



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

Appeal Number: PA/06133/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17 January 2022**

**Decision & Reasons Promulgated  
On 09 March 2022**

**Before**

**UPPER TRIBUNAL JUDGE McWILLIAM**

**Between**

**M M H  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Ul-Haq, Counsel, instructed by J M Wilson Solicitors  
For the Respondent: Mr D Clarke, Home Office Presenting Officer

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure  
(Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

**DECISION AND REASONS**

1. The Appellant is a citizen of Yemen. His date of birth is 2 June 1978. I anonymise the Appellant. Having had regard to the Upper Tribunal

Immigration and Asylum Chamber Guidance Not 2022 No 2: Anonymity Orders and Hearings in Private, specifically [28], I conclude that confidentiality is required.

2. The Appellant is a citizen of Yemen. His date of birth is 2 June 1978. The Appellant is a foreign criminal.<sup>1</sup> He has a number of previous convictions between 2001 and 2007. On 16 December 2006 he was convicted of kidnapping. He received an indeterminate prison sentence with a minimum of 30 months in custody to be served before considered for release. On 18 May 2007 he was convicted of robbery, assault occasioning bodily harm and criminal damage. He was sentenced to six months' imprisonment.
3. A deportation order was made by the Secretary of State on 9 February 2015 pursuant to s.5 of the Immigration Act 1971. The law states that the deportation of a foreign criminal is conducive to the public good<sup>2</sup> and the Respondent must make a deportation order, save in certain exceptions, including where the decision breaches the Refugee Convention or the Appellant's rights Article 8.<sup>3</sup>
4. The Appellant made a claim on protection grounds. This was refused by the Secretary of State on 4 May 2016. The Secretary of State certified the claim under s72 of the Nationality, Immigration and Asylum Act (the 2002 Act) on the basis that the Appellant, having been convicted of a particularly serious crime constitutes a danger to the community and therefore he is excluded from protection under the Refugee Convention.<sup>4</sup> The Appellant appealed against this decision on protection and human rights grounds. His appeal was allowed by the First-tier Tribunal. However this decision was set aside by the Upper Tribunal and the appeal was remitted to the First-tier Tribunal. The Appellant's appeal came before First-tier Tribunal Judge P J M Hollingworth and First-tier Tribunal Judge Groom on 13 February 2019. The panel dismissed the Appellant's appeal in a decision promulgated on 18 March 2019. The panel found that the Appellant had failed to rebut the presumption that he constitutes a danger to the community.<sup>5</sup> The panel went on to dismiss the appeal under Article 3 ECHR.

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<sup>1</sup> The Appellant is a foreign criminal as defined in s117D (2) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") and s32 (1) of the UK Borders Act 2007 ("the 2007 Act")

<sup>2</sup> Section 32 (4) of the 2007 Act states that for the purpose of section 3(5)(a) of the Immigration Act 1971 the deportation of a foreign criminal is conducive to the public good.

<sup>3</sup> Section 32 (5) of the 2007 Act requires to Secretary of State to make a deportation order in relation to a foreign criminal subject to the exceptions in s33 applies ( which include where deportation would breach the Refugee Convention or the ECHR.

<sup>4</sup> Pursuant to s.72 (3) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if—

- (a) he is convicted outside the United Kingdom of an offence,
- (b) he is sentenced to a period of imprisonment of at least two years, and
- (c) he could have been sentenced to a period of imprisonment of at least two years had his conviction been a conviction in the United Kingdom of a similar offence.—

<sup>5</sup> The presumption that a person constitutes a danger to the community is rebuttable by that person (s.72 (6) of the 2002 Act)

5. The Appellant appealed against the decision of the panel. Permission was refused by the First-tier Tribunal and the Upper Tribunal. Permission was granted by the High Court. The decision of the Upper Tribunal refusing permission was quashed by the High Court and subsequently permission was granted by the Vice President of the Upper Tribunal on 18 November 2020.

