



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/17581/2016

THE IMMIGRATION ACTS

Heard at Birmingham
On 23 August 2018

Decision & Reasons Promulgated
On 27 November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MR OMAR MOHAMMED AL HEBSHI
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Appearances:

For the Appellant: Mr T Khan, Counsel instructed by Khurram and Co Solicitors
For the Respondent: Ms H Aboni, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Saudi Arabia, date of birth 11 November 1986, appealed against the Respondent's decision, dated 4 July 2016, to refuse leave to remain under the Immigration Rules and on Article 8 ECHR grounds. His appeal came before First-tier Tribunal Judge Watson who on 31 August 2017 dismissed his appeal. Permission to appeal was given and on 27 June 2018 my decision was promulgated

in which I found there was an error of law in the determination by the First-tier Tribunal Judge of the Appellant's claim particularly on the issue that the judge had not sufficiently dealt with the issue of the impact of the Appellant's removal to the Kingdom of Saudi Arabia (KSA) and the potential impact on his wife. It was clear that his wife has entered into a marriage with the Appellant but that she is not a Muslim or a practitioner of the Muslim faith and there are questions raised but unresolved as to whether or not such a marriage would even be recognised in KSA.

2. I concluded therefore that it was appropriate for the matter to be remade in the Upper Tribunal.
3. The evidence before me was not substantively challenged being the statements made by the Appellant in the First-tier Tribunal bundle dated 21 July 2017 and the evidence of the Appellant in the Upper Tribunal bundle dated 7 August 2018. In addition I had two letters one before the First-tier Tribunal written by the Appellant's wife, Hayley Morris, dated 8 June 2017 which was extensive and a further letter dated 7 August 2018 adding to the contents of the earlier letter she had written. The Appellant and his wife gave evidence. I find the Appellant, whilst being a national of KSA, had not lived there since the age of 3. Whilst he has brothers and sisters who still live there he is not in contact with them and effectively contact ended with the death of his father which has left behind confused property disputes which are unresolved and in which the Appellant knows virtually nothing of his father's estate and/or property if he had any in KSA, particularly when his father's company was effectively either bankrupt or in liquidation.
4. The fact was that if returned to the KSA the Appellant would go there with no job, no home and no evident means of support in the interim. His wife was not in employment at the moment and it was hard to see how were she to be employed in the UK there would be sufficient funds to support the Appellant from the UK.
5. The Appellant in his first statement indicated that his reading, writing and numeracy skills are nominal in Arabic and he had never needed to learn it properly.

6. He said in his evidence to me that he does not effectively read Arabic, can speak some Arabic and has no work experience in Arabic or with the Arabic language.
7. The judge, when considering the matter previously, reached the conclusion that the Appellant speaks good Arabic and can read Arabic. On what basis and evidence that view could have been arrived at I could not find from the papers nor any Record of Proceedings and I prefer the evidence before me.
8. So far as the issue of return is put, it is said by reference to paragraph EX.1 of Appendix FM that that illustrates the kind of considerations which show the Respondent's decision is disproportionate.
9. Thus it needs consideration whether there are insurmountable obstacles which the Appellant and/or his wife would face living outside of the UK in the KSA. The position is that the first consequence of the Appellant and his wife returning is that she would be separated from her grandmother with whom she lives and with whom she has a complicated emotional relationship. Her grandmother has effectively become the child in the relationship and the Appellant's wife, the mother. The grandmother simply cannot make decisions without effectively recourse to Ms Morris. She will not make decisions and does not react well to others perceived as usurping that role Ms Morris plays. This problem has been illustrated by the fact that the Appellant's sister and her husband with children have moved into the home and attempts by the Appellant's sister have been rejected vigorously and unpleasantly such that the sister and her husband with children wish to leave the home.
10. The grandmother simply does not like any intervention by anyone other than Ms Morris. A further illustration of this level of irrationality is when in considering the change of a GP, the GP suggested referral to a local mental health team. This led to the grandmother refusing to attend that GP and reverting back to her original one. She does not countenance any change.

