Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/08133/2013

THE IMMIGRATION ACTS

Heard at Bradford
On 21 January 2014

Determination Promulgated

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Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

MANAF OMAR ABDULRAHMAN AL-MANSAB

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Siddique, Parker Rhodes Hickmotts, solicitors
For the Respondent: Ms R Pettersen, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Manaf Omar Abdulrahman Al-Mansab, was born on 26 June 1983 and is a citizen of Yemen. He had appealed against decision of the respondent dated 9 August 2013 to refuse to grant him asylum and to remove him from the United Kingdom by way of directions under paragraph 10A of Schedule 2 of the Immigration Act 1971. The First-tier Tribunal (Judge Sarsfield) in a determination

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promulgated 3 October 2013, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The first ground of appeal concerns errors allegedly made by the judge in his analysis of the evidence. First, at [14], the judge found that there was "no evidence relating to the 16FM (16 February Movement) other than a letter (post)." The appellant claimed to be a member of the 16FM group, an opposition political party in South Yemen. As the appellant's grounds point out, the judge's finding that there was "no evidence" relating to the group was not accurate; the judge had before him an internet news article (with translation) in the respondent's bundle of documents which clearly refers the group.

3. Further, at [17], the judge made a number of detailed findings some of which (it is not disputed) were factually inaccurate. The judge refers to a letter from a lawyer who has visited the appellant in detention. Mention is made in the letter of two other individuals seeking to visit the appellant ("activists"), the judge recorded that there was "no evidence to support the claim that [those individuals] were activists and the appellant only ever mentioned a visit by a lawyer, not anyone else so this contradicts his own evidence." As the grounds point out, there was no inconsistency in the appellant's own evidence because the lawyer had explained in his letter that the activists/human rights observers had not been allowed into prison to speak with the appellant although they had attempted to enter the prison. It was not surprising, therefore, that the appellant himself, having received only a visit from the lawyer and not the activists/human rights observers, should only mention the lawyer.

4. In the same paragraph, the judge refers again to the lawyer's letter and noted that the letter "refers to questioning [paragraph 5] that the appellant has never mentioned." Again, that finding was not factually accurate; at [19] of his own witness statement, the appellant referred to the questioning.

5. At [18] of the determination, the judge referred to a memo dated 24 March 2013 which had prevented the appellant from travelling. The judge went on to observe that "this [memo] did not stop the appellant entering Yemen from Egypt on 26/03/12 as he claimed." Later, the judge refers to the appellant's "re-entry to Yemen on 26/03/12."Any reader of the determination would be left in no doubt that the apparent inconsistency had diminished the appellant's credibility in the mind of the judge. In the appellant's witness statement [16 and 34] the appellant refers to having entered Yemen on 6 March 2013 not 26 March 2013. There was no reason, therefore, why the appellant should have been stopped from entering on that date since, at the time of his entry, the memorandum had not been issued.

6. Ms Pettersen, for the respondent, did not seek to take issue with the submissions made in the grounds of appeal. Indeed, it is clear from any perusal of the evidence which was before the First-tier Tribunal that the criticisms of the determination are all substantiated.

7. The judge has inaccurately referred to there having been no evidence of matters which were referred to, sometimes in more than one place, in the appellant's written evidence. Whilst a single minor inaccuracy might not disturb a determination, the fact that there are numerous errors in this determination have led me to conclude that the decision is not safe and should be set aside. In addition to the errors which I have referred to above, I note at [18] that the judge refers to a number of dates which are simply not accurate. The judge has also somewhat carelessly referred at [24] to the appellant having no risk of serious harm should he return to Kuwait, rather than Yemen. In addition, I find that the judge's findings at [21] are unclear. It is not apparent from that paragraph whether the judge actually found that the appellant had knowledge of the South Yemen Movement or whether he was present at a meeting to prepare to commemorate independence; use of the word "may" leaves these matters in doubt.

8. I direct that none of the findings of the First-tier Tribunal's determination shall stand and that the hearing shall be determined *de novo*. In the light of the extensive evidence of fact which the Tribunal will need to consider and make findings in respect of afresh, I find that the appeal should be remitted to the First-tier Tribunal for the decision to be remade by a judge other than Judge Sarsfield.

DECISION

9. The determination of the First-tier Tribunal promulgated on 3 October 2013 is set aside. None of the findings of fact shall stand. The appeal should be remitted to the First-tier Tribunal for the decision to be remade by that Tribunal.

Signed Date 11 February 2014

Upper Tribunal Judge Clive Lane