Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11346/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3 April 2019	**On 30 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JORDAN

Between

ALI ALZABIDI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms G. Brown, Counsel instructed by Lei Dat & Baig, Solicitors
For the Respondent: Mr T. Melvin, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant was born on 9 June 1990 in Saudi Arabia. His parents were nationals of Yemen, his father working in Saudi Arabia. The appellant, too, is a national of Yemen although he had only visited the country once, in 2008. He has spent all his life in Saudi Arabia save for various visits abroad. He is married to a national of Saudi Arabia and has worked there. It is accepted that the Secretary of State is, in principle, entitled to issue

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removal directions both to Saudi Arabia, the country from which he travelled to the United Kingdom and to Yemen, the country of his nationality.

2. By a decision made on 12 September 2018, the Secretary of State responded to the appellant's application for asylum based upon his twin claims to have a well-founded fear of persecution in Saudi Arabia as well as a generalised fear of return to Yemen.

3. It is as well to point out at this stage that the appellant is not entitled to refugee status if there is a single country to which he might lawfully be returned without fear of persecution or serious harm. Hence, in order to succeed, the appellant must establish a relevant risk in each of the two countries, Saudi Arabia and Yemen.

Saudi Arabia

4. The appellant had claimed that, in response to the humanitarian situation in Yemen caused by the internal conflict there, he had sent money to the country for the relief of suffering from his home in Saudi Arabia. He claimed that he had been arrested in February 2018 and accused of sending the money in support of the Houthi rebels. This had not been his intention and the accusation was false. The money had been collected by fellow Yemeni nationals living in his neighbourhood in Saudi Arabia. He claimed that he had been released after two days in detention on condition of daily reporting and that he inform upon others who were sending money to Yemen.

5. It is plainly plausible that a foreign national living and working abroad would wish to respond to a humanitarian crisis in his country of nationality by offering financial support to those collecting on behalf of his fellow nationals in need. The payment of money, in itself, would raise no inference that the money is destined for the benefit of a rebel militia or was otherwise a political gesture unrelated to the relief of suffering.

6. The Secretary of State rejected the appellant's claim that the Saudi authorities who were prosecuting a war against the rebels (or were supporting the Yemeni government to do so) would infer that payments made by the appellant were to fund the rebel cause. He did so relying on certain inconsistencies in the appellant's claim. In addition, the respondent noted the severe restrictions that existed on foreign travel by residents of Saudi Arabia and, in particular, a ban upon international travel directed at those subject to ongoing investigations or those believed to have broken the law. As the appellant had been able to leave Saudi Arabia using his own passport, this was inconsistent with

his claim to be subject to continued investigations and daily reporting.

7. There was a considerable degree of logic in the approach adopted by the Secretary of State. In his appeal to the Tribunal, the appellant maintained he was arrested for sending money to Yemen and could not therefore return to Saudi Arabia.

8. By a determination promulgated on 12 November 2018, First-tier Tribunal Judge Foudy dismissed the appellant's appeal. A reading of the determination reveals that the judge was focusing upon the appellant returning to Yemen. Thus, in paragraph 1 of the determination, the judge confined herself to his claim that he could not return to Yemen. Similarly, in paragraph 8, the judge refers to her having read country guidance in relation to Yemen. In her findings, however, whilst focusing upon Yemen, she made sustainable findings of fact in paragraph 17, 18, 19 and 20 about his claim that he was of any interest to the Saudi authorities as a result of his activities in Saudi Arabia and his inability to return there, having lost his employment in March 2018. The judge made reference to the Immigration and Refugee Board of Canada's information that non-Saudi husbands of Saudi women can apply for permanent residence in Saudi Arabia. She therefore rejected his claim that he had to leave Saudi Arabia once he had lost his job. In paragraphs 25-27 of her determination, the judge returns to the risk the appellant faces in Yemen concluding there was no reasonable likelihood of persecution or serious harm if returned to the Yemen.

9. No direct challenge is made to the fact that the judge did not expressly deal with his asylum claim as it related to a return to Saudi Arabia. It is not possible for me to determine whether this was the subject of any detailed argument by the appellant's solicitor at the hearing. It is clear that the focus was on a return to Yemen. Nevertheless, the judge's findings of fact in relation to the claim as to the events in Saudi Arabia are clear and sustainable.

