



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/23570/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 27 August 2019  
Extempore decision

Decision & Reasons Promulgated  
On 18 September 2019

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

THE ENTRY CLEARANCE OFFICER

Appellant

and

MRS MANAL ABDULLAH OMAR HAITHM  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Mr L Tarlow, Home Office Presenting Officer  
For the Respondent: Ms N Alhwich, volunteer, British and Muslim

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State against the decision of Judge Veloso promulgated on 11 June 2019, which allowed the appellant's appeal against a refusal of entry clearance by the respondent on 11 October 2018. For the sake of convenience, I will refer to the parties using the terminology applicable before Judge Veloso.

2. The appellant before Judge Veloso was Manal Abdullah Omar Haithm, a citizen of Yemen born on 1 January 1986. She is married to Mr Iqbal Ahmed Valli, a British citizen resident in this country. His date of birth is 24 May 1961. He is the sponsor in these proceedings.
3. Judge Veloso allowed the appellant's appeal after considering it on the papers. In her decision, Judge Veloso featured an extensive chronology spanning five pages outlining the visits, travel history between the appellant and the sponsor and, to the extent it was relevant, their immigration history in relation to previous attempts to apply for entry clearance and their meetings in third countries.
4. The basis of the application made by the appellant was that there are exceptional circumstances in the form of the situation in Yemen. She accepted that the language and maintenance requirements in the Immigration Rules were not met. The judge considered the situation in Yemen to amount to exceptional circumstances, meaning that a continued refusal of entry clearance would be unduly harsh. As such the judge allowed the appeal by reference to Article 8 outside the Immigration Rules.
5. The assumption which underpins the refusal of entry clearance and the judge's decision is the existence of a serious humanitarian situation in Yemen. In the grounds of appeal, the respondent before the First-tier Tribunal contended that there is no evidence that the appellant's own home had been bombed in Yemen, which had been suggested, and pointed out that she had voluntarily returned from Djibouti, where she had previously fled seeking refuge, to Yemen, of her own accord. The judge noted that there was "a considerable amount of disruption" in Yemen, basing that conclusion primarily on the fact that the Tribunal's directions, which had been posted to the appellant's address in Yemen had been returned, bearing a Royal Mail stamp stating that the mail service in Yemen had been suspended.
6. The Secretary of State appeals with the permission of Judge Parkes. In granting permission Judge Parkes wrote this, "It is clear that where the Rules are not met then compelling circumstances are needed to justify a grant of leave. The grounds are clearly arguable."

#### *Procedure*

7. At the hearing the sponsor was unable to attend and was not legally represented. He and the appellant are assisted in these proceedings by a community advocacy support group called British and Muslim. British and Muslim sent a volunteer trainee, Nejah Alhwich, in order to read out an email which had been provided to the Tribunal in advance. The contents of that email essentially implored the Tribunal to uphold the allowed appeal of Judge Veloso outlining the financial difficulties that British and Muslim as well as the appellant and the sponsor had experienced in seeking to obtain formal legal representation. I indicated at the outset of the hearing that I was content for Ms Alhwich to address me in these terms, especially given she confirmed to me that she is a volunteer with the organisation and neither she nor the organisation are receiving any payment for their services or assistance to the appellant and sponsor as part of these proceedings. Under the circumstances, I

considered there to be no statutory objection to the Tribunal being addressed in this way and, having given him the opportunity to comment, it appears that Mr Tarlow did not either.

