



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

Appeal Number: PA/04535/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 8 February 2019**

**Decision & Reasons Promulgated
On 6 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**MR O B
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Warren of Counsel

For the Respondent: Mr Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Yemen. He was born on 23 June 1989. He appealed against the respondent's decision dated 13 March 2018 to refuse him asylum and humanitarian protection.
2. Judge Lodge (the judge) dismissed the appeal in a decision dated 27 August 2018.
3. There were six grounds:
Ground 1. The judge erred in his consideration of the appellant's ability to apply for Saudi citizenship. The law was not contentious and

set out at [26] of the refusal letter and dealt with by the expert. The judge had no regard to the appropriate evidence.

Ground 2. The judge failed to grasp the significance of the issue of citizenship in considering the appellant's asylum claim. He said at [38] that citizenship was not the central issue. This ground claims on the contrary that denial of citizenship was highly relevant to the question of persecution. See **MA (Ethiopia) [2009] EWCA Civ 289** at [43].

Ground 3. The judge failed to have regard to the evidence of increased persecution within Saudi Arabia which infected his assessment of the appellant's credibility and his assessment of risk.

Ground 4. The judge erred in treating risk to the appellant from having made an asylum claim and his criticism of the regime as conjunctive. See [47] of the decision. The expert was explicit that both issues exposed the appellant to risk independently.

Ground 5. The judge failed to deal with the principle of non-refoulement and the risk to the appellant that he would be removed to Yemen by the Saudi authorities.

Ground 6. The judge had regard to irrelevant matters in considering the risk to the appellant through criticism of the Saudi regime.

4. Judge Keane granted permission on 3 October 2018. He said inter alia as follows:

"All the grounds mentioned in the application are arguable. In particular, the judge arguably took into account an irrelevant consideration in requiring corroboration in the form of documentary evidence of the appellant's account that he had applied and had been refused Saudi citizenship. The judge arguably failed to engage with the appellant's claim as to the consequences for him having been refused Saudi citizenship. The consequences for which the appellant contended were significant and arguably amounted to persecution. The judge did not engage with the issue and merely stated at paragraph 38 of his decision, 'In any event citizenship is not the central issue.' The respondent had accepted that the appellant would be at risk of persecution in Yemen, there was expert evidence that if returned to Saudi Arabia the appellant was at risk of deportation to the Yemen and in these circumstances the judge's arguable error in his treatment of the citizenship issue was all the more material"

Submissions on Error of Law

5. Mr Clarke submitted that it was open to the judge (at [17]-[34] of his decision) to reject the appellant's explanation given what he found to be his general unreliability and the implausibility of Saudi Arabia doing business verbally and not issuing letters.

6. Mr Clarke submitted that the appellant's grounds were misconceived with regard to the judge having failed to have regard to Saudi citizenship law in the Reasons for Refusal Letter (RFRL) or the expert's opinion with regard to the same. The Saudi law evidence contained in the RFRL was from the Saudi Ministry of the Interior and it confirmed at [8](d) that the appellant might be granted Saudi citizenship if "*applying for citizenship after one year of reaching the legal age*" not as suggested in the grounds at [4] "*within one year of reaching the legal age.*" As regards the expert, at [38] of his report, this was merely his interpretation and understanding of the Saudi citizenship system from what he had been told by unnamed Saudis and "*.....what appears to be another English language translation of the Saudi citizenship system.*" There was nothing to suggest that he could only apply for citizenship during the year after he turned 18.
7. As regards Ground 2, the appellant claimed that the judge's finding at [38] that "*.....in any event, citizenship is not the central issue*" was unsustainable because citizenship was relevant to the issue of persecution. The appellant had relied upon his witness statement at [29] and the expert report at [54]-[58] as to the effect of being denied Saudi citizenship. The ground further argued that the judge erroneously considered at [42] the situation as though the appellant was a Saudi citizen whereas the respondent conceded the appellant was Yemeni such that it was not open to the judge to go behind the respondent's concession.
8. Mr Clarke acknowledged that denial of citizenship was capable of amounting to persecution in certain circumstances but that was not the case with regard to this particular appellant. At [54]-[58] the expert was referring anecdotally to the deportation of foreigners with uncited assertions, text relying upon inaccessible hyperlinks such that the report was of little value. In any event, the appellant's witness statement at [29] identified four complaints flowing from a lack of citizenship, none of which engaged the threshold of persecution. Equally, the grounds failed to identify which category of the Refugee Convention the appellant allegedly fell into by being denied a citizenship he had never possessed. In any event, the judge found at [37] that Saudi citizenship was obtainable. The appellant's complaint that the judge went behind the respondent's concession as to nationality at [42] was misconceived. At [39] the judge correctly directed with regard to Saudi nationality, "*I will proceed on the basis that he does not have it.*"
9. As regards Ground 3, the appellant took issue that the judge was not impressed with any risk to him given the coup in Saudi Arabia. Mr Clarke submitted that the judge recognised at [31] that the arrests on the installation of the new regime were for the most part, of high level dignitaries, including members of the Saudi Royal Family, as did the appellant's expert at [90]. The expert claimed the appellant would be at risk because of his dissertation but the judge dealt with that at [20]-[33] concluding it was benign and in any event it was not passed on to the OIC

and even if it was, there was no evidence they had passed it on to the Saudis. The expert had not even seen the dissertation himself.

