



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

Abunar (Para 339C: “Country of return”) [2018] UKUT 00387 (IAC)

THE IMMIGRATION ACTS

Heard at Glasgow

17 August 2018

**Decision & Reasons
Promulgated**

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Before

**MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE CONWAY**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

WAJDI SAEED ABUNAR

Respondent

Representation:

For the Appellant: Mrs M O’Brien, Senior Home Office Presenting Officer.

For the Respondent: In person.

It appears that paragraph 339C of the Immigration Rules does not correctly transpose the relevant provisions of the Qualification Directive.

DETERMINATION AND REASONS

1. This is the Secretary of State’s appeal; the respondent, whom we shall call “the claimant”, appeared before us unrepresented and street homeless.

2. The claimant claimed to have been born in Syria. He lived for many years in Egypt. He claimed to have left Egypt with a well-founded fear of persecution there. He gave oral evidence before Judge Murray. She distinguished carefully between the evidence she believed and the evidence she did not believe. On the material before her she concluded that the claimant was a national of Syria who had, or had had an Egyptian residence permit; he had lived in Egypt since the age of six, but he did not leave Egypt fearing persecution in that country and would not be in danger on return to Egypt. The Secretary of State's position, as set out in the letter of refusal, was that he did not believe that the claimant was of Syrian nationality; but even if he were, he could be returned to Egypt. Judge Murray concluded as follows:

"52. I do not find that the appellant's asylum claims can succeed for a Convention reason but as I find he is Syrian and based on the situation in Syria at the moment I am going to grant him humanitarian protection in the United Kingdom."

She therefore allowed the appeal on humanitarian protection grounds.

3. The Secretary of State sought permission to appeal on a number of grounds. It was asserted that the judge had adopted a flawed approach in assessing credibility and in setting the standard of proof. Judge Phillips, before whom the application for permission came for consideration, refused permission on those grounds. Ground 2, however, was as follows:

"Even if it was open to the FTJ to find the appellant is Syrian, the evidence from the appellant himself was that he apparently resided in Egypt lawfully on a residence permit in his Syrian Passport. The FTJ makes no findings why the appellant couldn't return to Egypt in a similar fashion given she has found he could safely return there.

The FTJ makes no/inadequate findings if she accepts the appellant is no longer in touch with his family."

4. Judge Phillips' response to that was as follows:

"The second ground is however arguable. Given the findings made there is no analysis of why the Appellant could not return to Egypt. It is concerning that the Judge finds (at paragraph 42) that if "the appellant is from Syria then I shall grant him humanitarian protection" with no reference to a potential return to Egypt in such circumstances. Indeed, the next paragraph finds that the Appellant could return to Egypt but only if he is Egyptian. These conclusions and the resultant allowing of the appeal on humanitarian protection grounds do not address paragraph 339C of the Immigration Rules or paragraph 15(c) of the Qualification Directive neither of which restrict return to the country of nationality."

He therefore granted permission on that ground only.

5. There are no removal directions in this case, but the decision under appeal states that the claimant "can be removed to Egypt".

6. Mrs O'Brien began by applying for an adjournment on the basis that the claimant was clearly vulnerable and ought to have a further opportunity to seek further representation. We sought her substantive submissions before considering that application, because we suspected that we might be able to deal with the matter more efficaciously by not granting an adjournment. Mrs O'Brien accepted that the claimant is a Syrian national and that the circumstances in Syria are such as to engage article 15(c) of the Refugee Qualification Directive. The substance of the determination, and the judge's findings of fact, lead clearly to that conclusion. The issue of whether under those circumstances the Secretary of State can refuse humanitarian protection on the ground that the claimant could be removed to Egypt is a matter of potential difficulty. As Judge Phillips noted, neither article 15(c) itself, nor paragraph 339C of the Statement of Changes in Immigration Rules, HC 395 (as amended), make reference to the circumstances as circumstances in the country of the claimant's nationality. That, however, is far from being the end of the matter.
7. Article 15(c) sets out only the circumstances in which there is, within the meaning of the Directive, "serious harm". The conditions of a grant of subsidiary protection (called in the United Kingdom "humanitarian protection"), are set out in article 18, which provides that:

"Member States shall grant subsidiary protection status to a third country national or a stateless person eligible for subsidiary protection in accordance with chapters II and V."

Article 15 is part of chapter V but within article 2 are the following definitions:

"For the purposes of this Directive:

...

(e) 'Person eligible for subsidiary protection' means a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her *country of origin*, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom article 17(1) and (2) do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country. (emphasis added).

...

(k) 'Country of Origin' means the country or countries of nationality or, for stateless persons, of former habitual residence."

8. The transposition of the relevant provisions into United Kingdom law is by paragraphs 339C onwards of the Immigration Rules. But the comparable provisions of paragraph 339C are as follows:

"A person will be granted humanitarian protection in the United Kingdom if the Secretary of State is satisfied that:

- (i) They are in the United Kingdom or have arrived at a port of entry in the United Kingdom;
- (ii) They do not qualify as a refugee ...;
- (iii) Substantial grounds have been shown for believing that the person concerned, if returned to the *country of return* would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail themselves of the protection of that country; and
- (iv) They are not excluded from the grant of humanitarian protection.”
(Emphasis added).

9. It is therefore right to say, as Judge Phillips did say, that paragraph 339C does not refer to the country of nationality. However, the phrase used in the Directive is “country of origin”, but the phrase used in paragraph 339C is “country of return”. The latter phrase does not appear to be defined in the Immigration Rules, and it must therefore be assumed that it applies to a country of proposed return, whether or not that country is the claimant’s country of origin. It appears to follow that paragraph 339C does not correctly transpose the relevant provisions of the Directive.
10. Mrs O’Brien did not ask us to apply the Immigration Rules rather than the Directive. There is no doubt that the wording of the determination is unfortunate: the judge had no power to grant the claimant humanitarian protection. It is, however, clear from her findings that the claimant was, on the basis of those findings, entitled to a grant of humanitarian protection. We therefore dismiss the Secretary of State’s appeal. With great assistance from Mrs O’Brien, we were able to satisfy ourselves during the course of the day that the claimant had access to housing and other assistance in the light of his successful claim.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 19 October 2018.