### **Error of Law**

6. The matter came before me on 14 September 2021. On that occasion I found that the panel materially erred in law and set aside the decision to dismiss the Appellant's appeal. My reasons are as follows:-

“27. The grounds do not challenge the findings of the panel relating to exclusion. Therefore it is accepted that the determinate issue before the panel was whether the Appellant's deportation would breach the United Kingdom's obligations under Article 3.

28. The panel found that it would not be safe for the Appellant to return to northern Yemen because of the security situation. There is no cross-challenge to this. They then considered relocation to another part of Yemen. They found that there would be parts of the country where the Appellant could safely return where he could find accommodation and employment. A proper reading of the decision discloses that this conclusion was reached with the finding of the Appellant's extended family in mind. The panel rejected the Appellant's evidence that he has no one to return to in Yemen because the expert made reference to his extended family (albeit the Appellant said he was not in contact with them). It is likely that the panel considered Mr Thompson's evidence in this context. However, I accept that the overall conclusion is problematic. It is not adequately reasoned why the existence of 'extended' family in Yemen led to a conclusion that the Appellant would be able to find accommodation and employment, considering the overwhelming evidence of a serious humanitarian situation throughout Yemen. This is particularly so when considered in the light of the fact that the Appellant has not been to Yemen since he was aged 14 and his evidence that his father did not send money to family in Yemen after they emigrated to the United Kingdom. While Mr Kotas is correct about where the burden of proof lies and to highlight the credibility finding about the family, in the context of the evidence, further analysis was necessary. The error is material. I do not need to consider ground 2.

29. For the above reasons I find that the panel materially erred. The decision to dismiss the Appellant's appeal is set aside.

7. In respect to the issues at the resumed hearing, I stated as follows:-

31. The scope of the appeal is narrow. There is no need to go behind the finding that the Appellant's return to the area characterised by the First-tier Tribunal as the north and which includes his home area would breach Article 3. The issue is whether there is another part of Yemen where the Appellant can safely return. There is no reason to go behind the finding of the panel that rejects the evidence of the Appellant that he has no one to turn to in the light of 'extended' family in Yemen; however, this needs further analysis, in the light of the background evidence which depicts a bleak picture in terms of the humanitarian situation ...".

### **The resumed hearing**

8. The matter proceeded by way of submissions only. The Appellant, a serving prisoner, was not produced because he tested positive for Covid-19. There was no application to adjourn by Mr Ul-Haq on the basis of the Appellant's non-production. The issue is whether relocation would breach the Appellant's rights under Article 3 or whether it is unreasonable applying the Secretary of State v AH (Sudan) [2007] UKHL 49 and Januzi v Secretary of State for the Home Department and Others [2006] UKHL 5. The test for the former is whether the Appellant is at real risk of being subjected to inhuman or degrading treatment or punishment so serious as to meet the high threshold set by Article 3 of the European Convention on Human Rights. The test for the latter is whether, in all the circumstances, it would be unduly harsh or unreasonable to expect him to go there.
9. Both parties relied on the Country Policy and Information Note Yemen: Security and Humanitarian Situation Version 5.0 December 2021 (CPIN 2021). The Appellant also relied on the report of Mr Thompson which was before the First-tier Tribunal and an addendum report by Mr Thompson of 6 January 2022. I was assisted by full and detailed submissions from both parties for which I am grateful. I was assisted by Mr Ul-Haq's skeleton argument. I have not set out the submissions or the evidence in full. I shall engage with the submissions and refer to the relevant parts of the evidence in my findings.
10. It is not challenged that the Appellant is at risk on return to the area referred to as north Yemen as a result of the security situation. Insofar as the reference to north and south Yemen is concerned, I take into account the map in the CPIN 2021 and what is stated about the geographical areas of north and south Yemen.<sup>6</sup> Although sources often refer to north and south Yemen, the areas broadly correspond with the boundaries of the former Yemen Arab Republic (north Yemen) and People's Democratic Republic of Yemen (south Yemen). Although referred to as north and south the boundaries geographically correspond to west-south east and east-south west.
11. Mr Clarke indicated at the start of the hearing that the Secretary of State's case is limited to the Appellant returning to Aden in the area referred to as

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<sup>6</sup> Para 8.1. CPIN 2021

south Yemen. It is the Secretary of State's case that the Appellant can reasonably and safely return to Aden. Mr Clarke said that the issue is relocation and the test is whether relocation is reasonable, relying on AH and Januzi.

