



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

**Appeal Number: HU/50697/2021
UI-2021-001441; IA/02779/2021**

THE IMMIGRATION ACTS

**Heard at Field House
On the 13 January 2023**

**Decision & Reasons Promulgated
On the 18th January 2023**

Before

UPPER TRIBUNAL JUDGE OWENS

Between

**MR ALI ABDULRAHMAN M ALBAWARDI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME OFFICE

Respondent

Representation:

For the Appellant: Mr J Abbas, Legal Representative, Imperium Group
For the Respondent: Ms Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Mill sent on 4 November 2021 dismissing the appellant's human rights appeal against the respondent's decision dated 22 February 2021 to refuse his

human rights claim. Permission to appeal was granted by First-tier Tribunal Judge Boyes on 17 January 2022.

Background

2. The appellant is a national of Saudi Arabia. He entered the UK with his mother and younger siblings in 2015 and remained in the UK with different categories of leave until July 2019. He last entered the UK on 25 February 2020 as a visitor and on 20 May 2020 made an application to remain in the UK on the basis of his private and family life. The application was refused on 22 February 2021.

The decision of the judge

3. The judge dismissed the appeal. The judge found that the appellant was evasive in giving evidence; that there would be no very significant obstacles to him relocating to Saudi Arabia; that family life did not exist between he and his mother and siblings in the UK and that there would be no unjustifiably harsh consequences amounting to a disproportionate breach of Article 8 ECHR if he were required to leave the UK.

Grounds of Appeal

4. The grounds of appeal are as follows:
 - (1) In dismissing the appeal, the First-tier Tribunal Judge materially erred in law:
 - (a) Ground 1 -Mistake as to a material fact - The judge made an error in the chronology when she found that the appellant claimed asylum but failed to attend his screening interview. The appellant did not claim asylum.
 - (b) Ground 2 - failure to take into account facts/ material matters - The judge failed to take into account the appellant's family history and his reasons for wanting to stay in the UK. His mother gave evidence that there was a long history of domestic violence from the appellant's father witnessed by the appellant and that the appellant was dependent on his mother financially and emotionally. The judge failed to make any findings on this evidence.
 - (c) Ground 3 -Flawed approach to paragraph 276ADE(10(vi) - The judge failed to take into account the small amount of time the appellant had spent in Saudi Arabia (five years cumulatively as a child), his limited exposure to the culture there and the difficulties for him to integrate to such a ultra conservative and discriminatory society after living in the UK and USA for the vast majority of his life.

- (d) Ground 4 -Making irrational findings and Failure to take into account material facts and evidence in respect of family life - The judge found that the appellant was financially dependent on his mother but then went onto find that this did not amount to real or effective or committed support. When assessing family life, the judge failed to take into account the emotional ties between them because they were both victims of domestic violence.
- (e) Ground 5 - Flawed approach to credibility- The judge failed to take into account the cultural situation in Saudi Arabia when assessing the appellant's evidence about family in Saudi Arabia. The appellant's father had many siblings and many of his members of his family have several wives. The judge failed to appreciate the appellant's connection to the ruling House of Saud and that his father resides in Morocco for political reasons.

Rule 24 Response

- 5. The Secretary of State produced a brief rule 24 response, defending the decision. It is submitted that the judge engaged with all the evidence before him, gave adequate reasons for his findings and that the grounds disclose no material error of law.

Documents

- 6. On the day of the hearing, I was provided with an electronic copy of the appellant's original bundles, the respondent's bundle, as well as Amnesty International reports which were before the First-tier Tribunal Judge, but which had not been uploaded to the digital file. The judge's decision, grounds of appeal, grant of permission and rule 24 response were also all on the electronic file.

Grant of Permission

- 7. Permission was granted on 15 March 2022 by First-tier Tribunal Judge Boyes on the basis that the grounds were arguable.

Discussion and Analysis

- 8. I start with Grounds 2 and 4 which are related. In her submissions Ms Cunha accepted that the judge had failed to take into account or make findings on the history of domestic violence between the appellant's mother and father and the impact that had on the appellant. She accepted that this was an error but asserted that it was not material because the judge found that the appellant had gone back to visit his father in Morocco on occasion, and that he had lived an independent life studying since 2015. Further the judge's findings on "very significant obstacles" are sustainable.
- 9. I am in agreement that the failure by the judge to make findings and take into account the family circumstances and the history of the domestic

violence is an error of law. The appellant's mother explained in her witness statement that she had experienced abuse from her ex-husband which she described as "torture" that had been witnessed by her children. Both the appellant and his mother explained in their witness statements how close they were as a result. The judge made no reference to this evidence at all and made no findings on it.

