



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

Appeal Number: HU/10862/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons  
Promulgated**

**On 13 September 2018**

**On 4 December 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY**

**Between**

**M A H A  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss Harris, Counsel for Ferial Saada Solicitors, London  
For the Respondent: Mr Kandola, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Yemen born on 26 June 1982. He appealed the respondent's decision of 11 April 2016 refusing his claim under Article 8 of ECHR on the basis of his relationship with his daughter A A born on 14 May 2005. She is a British citizen. His appeal was heard by Judge of the First-Tier Tribunal Courtney on 4 April 2018 and dismissed under Article 8 of ECHR in a decision promulgated on 17 April 2018.
2. An application for permission to appeal was lodged and permission was granted by Judge of the First-Tier Tribunal Hollingworth on 2 July 2018. The permission states that at paragraph 30 of the decision the Judge states that the appellant is theoretically able to acquire a right of

residence in Saudi Arabia. The permission goes on to state that given the reference by the Judge to the theoretical position it is arguable that the Judge should further have delineated the boundary between the theoretical ability to acquire a right of residence and the existence or otherwise of very significant obstacles to reintegration into Saudi Arabia. The permission states that it is arguable that insufficient analysis has been set out exploring that boundary and this has affected the conducting of a full proportionality exercise.

3. There is no Rule 24 response.

### **The Hearing**

4. Counsel submitted that at paragraph 30 of the decision the Judge deals with the appellant's possible return to Saudi Arabia. Theoretically the Judge finds he can go there but I was referred to the appellant's bundle at pages 297 to 312 being the residence regulations for the Kingdom of Saudi Arabia. I was also referred to paragraph 30 of the Judge's decision and she submitted that the Judge gets the information in this paragraph from that document. I was asked to consider the Refugee Board of Canada document in the appellant's bundle about Saudi Arabia and work and residence permits and the assessment therein of residence permits and citizenship rights.
5. She submitted that there are difficulties for the appellant going back to Saudi Arabia. The appellant would not be considered to be Saudi Arabian and residency and citizenship are both based on the appellant's father's side of the family but it is this appellant's mother who is from Saudi Arabia, his father is not. Their children's rights to residence therefore are discretionary and this appellant is no longer a minor.
6. The objective evidence shows that when a visa ends a new application has to be made and the last permit this appellant had in Saudi Arabia was in 2002. She submitted that this would also be a problem for him renewing his permit as it would be considered a totally new application. A completely new visa would have to be granted to enable the appellant to enter Saudi Arabia. He has left Saudi Arabia and he has no retained rights. When the appellant went there, after he started living in the UK, he entered on visit visas. Counsel submitted that there are restrictions on where you can enter from. Counsel submitted that for the appellant to get entry he will need a passport and he does not have a passport.
7. She submitted that this appellant has Yemeni nationality but he has never been to Yemen. She submitted that if the appellant did manage to get entry to Saudi Arabia once his visa ends he could be sent to Yemen and that would be unduly harsh. Much of Yemen cannot be entered because of 15C difficulties there.
8. I was referred to the refusal letter and Counsel submitted that Yemen is not adequately addressed therein. Return to the Yemen has not been

analysed in the refusal letter and he submitted that what has been concentrated on is whether the appellant can go to Saudi Arabia but he has no right to go there.

9. I was referred to the appellant's statement from paragraph 24 onwards. The appellant states that the respondent has suggested that there would be no significant obstacles to his integration into Yemen or Saudi Arabia if he had to leave the UK but he has been in the UK since 2002 and has only visited Saudi Arabia on four occasions. He was born in Saudi Arabia and stayed all his life there before coming to the United Kingdom and he has never visited Yemen. His father, who is originally from Yemen, has not been to Yemen since 1962. His family in Saudi Arabia are residing on temporary residence permits which are renewed every year and when the appellant lived there he was a dependant on his father's residency as he was in full time education. His residence permit has now been cancelled and he no longer has any right to reside in Saudi Arabia. When he went there from the UK he had to apply for a visit visa. Counsel submitted that the appellant will not be permitted to return to Saudi Arabia to live with his family.
10. Counsel submitted that this appellant was married to a British national but the marriage has now broken down. To go to Saudi Arabia he will require a visit visa and then only a temporary stay will be granted. He has no passport and he has not lived there since 2002. She submitted that if the appellant wants to get a work permit he will require to get a Saudi Arabian to get this for him before he enters.
11. Counsel referred to the First-tier Tribunal Judge who considered the appellant returning to Yemen but found that it would not be appropriate for the appellant to go there. He submitted therefore that if the appellant goes to Saudi having managed to get a permit he could well be sent back to Yemen by Saudi Arabia when his visa ends. In any case he would only be there for six months and his permit could be withdrawn at any time. The maximum permit would be for one year and he would have no citizenship there. Counsel submitted that the Judge has made a material error of law in his decision.
12. She submitted that there is not sufficient analysis in the decision when proportionality is assessed. This is an appellant who has nowhere to go if he does not stay in the United Kingdom. 15C applies in Yemen and she submitted that at present the greatest connection the appellant has to any country is the United Kingdom.
13. The Presenting Officer submitted that the application for permission to appeal is merely a disagreement with the Judge's decision. He submitted that it would be perfectly reasonable for the appellant to go back to Saudi Arabia and an application should have been made, as it is not clear whether he is able to go to live there or not and it is not clear whether, if he is allowed to go there, it would only be on a temporary basis.

