



IAC-AH-CT-V1

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

Appeal Number: PA/09719/2017

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice Centre
on 12th July 2018, typed, corrected signed
and sent to Promulgation on
6th August 2018.**

**Decision & Reasons Promulgated
On 14 August 2018**

Before

Upper Tribunal Judge Chalkley

Between

**MR ABDUL QADIR YEHYA MOHAMED
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Chaudhry of Counsel, instructed by Equity Law Chambers Solicitors
For the Respondent: Mr Bates

DECISION AND REASONS

1. The appellant was born on 10th May, 1985 and claims that he was born in Somalia, but that he is from Yemen.
2. The respondent issued a Notice of Refusal of leave to enter addressed to the appellant following refusal of his claim to asylum. The appellant appealed that decision and his

appeal was heard by First-tier Tribunal Judge Herwald in Manchester on 31st October 2017.

3. In paragraph 9 of the judge's determination, he summarises the appellant's claim, drawing on what was set out during the appellant's asylum interview, in a written statement signed by him and his oral evidence before the judge:-
- “(a) In his witness statement before the court the appellant said that his father was a Yemenite national and he had last seen him in the 1990s when they were separated in Somalia. His mother was Somali. He was separated from his mother in the 1990s.
 - (b) He married a woman called Amal, a Yemenite. They married in August 2007 and have two children, all are Yemenite nationals and he last saw them in Yemen.
 - (c) She divorced him, and he has a second wife called Sara, married in April 2014, and they have one child and he last saw them in Yemen.
 - (d) He said he was born in Somalia and lived there with his parents and family and lived there until 1990 when the family fled. He and his aunt went to Yemen. She was Yemenite.
 - (e) He stayed in one town until 1994 then moved to Sana'a. He was then 9 years of age. His schooling ended and he found odd jobs and eventually became a bus driver but 'would constantly receive racial abuse when it was known I was born in Somalia'.
 - (f) He lived with his first wife, with his aunt, and life was good but eventually his first wife was persuaded to leave him in early 2012 'because I was not a proper man and unable to provide for them... also because of the violent situation in Sana'a as there were lots of demonstrations... I was left with our children and my aunt.'
 - (g) Thus he remarried in April 2014.
 - (h) The Houthi rebels attacked Sana'a and 'they always wanted money and would intimidate you to ensure you pay bribes... I cannot count how many times I was stopped by them... while I was working I was injured in cross-fire and hospitalised for a day...'
 - (i) The Houthi rebels took control then everyone started to leave the capital and so the appellant went to live in a town called Taiz which then became even worse than Sana'a. There was no electricity or running water and then one day he came back from the mosque to find his own home had been destroyed by a bomb. His aunt was injured and his wife and children were no longer there. His aunt died from her injuries and 'I had to find a way out of Yemen. I had the assistance of the resistance and an agent'.
 - (j) He left Yemen on 5th April, 2017 by air. He flew to Djibouti.
 - (k) He could not return to Yemen because it was not safe. He had lived there since he was 7. He insisted that he was born in Somalia but had no birth certificate or documents to show this.
 - (l) Mr Ahmad, representing the appellant, told me that the argument in favour of persecution was that the appellant would be recruited by Houthi rebels and this would amount to persecution. He also faced, to a lesser degree, he said, discrimination as someone born in Somalia.

(m) Mr Ahmad said there was no discrete human rights claim here, either outwith or within the Immigration Rules.

(n) Mr Ahmad also said that the claim invoked humanitarian protection.”

4. After hearing the evidence and considering the background evidence including the UK Home Office Country Policy and Information Note dated June 2017, from which he extensively quoted, the judge made his findings. He found that the appellant was a Yemenite citizen. The judge did not believe that the appellant’s claim to have been born in Somalia was an element of his case that went to the core of the appeal, but even if he had been born in Somalia there was no cogent evidence put before the judge to support the allegation that being born in Somalia would lead to discrimination or treatment amounting to persecution. Originally he had suggested that he faced the possibility simply of being kidnapped for having been born in Somalia, but he conceded that everyone was in the same position and faced the possibility of kidnap. He also conceded that while the appellant had been stopped and detained up to 25 times by Houthi rebels, he was no different to any other bus driver and it was a regular occurrence for them all, no matter where they were born.
5. The appellant said at interview that his tribe, as well as his wife’s tribe, are from Taiz, this is midlands, a very weak area, whereas if they had come from the north they are from a strong part of Yemen. He confirmed that no-one had tried to recruit him either from the Houthis or from the Saleh’s Army. The appellant said that he fled during the night from his home to Taiz and when he returned one day later he found his house had been bombed and his aunt subsequently died. The judge saw no reason to doubt the appellant’s assertion that his own home had been under attack and he accepted that the appellant had lost touch with his immediate family.
6. The appellant claimed that his aunt had died, but before dying she gave him jewellery and savings which he paid to a people smuggler. The judge did not accept this.
7. The judge did not believe that the appellant faced discrimination in Yemen as someone who had been born in Somalia. He was persuaded that the appellant was married in Somalia and had acquired a tribal allegiance in Yemen which would be of assistance to him on his return. The judge was persuaded that there had been an attack on the appellant’s home and noted that the appellant had said that he is from the south of Yemen. The judge was not persuaded, however, that there was any threat to kidnap or recruit the appellant. When considering whether or not it was possible for the appellant to return and to relocate, the judge reminded himself of what was said in relation to internal relocation to Aden, in the country information background material and concluded that there was no reason why the appellant should not relocate. The judge said,

