



**Upper Tribunal
(Immigration and Asylum Chamber)**
PA/03042/2016

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Birmingham Employment Tribunal
On 3 May 2017** **Decision promulgated
On 5 May 2017** **&** **Reasons**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**N A S H
(anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Janjua of Morden Solicitors
For the Respondent: Mr Mills Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Shergill ('the Judge') who in a decision dated 14 October 2016 dismissed the appellant's appeal against the refusal of his claim for asylum or leave to remain in the United Kingdom on any other basis.

2. At [33] the Judge finds:

33. I am satisfied that the appellant could move back to Maqbaba/Makkbanna where his family is based. I see no reason why he would have to move to Taiz city which is where military activity is occurring. I was not assisted by any of the evidence before me as to where Maqbaba/Makkbanna is located. I was able to ascertain from an Internet search that it is located about halfway between Taiz City and the coast to the west; in the south-west of the country in Taiz Governorate. It is some 211 km from Sana. The nearest city is Taiz city which is 24 km away. There is a hospital in Maqbaba given the reference to it in a BBC News article.

<http://www.bbc.co.uk/news/world-middle-east-34388463>

<http://wikimapoa.org/14270401/Maqbana-Center>

3. The applicant asserts the Judge erred in law by undertaking post-hearing research and relies upon the decision of the Asylum and Immigration Tribunal in *EG (post-hearing Internet research) Nigeria [2008] UKAIT 00015*, the head note which reads:

"... it is most unwise for a judge to conduct post-hearing research, on the Internet or otherwise, into the factual issues which have to be decided in a case. To derive evidence from post-hearing research on the Internet and to base conclusions on that evidence without giving the parties the opportunity to comment on it is wrong."

4. The need for fairness in relation to the treatment of the evidence was also confirmed in the case of *AM (fair hearing) Sudan [2015] UKUT 00656 (IAC)* in which it was held that if a judge is cognisant of something conceivably material which does not form part of either party's case, this must be brought to the attention of the parties at the earliest possible stage, which duty could in principle extend beyond the hearing date;

5. The appellant is a national of Yemen who claimed he could not return to his home area because of an alleged risk arising from a family land disputes/blood feud and threat from Houthi rebels. It was incumbent upon the appellant to produce sufficient evidence to inform the Judge of where exactly his home area was in that country, especially considering the nature of the current conflict in Yemen and the country material made available, which showed that in the north, west and centre of the country the humanitarian and security conditions are likely, in many cases, to breach Article 3 and/or Article 15 (c) of the Qualification Directive. The appellant failed to produce evidence showing where his home area was within Yemen. When asked why this information was not provided the appellant claimed he was not asked either by his solicitor or by the Judge.

6. The Judge may well have been entitled to take a view that as the appellant had not produced evidence to show where his home area was, he had failed to show that it was within a region of the country where a real risk of serious harm might arise. The Judge did not do this, however, and took it upon himself to research the location of the appellant's home area which was shown to be in the south west of the country outside those areas identified in the country material as giving rise to a real risk. The appellant must have been aware of where his town was located and if the reason this information was not

communicated was an attempt to mislead the First-tier Tribunal that is not acceptable.

7. What the appellant has failed to make out is that he suffered any prejudice or that there was any unfairness in the Judge undertaking the research and in not informing the parties of the nature of that research prior to receipt of the decision under challenge. On behalf of the appellant it was accepted that the Judges finding in relation to the location of the appellant's home town is factually correct. The research did not provide the Judge with knowledge the appellant did not already possess. No arguable legal error material to the decision is made out as the appellant has failed to establish any procedural irregularity amounting to an unfairness which has caused prejudice to the appellant or denied the appellant a fair hearing. As noted from the head note relied upon by the appellant, undertaking post-hearing research, whilst unadvisable, does not automatically give rise to arguable legal error. The question is whether the parties have been denied the opportunity to comment upon evidence that such research may have given rise too. In this case there was no need to invite such comment.
8. The second challenge relates to the Judge's finding that the appellant can safely return to his home area. The relevant parts of the decision under challenge are in the following terms:
 34. I am satisfied that the appellant would be returning to his family who are located sufficiently far away from any ongoing fighting in Taiz city to which the news cuttings relied on by the appellant refer.
 35. I am satisfied that the humanitarian situation in some areas in southern Yemen while harsh do not in general breach Article 3. I am not satisfied that the appellant is particularly vulnerable so as to bring him under international protection [2.3.7]. I also note that whilst relocating to most parts of Yemen is difficult a number of people have located internally to flee combat zones including to the appellant's home governorate. That would tend to support, along with the oral evidence that I heard, at the situation generally in Taiz Governorate is safe albeit that Taiz city has been under siege. I am satisfied that the appellant will be able to rely on his family to return to Maqbana/ Makkbanna or elsewhere in Taiz governorate and avoid Taiz City. It will not be necessary to relocate to Aden. The airport issue is a matter of practicality of removal but once flights resumed there is no protection ground preventing his removal.
 - ...
 38. I have decided that on the basis of the facts found and applying the relevant country guidance and Article 15(c) law, that the appellant has not discharged the burden of proof to show that he would face a real risk of suffering "serious harm" within the meaning of paragraph 339C of the immigration rules if he was to return to Yemen.
9. The question of an entitlement to a grant of Humanitarian Protection arises as at [30] the Judge found he was not satisfied to the lower standard that there is a family land dispute that is ongoing or that because of any such dispute the appellant's life is at risk as claimed from his family members or from being targeted by Houthi rebels or

- otherwise when looking at all the evidence in the round. The Judge concluded to the lower standard that the appellant's family remain in Maqbana/ Makkbanna and that he can get in touch with them.
10. The appellant's representative was asked to refer to any specific paragraphs in the country information made available to the Judge that supported the assertion the Judge had erred in law in reaching the conclusions set out above. No specific submissions were received as the representative indicated that he did not have a complete bundle before him.
 11. The evidence before the Judge appears to be composed of various country reports including the respondents Country Information and Guidance Yemen: Security and humanitarian situation Version 2.0 dated April 2016 which is referred to in the appellant's skeleton argument prepared for the purposes of the First-tier Tribunal hearing.
 12. Based upon the evidence the Judge was entitled to conclude that the appellant's home area, being in the south-west of Yemen was not one where the appellant did face a real risk of indiscriminate violence as a result of an internal armed conflict. It is accepted that a Saudi led coalition is fighting the Iranian backed Houthi rebel movement which has resulted in a number of deaths and areas where a real risk may arise. That is referred to in the country information as being those areas mentioned above and not the south-west region which, as the Judge noted, is viewed by some fleeing internally as a relatively safe haven.
 13. The conclusion by the Judge that the appellant had not established he fell 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 is also an arguably sustainable finding.
 14. In 2012 the European courts found in *AA and others v Sweden (Application no. 14499/09)* that the general situation in Yemen remained volatile and extremely tense despite some recent political improvements. There were several internal conflicts going on between various groups; however, in the Court's view, the general situation of instability and violence in Yemen was not of such intensity that it might be said that the Appellants will be exposed to a real risk of ill-treatment simply by being returned there.
 15. Whilst it is accepted by both advocates that the situation has deteriorated since 2015 the evidence relied upon by the appellant was still arguably insufficient to show that this appellant will be exposed to a real risk of ill-treatment as a result of an internal armed conflict solely as a result of his being in Yemen.
 16. No arguable legal error material to the decision to dismiss the appeal is made out.

Decision

17. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

18. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 3 May 2017