14. The Judge states in the decision that there is nothing before him to show that the appellant would be discriminated against if he went back to Saudi Arabia and the Presenting Officer submitted that the refusal letter cannot be challenged unless there is a breach of the appellant's Article 3 rights. He submitted that Saudi Arabia is the country of the appellant's last habitual residence and he submitted that there are no very significant obstacles to the appellant reintegrating in Saudi Arabia.
15. Counsel submitted that at paragraphs 31, 32 and 33 of the decision the Judge has explained why he finds the appellant can return to Saudi Arabia. At paragraph 33 the Judge states that he is not persuaded on the balance of probabilities that the appellant would face any very significant obstacles to his reintegration into Saudi Arabia. He finds that he is not entitled to a grant of limited leave to remain in the UK on the basis of his private life under paragraph 276ADE(vi) of the Immigration Rules. He finds that the appellant could get work in Saudi Arabia and I was asked to take into account all the objective evidence which was before the Judge.
16. The Presenting Officer accepted that the Yemen issue should be ignored as the appellant would be in danger if he had to return to Yemen in its present war-torn situation.

### **Decision and Reasons**

17. I have to decide if there is a material error of law in the Judge's decision. The Judge has referred to a theoretical position but when the residence regulations for Saudi Arabia are considered it is not clear whether the appellant is able to go to reside in Saudi Arabia. The problem is that the appellant has not made enquiries about this and has not made any application to go there on any basis. This makes it difficult for a decision to be reached. It seems that if the appellant could acquire a right of residence he could go there and there would be no significant obstacles to his reintegration into Saudi Arabia. The Judge has not considered this in any detail. Because of this it is not clear whether, if the appellant returned to Saudi Arabia there would be a possibility of him having to go to Yemen when his residence permit ran out.
18. The appellant has a British daughter. He is divorced. He only has indirect contact with his daughter.
19. It has been accepted that it would be unduly harsh to send the appellant to Yemen.
20. I have to decide if there is a material error of law on the part of the Judge who made no finding as to whether this appellant can be sent to Saudi Arabia, other than on a theoretical basis, on the evidence which was before him. The grounds suggest that the issue based on Saudi law should be re-determined on the evidence submitted and not heard de novo. I do not find that this is can be done as the appellant has made no attempt to enter Saudi Arabia on any basis. The appellant states that he cannot

return to Saudi Arabia but he has not produced any evidence to support this apart from objective evidence. There was nothing before the First-tier Judge relating to this particular appellant's ability to go and live there. His family is there. He has made no application for, for example, a residence card. The burden of proof is on the appellant and the appellant should make an application and submit further evidence about this at a de novo hearing. The appellant does not have a passport, his father is a temporary resident of Saudi Arabia and his mother is from Saudi Arabia. The grounds state that any admission to Saudi Arabia would be of a temporary status or one without rights. The appellant has not shown this. The burden of proof is on the appellant.

21. I find that the First-Tier Tribunal Judge has not delineated the boundary between the theoretical ability to acquire a right of residence and the existence or otherwise of very significant obstacles to reintegration into Saudi Arabia. This is a material error of law. For this appellant to succeed he has to show that he has tried to enter Saudi Arabia. He has no right to be in the United Kingdom at present. The Judge has insufficiently analysed the evidence before him and this has affected the full proportionality exercise.
22. I find that there are material errors of law in the First-Tier Tribunal Judge's decision promulgated on 18 April 2018. The appellant has not made any attempt to clarify his situation relating to his return to Saudi Arabia.

### **Notice of Decision**

Because I find that there is a material error of law in the First-Tier Judge's decision I direct that that decision is set aside. None of its findings are to stand other than as a record of what was said on that occasion. It is appropriate in terms of Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to remit the case to the First-Tier Tribunal for an entirely fresh hearing and to enable the First-Tier Judge at that hearing to reach a decision the appellant requires to make every effort to show that he either can or cannot obtain residency, even for a temporary period in Saudi Arabia.

Members of the First-Tier Tribunal chosen to consider the case are not to include Judge of the First-Tier Tribunal Courtney.

Anonymity has been directed.

### **Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014**

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 30 October 2018

Deputy Upper Tribunal Judge Murray

A handwritten signature in cursive script, appearing to read "Judge Murray".