



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/06860/2018

**THE IMMIGRATION ACTS**

Heard at Manchester  
On 18th February 2019

Decision & Reasons Promulgated  
On 22th February 2019

**Before**

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

**Between**

SECRETARY OF STATE FOR THE HOME DEPARTMENT

**Appellant**

And

MR A M A H  
(ANONYMITY DIRECTION MADE)

**Respondent**

**Representation:**

For the appellant:

Mr Bates, Senior Presenting Officer.

For the respondent:

Miss Patel, Counsel, instructed by Greater Manchester  
Immigration Aid.

**DECISION**

**Introduction**

1. Although it is the Secretary of State who is appealing in these proceedings, for convenience I will refer hereinafter to the parties as in the First-tier Tribunal.

2. The appellant is a national of Yemen, born in October 1972. He made a claim for protection in June 2008 which was unsuccessful. His appeal was dismissed. That appeal was heard before Immigration Judge Lyons on 14 August 2008. The decision recorded that the appellant said he left Yemen in June 2002 in order to study in Cuba. He arrived at Gatwick in June 2008 on a transit visa and decided to remain. He made a claim for protection several days later. He said he had been an officer in the Yemeni army and had been sponsored to study in Cuba. He obtained two degrees. He returned to Yemen in 2007 to visit family. At that time there were demonstrations taking place in respect of the political situation and he decided to attend. He was subsequently detained. His family were able to obtain his release primary. He then returned to Cuba to continue his studies. He claimed he was due to return when his brother advised him that arrest warrants had been issued.
3. Immigration Judge Lyons did not accept the account. The objective evidence did not confirm the large demonstration the appellant described. The judge found his being released highly improbable, as was his ability to leave Yemen on his own documentation; to resume his studies and to continue to receive payment as soldier. The judge also found his failure to claim immediately called into question his credibility.
4. He subsequently made various further submissions which were unsuccessful. The last of these formed the subject matter of the proceedings before First-tier Tribunal Judge AJ Parker. In the interval the appellant had married a British national and they had a child. Furthermore, there had been an escalation of events in Yemen with the respondent's country policy note of June 2017 referring to a state of armed conflict in parts of the country. The appellant's home area was affected and the further submission was to the effect it would be unreasonable to expect him to relocate elsewhere.
5. The refusal letter accepted that the appellant was entitled to leave to remain on the basis of his family life. In respect of his claim for protection the letter referred to the earlier refusals and the rejection of his claim of political activity both in Yemen and in the United Kingdom. Reference was made to the Devaseelan principle. The respondent also referred to its country policy note which not find a 15 C risk. There was reference to country conditions including a cholera outbreak.

### The First tier Tribunal

6. The appeal was listed before First-tier Tribunal Judge AJ Parker at Manchester on 12 October 2018. There is a fax on file from a Mr Goy, an executive officer with the Home Office, to the tribunal in Manchester dated 12 October 2018. It states that the presenting officer had called in sick 10 minutes earlier and there was no replacement available. Consequently, an adjournment application was requested for two protection appeals including the present.

7. In the decision, the judge at paragraph 10 referred to the absence of the presenting officer and was aware that one had been arranged but they had suddenly become unwell. The judge then referred to the 2014 Procedural Rules as well as the decision of Nwiange (adjournment fairness) [2014] UKIAT 000412. Miss Patel who then appeared for the appellant, as she does now, objected to the proceedings being adjourned. She referred to the fact the appeal had been adjourned in July and that further delay would incur expense and would be injurious to the appellant's mental health. The judge decided not to adjourn and took the view that the appeal did not turn upon the appellant's credibility but upon the current situation in Yemen.
8. The judge referred to the earlier rejection of his claimed political activities. The judge records Ms Patel as stating that the appellant was not relying on this but on who he was and where he was from. At paragraph 25 the judge referred to the respondent's guidance that there was no 15 C risk but stated that the country's President had left.
9. At paragraph 28 the judge concluded that the appellant would be at risk in his home area because of an imputed political opinion as he was not aligned with either of the fighting factions. At paragraph 45 the judge referred to the appellant having a profile which would place him at risk. The judge concluded that relocation would be unduly harsh and travel into and around the country was difficult. Then, at paragraph 47, the judge found he was entitled to humanitarian protection under article 15 C and that he would be particularly affected because of his profile. However in the decision notice the judge did not allow the appeal under the Qualification Directive but did under the Refugee Convention.

