



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-000492
First-tier Tribunal No: PA/52376/2020
IA/00823/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 17 May 2023**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**K.H.A. Abu Baker + 2
(no anonymity order made)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr B. Hawkins, Counsel instructed by Fountain Solicitors
For the Respondent: Mr A. Tan, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 6 March 2023

DECISION AND REASONS

1. The Appellant is a national of Yemen born on the 17th July 1978. His dependents are his wife and minor daughter. They have all been granted Humanitarian Protection by the Respondent. The question that arises in this appeal is whether they should instead be recognised as refugees.
2. The salient facts are that the Appellant and his family are Sunni Muslims who have never in fact lived in the country of their nationality, Yemen. Both the Appellant and his wife were born in Saudi Arabia after their family fled there to avoid civil war in the 1960s. They lived and worked in Saudi Arabia until 2020 when a change in the law meant that the Appellant lost his employment in favour of a Saudi national. Having lost his job, he then lost his right to reside. He and

his family subsequently came to the United Kingdom and claimed asylum. The basis of the claim was that as Sunni Muslims who had lived in Saudi Arabia, they would be at risk of persecution in the north of the country: the *de facto* government of Ansar Allah (the 'Houthi rebels') are Zaydi Shi'as who are hostile to Saudi Arabia, and by extension to Sunnis who have lived there. Furthermore he could not live in the south of his country because being of northern origin, a fact discernible from his name, he would be perceived to be associated with the rebels, and would as a result face persecution there from the Southern Transitional Council (STC).

3. The Respondent refused the claim on the 27th October 2020, having reached the conclusion that what the Appellant was in fact afraid of was the civil war: the Refugee Convention was not therefore engaged.
4. The Appellant appealed and the matter came before First-tier Tribunal Judge Handler, who by her decision of the 15th June 2021 dismissed the appeal. Judge Handler first considered the position in respect of Northern Yemen, and having done so concluded that the country background material did not support a finding that a returnee from Saudi Arabia would face a real risk from Houthi rebels. The decision then turns to the south of the country. Country background information did indicate that there was a "mass arrest and deportation campaign against northerners" going on in some areas, particularly around Aden. That evidence did not however "support a finding that a person with northern origins would be at risk of displacement in every area of the south of Yemen". So although the Appellant did have an identifiably northern name, and there were checkpoints where that might be discovered, the risk of arrest and forced displacement did not pertain "wherever he lived in the south of Yemen". The decision then concludes as follows:

"32. If the appellant's home area is taken as being the area where his family came from, that is Taiz which is Houthi controlled. For the reasons set out above he has not shown to the lower standard that he has a well-founded fear of persecution there for any Refugee Convention reason. Therefore, any risk that he faces in the south of Yemen is not relevant.

33. If the correct approach is that because the Appellant has not lived in Yemen and his father left Yemen in 1965 and he has no remaining family there, there is no home area as such, any risk of persecution in the south of Yemen would not enable him to succeed in his appeal because there is no reason why the south of Yemen should be treated as his home area. Even if it was, the evidence does not support a finding that he would face a risk of displacement in every area in the south of Yemen. He has not shown that such a risk would exist in Mahra province".

5. Was this the correct approach?

Discussion and Findings

6. In my view, it was not. The question of whether someone is a refugee is commonly broken down into two parts. Is there a fear of persecution in the claimant's 'home area'? If there is, then the next stage of the enquiry is to ask

whether it would be unduly harsh, or reasonable, to expect them to move away from the home area to avoid that persecution. Those questions are not however requirements of law. They only arise commonly because they commonly arise on the facts.

7. Article 1A(2) of the Refugee Convention defines a refugee as someone who:

“owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”.
8. There is no reference in that definition to where the persecution takes place, beyond the requirement that it is in the country of nationality, and that is *why* the claimant is outside of it. It is from that focus on causation that the doctrine of internal flight developed. If there was somewhere within the country that the claimant could reasonably go, then it must follow that the claimant cannot legitimately claim to have left owing to his fear.
9. The framework for enquiry in this case should therefore have been:
 - a) Is the Appellant outside of Yemen owing to his (subjective) fear of persecution for a Convention reason;
 - b) Is that fear well founded?
 - c) Is there somewhere else within Yemen where he could reasonably be expected to move to receive state protection?
10. The First-tier Tribunal found that the Appellant was outside of Yemen owing to his fear of war. It is certainly true that this was a feature of his evidence, but it was not the only one. He explained that he also feared being targeted by various factions because of his ethnic origins and religious affiliation, as for instance in this passage from his witness statement:

“Having a northern Yemeni roots would make me unwelcome to live in the southern part by locals and by the separatist militia Southern Transitional Council, which governs many southern provinces. Northern Yemenis were deported from the South on many occasions especially after clashes between the separatists and the Muslim Brotherhood, Islah party, that controls some southern provinces. The Muslim Brotherhood and al Qaeda in the South of Yemen have the philosophy of ‘join us or die’”
11. In truth the Appellant is outside of his country of nationality for a number of reasons: he has never lived there and has no connections there; a brutal and intractable civil war rages; the war has led to a huge humanitarian crisis with millions facing starvation, lack of shelter and clean water; and, as he has credibly explained, because he fears being targeted as a northerner. It is well established in UK jurisprudence that the ground on which the claimant relies need not be the only, or even the primary reason for the feared harm. It is enough that the ground relied on is “an effective reason”: per Lord Bingham in *Fornah* (FC) [2006] UKHL 26 [at 17]. It was clear from the Appellant’s witness statement that his fear of

being targeted was a significant, and therefore “effective” reason why he sought international protection. Question (a) is therefore answered in the Appellant’s favour.

