



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

Appeal Number: PA/00648/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 29<sup>th</sup> July 2019**

**Decision & Reasons Promulgated  
On 13<sup>th</sup> August 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE KING TD**

**Between**

**K Y M A**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms G Brown of Counsel instructed by Duncan Lewis & Co Solicitors

For the Respondent: Mr S Kotas, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of the Yemen born in Abu Dhabi, United Arab Emirates, on 31<sup>st</sup> December 1981. He has never lived in Yemen.
2. On 15<sup>th</sup> October 2017 the appellant left Abu Dhabi and arrived in the United Kingdom upon a visitor's visa. On 23<sup>rd</sup> October 2017 he claimed asylum.
3. By a decision of 8<sup>th</sup> January 2019, the respondent refused the application for asylum but granted humanitarian protection instead.

4. The appellant however sought to renew his application for leave to remain on the basis of asylum.
5. That appeal came before First-tier Tribunal Judge Russell for hearing on 22<sup>nd</sup> February 2019 and was dismissed. The appellant sought to appeal against that decision and permission to do so was granted by the Upper Tribunal. Thus the matter comes before me to determine that issue.
6. The appellant advances his claim for asylum on two bases. The first being that of a social group, it being his contention that he is in danger from his father's family in Yemen were he to return. The detailed circumstances are set out in several witness statements submitted on his behalf. The statements are dated 19<sup>th</sup> April 2018, 21<sup>st</sup> May 2018 and 12<sup>th</sup> February 2019.
7. His father's family is said to be of the Alshami tribe. His father was disowned by the family because he married outside of that tribe. His father left Yemen in 1962. He said that in 1991 his father was tricked into returning to the Yemen on the understanding that a visit from him would then be welcomed. Instead there was an assassination attempt made on him which left him requiring extensive medical treatment.
8. In 2006 one of the cousins from Yemen was working in Qatar and wished to marry the appellant's sister and take her back to the Yemen. The sister refused.
9. In 2009 the appellant sought to marry and his proposed wife asked him about his family background. He contacted his aunt in Yemen to try and find out that information. She was somewhat hostile to him but did indeed give him the information that he wanted. That information revealed also that the family were Shia whereas he and his father were Sunni.
10. It was the appellant's claim that not only was he marrying out of the family but was also of a different faith. This resulted in the father's family threatening him from 2006 until 2015. He then changed his telephone number and the threats ceased. Thus it is that the appellant fears violence from the family upon return.
11. The second basis is that of racial/political grouping. The appellant says he is from the Alshami tribe and that his uncle was a Chief of Airforce in the civil war in 1994. Such a clan is part of, alternatively a supporter of the Al-Houti tribe. That there is tension between that tribe and the Government supported by Saudi and Arab allies. It is said that all the families from the Al-Houti tribe were Shia Muslims and support the rebels. As his father's family tribe the Alshami's are one of the Al-Houti militia. He will be targeted upon suspicion if returned.
12. In the reasons for refusal dated 8<sup>th</sup> January 2019 the respondent set out in some detail the account of the appellant. It was accepted that the appellant belonged to the Alshami tribe. It was accepted that the appellant was a Sunni Muslim.

13. It was considered that the claim that the cousin from the father's family proposed to the sister did not stand well with the contention that his father and family have been disowned. It was not accepted that the appellant would be at risk as a Sunni from the Shia given that there were a few sectarian issues in Yemen, as the conflict was mainly political and that often both Sunni and Shia sects pray in the same mosques. It was not accepted, for the reasons set out, that simply being a member of the Alshami tribe would place the appellant in danger and risk. However, it was accepted that the general situation in Yemen was such that there was a general risk on return such as to grant humanitarian protection.
14. In the short determination by Judge Russell, the concerns as expressed by the respondent were noted. The credibility of the claim as to risk from the family was not accepted. It was found that there would be little interest that the family in Yemen would have in the appellant. It was not accepted that the Shia /Sunni tensions created any difficulties for the appellant upon return.
15. The grounds of appeal, as developed also by the skeleton argument of Mrs Brown, contend that the analysis of the evidence of the Judge, particularly as to the family feud was wholly inadequate. Further, there was no real consideration of the socio-political dimension of family groupings and there was a total lack of engagement with the report of Dr George, which it is said was helpful to the appellant in all respects.
16. It is said in particular, that it was wrong to criticise the appellant for failing to clarify his claim and correct any inconsistencies, when he had sought to do so by a subsequent statement. For example, the appellant explained, with reference to the cousin's marriage proposal, that it was traditional for the first son of the father's brother to marry his cousin. It is said that because the father had been disowned the proposal was not carried out in the traditional manner by the uncle coming to the family home, rather that the cousin came for that purpose. It is said that such an action without the intervention of the uncle was in effect an insult.
17. Notwithstanding such an explanation as subsequently offered, it would seem somewhat unusual for the family, holding such strong and adverse views of the appellant's family, that such an offer should be contemplated at all. It was submitted by Mr Kotas, that notwithstanding that the aunt seems to have been dismayed by the appellant's wish to marry outside the family and his Sunni faith, nevertheless she provided him with the family tree that was requested.
18. The report of Dr George of 12<sup>th</sup> February 2019 was said to be supportive of the appellant's account of a family feud. It seems to me, and indeed Mr Kotas submits that the reverse would seem to be the position. In dealing with the appellant's position at paragraph 115 the expert contends that marriages between individuals of different tribes are not unusual in Yemen and would not normally be regarded as bringing dishonour on a family or tribe. Although the expert does not seek to rule out as implausible the account which the appellant has given, particularly in that the applicant's