10. The judge correctly noted that the appellant moved to the USA to study in 2015 (because his application for leave to remain in the UK was refused and he had no in-country right of appeal) and that he was living independently from his mother and younger siblings during the four-year period in which he was studying. However, the appellant returned to the UK live with his mother and siblings in 2020. Since then, he has been living in her household and is financially dependent on her. He has not left the UK. There was a failure on the part of the judge to decide whether at the date of the appeal hearing there was "family life" between the appellant and his mother because of their close emotional ties because the judge did not take into account the family history of domestic violence. At [29] the judge did not explain why the "ongoing close ties" between the appellant and his mother did not amount to real, effective or committed support. There was also a tension between the judge's finding that the appellant was dependent on his mother financially as well as living as part of her household and his finding that there was no real, committed or effective support. The judge's evaluation of the existence of family life is therefore flawed because it failed to take into account relevant factors.
11. In my view this was a material error. Had the judge decided that there existed family life between the appellant and his mother, the judge would have needed to accord this family life some weight in the Article 8 ECHR balancing exercise. Further, the judge failed to take into account the history of domestic violence in the more general Article 8 ECHR proportionality exercise. Had these errors not occurred the outcome of the appeal may have been different.
12. Mr Abbas also argued that when considering the issue of "very significant obstacles" there was a failure by the judge to take into account that the appellant had only ever lived in Saudi Arabia for a few years as a young child and that he had spent the remainder of his life in either the USA or the UK. He submitted that more recently the appellant had travelled to Saudi Arabia for short visits only and that the appellant had found the culture oppressive having been brought up in western society. He gave oral evidence that he was segregated from women even female members of his own family. There was no reference to the Amnesty International reports put before the judge in respect of the ultra-conservative and discriminatory culture in Saudi Arabia.
13. I am satisfied that it is not clear from the decision at [24] whether the judge was aware and took into account that the appellant had only lived in Saudi Arabia for 5 years cumulatively as a young child.

14. Although I note that in general the Upper Tribunal should be cautious to interfere in the decision of the First-tier Tribunal, I am satisfied that in this appeal, the judge failed to take into account the history of domestic violence when assessing the question of proportionality and family life, and failed to take into account the little amount of time that the appellant had spent in Saudi Arabia as well as the difference in culture when assessing whether the appellant would face very significant obstacles in Saudi Arabia.
15. Ms Cunha also conceded that the judge at had in fact applied the wrong test in relation to very significant obstacles because the test set out in Treebhawon v SSHD [2017] UKUT 13 referred to at [35] no longer applies. I agree with Ms Cunha's submission but also her submission that this was not a material error because the judge then went onto refer to the correct test at [36] that is the test of whether the appellant would be "enough of an insider".
16. Finally, Ms Cunha acknowledged that there is an error in the chronology in that the appellant did not claim asylum in the UK and fail to attend a screening interview. This error appears to have arisen because the error was contained in the respondent's decision letter and the chronology in the decision at [10] was transposed directly from that document. Although this error is not material, I agree that casts a shadow on the appellant and gives the impression that he had an adverse immigration history or raised an unmeritorious asylum claim which he did not pursue when this was not the case. This may have influenced the judge's view of the appellant's credibility.
17. Mr Abbas submitted that the judge erred by failing to take into account the asylum aspects of the appeal in the very significant obstacles exercise. Although the judge must look at any protection element raised when considering very significant obstacles even if the appellant has made no formal claim for asylum in accordance with JA (human rights claim; serious harm) Nigeria [2021] UKUT 97 (IAC), in this appeal the evidence of risk was very slim amounting a vague assertion that the appellant's father lives in Morocco for political reasons and oral evidence that the appellant had been harassed in Saudi Arabia. The appellant did not assert that he is not safe in Saudi Arabia because of his family association with the House of Saud which is the ruling family. I do not find the judge's handling of this issue to be flawed because of the lack of detailed evidence before the judge in respect of any difficulties the appellant asserts he would face.
18. However, having considered the decision carefully, I am satisfied that Grounds 2 and 4 are made out and that on this basis the decision should be set aside in its entirety with no findings preserved. Both parties agreed that it would be appropriate for the decision to be remitted to the First-tier Tribunal to be heard de novo because of the extent of the findings needed and I agree with that course of action.

Notice of Decision

19. The decision of the First-tier Tribunal involved the making of an error of law.
20. The decision is set aside in its entirety with no findings preserved.
21. The appeal is remitted to the First-tier Tribunal to be heard de novo by a judge other than First-tier Tribunal Judge Mill.

No anonymity direction is made.

Signed R J Owens

Date 18 January 2023

Upper Tribunal Judge Owens