10. As regards Ground 4, the appellant argued that the judge at [47] erroneously treated dual risks to the appellant from having made an asylum claim here and his criticism of the regime as conjunctive, contrary to the expert who confirmed both issues exposed the appellant to risk independently. Mr Clarke submitted that the appellant's complaint was wholly without merit. Whilst the judge had referred to the conjunctive "and" in the expert report at [79] he dealt with the two risk issues independently. At [48] he found the appellant had never been critical of the regime and at [49] that the Saudi authorities did not know of the appellant's asylum claim and the appellant would not need to disclose his asylum claim in any event.
11. As regards Ground 5, the appellant argued that the judge failed to consider whether he would be at risk of being removed to Yemen from Saudi Arabia. The appellant claimed the judge made only passing reference to the issue at [50] without any reasoning. He relied upon the expert report at [103] and the background evidence in his bundle as evidence of such a risk. Mr Clarke submitted that the ground was misconceived as the judge found at [37] that the appellant could apply for Saudi citizenship. In any event, as set out in Mr Clarke's skeleton at [17] and [21] the evidence relied upon by the appellant was distinct from his factual matrix.
12. As regards Ground 6, the appellant had alleged that his dissertation had come to the attention of the Saudi authorities and that the judge erroneously found his dissertation "mild" at [20] because of erroneous comparison to a different report submitted to the Home Office by the appellant. The appellant complained that the content of one report said nothing of how the Saudi authorities would consider the other report. Equally, the expert report at [70] confirmed "*there is no freedom of expression in the Saudi Kingdom and no criticism of the regime is tolerated. Anyone who does can expect very serious trouble*". The appellant further complained that the judge failed to have regard to the fact that the dissertation was submitted at the outset of the internship and only during the internship did he become aware of Saudi influence at OIC. Mr Clarke submitted that the complaint was without merit. The judge did not use the appellant's report as sent to the Home Office, for finding that the dissertation was benign. The judge merely found the report instructive as an example of sustained criticism of the Saudi authorities. The judge gave adequate reasons at [20]-[23] based upon the merits of the dissertation alone. Further, at [23] the judge found that the expert had never even seen the appellant's dissertation a finding that was not challenged by the appellant. In any event, the judge found at [33] that the dissertation was never given to the OIC. He said at [29] that the appellant merely speculated that the OIC passed the dissertation on to the Saudi authorities as was conceded in oral evidence.

13. As regards the complaint that the judge failed to consider that the appellant gave the OIC the dissertation before realising the Saudi influence at OIC, Mr Clarke submitted that the complaint was misconceived. The judge found that the OIC gave the appellant a glowing reference when he left the intern programme. See [30]. There was no evidence the OIC passed on the dissertation. See [33]. There was no adverse interest in the appellant before or after he left Saudi on his own passport and without issue. See [32].
14. Ms Warren responded to Mr Clarke's skeleton. She raised a preliminary issue concerning humanitarian protection as now understood in light of **Abunar (paragraph 339C: "country of return") [2018] UKUT 00387 (IAC)**. This case was promulgated after permission to the Upper Tribunal was granted and clarified the law on return to a third country that was the country of nationality. **Abunar** confirmed that the Qualification Directive defined the country of origin as the country of nationality by virtue of the definition given at Article 2 and must be followed over the incorrect transposition in the Immigration Rules. It followed that a person was entitled to humanitarian protection where there was such a risk in their country of nationality. The respondent accepted at [49] of the RFRL that the appellant was a Yemeni citizen and would be at risk if returned there. Following **Abunar** Ms Warren submitted that he was entitled to humanitarian protection notwithstanding the question of return to Saudi Arabia. That was a "**Robinson** obvious" point and should be dealt with by me.
15. As regards Ground 1, Mr Clarke's submission attempted to hide the inadequacy of the judge's reasoning on corroboration and citizenship behind general support for his plausibility findings. It did not deal with the errors in the decision as identified in Ground 1. The judge was not only asked to consider the appellant's detailed account but expert and documentary evidence too. There was evidence that it was not implausible that rejection would be given without explanation and corroboration. Further, Mr Clarke misstated the law on corroboration. The attack on the expertise of the expert was unwarranted and was not made before the judge. Clearly, he was an expert on Saudi Arabia with extensive contacts and reliance upon such first-hand contacts.
16. As regards Ground 2, Mr Clarke misrepresented the disadvantages the appellant was subject to as a result of not having Saudi citizenship. See his witness statement at [29]. A "visa to travel" was an exit and re-entry visa with a concurrent risk that re-entry would be denied. Further, the expert's evidence was extensive at [54]-[58] and referred to a risk of removal to Yemen.
17. There was no requirement for the expert to source his report. See **K [2005] EWCA Civ 1627**.
18. Mr Clarke at [19] of his skeleton considered persecution separately from the question of the right of abode. If denial of the right of abode denied

the person other rights and was for a Convention reason, then it was persecutory. See **MA (Ethiopia) [2009] EWCA Civ 289** at [60]:

*“In my judgment, however, the correctness or otherwise of **EB** does not arise directly in this case since if the appellant were able to establish that she has been arbitrarily refused the right to return to Ethiopia for a Convention reason, that would in my view amount to persecution. It would negate one of the most fundamental rights attached to nationality, namely the right to live in the home country and all that goes with that. Denial of that right of abode would necessarily prevent the applicant from exercising a wide range of other rights – if not all – typically attached to nationality, as well as almost inevitably involving an interference with private and/or family life in breach of Article 8 of the ECHR.”*

Ms Warren submitted that most tellingly, Mr Clarke did not deal with the central premise of Ground 2 which was the complete failure of the judge to deal with the question of citizenship as seen at [38] of his decision.

19. As regards Ground 3, Ms Warren repeated the grounds. There was extensive evidence of a crackdown that was described as “unprecedented”. See expert’s report at [60]. The judge failed to engage with that evidence. High profile arrests might make the news but the expert evidence was of a widespread crackdown.
20. As regards Ground 4, the judge’s failure to consider the two issues conjunctively in misreading the expert evidence infected his whole reasoning on risk. The evidence of risk to the appellant was dealt with by the expert at [84]–[86] which was not dealt with by either the judge or the respondent. Without appreciating the risk that flowed from making an asylum claim on its own, the judge could not assert that the appellant could avoid that risk by lying. In any event, the appellant could not be expected to lie.
21. As regards Ground 5, non-refoulement was a fundamental principle of refuge law and had to be considered by the judge. The background and expert evidence showed that Saudi Arabia operated a policy of removal to Yemen.
22. As regards Ground 6, Ms Warren submitted that Mr Clarke misunderstood what the judge said at [33]. The judge did not dispute that the OIC would have passed on the dissertation. He found the converse. That is, the appellant would not have passed it on given the OIC would have passed it on to the Saudi regime. In any event, Mr Clarke’s argument was not a response to the ground which was that the judge substituted his own view of risk in the exercise he undertook, namely the risk posed by an academic dissertation without considering the background evidence that any dissent or critical expression exposed an individual to risk in Saudi Arabia.

Conclusion on Error of Law

23. As regards the preliminary issue, **Abunar** was not before the First-tier Judge. Neither side took issue with me dealing with this notwithstanding the fact that it was not before the First-tier Judge. Leaving aside the fact that the Secretary of State accepted the appellant would be at risk on return to Yemen, and the Secretary of State intended to return the Appellant to Saudi Arabia, he was prima facie entitled to humanitarian protection.
24. I find the judge's reasoning with regard to the corroboration of the appellant's evidence inadequate. He did not take into account **ST (Corroboration - Kasolo) Ethiopia [2004] UKIAT 00119** nor did he engage with the detail of the expert's report and the supporting documentary evidence. Whilst Mr Clarke took issue with the expertise of Dr Miles, there was no challenge in that regard before the judge. Without more, significant in its absence, I do not accept that the judge was entitled to make an adverse credibility finding regarding the lack of corroboration particularly bearing in mind the expert's evidence. The judge was obliged to consider the appellant's citizenship as it was the central issue. See [38].
25. The judge failed to engage with the issue of refoulement in any meaningful way. All he says at [50] is that there would be no risk of detention in Saudi Arabia or refoulement to Yemen on the basis of the appellant's political opinion or the fact that he applied for asylum here. That fails to take into account the views of the expert who considered both issues in detail.
26. Clearly, the judge was in error at [49] in suggesting that the appellant was obliged to tell the Saudi authorities untruths in order to disguise the fact that he was late in renewing his entry visa because he had applied for asylum in the UK. See **HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department [2010] UKSC 31.**
27. As regards the dissertation, I accept the judge appeared to be correct in his observation that Dr Miles had not seen it. The issue must be however not whether the judge felt the dissertation was innocuous or not but what the Saudi authorities would make of it. See Dr Miles' report at [70]-[72].
28. I find the judge materially erred in his approach to this appeal for the reasons I have set out above. The parties have agreed that in the event that I found a material error of law it was appropriate to remit the appeal to the First-tier.

Notice of Decision

The judge materially erred such that his decision is set aside and will be remade in the First-tier following a de novo hearing.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 4 March 2019

Deputy Upper Tribunal Judge Peart