12. The factors which in Mr Clarke's opinion should lead the UT to conclude that the Appellant has not discharged the burden of proof in this case are threefold;
  - (i) The Appellant has not assisted the Tribunal in respect of family members in Yemen.
  - (ii) The Appellant has family members in the United Kingdom who can support him on return, and
  - (iii) Shortly before the date of the first report prepared by Mr Thompson the Appellant made representations through his representatives for facilitated return.
  
13. There is a dire humanitarian situation throughout the country and the country is in a state of internal conflict.<sup>7</sup> Yemen has the fourth highest level of internal displacement in the world (4,000,000 people have been displaced since 2015). According to the UN Office for the Coordination of Humanitarian Affairs (UNOCHA), Yemen remains the world's largest humanitarian crisis.<sup>8</sup>
  
14. I agree with Mr Clarke that the evidence presents a bleak picture of return to Yemen. Indeed the Secretary of State's CPIN 2021 indicates that the picture is so severe that the Secretary of State's position is that a person is likely to face a real risk of serious harm because conditions amount to torture or inhuman or degrading treatment as defined by paragraphs 339C and 339CA(iii) of the Immigration Rules and Article 3 ECHR. However, the guidance also emphasises that each case will need to be considered on its facts, with the onus on the Appellant to demonstrate that he faces a real risk of serious harm.<sup>9</sup>
  
15. Mr Clarke was in no doubt that the humanitarian situation in Aden is dire. He took me through the CPIN 2021 in some detail. It establishes that the humanitarian conflict is as a result of the ongoing conflict in Yemen. It is described as the largest humanitarian crisis in the world. Two out of three Yemenis need some kind of assistance. There is food insecurity and 42% of the population have no adequate sanitation. 82% of the Yemen is in severe need of health assistance. The war has had a severe impact on the economy, causing significant rising prices, depreciation of currency and loss of jobs. The delivery of humanitarian assistance is impacted by insecurity caused by conflict, arbitrary regulations and restrictions imposed by local authorities.

