perhaps a matter of interpretation.

In the light of the primary findings of the Board, in particular their knowledge that "the UNHCR were not aware of any general policy to target political activists on return to Vietnam, and knew of not one single specific case of harassment to date", the Board's decision that it was unable to recognise the applicant as a refugee was justified.

The court has a very limited role to play in judicial review case against the decisions of the Refugee Status Review Boards. In the present case, the Court can only interfere if the decision of the Board to screen out the applicant as a refugee is irrational and is one which no tribunal, properly directing itself as to the relevant law, could reasonably have come to.

I have considered the background of the case as well as Counsel's submission carefully, I am unable to say that the matters

before me might, on further consideration, demonstrate an arguable case for the grant of relief claimed by the applicant.

There is no merit in the application for leave to apply for judicial review of the decision of the Refugee Status Review Board and it must be refused.

I also make an order nisi that the applicant is to pay the costs of the Respondent to be taxed if not agreed. The order nisi will be made absolute 14 days after the handing down of the judgment.

(W. YEUNG)
Judge of the Court of First
Instance of the High Court

Mr. Matthew Gold of Messrs. Pam Baker & Co., for Applicant.

Mr. William Marshall, S.C. and Mr. Francis Kwan, S.G.C., for
Respondent.