Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05113/2014

THE IMMIGRATION ACTS

Heard at Columbus House, Newport	**Decision & Reasons Promulgated**
On 16 December 2014	**On 23 January 2015**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

M N
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr I Palmer, instructed by Duncan Lewis Solicitors
For the Respondent: Mr I Richards, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal is subject to an anonymity order made by the First-tier Tribunal pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited me to rescind the order and I continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

Introduction

2. The appellant is a citizen of Yemen who was born on 2 June 1963. He arrived in the United Kingdom on 14 June 2010 and claimed asylum. His

claim was refused on 16 August 2010 and his subsequent appeal dismissed by the First-tier Tribunal (Judge Page) on 22 October 2010. Further submissions were made on the appellant's behalf and on 23 May 2012 the Secretary of State decided that the further submissions did not amount to a fresh claim. The appellant challenged that decision by judicial review and, following the grant of permission at an oral hearing on 17 September 2013, the Secretary of State withdrew her decision of 23 May 2012 and reconsidered the appellant's further submissions. On 26 June 2014, the Secretary of State again refused the appellant's claim and on 8 July 2014 refused him leave to enter.

3. The appellant appealed that latter decision to the First-tier Tribunal. In a determination dated 30 August 2014, Judge C J Woolley dismissed the appellant's appeal on asylum, humanitarian protection and human rights grounds.

4. On 29 September 2014, the First-tier Tribunal (Judge Shimmin) granted the appellant permission to appeal to the Upper Tribunal. Thus, the appeal came before me.

The Appellant's Claim

5. The appellant's claim is set out in his screening interview dated 14 June 2010, in his asylum interview on 23 June 2010 and in his witness statement dated 22 August 2014 at pages 1-8 of the appellant's bundle before the First-tier Tribunal. His claim is helpfully summarised in paras 6-11 of Judge Woolley's determination.

6. The appellant claims to be a political activist in Yemen. He is from the south of Yemen and, as a result of the political domination of those from North Yemen, he has actively been involved in organisations and peaceful demonstrations, campaigning for the liberation of South Yemen. He claimed to have been involved in the independence movement since 2006 when he joined the Peaceful Committee and subsequently joined the Southern Movement Committee in 2008. He claims to have attended marches and demonstrations and to have been very active in two smaller organisations which were part of the Southern Movement.

7. The appellant claims that on 13 May 2009 he was involved in a demonstration outside the offices of the Al Ayyam newspaper. He claims that he was at the front of the demonstration waving a flag and that the demonstrators were attempting to be a "human shield" because the authorities were seeking to enter the offices and seize the editor and proprietor Mr Bashraheel. At this demonstration, the appellant claims that he was shot by a soldier and the bullet passed through his buttocks, emerging through his groin, damaging one of his testicles which was removed after he was taken to hospital by a friend, where he remained for twenty days.

8. His passage was later arranged out of Yemen via Saudi Arabia where he spent ten months and received treatment. He then came to the United Kingdom and claimed asylum.

9. In addition, in his witness statement the appellant claims to have been active in the Southern Movement since he has been in the UK including being involved in discussions with others of like mind concerning the independence of Southern Yemen and political posts are made on his Facebook page.

The Judge's Decision

10. The grounds of appeal relate exclusively to the judge's dismissal of the appellant's claim based upon his fear of the Yemen authorities as a result of his political activities concerned with the independence of South Yemen. It is not necessary, therefore, to set out the judge's decision in relation to Art 8 which is not challenged.

11. The judge's determination is a detailed one. Having set out the appellant's claim and the respondent's case and the oral submissions made at the hearing, Judge Woolley analysed the evidence and made findings of fact at paras 31-62 of his determination.

12. The judge assessed the appellant's credibility in the light of the earlier decision of Judge Page on the basis of the recent evidence submitted on the appellant's behalf which the judge itemised at para 37 of his determination. That evidence included emails from Peter Bouckaert who works for Human Rights Watch, who had interviewed the appellant and there was also an email from Christoph Wilcke, a Senior Researcher at Human Rights Watch (see respectively respondent's bundle D1-D4 and D4-D6). Also, there was an email from Mr Bashraheel Bashraheel, the editor of the Al Ayyam newspaper (at respondent's bundle D6-D7) and a further letter from him (at respondent's bundle D10. Further, there was an email from Mr Al-Sakaff at the SOHR (at respondent's bundle D7-D8) and an email from Mr Naqeeb, the information secretary of the Southern Democratic Assembly (respondent's bundle D8-D9). Finally, the appellant submitted an expert report from Mr Emile Joffe (at respondent's bundle E1-E32).

13. The judge analysed the evidence in stages. First, he did not accept the evidence of the appellant or of Mr Al-Sakaff that the appellant had been politically active or, as he claimed, had acted as an informant for SOHR prior to the demonstration on 13 May 2009. Secondly, the judge accepted that the appellant had been at the demonstration on 13 May 2009 outside the Al Ayyam newspaper. At para 47, the judge did not accept that the appellant had been shot as he claimed but that if he had: "it was by a stray bullet hitting him as a bystander rather than him being targeted."