own marriage to a Yemeni woman from another tribe would have deeply upset his immediate relatives to the extent that they would target him, the comment however is made in the report that “such intense disapproval and sense of shame over persons marrying outside their tribe would be very unusual”. Although the expert did not entirely rule out as implausible that the applicant’s father’s family might have disowned him and his father for not following the Shia religion, the expert comments that again such would have been unusual.

19. Mrs Brown contends that, because the expert could not definitively rule out the explanation, the report was capable of supporting the account. It appears to me however that is a somewhat difficult proposition to sustain when one reads the report as a whole. The expert also in paragraph 126 refers to a report from the US Embassy dated 7<sup>th</sup> February 2007, to the effect that the line between Sunni and Shia in Yemen is highly blurred and the two groups often pray in the same mosques and worship much in the same manner. Identities are derived chiefly from tribal rather than religious affiliation.
20. In terms of the ethnic, social and political profile of the appellant it is contended that the Judge wholly omitted consideration of that matter. Prima facie there is merit in that contention. However, once again the report of Dr George is instructive on that issue. Firstly, Dr George, at paragraph 129 of the report, indicates that there is no Alshami tribe. Alshami is transliterated into English as Hashemite who are simply persons who claim the prophet Mohammed as an ancestor. A proportion of the Yemeni population claiming to be Hashemites varies between 7 and 12%. The Al-Shami or Hashemites can be Sunni or Shia, although the majority are Shia of the Zeibi persuasion. It is said that they are not all members of a defined, coherent group. While Hashemites play a significant role in the Houthi movement, the latter by no means represents all Hashemites. The expert goes on to say:-

“In view of the extreme diversity of Al-Shami or Hashemite families, it is not possible to generalise about the political or socio-cultural stances of individual families.

To the best of my knowledge and belief the Saudi-led anti-Houthi alliance does not engage in the arbitrary targeting of persons carrying the name Al-Shami simply because of their names. Indeed, there are numerous Al-Shamis who are citizens of Saudi Arabia and the other Arab states comprising the coalition.”.

21. Dr George concludes that Mr Alshami would not face undue difficulties in Yemen on account of his ethnic, social or political identity. Dr George can ascertain no obvious reasons why the appellant might be at real risk from the Government. Some Al-Shami can of course face discrimination, harassment because of their significant involvement with the movement. This does not apply to the appellant.

22. Given the comments of Dr George it is difficult to understand how that report could be said to be supportive of the case for the appellant, rather the reverse.
23. Permission to challenge the decision of the First-tier Tribunal was granted by the Upper Tribunal on the basis that the report of Dr George could have made a material difference to the outcome of the appeal in favour of the Appellant.
24. It seems to me, having read the report in detail and putting matters into context, it is a report that gives the appellant little if any support. Indeed it is a report which materially undermines the case as presented for the appellant.
25. Clearly, as Mrs Brown indicates, the Judge ought properly to have considered that report and made reference to it in the determination. That having been said, it is abundantly clear that had the Judge considered that report it would have afforded no assistance to the appellant in the presentation of the case, indeed quite to the contrary. Clearly the Judge was in error not to have considered the issues raised as to being Alshami but it is not a material error given what the Report had to say.
26. Although the reasons of the Judge were very brief he was entitled to rely upon the comments made in the reasons for refusal and adopt them as his own.
27. Even if there were some substance as to hostility between the appellant and his father's family it was the finding of the Judge, given the context of life in Yemen and the nature of the overall conflict and difficulties that are faced by the population that the issue of mixed marriage was unlikely to be a significant one in the practical considerations. It seems to me that that was a comment properly open to be made. The appellant was now separated or divorced from his wife and would have no need to return to his Father's family. Given the general disorder in the Yemen there would be little prospect of the family tracing him even if they had any interest in doing so.
28. Although there are clearly shortcomings with the determination I find that such, particularly in light of the report of Dr George, discloses no material error of law.

### **Notice of Decision**

29. In those circumstances the appeal before the Upper Tribunal is dismissed. The Grant of humanitarian protection clearly remains in force.

### **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 his 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.

A handwritten signature in black ink, appearing to read "P. Q. King". The signature is written in a cursive style with a distinct loop at the end of the last name.

Signed

Date 2 August 2019

Upper Tribunal Judge King TD