



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

Appeal Number: PA/11372/2017

THE IMMIGRATION ACTS

**Heard at Bradford
On 19 October 2018**

**Decisions and Reasons Promulgated:
On 5 November 2018**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

RAFIK [S]

(ANONYMITY NOT DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:

Mr Jacobs (Counsel)

For the Respondent:

Mr McVeety (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Secretary of State's appeal to the Upper Tribunal from a decision of the First-tier Tribunal (the tribunal); whereupon it allowed his appeal against the Secretary of State's decision of 22 October 2017 to refuse to grant him international protection. Permission to appeal was given by a Tribunal Judge on 30 May 2018.

2. The claimant, who was born on 17 April 1958, is a Yemeni national. He is married and his wife is a dependent upon his asylum claim. The couple have three adult children who reside neither in the Yemen nor in the United Kingdom (UK).

3. The claimant entered the UK having obtained a visit visa. He says he actually entered by air on 20 March 2017. It is recorded that he claimed asylum on 3 August 2017. In seeking international protection, he asserted that he would be at risk in Yemen due to his political affiliations and connections and due to his status as an academic. He explained that his wife is a cousin of the former Foreign Minister of Yemen, a person who had headed a mission by the now Government in exile, when it was seeking assistance from the Saudi Arabian Government to overthrow the Houthi rebels who were attempting to take control of Yemen. He asserts that that former Foreign Minister has now been sentenced to death by those now in control and he asserts he himself would be at risk due to the connection. He also expresses a fear he would be harmed in consequence of his son's former political activity in that country.

4. As noted, the Secretary of State refused the claim for international protection on 22 October 2017. It is not entirely clear to me from the detailed written explanation of the decision, whether the Secretary of State believed all of what the appellant had claimed. But he might have done. However, she thought that even if he was at risk in his home area he would be able to relocate to Aden. The claimant appealed to the tribunal and his appeal was heard on 21 March 2018. He was represented at that hearing by Mr C Jacobs of Counsel who also represented him before me. The Secretary of State was then represented by one Mr Z Mughal, a Home Office Presenting Officer. The tribunal allowed the appeal. It produced brief written reasons for its decision. This is the salient part of what it had to say:

“ 4. At the outset, I should say that the appellant's case was put by Mr Jacobs on the basis that article 15(c) of the Qualification Directive applies so that refugee status is made out by reference thereto. He submitted that the current situation within Yemen is to be considered in the light of the decision of the Upper Tribunal in ZMM (Art.15c) [CG] [2017] UKUT 263. He also submitted that the objective or background evidence in respect of Yemen is now different to that which obtained at the time of the respondent's decision in October 2017 in that of the security situation has deteriorated further.

5. The core facts were not in dispute. The appellant's wife is a cousin to the former Foreign Minister of Yemen, who headed the mission by the now government in exile, when it was seeking assistance from the Saudi Arabian government to overthrow Houthi rebels. Accordingly, Houthi rebels have indicated that he has been sentenced to death, albeit, seemingly, by a court of no particular standing. The appellant is an academic and, he says, his son is somebody who formed a political party in Yemen but has now fled that country.

6. The appellant previously resided in Abu Dhabi, but says that he has lost his job in that country, because he lost his accommodation and so he cannot return to reside in the U.A.E.

7. The appellant gave evidence by adopting the content of his witness statement dated 6 December 2017 as his evidence in chief. His veracity was not challenged and I accept the thrust of his factual evidence.

8. The respondent refused the application on the basis that although it accepted that there is an ongoing civil war situation in certain parts of the country, that did not apply to the governate of Aden and so the appellants could return to Aden.

9. Mr Jacobs made the case, by reference to recent objective material, that Aden governate is as badly afflicted by civil war, indiscriminate violence and a breakdown in law and order that it is no more secure than any other part of Yemen. Indeed, he went further and submitted that the current objective evidence is to the effect that governance has all but broken down in Yemen, which has ceased to function as a sovereign state. It is little more than a territory torn apart by civil war, where rival tribes, factions or warlords vie for control.

