



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

Appeal Number: AA/06868/2013

**THE IMMIGRATION ACTS**

**Heard at Birmingham Sheldon Court**

**Determination  
Promulgated**

**On 24 June 2014**

**On 26 June 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCCARTHY**

**Between**

**ABDULLAH ADULRAHMAN DABWAN SAIF**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Vokes, instructed by TRP Solicitors

For the Respondent: Mr N Smart, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. On 17 December 2013, Upper Tribunal Judge Coker granted the appellant permission to appeal against the determination of First-tier Tribunal Judge Ferguson that was promulgated on 31 October 2013.
2. Judge Ferguson dismissed the appellant's appeal against the immigration decisions of 5 July 2013 refusing to vary his leave and to remove him from the UK by way of directions under s.47 of the Immigration, Asylum and Nationality Act 2006. Judge Ferguson decided that the appellant was not a refugee or otherwise in need of international protection.

3. The grounds of appeal argue the determination was not legally sound on three fronts. First, the judge had made his assessment of risk on return by taking the case at its highest. This approach was flawed for two reasons. At its highest the case clearly showed that the appellant had a well founded fear of persecution in the Yemen because he faced real threats to his life and freedoms from a terrorist group from which he had no effective protection from the state authorities. In the alternative, by taking the case at its highest the judge failed to make findings on relevant issues. The second and third grounds of appeal in essence developed these two reasons.
4. After discussing the issues with Mr Vokes and Mr Smart, although I am satisfied that the first ground is not made out, I am satisfied the second is well made and insofar as the third ground is on a similar footing it too must succeed. My reasons are as follow.
5. The first ground fails because it is based on a misreading of the text. At no point does Judge Ferguson say that he is taking the appellant's case at its highest. At two points (paragraphs 27 and 32) he refers to taking the evidence at its highest. In those two paragraphs the judge is making findings of fact and therefore this expression in context is merely his description of the weight he attached to the evidence.
6. The second and third grounds do not fall away even though they are linked to this misreading because, as Mr Vokes developed in submissions, there are good reasons to find that Judge Ferguson failed to have proper regard to all the evidence and thereby failed to make findings of fact that would have an impact on his assessment of risk on return.
7. In paragraphs 30 and 32, Judge Ferguson refers to the appellant's father and brothers remaining in the Yemen, albeit in hiding. This fails to have regard to the appellant's most recent statement in which he describes how one of his two remaining brothers had tried to flee to Saudi Arabia because of the ongoing threats in Yemen. The appellant had confirmed that he was one of four brothers. He and one brother were in the UK. At the time of application and interview his other two brothers were in Yemen but before the hearing one of those had fled.
8. In the same paragraphs the judge relies on no harm befalling the appellant's mother and sister who continued to reside in the family home as being a reason to find that the appellant had not established a well founded fear of persecution. It is not clear on what basis the judge drew this conclusion.
9. The appellant admitted that his mother and sister remained in the family home and that they had not attracted any adverse attention. However, his explanation for his mother and sister not being at risk is recorded in paragraph 8 of the determination. The appellant explained that killing women brought shame on the killer. Therefore, the fact that the appellant's mother and sister had not faced harm was not a basis from which to infer that the threats to the appellant's life and freedoms might be reduced. The judge does not explain on what basis he could draw from this evidence that the risks facing the appellant were reduced.

10. In paragraph 31 Judge Ferguson examined whether the appellant could obtain adequate protection against Al Qaeda. This fails to have regard to the appellant's evidence which is supported by the expert report to the extent that those seeking to harm the appellant and his father and brothers are unlikely to emanate from Al Qaeda. The judge recorded this evidence in paragraph 21 and noted the evidence that those threatening the appellant were likely to be one of the militias that had grown out of the security vacuum. At no point does Judge Ferguson explain why he considered the protection issue only in terms of protection from Al Qaeda or why he failed to have regard to the evidence he recorded when assessing risk on return.
11. But of even greater significance than these three points is the fact that although the Secretary of State challenged the appellant's credibility Judge Ferguson makes no finding as to whether he found the appellant to be generally credible or whether there were parts of his account he accepted and parts he did not find reliable. This of course further undermines the failure of the judge to make relevant factual findings on the specific points already discussed.
12. Mr Smart accepted that the determination contained a legal error because of these matters but argued that the outcome would nevertheless have been the same. He argued that the determination when looked at overall showed that the judge was sufficiently aware of the appellants' case so as to assess the risks he faced on return.
13. I do not share Mr Smart's view. The duty on the Tribunal to make relevant findings of fact in order to carry out a thorough assessment of risk on return is well established. The points identified by Mr Vokes clearly go to the assessment of risk of return and therefore the failure to make findings on those points undermines the determination in its entirety.
14. For these reasons I find that the determination must be set aside.
15. The parties recommended that if I were to set aside the determination that the matter be remitted to the First-tier Tribunal. I find this is a situation where that is the appropriate course because there has as yet been no satisfactory judicial assessment of the appellant's case. Such an assessment should be carried out in the First-tier Tribunal to ensure that appeal rights are preserved.

## **Decision**

The determination promulgated on 31 October 2013 contains an error on a point of law and is set aside.

The appeal against the immigration decisions of 5 July 2013 is remitted to the First-tier Tribunal to be heard by any judge other than Judge Ferguson.

Signed

Date

Deputy Judge of the Upper Tribunal