



**Upper Tribunal**

**(Immigration and Asylum Chamber)  
PA/11118/2019 (P)**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Decided under rule 34 (P)**

**Decision & Reasons  
Promulgated**

**On 24 September 2020**

**On 29 September 2020**

**Before**

**UPPER TRIBUNAL JUDGE KEKIĆ**

**Between**

**S MDF**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**DECISION AND REASONS**

**Representation (by way of written submissions)**

**For the appellant: Mr J Howard, Fountain Solicitors**

**For the respondent: Mr T Melvin, Senior Home Office Presenting  
Officer**

## **Background**

1. This appeal comes before me following the grant of permission to appeal by Upper Tribunal Judge Finch on 19 June (promulgated on 30 June) 2020 against the determination of First-tier Tribunal Judge Parkes, promulgated on 12 February 2020 following a hearing at Birmingham on 27 January 2020.

2. The appellant is a Yemeni national who appeals the respondent's decision of 7 November 2019 to refuse to grant him protection. He has, however, been granted humanitarian protection until November 2024 due to the ongoing war but argues that he would be at risk on return on asylum grounds on the basis that he was a journalist who is wanted for the anti Houthi articles he wrote on Facebook in Turkey where he had attended university. He claims to have worked at news agencies whilst and after studying. He claims that the rebels threatened him by phone and forced his mother to disown him. He also claims that there are 'wanted' posters of him displayed in public in Yemen.

3. The appellant overstayed his student visa in Turkey and was detained pending deportation. He then flew to Khartoum from where he travelled to Egypt, Mauritania, Mali, Algeria, Morocco, Spain, France, Belgium and then the UK, arriving here by lorry in March 2019.

4. The respondent found the appellant's claim to be speculative and inconsistent and rejected its credibility.

5. An appeal was lodged and came before First-tier Tribunal Judge Parkes. The judge heard oral evidence. He noted that the appellant had been unable to provide any evidence that he had worked as a journalist and that he had made no attempts to obtain such information from Al Jazeera and the other agencies in Turkey he claimed to have worked for. He considered the pictures of wanted posters showing the appellant's face with Arabic writing and a date written in English. He found that in the absence of any identifying features, these could have been anywhere. He considered that it was not credible that with an ongoing war, the rebels would be chasing the appellant who had been out of the country for many years or that they had not returned to the appellant's mother's home after a single visit if they really were interested in the appellant. He found that the court document, sentencing him to three years in prison and being passed off as an original, was a photocopy. He noted that the appellant seemed content to leave his wife in Yemen living with a group of women. He noted that the appellant had not mentioned a wife when asked for family details. He dismissed the appeal.

6. The appellant sought permission to appeal on the following grounds: (i) that the judge made no findings on whether the appellant wrote the articles claimed (at AB:130-132) and on the impact they would have on

the persecutory risk he fears on return to Yemen; (ii) that having accepted that the appellant had been a student of journalism in Turkey, the judge misdirected himself in the assessment of the persecutory risk the appellant faces; (iii) that it was unreasonable for the judge to expect the appellant to have obtained evidence of his work for journalist agencies because of "the appellant's factual matrix"; (iv) that the judge erred in his assessment of the evidence of posters of the appellant by expecting to see geographical identifying features; (v) that no reasons were given for why the judge did not attach weight to the evidence of the appellant's witness; and (vi) that the judge did not explain why weight could not be given to the court document.

7. Permission was granted by Upper Tribunal Judge Finch on the basis that the judge had arguably erred in making findings without taking account of the articles in the appellant's name, the evidence of the witness and by failing to consider the evidence of posters in the context of the situation in Yemen.

#### Covid-19 crisis

8. Normally, the matter would have been listed for hearing after the grant of permission, but due to the Covid-19 pandemic and need to take precautions against its spread, this did not happen. Instead, directions were sent to the parties by Upper Tribunal Judge Rimington on 13 July 2020. They were asked to present any objections to the matter being dealt with on the papers and to make any further submissions on the error of law issue within certain time limits.

9. Mr Melvin's submissions for the respondent were received on 21 July 2020 and the submissions for the appellant from Mr Howard were received on 24 July 2020. I now proceed to consider the matter.

10. In doing so I have regard to the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Rules), the judgment of Osborn v The Parole Board [2013] UKSC 61, the Presidential Guidance Note No 1 2020: Arrangements during the Covid-19 pandemic (PGN) and the Senior President's Pilot Practice Direction (PPD). I have regard to the overriding objective which is defined in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as being "*to enable the Upper Tribunal to deal with cases fairly and justly*". To this end I have considered that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues (Rule 2(2) UT rules and PGN:5).

11. The appellant seeks an oral hearing but gives no reasons for why the matter cannot be determined on the papers despite being specifically asked to address it. In the absence of any reasons, and given that the arguments for the appellants are clearly made by way of the grounds for permission and in the submissions, I see no reason why the appellant would be disadvantaged by a paper determination. I am satisfied that I am able to fairly and justly deal with this matter on the papers before me and I now proceed to do so.