10. In the grounds of appeal to the Upper Tribunal, the appellant's solicitors who acted for him at the hearing criticise the judge's comments that the appellant could have explained that his donations were to help the poor. The grounds go on to say:

> "However, the [judge] fails to have regard that there is a violent conflict in Yemen in which Saudi is involved. Whilst [the appellant] could have given an explanation there is no reason why the authorities would have believed him given the suspicion surrounding the conflict."

11. This misses the point of the judge's reasoning. It was for the appellant to establish by credible evidence that the appellant,

who was entirely innocent of any wrongdoing, would be misconstrued by the Saudi authorities as funding terrorism. Given the plausible and reasonable explanation (which must be common amongst all Yemeni nationals sending funds to the humanitarian crisis in Yemen) that he was seeking to help the victims of the conflict, there was nothing the appellant himself had done which might reasonably be construed as supporting the rebel cause.

12. This was supported by the finding of fact that he was released after two days and that his passport was not confiscated and he was allowed to leave the country without difficulty.

13. The grounds of appeal to the Upper Tribunal also challenge this finding saying that it was not clear what evidence the judge was referring to when finding that the Saudi authorities had a sophisticated entry and exit system with a high level of monitoring. This criticism is not arguable. The Saudi authorities operate a system of controlling exit (or monitoring it) by the grant (or refusal) of permission. The background information is mentioned in paragraphs 40 and 41 of the refusal decision. In particular, there is an extensive quotation from the United States Department of State Country Report on Human Rights Yemen 2017, section D, *Foreign Travel:*

> "There are severe restrictions on foreign travel, including for women and members of minority groups. No one may leave the country without an exit visa and a passport. The government continued to impose international travel bans for individuals deemed at risk of flight during ongoing legal proceedings and investigations, as well as for criminal sentences. The government reportedly confiscated passports on occasions for political reasons and revoked opportunity to contest the restriction. Most travel bans reportedly involved individuals in court cases relating to corruption, state security concerns, labour, financial, and real estate disputes."

14. This point is not specifically addressed by Ms Brown in her skeleton argument for the hearing before me. Although she repeats in paragraph 11 the ground of appeal that there was no evidence of a sophisticated entry and exit system on the part of the Saudi authorities, her submissions are directed towards the judge's failure to have regard to the appellant's evidence that he believes he was let through the airport because the authorities knew he had no status in Saudi Arabia and therefore would not be able to return. This submission is not supported by the evidence which makes it plain that a non-national married to a Saudi national is entitled to seek the right of residence in Saudi Arabia. Nor does it answer the fact that, if the appellant were

considered to be the subject of reporting conditions and was under suspicion of funding terrorism, the evidence pointed to the likelihood of the Saudi authorities confiscating his passport or using their exit procedures to prevent him from leaving.

15. Ms Brown's submissions further assert that the evidence of arbitrary arrest in Saudi Arabia negate the judge's finding that the appellant could return to Saudi Arabia as he was entitled to permanent residence there. I do not see the causal link between evidence of arbitrary arrest and the fact that the appellant married to a Saudi citizen was entitled as a matter of law to residence.

16. I am satisfied that it was open to the judge to conclude that the appellant's claim to be the object of suspicion on the part of the Saudi authorities was not credible. As a sustainable finding of fact which cannot now properly be challenged, this inevitably results in the conclusion that any claim for asylum based on events in Saudi Arabia cannot succeed.

17. For the reasons that I have stated, it is possible for the appellant to be returned to Saudi Arabia without violation of any of his rights. Consequently, whether or not he is at risk elsewhere is not strictly relevant provided, of course, the removal directions are directed towards Saudi Arabia. Nevertheless, for the sake of providing a comprehensive determination, I now turn to consideration of the risk of return to Yemen.