### *Discussion*

8. This is essentially a rationality based challenge to the decision of Judge Veloso. Although the permission granting judge said that the grounds of appeal were “clearly arguable” it is difficult to know the precise basis upon which this generous grant of permission was made. In order to ascertain in further depth what the issues before the Tribunal are, it is necessary to address the grounds of appeal which were considered by the permission judge in more depth.
9. Distilled down, the grounds of appeal essentially amount to two propositions. First, that the judge below failed to provide reasons based on the country situation in Yemen as to how the appellant was affected by the “general situation there”, bearing in mind that she lives with family members in Yemen, appears to have some form of employment and has maintained contact with the sponsor including on a face-to-face basis in third countries. Secondly, the grounds contend that the judge placed insufficient weight on the public interest in immigration control.
10. Mr Tarlow relied on the grounds of appeal and left the matter in my hands.
11. Although I had permitted Ms Alhwich to address me, understandably her observations were not legal submissions, and nor did they address the essential question I had to consider, namely whether Judge Veloso had reached an irrational decision. I permitted Ms Alhwich to address me in order to further the overriding objective and to facilitate the best possible participation of the appellant and sponsor. Although she implored me to uphold Judge Veloso’s decision, it is the analysis set out below which has led me to find that her decision did not feature an error of law, rather than her remarks to the Tribunal.
12. I consider that the judge’s observations as paragraph 23 that there is a “considerable amount of disruption” in the country to amount to judicial understatement. Understandably the judge did not want to do her own research into the situation in Yemen, especially given this was dealt with as a paper case, and she was unable to seek the parties’ agreement as to the situation there. She did refer in broad terms at paragraph 31 to the situation which “reigns” in Yemen, which I take to be a reference to the well-documented conflict and humanitarian situation.
13. At the hearing I sought Mr Tarlow’s views on referring to the Home Office’s own Country Policy and Information Note concerning Yemen. Mr Tarlow had no objections to me doing so. Paragraph 2.3.5 of the *Country Policy and Information Note, Yemen: Security and humanitarian situation*, version 4.0, January 2019, states :

“Yemen is experiencing a severe humanitarian crisis as the result of ongoing conflict and the UN has declared a level three emergency response (activated in the most complex and challenging humanitarian emergencies when the highest level of

mobilisation is required). Areas in which people are in severest needs are in the north and west of the country controlled by the Houthi rebels, which sees open fighting, including Saudi led aerial bombardment.”

It is not necessary to outline the humanitarian situation in further depth.

14. Turning to the decision itself, I consider that the judge provided sufficient reasons as to why the appeal could be allowed. She was aware of the fact there was extreme conflict and a very poor humanitarian situation, as I have demonstrated is confirmed by the Home Office’s own guidance on Yemen.
15. In relation to the contention in the grounds of appeal that there is no evidence that the appellant’s own home had been bombed, I consider that the watermark of whether there exist exceptional circumstances or whether it would be unjustifiably harsh to maintain the refusal of entry clearance is not whether or not an appellant’s house has been bombed. It was plain from the judge’s general knowledge, as accepted by the Country Policy and Information Note, of the situation in Yemen was such that the circumstances there meant that the appellant could not be expected to maintain face-to-face contact with the sponsor in Yemen. The effect of continued refusal of entry clearance in these circumstances would be potentially permanent separation. I accept that the Home Office may take a different view as to whether or not such circumstances amount to it being unjustifiably harsh for the purposes of whether or not entry clearance should be granted. The sponsor at the time of the application had been unable to establish a clear employment history making sufficient money in order to satisfy the requirements of the minimum income requirement. This is because he previously had extensive care and responsibilities for his own mother who has since died.
16. I consider there to have been nothing irrational or perverse about the judge’s approach. She outlined the general situation in Yemen, gave sustainable reasons as to why it would be unjustifiably harsh to expect the sponsor to establish an employment history sufficient to meet the minimum income requirement, in view of the fact that matters were of such severity in Yemen. She reached a conclusion that was open to her on the facts of the case to reach. Not all judges would have reached that generous conclusion, but to the extent the Secretary of State contends that the judge fell into error in doing so, her submission is one of disagreement, rather than one highlighting an error of law.
17. In relation to the second ground of appeal, namely that the judge had ascribed insufficient evidence to the public interest in immigration control, the judge noted at paragraph 31 that circumstances such as those at play in the present matter would not usually amount to something getting close to the exceptional circumstances threshold. In articulating matters in this way, it is plain that the judge had in mind the high threshold required in order to depart from the requirements of the Immigration Rules on the grounds of exceptional circumstances. When the judge drew her analysis together at paragraph 32, she specifically noted that the appellant did not meet the requirements of the Immigration Rules and again underlined her emphasis on the public interest in maintaining effective immigration control.