14. At para 59 the judge summarised his view "on credibility" as follows:

> "I have considered the new evidence provided by the appellant since the first determination, and looked at all the evidence before me holistically in order to come to a decision on the appellant's credibility. On all the evidence I find that his account is not credible. I have not accepted his account of events in Yemen prior to his alleged shooting, and I have not accepted that he was anything other than a bystander if he was shot outside the newspaper offices, and that if he was shot it

> was by a stray bullet. I have not accepted his account of being involved in the Southern movement as he describes, or that he was ever of interest to the Yemeni authorities. I have found his account of his attempted detention during his hospital treatment to be not credible. I have not accepted that the documents he has produced (such as the warrant or the newspaper articles) can be relied on. The expert report is predicated on the fact that his account is true for him to be at risk. I find on a global assessment that his account cannot be accepted as credible."

15. Consequently, the Judge did not accept that the appellant would be at risk on return.

Discussion

16. In his oral submissions, Mr Palmer refined the eight grounds set out in the application for permission to appeal. To an extent, there is an overlap between some of the grounds. However, I will seek to deal with each of the grounds in turn.

Ground 1

17. Mr Palmer submitted that the judge had failed to take into account evidence that supported the appellant's claim to have been politically active and to have been actively involved in the demonstration outside the Al Ayyam newspaper on 13 May 2009 at which the appellant claims to have been shot. Mr Palmer relied upon the evidence of Peter Bouckaert and Christoph Wilcke that the appellant had been interviewed by HRW having been brought to them by local activists. Mr Palmer also relied upon the email from Mr Al-Sakaff which supported the appellant's involvement with SOHR and Mr Palmer submitted that the judge was wrong to find this evidence unreliable (at para 43 of the determination) on the basis that Mr Al-Sakaff had not explained how the appellant had been sending information to SOHR when Mr Al-Sakaff's evidence was that it was through forums and chat rooms. When I enquired of Mr Palmer whether it was now suggested that other material had not been considered by the judge, although not directly raised in the grounds, he relied, without any further exposition, on the evidence set out at pages 4-5 of the skeleton argument that had been relied on before Judge Woolley.

18. I do not accept Mr Palmer's submission that the judge failed to take into account the evidence relied upon.

19. First, he dealt with the evidence of Mr Bouckaert at para 45 of his determination as follows:

> "Some of the new evidence produced by the appellant relates to his role on the 13th May 2009. There is an email from a Mr Peter Bouckaert from Human Rights Watch who interviewed the appellant. He had been brought to Mr Bouckaert by local activists. He told him that he had been shot in the testicles 'when he was a bystander at the Al Ayyam office clashes'. This was according to his colleague Mr Wilcke in July 2009. Mr Bouckaert was asked what he meant by bystander and he replied 'I cannot confirm or deny that he was there expressly to show his support for the newspaper. I meant the word 'bystander' to mean that he did not appear to have been actively involved in the

> violence between the security forces and protestors when he was shot'. I find that this explanation is not at all helpful to the appellant. If he had been a leader or organiser there would have been no reason why he could not have said this to a neutral 3rd party such as Mr Bouckaert. Yet he told Mr Bouckaert that he was a 'bystander', not that he was standing in front of the demonstration, that he had been targeted by a solder, or that he was waving a flag."

20. The evidence of Mr Wilcke was in like terms.

21. Mr Palmer submitted that the judge had misunderstood Mr Bouckaert's evidence concerning whether the appellant was a "bystander". As is clear from para 45, the judge specifically considered Mr Bouckaert's evidence about what he meant when he said that the appellant was a "bystander". I see nothing inconsistent in the judge's view that the evidence of the appellant and Mr Bouckaert was, to some extent, at odds in that the appellant's account was that he was standing in the front of a demonstration, waving a flag and had been targeted by a soldier who had shot him. Mr Bouckaert on the other hand reported that the appellant had said he was a bystander which Mr Bouckaert explained meant that he was not involved in the violence.

22. In addition, Mr Palmer submitted that the judge had been wrong in failing to take into account that the appellant had been brought by local activists to HRW to be interviewed and this supported his claim to be a political activist. In fact, however, that is not precisely what Mr Wilcke said in a letter to the appellant's legal representatives which stated that he and Mr Bouckaert had:

> "interviewed around 80 people, who we knew beforehand or were suggested by local human rights activists as being politically engaged or <u>eye-witnesses to incidents of violence or other human rights abuses</u>." (my emphasis).

23. Whilst it was a <u>possible</u> inference that the appellant was brought to HRW because he was an activist, it was equally possible that he was brought because he had been at the demonstration and had been an eyewitness to violence. This evidence did not necessarily point in one particular direction only. It was not, in my judgment, irrational for the judge not to conclude on the basis of this evidence that the appellant was brought to HRW because he was a political activist.