<sup>7</sup> Ibid., para. 2.4.13. Error: Reference source not found

<sup>8</sup> Ibid, paras 7.8.1,7.1.1. Error: Reference source not found

<sup>9</sup> Ibid., para 2.4.10. Error: Reference source not found

16. While Mr Clarke was cognisant of the Respondent's position in respect of relocation (in general, due to the fluctuating levels of violence and the risk of ill-treatment at checkpoints internal relocation is unlikely to be an option. It is not reasonable for a person to relocate to an area where there is a real risk of serious harm as set out in paragraphs 339C and 339CA(v) of Immigration Rules")<sup>10</sup>, he submitted that the CPIN is predicated on a returnee having to travel through the country, while in this case the Appellant would be travelling directly to the airport in Aden.
17. Mr Clarke referred me to the timeline in the CPIN 2021. In August 2019 the Southern Transitional Council (STC) seized control of Aden and in April 2020 it declared self-rule breaking a peace deal signed with the Internationally Recognised Government (IRG). In December 2020 the STC agreed to join a newly constituted Hadi government in exchange for allowing the government to move back to Aden.<sup>11</sup> As I understand Mr Clarke's submission, this "peace deal" supports that there is a level of stability in Aden and raises the question about Mr Thompson's addendum report where there is no reference to it. Mr Clarke contended this was a material omission because the evidence of Mr Thompson is that Aden has been under the control of STC which suggests that he is unaware of the power sharing agreement with the IRG.
18. I have considered Mr Thompson's addendum of 22 January 2022 in which he states that Aden is under the control of the STC and he does not make reference to a peace agreement. Mr Ul-Haq submitted that the STC broke the peace deal and for all intents and purposes the STC is in control of Aden. Mr Thompson refers to areas under the "notional" control of IRG. He states that many areas of southern Yemen that ostensibly fall under the control of the IRG have fallen under the control of political forces opposed to the IRG. He goes on to state that the STC gained control of Aden. In my view, Mr Thompson's report is not at odds with the Secretary of State's evidence. The CPIN 2021 states that throughout the first part of 2021 the relationship between the STC and the IRG deteriorated with clashes taking place in July 2021.<sup>12</sup>
19. Having considered the CPIN online which allows me to properly consider the colour coded maps, it is clear that Aden is described as a UAE-backed STC controlled area (in October 2020). While this is before the peace agreement the CPIN 2021 does not indicate that the position has changed. Moreover, the colour coded map is taken from the CRS which was updated in March 2021.<sup>13</sup> The significance of the STC's effect of control over Aden is that there is no evidence of stability or an improvement in the security situation which may support an improvement in the humanitarian situation. The Riyadh Agreement allowed for the government to move into Aden; however, the evidence states that "while 2020 was met with a mixture of hope and scepticism over the prospects for peace in Yemen, the

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<sup>10</sup> Ibid., para 2.4.4. Error: Reference source not found

<sup>11</sup> Ibid., para 6 Error: Reference source not found

<sup>12</sup> Ibid., para 2.4.18. Error: Reference source not found

<sup>13</sup> Ibid., para 8.2.1. Error: Reference source not found

actual trajectory of the conflict has dashed hopes for an end to the fighting” and it establishes that Houthi forces continue to advance and that the pro-Hadi forces “barely registered any successes on the battlefield”.<sup>14</sup>

20. While Mr Thompson has not made reference to a peace agreement, I find that this does not undermine the weight to be attached to his report. I am satisfied that notwithstanding the peace agreement, the STC which is a military and political force is in control of Aden. I reject that any inference of stability or security can be drawn from a power sharing agreement (the Riyadh Agreement) which had the aim of solving conflict in Yemen, because the evidence establishes that the relationship between the parties has deteriorated and the agreement has not achieved its aim. The CPIN 2021 indicates that unification of STC and the IRG against the Houthi forces has not materialised and that the agreement has not removed STC successionist ambitions.<sup>15</sup>
21. I will engage with the preserved finding that the Appellant has extended family in Yemen. The Appellant is not relying on further evidence concerning this issue. The Appellant’s evidence before the First-tier Tribunal is that he had no family in Yemen. The First-tier Tribunal rejected this because the expert, Mr Thompson, in his report stated that the Appellant had not had contact with his extended family. In the First-tier Tribunal’s view he must therefore have communicated the presence of family to the expert. There is no further evidence concerning this before me. My starting point is that the Appellant has extended family members in Yemen to whom he can turn. This must be considered in the context of the evidence as a whole. He does not have immediate family in Yemen. He has not been there since he was aged 14 and his evidence is that his father did not send money to family in Yemen. It is not challenged that the Appellant emigrated to the United Kingdom with his immediate family when he was a child. While the Appellant has not given evidence before me and I accept that he is someone who is not of good character and he denies involvement in offences for which he has been found guilty, I have taken into account what Mr Thompson has written in his addendum report the following about the Appellant and his extended family in Yemen;-

“No contact with his extended family in Yemen, [the Appellant] does not have the ability to look for refuge within the framework of his extended family. He owns no land, he holds no title, and neither he nor his father have sent remittances home to look after the extended family”,<sup>16</sup>

Mr Thompson opines that the Appellant is essentially “poor” and that for “all practical purposes, [he] has no family in Yemen”.