18. I also consider the judge to have underlined her understanding of the importance she ascribed to the maintenance of effective immigration controls through the repeated references in the decision to the potential that the sponsor has, in due course, to work at a level which is likely to meet the minimum income requirement, for example at paragraph 32. She also noted the employment history of the appellant herself and the transferable skills that she has which could be of use in the labour market in this country: see paragraph 30. The judge was therefore clearly mindful of the importance in due course of economic independence and gave sufficient reasons to find that the appellant and sponsor were likely to be economically independent in due course.
19. As such given the underlying conflict which exists in Yemen at this time, and given the reasons provided by the judge, I do not consider that the judge erred in her weight to the importance of maintaining effective immigration controls. Weight is a matter for the judge. She had regard to the substance considerations contained in see Part 5A of the Nationality, Immigration and Asylum Act 2002. The Secretary of State may disagree with the findings of the judge, but nothing in the grounds of appeal reveals the presence of irrationality necessary for this Tribunal to interfere with this very fact-specific decision and exercise of judicial discretion.
20. This appeal is dismissed.

*Postscript*

21. As I conclude, I note the observations of the Court of Appeal in UT (Sri Lanka) v Secretary of State for the Home Department [2019] EWCA Civ 1095. At paragraph 19, the Court of Appeal observed that the right of appeal to the Upper Tribunal is on any point of law arising from a decision made by the First-tier Tribunal other than an excluded decision. The court also noted that, although error of law is widely defined, it is not the case that the Upper Tribunal is entitled to remake the decision of the First-tier Tribunal simply because it does not agree with it or because it thinks it can produce a better one. Therefore, the reasons given for considering there to be an error of law “really matter”, said the Court of Appeal. The court then quoted Baroness Hale in AH (Sudan) v Secretary of State for the Home Department where she stated at paragraph 30,

“Appellate courts should not rush to find misdirections simply because they might have reached a different conclusion on the facts or have expressed themselves differently.”

I also consider the concluding remarks of the Court of Appeal in UT (Sri Lanka) to be of particular relevance to the present matter, given the overly generous grant of permission, which did not articulate with the required specificity how it considered Judge Veloso to have reached an irrational decision (as to which see, for example, Durueke (PTA: AZ applied, proper approach) [2019] UKUT 00197 (IAC), Headnote at (ii) and (iii)).

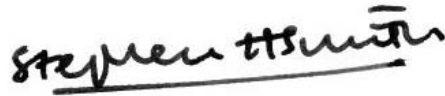
22. At paragraph 38, Lord Justice Coulson referred to what he considered to be an “unsatisfactory practice” in this jurisdiction, namely the “erroneous belief that every decision, no matter its provenance, nature or form is always capable of being appealed or at least reviewed, such that neither side ever regards any decision as final.” I consider this is one such matter where permission to appeal should not have been sought, still less should it have been granted.

**Notice of Decision**

This appeal is dismissed. The decision of Judge Veloso stands.

No anonymity direction is made.

Signed

Handwritten signature of Stephen Smith in black ink, written over a horizontal line.

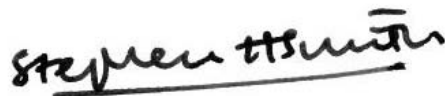
Date 5 September 2019

Upper Tribunal Judge Stephen Smith

**TO THE RESPONDENT**  
**FEE AWARD**

The decision of Judge Veloso not to make a fee award stands, for the reasons she gave.

Signed

Handwritten signature of Stephen Smith in black ink, written over a horizontal line.

Date 5 September 2019

Upper Tribunal Judge Stephen Smith