



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05011/2017

THE IMMIGRATION ACTS

Heard at Liverpool
On 19th December 2017

Decision & Reasons Promulgated
On 23rd April 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

ANES HUSSEIN AHEMD QASEM AL-YAFEI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Holmes, Counsel instructed by Parker Rhodes Hickmotts
Solicitors

For the Respondent: Ms H Aboni, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Yemen. On 10th May 2017, the respondent refused the protection and human rights' claims that had been made by the appellant. The appellant appealed the refusal to the First-tier Tribunal.

2. The appeal before me is an appeal against the decision and reasons promulgated by First-tier Tribunal (“FtT”) Judge Knowles in which he dismissed the appeal on all grounds.
3. The appellant’s immigration history is set out at paragraph [6] of the decision of the FtT Judge. At paragraph [8] of his decision, the Judge sets out a summary of the account of events relied upon by the appellant in support of his claim for international protection. At paragraphs [9] to [14], the Judge sets out the reasons provided by the respondent for refusing the claim. At paragraphs [15] to [24], the Judge sets out the appellant’s evidence. The Judge’s findings and conclusions are to be found at paragraphs [33] to [41] of his decision. For present purposes it suffices to refer to the summary that is to be found at paragraph [41] of the decision;

“Considering all the Appellant’s evidence in the round, I concluded that the Appellant’s evidence is not credible and his core situation is not reasonably likely to be true. I do not accept that it is reasonably likely that the Appellant is wanted by the authorities in Yemen on the basis of the evidence he has presented to me upon appeal. Whilst there is evidence that the appellant is a Southern Movement supporter, the evidence does not indicate that it is reasonably likely that he has come to the attention of the authorities in the Yemen.”

4. At paragraph [42], the Judge addresses the background material that was relied upon by the appellant in the following way:

“The appellant produces a considerable volume of background information concerning in Yemen, but this is all referring to the general security situation (see below concerning humanitarian protection). There is nothing in the background information provided by the Appellant, or in the Respondent’s CPIN, which suggests that a member and supporter of the Southern Movement is at any particular risk in Aden. It is for the Appellant to establish that membership and support alone would place him at particular individual risk. However, the appellant refers only upon the significant activity he claims to have participated in, organising demonstrations, hosting the leadership of the Southern Movement and fighting with the Southern Movement in 2011; he has not presented a case in evidence or in submissions that mere membership or support for the Southern Movement causes a risk. It does not appear to me, on the evidence, reasonably likely that the authorities in Aden have any interest in supporters of the Southern Movement that would place them at any particular risk.”

5. The Judge then turned to consider whether the appellant qualifies for humanitarian protection under Article 15(c) of the Qualification Directive. To that end, the Judge states, at [46]:

“I have considered the background information provided on appeal by the Appellant in support of his claims concerning the humanitarian situation in the Yemen. The background information provided all pre-dates the Respondents CPIN which is dated June 2017 and states that “Yemen is in a state of armed conflict which has led to deterioration in the security and humanitarian situation. Airstrikes and armed clashes on the ground continue particularly in the east, north and centre of the country, in and around Sana’a. Despite this, the situation has improved in Aden and some other parts of southern Yemen since July 2015, although Aden still faces security challenges including a rise of targeted killings and the presence of militant groups such as Al Qaeda and Daesh. While harsh, the humanitarian situation in Aden and some other areas of southern Yemen is not in general at such a level as to breach Article 15 of the Qualification Directive. However, it may do so for vulnerable people (e.g. Single women all disabled people, etc). Each case it should be assessed on its individual merits”. The Appellant is not a vulnerable person. The appellant states that he last lived in Aden in Yemen. Whilst he previously lived in Yafe, when asked why he could not live in Aden his response is because he is wanted by the authorities. That part of his core situation I have already found not reasonably likely to be true. Whilst the situation may have changed as the Appellant states concerning Yafe, the Appellant may relocate himself again in Aden. In my conclusion, the Appellant is not facing a serious and individual threat to his life or person by reason of indiscriminate violence in situations of international or internal armed conflict in Yemen.”

The appeal before me

6. The respondent advances one ground of appeal. That is, the judge failed to deal properly with all the appellant’s arguments concerning the Article 15(c) risk in Yemen. It is said that the Judge does not make clear in his decision which part of the respondent’s CPIN he is referring to in the extract cited at paragraph [46], although it appears to be accepted that the passage appears to be taken from the section entitled “Policy Summary”. The appellant contends that the Judge makes no attempt to engage with the evidence relied upon by the appellant and has misdirected himself as to the effect of the respondent’s CPIN, by treating the document, and applying it akin to country guidance, by which the Judge is bound. It is said that the appellant had provided a significant amount of evidence supporting his claim to an Article 15(c) risk upon return, and it was incumbent

upon the Judge to consider the entirety of the evidence, and resolve the disputed issue of whether there is an Article 15(c) risk upon return.