<sup>14</sup> Ibid., para 8.4.1. Error: Reference source not found

<sup>15</sup> Ibid., para 8.6. Error: Reference source not found

<sup>16</sup> Mr Thompson’s addendum report, para.2.1.

22. While there is a question concerning the Appellant's credibility generally, I accept that what he told Mr Thompson is truthful. The fact that the Appellant left Yemen with his family when he was aged 14 and that his father did not send money to extended family remaining in Yemen is highly suggestive of there being no meaningful support network available to him. The background evidence strongly supports that extended family would not be able to offer support, even if they are willing to. Turning to them would not avail the Appellant. In any event, the background evidence establishes a reasonable likelihood that they have been displaced.
23. I attach weight to Mr Thompson's report. I am satisfied considering the evidence in the round that the Appellant does not have meaningful support from extended members in the Yemen.
24. Having found that the Appellant would not have meaningful support on return to Aden from any extended family who may remain in the Yemen for the reasons I have given. In relation to family members in the UK, there was no evidence that would establish they would not be able to offer the Appellant support.
25. The Appellant's evidence before Judge Bell was that he did not have much contact with his siblings in the UK although he could rely on them to help if necessary. He gave examples of them helping his ex-partner to move house or help her to obtain a car. Mr Clarke's submission was that the Appellant could be supported in Yemen by his adult siblings here in the UK. I have taken into account that there is no specific evidence from the Appellant on this matter and he bears the burden of proof.
26. I have attached weight to the Appellant's siblings having at no time attended the Tribunal to support the Appellant's Article 8 case. There is no evidence of them giving the Appellant financial support while in the United Kingdom. In 2016 they gave the Appellant's partner practical support. I have also taken into account that it is not a matter of the Appellant returning to a country and having to start again, a situation where remittances from family in the United Kingdom would assist. The Appellant would be relocating to a country which is in the midst of a civil war with a significant humanitarian crisis that has been extremely damaged by conflict. I find that there would be no meaningful support available to the Appellant from his siblings which would alleviate the risk to the Appellant and which would provide a good reason to depart from the usual position of the Secretary of State that on account of the humanitarian situation return to Yemen would breach the UK's obligations under Article 3.
27. While there has been a decrease in civilian casualties since 2017, the overall picture is that the figure has remained on the whole steady but with minor fluctuations since 2019.<sup>17</sup> The number of civilian impact incidents and civilian casualties in the passing six months do not support a decrease.<sup>18</sup> There have been 320 security events and 48 fatalities

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<sup>17</sup> Ibid., para 8.7.1. Error: Reference source not found

<sup>18</sup> Ibid., para 8.7.4. Error: Reference source not found



reported in Aden between 1 January 2021 and 8 October 2021 out of a population of 265,982.<sup>19</sup>

28. I have taken into account that the Appellant made representations through his representatives for facilitated return in 2018. My understanding is that the Appellant and his ex-partner's evidence before Judge Bell was that they intended to take their three children with them to Yemen so that the family could live together. I do not know the circumstances of the request for facilitated return however I do not infer from this that the Appellant has meaningful support in Yemen. There could be a number of reasons why the Appellant would request facilitated return. It does not detract from the background evidence presented to me.
29. To summarise I conclude that to return the Appellant to Aden would breach the UK's obligations under Article 3 on account of the dire humanitarian crisis, notwithstanding the high threshold applicable. It would not be safe for the Appellant to relocate there. In an event, I am in no doubt that relocation would not be reasonable in the light of the evidence before me.
30. There is indiscriminate violence in Aden which contributes towards the humanitarian crisis disclosed by the figures in the CPIN 2021; however there is no need for me to make a discreet finding as to whether the security situation alone would breach Article 3 ECHR.
31. The Appellant's appeal is allowed under Article 3 ECHR.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed            Joanna McWilliam

Date 8 February 2022

Upper Tribunal Judge McWilliam

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<sup>19</sup> Ibid., para 7.9.1. Error: Reference source not found