10. Mr Jacobs took me through the objective evidence that he relied upon, which is noted in my Record of Proceedings. I do not propose to go through it in detail because I am satisfied that it points only in one direction and establishes that, certainly at the present time, the situation in Yemen is such that there is a serious threat to civilian life by reason of indiscriminate violence because of the internal armed conflict going on in the country and by reason of the Saudi involvement, which involves bombing those thought to be opposed to the so-called government in exile. It is also blockading the country's ports.

11. Accordingly, I allow the appeal on the basis that the appellant is a refugee by reference not article 15(c) of the Qualification Directive."

5. The Secretary of State applied for permission to appeal to the Upper Tribunal, contending that the tribunal had erred in law through seeming to decide that the claimant is a refugee on the basis that country conditions throughout Yemen meant that the threshold provided for in Article 15c of the Qualification Directive had been met. The Judge who granted permission to appeal, and the grant was unsurprising, did so because she thought it "at least arguable that the judge conflated the concept of refugee status with that of humanitarian protection". As she went on to explain, if a claimant succeeds in his appeal for refugee status then that claimant is then excluded from a grant of humanitarian protection.

6. Permission having been granted there was a hearing before the Upper Tribunal (before me) so that it could be considered whether or not the tribunal had erred in law and, if so, what should flow from that. Representation was as stated above and I am grateful to each representative.

7. Mr McVeety, for the Secretary of State, contended that the tribunal had indeed erred through effectively suggesting it was allowing the appeal on Article 15c grounds but then concluding that the claimant is a refugee. Mr McVeety said, in the circumstances, he would be content for me to set aside the tribunal's decision and substitute my own decision allowing the claimant's appeal on humanitarian protection grounds under Article 15c. Mr Jacobs, corrected what appeared to represent a misunderstanding on the part of the tribunal as to what it was he had actually argued before the tribunal. He had not put the case on the basis that Article 15c applied "so that refugee status is made out" (see paragraph 4 of the tribunal's written reasons). His argument had been to the effect that the claimant was at risk in his home area of Yemen for the reasons connected to his and his family's political affiliations and his status as an academic. So, absent an ability to take advantage of an internal flight alternative, he was a refugee. He had then argued the claimant could not do so because conditions throughout Yemen were such as to breach Article 15c. So, there was no available internal place of refuge.

8. Notwithstanding that clarification Mr Jacobs, having taken instructions, indicated that he was content for me to do as Mr McVeety had invited me to do. That is to say, he was content for me to set aside the tribunal's decision and to remake it by allowing the claimant's appeal on humanitarian protection grounds based upon Article 15c.

9. I have decided to set aside the tribunal's decision. In my judgment it may have contained a number of different legal errors. But only one is raised in the application for permission to appeal and I am content to set the decision aside on the basis of that ground alone. My having done that there is agreement between the parties to the effect that I should remake the decision and as to how I should do so. Mr McVeety does not seek to persuade me, with respect to remaking and of course his concession is limited only to this case, that there is not an Article 15c risk throughout Yemen.

10. In light of the above, but in a way which is not intended to be binding upon decision makers including First-tier Tribunals, I remake the decision on the basis that, if the claimant was returned to Yemen, he would face an Article 15c risk wherever, in that country, he was to attempt to live.

Decision

The decision of the tribunal which was sent to the parties on 28 March 2018 is set aside. That is because it contained errors of law.

The Upper Tribunal goes on to remake the decision: In doing so, the Upper Tribunal allows the claimant's appeal from the Secretary of State's decision of 22 October 2017 on humanitarian protection grounds.

Signed:

Date: 30 October 2018

Upper Tribunal Judge Hemingway

Anonymity

I have not directed anonymity in this case. The First-tier Tribunal did not do so and I was not invited to do so.

Signed:

Dated: 30 October 2018

TO THE RESPONDENT FEE AWARD

Since no fee has been paid and since no fee is payable, there can be no fee award.

Signed:

Date: 30 October 2018

Upper Tribunal Judge Hemingway