24. In relation to the evidence of Mr Bashraheel Bashraheel, the judge dealt with this at para 46 of his determination as follows:

> "He has also produced evidence from Mr Bashraheel Bashraheel about the demonstrations. He does not say how he knows the appellant and as there was no prior connection between the appellant and Al Ayyam newspaper it is not made clear how he even became aware of the appellant. He states that the appellant attended the offices of Al Ayyam in demonstrations on the 2nd, 4th and 7th May 2009 before being shot on the 13th. This specificity is at odds with the appellant's evidence who only specifies being at the newspaper demonstrations on the 13th May, although he does mention that he was at previous demonstrations. In his asylum interview he says at Question 60 'it was

> 13th May 2009 when the building was attacked by the Yemeni army'. It is not explained how Mr Bashraheel would know of the precise dates when the appellant attended, as he appeared to have no prior connection with the appellant. This awareness on the part of Mr Bashraheel has not been explained by the appellant. I find that the evidence of Mr Bashraheel of the precise dates when the appellant attended (when these dates are not in fact given by the appellant himself) must undermine the credibility of the whole account. Mr Bashraheel also mentions that the appellant returned to the demonstration on May 19th 2009. This was denied by the appellant at the hearing and is at odds with his account of remaining in hospital for 20 days."

25. Clearly, in my judgment, the evidence of Mr Bashraheel did not fit with the appellant's own account that he had remained in hospital for twenty days after the demonstration when Mr Bashraheel said that the appellant returned to the demonstration on 19 May. I see nothing irrational or improper in the judge's assessment of Mr Bashraheel's evidence and his conclusion that it was not reliable.

26. The judge dealt with evidence from Mr Mohammed Bashraheel (the brother and executive manager of the Al Ayyam newspaper) at para 48:

> "The appellant says that he was taken by friends to a private hospital as if he had gone to a public one the authorities would have found him. Amongst the evidence which he has produced is a letter from Mohammed Bashraheel (which may in fact have been before IJ Page since he refers to a letter from this source). This give a different account 'Mr N was shot by the military and was later harassed by the authorities who did not attempt to treat him at local hospitals'. The appellant has never mentioned any later harassment by the authorities, and this letter suggests that the military was aware of him but did not take him for treatment themselves. I find this different account undermines the credibility of the appellant's account."

27. Again, the judge's reasoning was entirely open to him given the differences in the appellant's account and that of Mr Mohammed Bashraheel.

28. In relation to the evidence of Mr Al-Sakaff, the judge dealt with this at para 43 as follows:

> "Mr Nedal Al-Sakaff is one of the founders of SOHR. He says that the appellant was 'one of the very active sources of information for me at that time'. He declines however to give further information about how the appellant was sending his information to SOHR which undermines the value of his assertion. More importantly however the appellant himself has never said that he was an active source of information for SOHR, either before IJ Page or me. This would have been information available to him at the time of the first hearing and I note under **Devaseelan** that such facts must be treated 'with the greatest circumspection'. He could have mentioned this to his former solicitor but did not. He does not mention it in his asylum interviews. He says that he thought he had enough evidence and therefore now says (at paragraph 16 of his statement) that he thought he had sufficient evidence. I do not accept this explanation as it is the duty of every

> asylum seeker to give the fullest information about their circumstances to the decision taker. I do not accept that the appellant was ever an informant for SOHR."

29. Whilst Mr Al-Sakaff does refer in his email of 23 January 2012 to the appellant as sending information to SOHR and "this was mostly done through forums and chat rooms" the judge also (and correctly) noted that the appellant, contrary to what Mr Al-Sakaff said, had not given evidence before Judge Page or in the current appeal that he was an "active source" of information for SOHR and, in the light of that, the judge was entitled to consider that the evidence of Mr Al-Sakaff was unreliable for that reason alone.

30. In relation to the evidence of Mr Naqeeb, the judge dealt with this at para 55 of his determination as follows:

> "The appellant has not described any activities he may have undertaken in the UK on behalf of the Southern Movement. He has produced an email from a Mr Abdo Naqeeb who is Information Secretary for the Southern Democratic Assembly (TAJ) in the UK, and a letter dated 22nd March 2011 saying that the appellant had joined the Southern Democratic Assembly and had become an active member of TAJ as a continuation of his political beliefs. The appellant at the hearing however gave no evidence in respect of his membership of TAJ and did not put forward any sur place grounds on which he might be granted asylum. I find that the letter from Mr Abdo Naqeeb in isolation is insufficient evidence to show that the appellant has undertaken any political activities in the UK."