### The Upper Tribunal

10. Permission to appeal was granted on the basis it was arguable the judge erred in not adjourning the appeal in circumstance. The Secretary of State raised other grounds including a failure to give reasons.
11. At hearing, Mr Bates pointed out that the adjournment issue had not been raised in the grounds. He sought to explain this by saying that the drafter would not have had the file. However, he suggested this was a Robinson obvious point. He pointed out that the judge was aware the Secretary of State had intended to be represented but for the presenting officer falling ill. He explained that the First-tier Tribunal hearing centre in Manchester is busy, with perhaps 7 courts operating. Whilst ideally they should be 100% representation, because of the lack of manpower this was not possible. They targeted key cases, one of which was the present. He submitted that this type of case was not one where a presenting officer, even if one were available, could rapidly assimilate but would need time to prepare. It was impractical to call upon presenting officers from other centres at short notice simply because of the logistics.

12. He referred to statements in the decision which lacked logic. For instance, the reference at paragraph 25 to the country's President leaving as supporting a 15 C risk. The judge had indicated that the appeal did not turn upon the appellant's credibility but upon the country situation. However, there was no extant country guidance case. Furthermore, the decision required consideration of the appellant's credibility as the appeal outcome is based upon a political opinion being imputed to him. I was referred to paragraph 45 with the judge describing the appellant as having told a consistent account supported by objective evidence but had provided no reasoning. This applied in respect of paragraph 24 and 25.
13. Ms Patel relied upon her rule 24 response. She submitted that the judge had been even handed in that he had considered the question of internal relocation even though not been raised in the refusal letter.

### Conclusions

14. The judge materially erred in the circumstance in not adjourning. Whilst judges aim to work efficiently and advanced cases this must not be at the expense of fairness. The decision of the judge indicates an over reliance upon the rules rather than the notion of fairness set out in Nwiange (adjournment fairness) [2014] UKIAT 000412. The question is whether the refusal deprived the affected party of his right to a fair hearing. Where an adjournment refusal is challenged on fairness grounds the question for the Upper Tribunal is not whether the FtT acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the affected party's right to a fair hearing? In my view that clearly was. This ground alone justifies a finding of a material error of law.
15. The judge refers to a need to be fair to both parties. However, I find the comments at paragraph 14 questionable. The judge suggests that if roles were reversed and Counsel for the appellant became suddenly ill the presenting officer would ask that the case proceed, suggesting another Counsel could take over. This seems highly improbable where the unavailability is at the last minute and the case is not straightforward.
16. I appreciate that in some cases the Secretary of State decides not to arrange representation. However, in the present instance it was clear the intention was to arrange representation. As Mr Bates indicated, with manpower restrictions the Secretary of State is selective in the cases where representation will be arranged. Given that this was a protection claim and there had been an earlier appeal then this is understandable.
17. The decision itself is not adequately reason. The fact the President of the country has fled does not mean that the citizens therefore would succeed in a claim for protection or the existence of a 15 C risk. There was a material before the judge about the ongoing conflict but the judge did not give

reasons for concluding the 15 C risk existed when the respondent's guidance was to the contrary. The judge also does not set out how the appellant would have a particular profile and how this would place him at risk. The decision is also contradictory with the judge in the body of the decision referring to a 15 C risk and yet not allowing the appeal under the Qualification Directive. I find these deficiencies also amount to a material error of law.

### Decision

The decision of First-tier Tribunal Judge AJ Parker materially errs in law and is set aside. The matter is remitted for a de novo rehearing in the First-tier Tribunal before a different judge.

Francis J Farrelly  
Deputy Upper Tribunal Judge.

Date: 19 February 2019

### Directions.

1. Relist for a de novo hearing in the First-tier Tribunal in Manchester excluding First-tier Tribunal Judge AJ Parker.
2. A Middle Eastern Arabic interpreter will be required.
3. A hearing time of around 2 ½ hours can be anticipated.
4. A presenting officer should attend.

Francis J Farrelly  
Deputy Upper Tribunal Judge.