7. Permission to appeal was granted by FfT Judge Easterman on 29th September 2017. The matter comes before me to consider whether the decision of the FfT involved the making of a material error of law, and if so, to remake the decision.
8. Mr Holmes adopts the grounds of appeal and makes four points on behalf of the appellant. First, the FfT Judge treats the respondent's CPIN as if it is binding upon him. Second, although the respondent's CPIN is dated June 2017, a closer examination of that document demonstrates that the background material relied upon in the document, either pre-dates the background material that was relied upon by the appellant, or is it at least contemporaneous to it. Third, the Judge gives no discernible reasons as to why he prefers the matters set out in the respondent's CPIN, to the background material relied upon by the appellant. He submits that there was a wealth of evidence before the Judge that the Judge simply did not consider. Finally, there was no individual assessment by the judge of the Article 15(c) risk that the appellant would be exposed to upon return.
9. In reply, Mrs Aboni submits that the Judge has adequately considered the humanitarian protection claim, and was entitled to attach weight to the summary set out in the respondent's CPIN which is supported by adequately sourced objective evidence from a range of sources over a period of time. The weight to be attached to the document was a matter for the Judge. It is not disputed that there is a humanitarian crisis in Yemen, but as the judge found, there are areas that the appellant can safely return to. The Judge adequately addressed the risk upon return, based upon the findings made.

Discussion

10. At paragraph [42], the Judge refers to the background material that was relied upon by the appellant and noted that the background material is concerned with the general security situation, and is relevant to the humanitarian protection claim.

There is nothing in the language that the Judge has adopted at paragraph [46] of the decision, that suggests that the Judge has treated the respondent's CPIN as binding upon him. In fact, the Judge expressly states that he has considered the background information provided on appeal by the appellant in support of his claim concerning the humanitarian situation. The language used by the Judge does not support the appellant's claim, but indicates that the Judge preferred the material set out in the respondent's CPIN because it was more recent background material.

11. The Judge was plainly aware that the background material relied upon by the appellant was concerned with the general security situation and relevant to his assessment of the humanitarian protection claim. Pages 8 to 400 of the appellant's bundle before the *FtT*, contained the wealth of background material that was relied upon by the appellant. The Judge was not required in his decision to address each piece of that background material. It would be entirely disproportionate to expect a Judge of the *FtT* to address each of the reports relied upon in turn. The weight that the *FtT* Judge attaches to the background material either individually or cumulatively, is a matter for him, as long as it is clear that the Judge has not disregarded it.
12. I have carefully considered the matters set out in the respondent's CPIN and the background material relied upon by the appellant. There is a common theme to the background material that was before the *FtT* Judge. The background material clearly establishes that the general situation in Yemen remains volatile and extremely tense. There are several internal conflicts going on between various groups. There is no doubt that Yemen is experiencing a severe humanitarian crisis, although the situation varies in different parts of the country. The background material confirms that since July 2015, the situation has somewhat improved in Aden and in other parts of southern Yemen. Pro-government forces remain in control of areas such as Aden and the lowland areas of southern Yemen. The levels of violence in Aden do not match those witnessed in other parts of the country.

13. I reject the submission that the Judge gives no discernible reasons as to why he prefers the matters set out in the respondent's CPIN, to the background material relied upon by the appellant. I accept that the CPIN is dated June 2017 and so that does not in itself mean that the CPIN post-dated the background material relied upon by the appellant. The respondent's CPIN draws upon background material from a number of reports from a range of sources, over a period of time and in particular from 2016 and 2017. The note draws in particular, upon reports such as the US State Department Country Reports on Human Rights Practices for 2016, the Human Rights Watch World Report 2017, and various UNHCR reports relating to the humanitarian situation in Yemen. Many of the reports relied upon by the appellant from these sources, are in fact referred to in the respondent's CPIN. It was in my judgment, open to the Judge to conclude that the background information relied upon by the appellant pre-dates the respondent's CPIN which is dated June 2017, and which draws together the threads of the background material. Even with the deterioration that is set out in the background evidence since 2015, the background material relied upon by the appellant does not undermine the background material referred to in the CPIN and the summary referred to by the Judge.
14. The assessment of the risk must be assessed on the individual merits of the claim and the facts as found by the Judge. The appellant's own case was that he had last lived in Aden in Yemen. The Judge had rejected the appellant's account that he is wanted by the authorities in Aden, and it is in that context, that the Judge had to consider the humanitarian protection claim.
15. In my judgment, based upon the evidence and the findings made, the Judge was entitled to conclude that the appellant's home area, being in the south of Yemen was not one where the appellant faces a real risk of indiscriminate violence as a result of an internal armed conflict. The conclusion by the Judge that the appellant is not a vulnerable person and therefore has not established that he falls within the category of those who may be at risk as a result of their personal profile, such as single women or a disabled person, demonstrates the fact specific assessment

carried out by the Judge. The Judge resolved the disputed issue of whether there is an Article 15(c) risk upon return to the appellant, in light of the evidence and the findings made, as he was required to.

16. It follows that in my judgment, there is no material error of law in the First-tier Tribunal Judge's decision and the determination shall stand.

Notice of Decision

17. The appeal is dismissed.

Signed Date 15th March 2018

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT

FEE AWARD

18. The F/T Judge made no fee award.

Signed Date 15th March 2018

Deputy Upper Tribunal Judge Mandalia