31. The judge, of course, deals with Mr Naqeeb's evidence in the context of the appellant's *sur place* activities. But, he does note that the letter refers to the appellant having joined the Southern Democratic Assembly as a "continuation of his political beliefs". Mr Palmer did not make any specific submissions in relation to this letter and it was not specifically relied upon in the grounds accompanying the application for permission to appeal. The judge was clearly aware of the letter, having referred to it in both paras 37 and 55 of his determination. The judge may well, therefore, have had the evidence generally in mind when considering the credibility of the appellant's account to have been actively involved in the independence movement whilst in Yemen. However, even if he did not, I am wholly unpersuaded that any failure to consider this letter is material to his adverse credibility finding and the detailed reasons he gave for rejecting the appellant's account.

32. In his general reliance upon the material at pages 4 to 5 of the original skeleton argument, Mr Palmer also implicitly relied upon the medical evidence concerning the injury to the appellant and the loss of a testicle which he claimed was as a result of a gunshot. The judge referred to the medical evidence at para 50 of his determination where he said:

> "I have noted in particular the statement of Mr Amar Ghattaura. From this I accept that the appellant has had his right testicle removed and has scarring to the right penile shaft. Mr Ghattaura found that he had suffered some trauma there, although he found it difficult to say

> whether this was from a gunshot wound or not. The findings made by IJ Page to the effect that there was no proper medical evidence to show that the appellant has received the injuries as claimed therefore cannot stand. There is evidence of this. However it only goes so far. It does not show that the injuries were by a bullet and there is no medical comment made as to the likely effect of being hit by a Kalashnikov bullet at 30 metres range. The new evidence does not disturb my finding that if the appellant was hit by a bullet it was as a bystander rather than being deliberately targeted."

33. The judge dealt with injury to the appellant at para 47 as follows:

> "The appellant says that he was at the demonstration when he saw a soldier take aim at him. He described to me that he had said 'Stop, Stop' and demonstrated how he had turned. The weapon (a Kalashnikov) was aimed at his head. The soldier was some distance away (he had said earlier about 30 metres away). As he turned he was hit by a single bullet which passed through his buttocks and emerged causing damage to his groin. IJ Page treats this evidence at paragraph 92 of his determination. In his evidence before IJ Page the appellant said he had two testicles and no injuries to his penis, and then remembered that he had an injury to his penis. IJ Page found that if he had been shot at a range of 30 metres by a Kalashnikov that he would have severe internal injuries. This was the ground on which the appellant sought to appeal the first determination. It was held by Upper Tribunal Judge Taylor that the immigration judge was entitled to use his common sense over his assessment of the effects of such a bullet wound. I do the same. I find that such a targeted shot would have caused injury internally and to the fleshy parts of his buttock, but no such injury is described in the medical reports. As with IJ Page, I find it is not credible that he could be taken to a private hospital sitting in a car. It was put to him at the hearing that a Kalashnikov is an automatic weapon capable of firing multiple rounds per minute, and further that if it had been aimed at his head it would at 30 metres have hit him in the head. The appellant had no real answer to these points. I find that he was not shot as he claimed, or that if he was shot it was by a stray bullet hitting him as a bystander rather than him being targeted."

34. Judge Page, in the earlier appeal, had rejected the appellant's claim that he had been shot in the buttocks as a result of being targeted. Judge Woolley clearly took into account the medical evidence and that the appellant had lost a testicle (which had been removed) as a result of trauma. The evidence was based upon the appellant's account that he had been shot and the report from the Al Wali Hospital that the appellant had suffered a gunshot wound through his right buttock and that had resulted in the injury he claimed. The evidence did not, however, explain how the appellant had come to be shot and whether it was as a result of active participation in the demonstration on 13 May 2009 as he claimed or otherwise. It was part of the overall evidence which the judge had to consider. Whilst it supported the appellant's claim to have been shot on that day and, perhaps, at the demonstration, it did no more than that and was not inconsistent with the judge's finding in paras 47 and 50 that if the

appellant was hit, he was hit "as a bystander rather than being deliberately targeted".

35. For these reasons, I reject ground 1.

Ground 2

36. As originally drafted, ground 2 argued that the judge had failed to resolve "material issues such as how the appellant was injured if not by way claimed". The ground continues that: "Given all the other evidence provided regarding political activities then when looked at 'in the round' along with the objective evidence, then we submit IJ erred in finding that 'stray bullet' and that not an act of persecution."

37. Mr Palmer in his oral submission did not place great weight upon ground 2 although he continued to submit that the judge should have made further findings. He submitted that the judge should have found that the appellant was politically active and that was why he was at the demonstration on 13 May 2009.