12. In respect of question (b), Mr Hawkins submits that the First-tier Tribunal also answered that in the affirmative. He points to the Tribunal’s acceptance of reports in *The Independent* newspaper that the STC (Southern Transitional Council) forces had launched a “mass arrest and deportation campaign against northerners” in Aden governorate as well as in some parts of Lahij and Abyan which border it; UNCHR evidence indicated that “over a thousand civilians with northern origins, including children, have been seized, with reports that they are to be forcibly deported to the North of Yemen”; and an article in the Daily Yemen confirmed the same, stating that hundreds of workers from northern provinces had been detained at an entry point to Aden.
13. At the hearing I queried whether the Tribunal’s acceptance that such actions were taking place amounted to a finding that the feared treatment amounted to persecution for a Convention reason. The Tribunal certainly does not say so. None of the documents specified how the detentions and displacement were being managed; there is no express indication that violence is involved; nor is it clear how long people are detained for. It is not always the case that such ‘round-ups’ amount to persecution. In Ravichandran v Secretary of State for the Home Department [1996] Imm AR 97 the Court of Appeal considered similar actions in the context of another civil war, that of the Tamils against the Sri Lankan state. No one doubted that many young Tamil men were being routinely rounded up and detained in Colombo. The Court was however not satisfied that these derogations of ‘second tier’¹ rights amounted to persecution. They were motivated not by any animus towards Tamils *per se*, but to fighting terrorism. Per Simon Brown LJ:

In particular I cannot accept that, even supposing these round-ups to be unlawful under Sri Lankan law and the 1966 Covenant, they are thereby necessarily to be regarded as involving persecution for a Convention reason. Justified or not, the loss of liberty involved is relatively limited and although in one sense the arrests are clearly ethnically based they are obviously directed not to the oppression of Tamils as such but rather to the maintenance of public order.

Could it be the case that the actions of the STC are akin to those of the Sri Lankan authorities in the 1990s?

14. On the basis of the limited evidence before me, I have decided that they are not. The evidence that the First-tier Tribunal was relying upon was all cited by the Respondent in her refusal letter. That evidence does not indicate that the ‘round-ups’ were motivated by a desire to combat crime, disorder or terrorism. There is no indication that people with northern Yemeni origins have been involved in such actions in the south, or that the STC (the effective government in the south of the country) has passed lawful measures aimed at tackling such problems. Those detained are not held by the police: they are driven north and left there. Those subject to the detentions include mothers and children, a strong indication that this is not a campaign with a legitimate lawful aim. Furthermore the inevitable consequence of such arbitrary detention and forcible displacement is that the civilians involved are deposited in areas not of their choosing in the north, areas

¹ See further PS (Christianity - risk) Iran CG [2020] UKUT 00046 (IAC) [§124]

where, it is implicitly accepted by the grant of humanitarian protection, they will be exposed to serious violence. For those reasons, I find that the risk of round-ups that the Tribunal accepted this family to face would amount to persecution for a Convention reason, namely their ethnic (northern Yemeni) origin. Question (b) is also answered in the Appellant's favour.

15. The final question is whether the family could reasonably be expected to relocate within Yemen to avoid such harm and seek state protection there. Article 8 of the Qualification Directive, still applicable to this appeal, provides:

Article 8

Internal protection

1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country.
2. In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.
3. Paragraph 1 may apply notwithstanding technical obstacles to return to the country of origin.

16. And this is replicated in material terms at section 35 of the Nationality, Asylum and Borders Act 2022:

35 Article 1(A)(2): internal relocation

(1) An asylum seeker is not to be taken to be a refugee for the purposes of Article 1(A)(2) of the Refugee Convention if—

(a) they would not have a well-founded fear of being persecuted in a part of their country of nationality (or in a case where they do not have a nationality, the country of their former habitual residence), and

(b) they can reasonably be expected to travel to and remain in that part of the country.

(2) In considering whether an asylum seeker can reasonably be expected to travel to and remain in a part of a country, a decision-maker—

(a) must have regard to—

- (i) the general circumstances prevailing in that part of the country,
and
- (ii) the personal circumstances of the asylum seeker;

(b) must disregard any technical obstacles relating to travel to that part of that country.

17. The First-tier Tribunal's decision does not address whether internal flight would be reasonable. It simply observes that the Appellant is not at risk of persecution everywhere in Yemen. That is not the same thing. Had that question been asked, there was only one answer that the Tribunal could have reached. Given the Secretary of State's acceptance that there was a risk of indiscriminate violence so great that humanitarian protection was necessary, it could only have concluded that there was no reasonable internal flight alternative. There is a risk of indiscriminate violence exacerbated by the fact that this is a family of, in effect, outsiders, with no local knowledge to call upon to navigate the dangers of life in Yemen today. There being no internal flight alternative, it follows that question (c) is also answered in the Appellant's favour. He and his family are refugees.

Notice of Decision

The appeal is allowed on protection grounds.

I was not asked to make an order for anonymity, and on the facts I see no reason to do so.

Gaenor Bruce
Judge of the Upper Tribunal
Immigration and Asylum Chamber
15th May 2023