



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

Appeal Number: PA/11669/2016
PA/11698/2016
PA/11699/2016
PA/11703/2016

THE IMMIGRATION ACTS

Heard at Field House
On 4 September 2017

Decision & Reasons Promulgated
On 6 September 2017

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

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(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Seelhoff, of Seelhoff Solicitors

For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

- 1.** The first appellant is the mother of the second and third appellants and the sister of the fourth. Their dates of birth are 26 August 1976,

11 August 1999, 6 April 1991 and 2 July 1980 respectively. They are all Yemeni nationals and challenge the determination of First-tier Tribunal Judge Maxwell dismissing their joint appeal for protection. The determination was promulgated on 27 January 2017 following a hearing at Harmondsworth on 19 November 2016. It is accepted by the respondent that the appellants cannot be returned to Yemen but she took the view that they could be returned to the United Arab Emirates where all but the first appellant had been born and where they had previously resided.

2. The grounds maintain that the judge erred in his application of MA (Ethiopia) [2009] EWCA Civ 289, that he failed to make findings of fact on relevant matters and that he erred in his assessment of the expert evidence. Permission to appeal was initially refused by Judge Grimmett on 12 May 2017 but granted on renewal by Upper Tribunal Judge Taylor on 19 July 2017. An additional ground of appeal was added by letter on 8 August 2017; this was that the judge erred in proceeding on the basis that a theoretical right to acquire a right of residence in a third country was relevant to the determination of refugee status or the entitlement to humanitarian protection.
3. At the hearing on 4 September 2017, I heard submissions from the parties. For the appellants, Mr Seelhoff submitted that this case could be distinguished from MA because in the latter the appellant did have nationality but had not applied for a passport whereas here there was no right to citizenship. He submitted that there were limited findings of fact and there had been a fundamental error in the analysis of the third country position.
4. In response, Mr Wilding agreed that the appellants could not be returned to Yemen but submitted that the respondent did not accept the evidence regarding the arrest warrant. He submitted that the judge had failed to make any credibility findings. The respondent's case was that the appellants would be entitled to UAE nationality/residence through their mother/grandmother. Whilst the judge found that was speculative (at paragraph 32), he did not explain why he reached that conclusion and the burden was on the appellants to show that they could not make a claim through that connection. He submitted that the making of such an application would not be placing the appellants at risk.
5. In a brief reply, Mr Seelhoff submitted that credibility findings were lacking in the determination and the entire matter should be re-heard and decided afresh.
6. The judge correctly identified the issue before him as being a question of whether the appellants would be able to return to the UAE

but then failed to make a reasoned and clear finding on that. He skirts around the matter at paragraph 32 of the determination but, as submitted by Mr Wilding, gives no explanation for why he considered it speculative to expect the appellants to rely on a familial link to return to the UAE. He referred to the alleged arrest warrants at paragraph 24 but makes no findings on these or on whether they would be enforced in the UAE or whether they would impact upon the ability of the appellants to approach the UAE authorities in the UK. Nor are any findings made on whether the appellants would be able to obtain employment and for their employers to act as sponsors thereby entitling them to residence.

7. Both parties were in agreement that the determination was flawed owing to an absence of findings on material matters and I concur with that. The matter has to be re-heard and all issues will need to be determined afresh.

8. Decision

9. The First-tier Tribunal made material errors of law and the decision is set aside. It shall be re-made by another judge of that Tribunal following a further hearing at a date to be arranged.

10. Anonymity

11. I continue the anonymity order made by the First-tier Tribunal.

Signed



Upper Tribunal Judge

Date: 4 September 2017