38. In my judgment, there is no merit in this ground. First, the judge did make appropriate findings, in particular at paras 47 and 50, that if the appellant was shot it was by way of a stray bullet rather than, as he claimed, being targeted by a soldier. The point in relation to the appellant's existing political activity was dealt with by the judge at paras 39-43. He did not accept on the basis of a number of significant discrepancies in the evidence that the new evidence formed any basis for departing from Judge Page's earlier finding that the appellant had not established any political activity. The judge's reasoning was as follows:

> "39. In his asylum interview the appellant was clear that he had joined the National Committee for Aden residents and the Peaceful Southern Movement Committee in 2006 when they were formed – the first in February 2006 and the second in July 2006. In his handwritten statement at the hearing before IJ Page he said he had made a mistake and this should have read 2008. IJ Page recorded that at the hearing before him he had said that he had started his important political activity in 2007. IJ Page considered this evidence and at paragraph 90 of his determination found the appellant not credible as to dates. The objective evidence showed (he found) that the organisation he claims to have joined in 2006 was not formed until 2007. He found that he had never been involved in it.
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> 40. The new evidence seeks to explain this discrepancy. Mr Joffe explains that the appellant joined the Peaceful Committee in February 2006 and the Southern Movement Committee in July 2008. He explains that the Southern movement was not an integrated single movement with a specific date of incorporation. The Southern movement groups together five different organisations of the same name. Mr Joffe's report is difficult to follow since further information about the Southern movement is buried in a mass of detail about events in Yemen over the last four decades. Rather unhelpfully he says at both paragraph 8 and paragraph 12 that the issue of the dates 'is discussed in detail

below' but he never appears to do so in respect of the appellant. At Paragraph 80 he however says that the Southern Democratic movement can be traced back to 2001. By 2010 it had hardened into a coherent movement against the North. The May 2009 demonstration was accompanied by a call from Mr Al-Bid for the independence of South Yemen (the appellant reports that he is the leader of the organisation although he calls him Mr Al-Beid).

41. In his statement the appellant says he did not join the national committee in 2006. He became involved in the Southern Security and Military Retired Personnel organisation in 2006. In 2007 he was attending marches organised by the Supreme Council of the Southern Movement. He became very active in two smaller organisations that were part of the Southern Movement: he was one of the founding members of the national establishment for the sons of Aden in January 2008, and also a founding member of the Establishment of Peaceful Movement in Aden. In his evidence however he appeared to say to Mr Johns than he had joined the Southern movement in 2006.

42. On all the evidence I find that the appellant ha still not satisfactorily explained the dates of his involvement or his role within the movements. In his asylum interview he specifies two organisations and says they were formed in February 2006 and July 2006. He says in his current statement however that the National organisation for Aden residents was not formed until 2008. In his handwritten statement before the first hearing he said he had made a mistake over the dates, and in his answers at the first hearing he said that he had become involved in 2007. IJ Page also drew attention to the variance in his evidence over his roles – from youth leader, to field leader to founding member. He had said before IJ Page that he was the youth team leader and then changed to saying he had been made the field youth leader on 10th January 2008. He repeated this variety of roles before me. While I accept that the political organisations in southern Yemen may be of a fluid nature this does not in itself explain the variances in the appellant's evidence between his asylum interview, his present statement, his past statement, and his evidence at the two appeal hearings. He appears to name a welter of organisations and then to explain his varying evidence by saying that one organisation was a sub-division of another. Nothing in his written evidence appears to point to 2007 as being a significant year for him in terms of the organisations (although I accept from the country evidence that 2007 was a watershed year in terms of the protests in Southern Yemen) and yet he was saying before IJ Page that he had become involved in the organisations in 2007."

39. That reasoning is, in my judgment, entirely adequate and persuasive. There were clear inconsistencies in the appellant's evidence and the judge was entitled, in the light of the earlier adverse finding, to conclude that the appellant had failed to establish his political involvement prior to the 13 May 2009 demonstration.

40. Given that finding, it was entirely open to the judge to find that, if the appellant had been shot at that demonstration, it was not as a result of being targeted but rather as a result of being hit by a stray bullet when he was, in effect, caught up in the events.

41. For these reasons, I reject Ground 2.

Ground 3

42. As originally drafted, ground 3 argued that the judge's findings were based upon "mere speculation" and as a result of procedural impropriety. In particular, the grounds challenge the judge's approach to the evidence in paras 43, 46, 55 and 56. Mr Palmer accepted that the substance of the ground did not, in large part, raise an issue of procedural impropriety. He nevertheless submitted that the judge's reasoning in the relevant paragraphs was unsustainable.

43. First, the challenge to the judge's reasoning in para 43 concerns the evidence of Mr Al-Sakaff which I dealt with above. Specifically, Mr Palmer relied on para 16 of the appellant's witness statement in which he sought to explain why his first legal representative had failed to provide relevant information. In particular, this must relate to the judge's observation in para 43 that the appellant had never said he was an active source of information for SOHR either before Judge Page (at the earlier hearing) or before the judge in this appeal. The latter is, of course, not explained by any conduct of the appellant's previous legal representatives in relation to the hearing before Judge Page. In any event, the appellant had an opportunity before Judge Page (as he did before Judge Woolley) to give his evidence on his prior involvement with SOHR. The fact remains that he never gave evidence of his being an active source of information for SOHR and the judge was fully entitled to take the absence of that evidence into account.