Yemen

18. In the refusal decision of 12 September 2018, the decision maker repeated the answers given by the appellant in his interview that he could not return to Yemen as a result of "war, the famine and poverty [and] one could lose his life once he is there". In responding to this claim, the Secretary of State expressly confined himself to the appellant returning to Aden and made extensive reference to the Country of Origin Information Service report on Yemen of June 2017. The following were quoted:

> "Since July 2015 the situation is somewhat improved in Aden and some other parts of southern Yemen. Levels of violence in Aden do not match those witnessed in other parts of the country. The security situation in Aden and some areas of southern Yemen do not represent a general risk under Article 15 (c).
>
> In some cases relocation to Aden and surrounding areas may be feasible. However the volatile security environment and frequent violence harsh humanitarian situation and lack of livelihood opportunities mean this will not be possible for many Yemeni citizens. Decision-makers must give careful

> consideration to the relevance and reasonableness of internal relocation on a case-by-case basis taking full account of individual circumstances of the particular person, including where they originate from in Yemen and where they will be returning to."

19. In further support of his conclusion, the decision-maker noted that the appellant was a young man with no medical conditions that would hinder his ability to return to Yemen. He was educated to University level. He could speak Arabic, an official language of Yemen. He also spoke some English. He had been working in Saudi Arabia. He could therefore use skills already acquired to gain employment.

20. The Secretary of State gave further consideration to the risk emanating from the Houthis and those in opposition to the Yemeni government. Given that the appellant is to return to Aden, I do not understand it to be argued that Yemeni citizens are generally at risk from the Houthi rebels in areas occupied and controlled by government forces, supported by the Saudi authorities. That said, in paragraph 54 of the decision, the Secretary of State noted that Aden still faced huge security challenges including a risk of targeted killings and the presence of militant groups such as Al Qaeda and Daesh. However, it remained under the control of the Saudi-backed government. The background information went on to record that one million of those who had been displaced by the conflict had returned to their areas of origin with nearly 70% of those returning to Aden and to other centres of population. On this basis, the decision-maker concluded that the security situation in Aden did not represent a general Article 15 (c) risk of serious harm.

21. The central feature of the appellant's grounds to the Upper Tribunal rests upon his claim that he would be regarded as a northerner on return to Yemen. The appellant, himself, was of course born and bred in Saudi Arabia. Nevertheless, the identity card found at page 29 of the appellant's bundle identifies him as originating from an area in the north. This, it is said, would expose his northern ethnicity and render it unsafe for him to return to Aden.

22. There is also a secondary point raised in paragraph 5 of the grounds that the judge failed to take into account the passage to which I have earlier referred which invites a case specific assessment including the individual circumstances of an appellant. Both the decision-maker and the First-tier Tribunal Judge paid close regard to the individual circumstances. This was, in both instances, a case specific assessment. The general challenge that it was not, is unfounded. Those circumstances would include the individual's place of origin. I reject the further

claim that the security challenges in Aden and the presence of militant groups there would present a risk to this appellant. There is no reason why he should be targeted (one of the circumstances which may place an individual at particular risk) and the general level of violence does not amount to placing him at risk of serious harm for the same reasons as advanced in the decision letter as supported by the background material

23. The crux of the appellant's challenge may properly be assessed by the consideration of two related questions: first, given that the appellant himself was born in Saudi Arabia and has spent his life there, does the evidence establish that he will be treated as a northerner because his parents originally came from the north and second, does the evidence establish that there is a process of discrimination affecting all those persons living in a Aden which distinguishes between northerners and southerners and that all those deemed to be northerners are at risk of serious harm?

24. There is no doubt that the Houthi rebels operate in the north of Yemen. That does not mean that all persons having a link with the north including a present or historic link are treated as being Houthi rebels or their supporters. The fact that the appellant himself was born in Saudi Arabia and has lived there ever since raises no inference that he will be treated as a Houthi rebel in Aden or, indeed, anywhere else.

25. The appellant does not claim to have any personal experience of attitudes in Yemen since he has never lived there and only visited once for a period of about a week in 2008. His father passed away in 2012 in Saudi Arabia. His mother and two siblings continue to live there. In his witness statement, the appellant merely records that he could not go back to Yemen because of the war; that it is impossible to live safely as a result of the war and that young males are being forced to fight. The specific claim of forced conscription is not advanced in the grounds or in submissions. No specific claim is made that the appellant would suffer discrimination and persecution as a northerner in Aden. Accordingly, in order to make good this claim, it would be necessary for the appellant to identify background material or expert evidence establishing those living in the government-controlled areas of Yemen including Aden are actively involved in distinguishing those around them who originate from the north and that, once an individual is stigmatised as a northerner, he is at risk of harm.