### **Submissions**

12. For the respondent, Mr Melvin submits that in the absence of any evidence from the two news agencies in Turkey to confirm the appellant's claim of employment, the judge was entitled to reject the claim that he was a journalist. It is submitted that given that finding, the claimed published articles carry no weight and the evidence falls away. It is submitted that the appellant's witness only met him after his arrival in the UK and whatever he has said about the appellant's activities were not as a result of first hand knowledge. It is submitted that the judge was aware that the appellant had been granted humanitarian protection and so was alert to the situation in Yemen. It was open to the judge to note that the appellant had failed to show that the posters were displayed in a Houthi controlled area in Yemen and to note that the date was displayed in English. The judge had considered the evidence holistically and reached sustainable conclusions.

13. For the appellant, Mr Howard submits that the judge accepted that the appellant had been a student of journalism in Turkey but he failed to make any findings on whether the appellant had written the newspapers articles that had been adduced and on how they would impact upon him on return to Yemen given that they highlighted problems in Yemen in relation to the Houthi militia. It is submitted that no findings were made on the evidence of the witness or on the enhanced risk the appellant faced on account of the general country conditions in Yemen. It is submitted that the judge erred with respect to his assessment of the evidence from the appellant showing posters bearing his face. It is submitted that these should have been considered in the context of streets in Yemen rather than expecting local identifying features. It is submitted that had the judge properly considered all the evidence, he would have reached a different conclusion.

### **Discussion and conclusions**

14. According to the documentary evidence in the appellant's bundle, he obtained a degree in journalism from Gazi Antep University on 28 June 2017 and had permission to remain in Turkey until 9 November 2017 but overstayed until the Turkish authorities arrested him for deportation and he made a voluntary departure to Sudan in March 2018. During his time in Turkey he claimed to have worked for two news agencies, Qasion and Al-

Jazeera. No evidence of his work for either agency has been put forward. Whilst the judge accepted that the appellant had been a student (there is ample evidence of that), he was entitled to expect a similar amount of confirmatory evidence about the appellant's employment. The grounds complain that such an expectation was unreasonable due to the factual matrix but that is not explained. The burden is on the appellant to make out his case to the required standard. It should have been a simple matter to establish his journalistic credentials; for example, by evidence of news agency ID cards, proof of salary payments, a letter from the agency or from others with whom he worked, but nothing has been adduced. The judge was entitled to have concerns about the lack of such evidence.

15. The only evidence of the appellant's writings are the few articles he wrote with another student as part of a graduation project: 'Lens' (these appear in the appellant's bundle at 121-130 and are duplicated at 131-135). They do not bear his full name or any other form of identification and although the appellant maintains that they were posted on his Facebook page, no evidence of that has been adduced and given the absence of any prior political profile it is unclear how this would have been spotted almost immediately by the rebels. Only two articles refer to Yemen and one of those is about Yemeni students abroad. So the appellant's claim is that all the efforts by the Houthis to find him were prompted by a single article, which it has to be said is not written in the clearest of terms, in a student project in Turkey.

16. The pictures of posters said to have been displayed in different areas in Yemen were sent to him by a friend but there is no evidence of that. If sent by WhatsApp, as appears to have been the case, the appellant should have details of the message even if deleted by the sender. The appellant's case was that these were displayed in Yemen but the judge found that had not been established. Despite the fact that the judge was criticized for pointing out that there were no signs to establish the geographical location where the posters were displayed, it was open to the judge to find that the appellant had not made out his claim that these posters were displayed in Yemen. That is essentially all the judge was saying. The anomaly of a date on the poster being the only part not in Arabic was also highlighted by the respondent and the judge but remains unaddressed (at 24). There is also no attempt to address how the rebels would have obtained the appellant's photograph and he does not identify the photograph as being one that might have been in the public domain.

17. The judge considered the fact that the appellant was not in Yemen when the interest in him was first expressed and it was open to the judge to highlight the oddity of the rebels expending time and resources to locate him for an article when engaged in a ferocious war (at 27).

18. The lack of interest in the appellant's mother, even as a source for finding the appellant, was also noted by the judge who found it strange that the Houthi had not been back to her (at 28). There is no suggestion

that they have approached any other member of the appellant's family, including his father who lives in Sanaa.

19. The grounds are correct to point out that the judge did not make any findings on the evidence of the appellant's witness but although this is an error it cannot in any way be material to the outcome of the appeal as the appellant and his witness only met recently in the UK. The witness did not even know if the appellant was married and anything he said about the appellant's work and fears would have come from the appellant. Although the witness claimed to have visited Yemen in 2018 (before he met the appellant) he had no contact with the appellant's family there. Therefore whilst it would, of course, have been preferable for the judge to have addressed the relevance of the evidence and the weight, if any, to be given to it, the failure to do so does not render the determination unsustainable.

20. There was no need for the judge to consider whether the appellant would be at risk as a result of the general problems in Yemen as he has been granted humanitarian protection.

21. No article 8 claim has been pursued.

22. When considering all the evidence holistically, as one is required to do, the judge's findings are reasoned and sustainable. The decision to dismiss the appeal is upheld.

### **Decision**

23. The decision of the First-tier Tribunal did not contain errors of law. The appellant's appeal is dismissed.

### **Anonymity**

24. I make an anonymity order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Unless the Upper Tribunal or a court directs otherwise, no reports of these proceedings of any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the content of the protection claim.

Signed

R. Kekić  
Upper Tribunal Judge

Date: 24 September 2020