44. Secondly, Mr Palmer criticised the judge's reference to the fact that the appellant did not give evidence of his connection to Mr Bashraheel Bashraheel and how he became aware of the appellant. He relied upon the fact that the appellant in para 12 of his statement said that Mr Bashraheel knew of the appellant and his activities. In my judgment, this is a very minor point indeed in the context of the judge's reasoning in para 46 of his determination which I have set out above. The substance of that reasoning is that when Mr Bashraheel states that the appellant was involved in demonstrations prior to 13 May 2009, these were not dates given by the appellant himself. Further, Mr Bashraheel's evidence that the appellant attended the demonstration on 19 May 2009 was simply contradicted by the appellant's own evidence that following his injury on 13 May 2009 he remained in hospital for twenty days.

45. Thirdly, Mr Palmer challenged the judge's finding in para 55 in relation to the appellant's *sur place* activities as a member of TAJ in the UK. Mr Palmer submitted that the judge was wrong to say that the appellant had given no evidence at the hearing of his *sur place* activities. He had done so at para 23 of his written statement.

46. That is undoubtedly the case. Indeed, in his submissions Mr Richards accepted that there might be some valid criticism on this basis alone. However, Mr Richards submitted that the error was not material as it was not clear what evidence if any there was that the appellant's *sur place* activity would come to the attention of the Yemeni authorities and what the consequences would be.

47. Neither the grounds, nor Mr Palmer in his submissions, drew my attention to any material concerning the ability of the Yemeni authorities to identify the appellant as a political opponent as a result of anything done in the UK. That said, the letter from Mr Naqeeb does refer to the establishment of an organisation to observe activity which may harm unity in Yemen. It also refers to a file in relation to TAJ being handed to the Attorney General for prosecuting members affiliated to the organisation. In the light of the judge's adverse credibility finding that the appellant had no political involvement prior to coming to the UK, the judge was entitled to take that into account in assessing what weight, if any, to give to the letter from Mr Naqeeb in relation to the appellant's claim to be politically involved in the UK. The finding in relation to his current political activities must also be seen in relation to the judge's findings in relation to his flight from Yemen and his claim to be the subject of an arrest warrant in Yemen. The judge's findings in respect of these matters at paras 53 and 54 were not challenged before me. There, the judge said this:

> "53. The appellant was asked at the Asylum interview how it was that he was able to operate in Yemen without being arrested. If he was a leader (or indeed founder) of some groups aligned to the Southern movement I find that he would have been of interest to the authorities. His simple answer was that he ran away all the time. I find this not to be credible. It is also contrary to his account in his screening interview that he had been warned by the authorities many times. If he was leading demonstrations he would have been identifiable and would have been detained. The authorities evidently knew of his identity when they came looking for him at the Al Wali hospital and I have rejected as not credible his account of how they were forced to go away by the doctors. If they knew of his identity at the time they would have known of it before. The true reason he was not arrested I find is that he was of no interest to the authorities because he was not involved in political demonstrations.
>
> **F. Events in Yemen after the appellant's departure**
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> 54. At the hearing he produced new evidence in the form of what is described as an 'ordered warrant'. I found his answers at the hearing on this to be confusing and evasive. At first he said that he had received a text message from his cousin that the police were looking for him. He added that he had a police warrant in the evidence. When he was challenged about this he retracted his account of a text. He was asked why his cousin had sent it to him and he responded that his brother was too busy on the farm. His evidence was reduced to the fact that a warrant had been issued for him. I have noted this warrant in the bundle. The original is largely handwritten. The purpose of the warrant is

> expressed as 'respect to claim against you'. Although it is expressed as being issued under the Code of Criminal Procedure there is no reference to any offence which the appellant may have committed. It is evident that there must have been an earlier document since at its foot the warrant states that the appellant 'has failed to attend at designated time after being notified'. I note the comments of Mr Joffe about this but I have not accepted his account of events in Yemen and under **Tanveer Ahmed** I find that no reliance can be placed on this warrant as showing that the appellant is wanted by the authorities in Yemen. He was able to leave the country unmolested some 3 months after the alleged incident and I find it is not credible that he would have been wanted by the authorities some 18 months afterwards."

48. In my judgment, the judge was entitled to find that the appellant had failed to establish any *sur place* activities which would expose him to risk on return to Yemen.

49. Fourthly, Mr Palmer submitted that the judge had erred in law in discounting the evidence form the Aden Press at para 56 on the basis that it referred to the appellant as "A Al D" (anonymised for the purposes of this determination) rather than the name that he had claimed in the asylum proceedings. Mr Palmer submitted that the name used was his nickname which he referred to in his screening interview at question 1.3 (A3 of the respondent's bundle). Further he referred to the Southern Press Centre article (at page 22 of the appellant's bundle) which named four individuals injured at the demonstration on 13 May 2009, stating that: "A martyr and three injured have fallen". The appellant (via his nickname) is referred to one of "three injured".

50. Even accepting Mr Palmer's point that the reference is to the appellant by his nickname, the point is not material to the judge's overall detailed reasoning and the documents do not, in my judgment, contradict the judge's finding that if the appellant were shot it was because he was hit by a stray bullet.