26. The material contained in the appellant's bundle served under cover of a letter dated 11 October 2018 does not make good that claim.

27. Page 34 of the bundle identifies the origins of the Civil War. President Hadi was faced with attacks by Al Qaeda, a separatist rising in the south, divided loyalties in the military, corruption, lack of food and unemployment. These difficulties prompted the rising of the Houthi movement, championing Yemen's minority Shia community. As paragraph 2 of his witness statement makes clear, the appellant is a Sunni Muslim.

28. Page 46, a report dated 25 March 2018 from Al Jazeera, headlines that hundreds of northerners were expelled from Aden as regional divisions between north and south worsened. Some business owners told Al Jazeera that they had been threatened unless they left southern Yemen. At page 47 of the bundle the *New Arab*, reporting on 8 May 2016, records that more than 800 northern Yemenis were deported from Aden. It is said that the authorities claim those deported did not hold adequate documents. The news came following cracks in Yemen's direct peace talks between the government and Houthi rebels forcing the United Nations envoy to revert to mediating between the warring factions in indirect talks. There were allegations by the government that the Houthis had gone back on their word about discussing substantive issues. Each side was accusing the other of not respecting the truce. It thus appears that the event took place within the wider context of frustration felt about the process of truce, negotiation and cross-allegations of misconduct.

29. At page 50 of the bundle, a report dated 13 May 2016 from *Asia News.it* reported that Yemen was moving towards partition and that thousands of northerners living in the south were being driven from their homes as part of a process of homogenisation along pre-1990 boundaries. This obviously refers to the same period of unrest mentioned in the preceding paragraph, now some 3 years ago. Similarly, page 55 is in an extract from Google referring to a website which recorded that on 9 May 2016 that Yemeni officials had claimed that possible southern separatist fighters in Aden were expelling and detaining hundreds of civilians from northern… [sentence complete]

30. Ms Brown relied upon the passage at page 51 that in March 2015 pro-Hadi armed groups, along with members of Al Qaeda and local armed militias, seized the Central Security headquarters in Aden, as well as properties and businesses owned by northerners. Northern-owned shops have been looted and northerners have been publicly hanged for allegedly belonging to or collaborating with Ansar Allah.

31. These were the passages to which I was specifically referred in the oral arguments. They span a period between 2015 and 2018. Whilst they clearly demonstrate that there is a process by which

some northern Yemenis have been the subject of discrimination and, indeed, forced removal, they fail to demonstrate that the incidents are widespread and continuous amounting to ethnic cleansing such as to put every northerner at real risk. There is little to identify the scale of discrimination. If there were a northern community in Aden of only 1,000 persons, then the forced removal of 800 of that community is clearly significant; much less so if the community is much larger. Then there is the context in which those removals took place; if they took place in the context of a general election where ethnicity featured heavily the risk may be of historic and not current interest. The event mentioned by Al Jazeera appears to have been directed to owners of businesses, perhaps because of a feeling that they operate a strangle-hold on commercial activity, perhaps envy, perhaps because they create unfair competition. It is speculative to say whether this impacts upon the ordinary Yemeni citizen from the north. Then there is the frequency of events; a pattern of repeated discrimination offers an insight into real risk whereas a single incident does not. Inevitably, events which took place many years ago offer little or limited evidence of current risk. On the basis of this very scant material, the appellant failed to establish he would be at risk on return.

32. In any event, the risk to northerners presupposes that the appellant will be deemed to be a northerner. This hinges upon the southern community knowing of, and being influenced by, the entry in the appellant's identity card. There is nothing else to establish this identity. He is a Sunni Muslim and there is no evidence he has an accent, facial features or other means of distinguishing him. The appellant's history will be self-evident, born and educated in Saudi Arabia. His conversation about his life in Saudi Arabia, his marriage, his qualifications, his work and his Sunni religion cannot reasonably be deemed to raise the inference of his associated with the north, far less with Houthi rebels.

Conclusion

33. Any critical evaluation of the appellant's claim must lead to the conclusion that he has failed to establish a risk on return to Saudi Arabia or to Yemen. The determination of the First-tier Tribunal does not reveal a material error of law.

ANDREW JORDAN
DEPUTY UPPER TRIBUNAL JUDGE
24 April 2019