“it is clear that the situation in Yemen is harsh, but I accept the assertion within the appellant’s own bundle to the effect that the humanitarian situation in Aden and other areas of south Yemen does not in general breach Article 15(c) of the Qualification Directive. Fighting continues throughout most of the country but the front lines have been relatively fixed and no argument was

put before me by the appellant's representative to suggest that if returned to Yemen, the appellant could not make his way to a relatively safe area in the south, with which he has connections".

The judge dismissed the appellant's asylum appeal, dismissed his claim for humanitarian protection and dismissed his appeal under Articles 2, 3 and 8 of the 1950 Convention.

8. Grounds were submitted which quoted from part of the Home Office Country Information and Policy Unit guidance which had been set out in the judge's determination and suggested that the appellant was not able to relocate to another part of Yemen, because of the risky and volatile situation in the country. It claimed that the objective evidence showed continued armed conflict in Yemen which would restrict the appellant's movement to Aden. This together with the fact that the appellant is not from the south of Yemen and has no connections, would render relocation to Aden not feasible.
9. In addressing me, Counsel relied on the grounds and suggested that the judge had misunderstood that the appellant originates from the north of the country. The judge appears to believe that the appellant originates from the south of the Yemen, she said. I explained that that was possibly because the appellant's evidence to the judge had been told by the appellant himself that he was from the south of Yemen. The judge records this at paragraph 13(l), and at paragraph 13(n) records again that he said that he was from the south of Yemen. Ms Choudhury pointed out that the appellant had claimed that his home area was Taiz which he said was in the midlands, it is not in the south of Yemen.
10. For the respondent Mr Bates, reminded me that the appellant claimed to have been born in Yemen and that at some stage moved to Taiz. During cross-examination by Mr Bates's colleague, the Presenting Officer before the First-tier Tribunal, the appellant confirmed that Taiz is in the south. Mr Bates said that the judge was entitled to take the evidence at face value and asked me to note that in any event the judge pointed out in paragraph 13(o) that he does have access to the tribe of his aunt in the south as well as to the tribe of his present wife. He submitted that there was no material error of law. Ms Choudhury, responding, said that during his interview he made it clear that his tribe as well as his wife's tribe are from Taiz and that this is in the midlands. She asked me to allow the appeal.
11. This very experienced judge was required to consider whether it would be unduly harsh for the appellant to relocate to a safe part of Yemen, since he could not return to his home area where fighting was taking place. The judge considered the evidence before him, including the Home Office background country information for 2017, and section 2.4 of it which dealt with relocation. He was aware that in some cases it might be feasible to relocate to Aden, but as the country background paper pointed out the volatile security environment and frequent violent/humanitarian situation and lack of livelihood opportunities, mean this may not be possible for many Yemeni citizens. The judge had recorded the appellant's own evidence given during the hearing that he was

from the south. Apparently he also claimed, I am told, that Taiz was in the south during cross-examination, although the judge recorded his evidence that it was in the midlands. Nonetheless the appellant claimed he was from the south of the country and had acquired tribal allegiance. The judge was entitled to believe that in the circumstances it would not be unreasonable to expect the appellant to relocate to Aden where he has access to both the tribe of his aunt and the tribe of his present wife. No argument was put before the judge to suggest that if returned the appellant could not make his way to the relatively safe area of the south where he had connections.

10. I have concluded therefore that the making of the decision by First-tier Tribunal Herwald did not involve the making of an error on a point of law. I uphold his decision. The appellant's appeals are dismissed.

Notice of Decision

The appellant's appeal is dismissed.

No anonymity direction is made.

Richard Chalkley
Upper Tribunal Judge Chalkley

6th August 2018

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Richard Chalkley
Upper Tribunal Judge Chalkley

6th August 2018