51. For these reasons, I reject ground 3.

Ground 4

52. Mr Palmer submitted that the judge had failed properly to take into account the expert report of Mr Joffe. In particular, he relied upon paras 11-20 of the report. A number of these paragraphs challenge the reasoning of the Secretary of State which was not relied upon by the judge. For example, that the demonstration did not occur on 13 May 2009 and that Mr Mohammed Bashraheel was in fact detained at the time that he wrote a supporting letter (see paras 12-14). Other paragraphs relate to the availability of treatment for the appellant at the Al Wali Clinic for his injuries or for diabetes (from which he also suffers) in Yemen (see paras 18-20). These are not relevant to the grounds of challenge currently relied upon.

53. Mr Joffe's report also deals with the claimed arrest warrant relied upon by the appellant but found to be unreliable by the judge at para 54 of his

determination (set out above) and the differing (and for the judge inconsistent) dates upon which the appellant claimed to be involved with political organisations in Yemen.

54. In fact, the judge referred extensively to Mr Joffe's report in relation to the appellant's claimed involvement with organisations in Yemen prior to 2009 at para 40 of his determination (set out above). Further, he dealt with Mr Joffe's report in general at para 58 in the following terms:

> "The expert report of Mr Joffe has been discussed above. It deserves however a section of its own, not least because of the criticisms in the skeleton argument that neither the respondent nor indeed IJ Page dealt with the background evidence of the situation in Yemen. I have referred above to the somewhat unsatisfactory way in which Mr Joffe's report deals with this particular appellant. The bulk of his report is concerned with the history of Yemen in the last four decades, rather than with the appellant. The appellant is considered at paragraphs 7 to 20, and then again at 97 to 99, but the intervening paragraphs contain general information about the country. Paragraphs 7 to 10 summarise his claim and derive wholly from his account without critical comment. Paragraphs 11 to 20 summarise and criticise the respondent's decision on such matters as the warrant. I have considered these in relation to the specific pieces of evidence produced. Only at Paragraphs 97 to 99 does he discuss the implications for the appellant. He finds it plausible that the appellant was hit by a bullet and that he was involved with the Southern movement. He says that if his claim is accepted then he will face arrest in Yemen. He finds that relocation would be difficult. I find that the report of Mr Joffe is of value in providing evidence about the country conditions in March 2012 when it was written (and I discuss this under Humanitarian protection below) but I note that there has been a regime change since then and so many of his comments about Yemen are now out of date. At the most his report says about the appellant is that if he is found to be credible then he will be at risk."

55. From these passages, it is clear that the judge took into account Mr Joffe's evidence concerning the appellant's evidence of his involvement with organisations prior to 2009 in Yemen. At paras 40-42 (above) gave cogent reasons for finding that the appellant's evidence was unreliable given the differences in his evidence which could not simply be explained on the basis that, as Mr Joffe says in para 16 of his report, the appellant's claim was that he joined a "Committee of the Southern Movement in July 2006" even though Mr Joffe does not dispute that the Southern Movement itself was only created in 2007.

56. To the extent that Mr Palmer submitted that the judge had failed to take into account the background evidence in Yemen set out in Mr Joffe's report, I fail to see how that ground can be made out. It is wholly unclear to me how the judge's assessment of the appellant's particular circumstances and his reasoning in relation to the credibility of the appellant's personal account could have been affected by any of the background material set out in Mr Joffe's report. The judge did not, after all, question the political context in Yemen which the appellant claimed to be a part of nor, unlike the Secretary of State, did he doubt that the events concerning the Al Ayyam newspaper demonstrations occurred. The judge

was undoubtedly aware of the political situation in the Yemen. Indeed, he refers to the "latest country evidence" at para 64, albeit in the context of the appellant's claim for humanitarian protection. He also specifically states that he has considered Mr Joffe's report and indeed the evidence from SOHR in that regard.

57. In reality, Mr Joffe's report, as Mr Richards pointed out in his submissions, boils down to his conclusion in para 98 that if the appellant's claim is plausible then he is likely to face arrest upon return to Yemen. On the judge's findings, the appellant's claim was not made out on the evidence so as to create the risk recognised by Mr Joffe in his report.

58. For these reasons, I reject ground 4.

Ground 5

59. Mr Palmer did not seek to place any reliance upon ground 5 set out in the grounds of the application which, in substance, asserted that the Tribunal had imposed a "very high burden" on the appellant and that in the light of the evidence his claim was made out. Mr Palmer was correct, in my judgment, not to place any reliance upon this ground which in substance adds nothing to the multiplicity of challenges made to the judge's credibility findings.

Ground 6

60. Mr Palmer submitted that the judge had failed to deal with the risk to the appellant as a "low level supporter" of the independence movement. The difficulty with this submission is, as Mr Palmer himself acknowledged in his submissions, that if the appellant cannot establish that he was politically involved as he claims and that he was only injured at the demonstration because he was caught up in the cross-fire, then he could have no claim on this basis.