11. I do not find the Appellant faced the same difficulty with his mother with whom he lives and with whom he cares. I find that her circumstances are a responsibility that he has taken on but not one which would render his return to the KSA an insurmountable or even very significant obstacle.
12. More particularly it seems to me the difficulties faced by Ms Morris go to show why there are actually insurmountable obstacles to her making a life for herself in the KSA, even if she was prepared to go, which she is not because she will not abandon her grandmother. Ms Morris's view was that as it may and there was forced separation so be it but they will be living apart but married and wishing to be reunited. It is clear in the short term Ms Morris simply will not contemplate going to the KSA but, I conclude there are a number of significant difficulties she would face. First, she does not speak the language, has no background in Arabic and would be subject to the limited lifestyle which is acknowledged to be imposed on women in the KSA. She would therefore be restricted on being outside of the home on her own, she would not have a male relative to accompany her other than the Appellant and would not be able to leave the home. Secondly, Ms Morris has no background in the practice of the Muslim faith, she does not attend a mosque in the UK and would simply be unable to publicly participate in any religious ceremony. As the background information provided in the HRW report for 2017 to which I do not understand there to be any material change the KSA does not tolerate public worship by adherents of religions other than Islam and systematically discriminates against Muslim religious minorities including in such areas as public education, the justice system, religious freedom and employment.
13. The rights of women are limited and mean an adult woman needs permission from a male guardian to travel, marry or exit. They are required to provide guardian consent in order to work or access healthcare and women regularly face difficulties conducting a range of transactions without a male relative, from renting an apartment to filing legal claims. All women remain banned from driving cars in Saudi Arabia though it would seem that neither the Appellant or Ms Morris actually drive.

14. The freedoms of expression for women are therefore noted to be limited. Women and girls continue to face discrimination in law and in practice and are inadequately protected against sexual and other forms of violence. Women remain legally subordinate and inferior in status to men in relation to marriage, divorce, child custody and inheritance, and could not access higher education, take paid employment or travel abroad without the approval of their male guardian.
15. There is nothing to suggest the likelihood of any material change in that position in relation to women's rights.
16. Ms Morris is interested in health issues and is doing private research into a number of issues and hopes one day to find sponsorship and funding for further research and/or work. She currently is not working in paid employment but is undertaking her studies and investigations which will form the backbone of her skills to deal with medical/mental health issues.
17. It is said that quite simply those aspects could not be pursued and similarly publishing and promoting her views in writing and publications would similarly be constrained were she to be in the KSA.
18. In addition the Appellant is concerned that one of their hobbies and pastimes is the collection of figurines and images which he believes would be regarded as offensive in the Muslim faith. Whether that is so and whether it might be regarded as idolatry and offensive to Sharia law I do not know on the evidence before me but that is his understanding.
19. In addition Ms Morris has Asperger's syndrome and to some extent there is a lesser degree of tolerance towards her and she fears that that would not assist her in making a life were she to have to in KSA.
20. So far as the Appellant is concerned in terms of insurmountable obstacles they are really that he goes there with no meaningful background of life in KSA and that he has no contact with his brothers and two sisters in the KSA. The last contact he had was around the time his father died and little if any approach has been made by

those in the KSA to have contact with him or to involve him in the resolution of his father's estate and liabilities. In addition the Appellant and Ms Morris have what to some might seem an unusual relationship in that they spend some time together each week but it is limited either by her work activities or her care for her grandmother or his care for his mother.

21. Ms Morris's grandmother is able and fit but it is her mental dependency and emotional dependency upon Ms Morris that is the binding quality of the relationship. So far as the mother of the Appellant is concerned, the position is that she does not have any status in the UK as yet and such appeals as she has exercised have failed. She is not a national of KSA.
22. It seemed to me that the theoretical issue of the Appellant making a life for himself in KSA is just that but the reality of doing so as a total stranger without support, without a family network, without employment opportunities obviously available shows just how difficult life would be and whilst insurmountable obstacles do not as a fact have to be insurmountable it is clear that they have to be serious, severe and intrusive. I find to me the way of life that is being required to be visited upon the Appellant is to seek to make him overcome insurmountable obstacles. I do not find that that is proportionate. His adverse immigration history is a material factor in the sense that the purpose for which he came to the UK and stayed here came to an end with the death of his father and of itself staying on did not have any realistic basis to do so. There can be no criticism of the fact that Ms Morris became aware early on as to his history and her hopes unsurprisingly that he would be able to resolve those matters.
23. I accept that they are in an enduring relationship which they intend to continue. I find that the public interest in this case is outweighed by the complex personal circumstances, particularly of Ms Morris, not just with the difficulties spoken to in her evidence as arose in relation to her own health which the Appellant has helped her with but more in terms of their plans and wishes to be here as husband and wife. In the circumstances I find that the evidence shows on balance that there are

insurmountable obstacles for them as husband and wife going to KSA and that plays into the issue of proportionality. I conclude on the evidence referred to above and the reasons given that the Respondent's decision is disproportionate.

DECISION

The appeal is allowed on Article 8 ECHR grounds.

ANONYMITY ORDER

No anonymity order was sought nor is one required.

FEE AWARD

A fee of £140 was paid but in this case the appeal has succeeded on the strength of additional evidence coming forward to support the claim and in these circumstances I do not find a fee award is appropriate.

Signed

Date

Deputy Upper Tribunal Judge Davey

23 November 2018