61. In my judgment, that candid acknowledgment of the appellant's case is entirely correct. Unless the judge's adverse credibility finding cannot stand, the appellant has failed to establish that he was a supporter or was politically involved at all in Yemen. Consequently, given the judge's adverse credibility finding, the appellant could not succeed (even if the background evidence supported such a claim) on the basis that he was a "low level supporter" of the independence movement.

62. For these reasons I reject ground 6.

Ground 7

63. Mr Palmer submitted that the judge had rejected the evidence from the "Aden Press" by imposing too great an obligation for such evidence to be reliable, namely that it provide some evidence of editorial control or verification of the truth of its articles. Mr Palmer submitted that a similar view would not be taken of a UK newspaper.

64. In considering this submission, it is important to set out the judge's reasoning in para 56 which was as follows:

> "The appellant has produced further documentary evidence in respect of his appeal, some of which indeed had been before IJ Page. When challenged to point to a document that referred to him the appellant pointed to the document at page 19 of the bundle. This is a document from Aden Press which the appellant explains is published in the UK but not in Yemen. There is no indication who the Aden Press is or how they source their material. On reading the article I find it is self-serving and bears all the hallmarks of having been self-produced and submitted to the Aden Press for the purpose of supporting an asylum claim. It is clear on reading it that some of the information could only have come from the appellant (e.g. that he has expressed his appreciation of the British authorities on his good treatment at the airport and his residence in Cardiff). There is no statement from the Aden Press as to how they produce their articles and in the absence of any evidence of editorial control or verification of the truth of any articles I find this to be not reliable under the doctrine of **Tanveer Ahmed**. ....."

65. In truth, the substance of the judge's reasoning was that the report should be given little weight as its contents did not appear to have come from an independent source, but rather from the appellant himself. The example given is that the appellant has expressed his appreciation of the British authorities on his good treatment; something which only the appellant himself could have told the newspaper. That was, in itself, in my judgment, sufficient for the judge to place little weight on what was said in a newspaper report. In terms of support, it provided no independent verification of events beyond those which the judge was entitled to find had come from the appellant himself.

66. For these reasons, I reject ground 7.

Ground 8

67. Mr Palmer submitted that the judge had made a factual error in para 18 where he had stated that the appellant had "escaped" following being shot at the demonstration on 13 May 2009. Mr Palmer submitted that the appellant's evidence was that he had turned away from the soldier who had shot him from behind but he had not escaped but had been taken to hospital. In my judgment, there is no substance in this ground. The judge's reference to the appellant having "escaped" in the general recitation of the evidence at para 18 had no effect on his adverse credibility findings. As the judge made clear in para 47, he was clearly aware that the appellant's account was that he was shot in the buttocks and that he was taken to a "private hospital sitting in a car".

68. In addition, Mr Palmer criticised the judge at para 57 of his determination where he considered the evidence produced from the SOHR and the evidence of people killed and injured in Yemen. As I understood Mr Palmer's submission it was that this was unnecessary and demonstrated the judge's general approach and should be taken into account in considering the other grounds of appeal.

69. Mr Palmer did not seek to rely on the factual errors said to exist in the judge's determination and set out additionally in ground 8, for example, that the judge had made an error in failing to record that two fresh claims

had been made in the immigration history or that the appellant had been working in Saudi Arabia.

70. The grounds rely upon the Court of Appeal's decision in ML (Nigeria) v SSHD [2013] EWCA Civ 844 that a series of factual errors can constitute an error of law. Whilst that is undoubtedly true in principle, the suggested factual errors in ground 8 are far removed from the significance and number of factual errors that led the Court of Appeal in ML to conclude that the appellant in that case had not received a fair hearing.

71. I have considerable difficulty in identifying any error in para 57 of the judge's determination when considering the evidence from SOHR in any event. Leaving aside the "non-error" in referring to the appellant as having "escaped", the remaining matters identified as errors in ground 8 have no material bearing on the judge's finding or could conceivably lead to a conclusion that the appellant's appeal had not been fairly conducted and the judge had not given careful consideration to his claim.

72. The judge's determination is a detailed and substantially well-reasoned one considering which deals with the bulk of the evidence relied upon by the appellant. This was, after all, a second appeal; the appellant having already failed in his appeal in 2010. The focus of the judge was, therefore, unsurprisingly upon the new evidence relied upon. In my judgment, with one or two immaterial exceptions, the judge properly and fully dealt with this evidence. He gave full and cogent reasons for rejecting the appellant's account and, therefore, for his ultimate finding that the appellant had failed to establish that he would be at risk on return to Yemen.

73. For these reasons, I reject ground 8 also.

Decision

74. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal did not involve the making of a material error of law. That decision stands.

75. Accordingly, the appellant's appeal to the Upper Tribunal is dismissed.

Signed

A Grubb
Judge of the Upper Tribunal

16 December 2014