Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05838/2014

THE IMMIGRATION ACTS

Heard at Columbus House, Newport	**Determination Promulgated**
On 14 April 2015	**On 17 April 2015**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

M Q
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr I Richards, Home Office Presenting Officer
For the Respondent: Mr B Hoshi, instructed by Migrant Legal Project

DETERMINATION AND REASONS

1. This appeal is subject to an anonymity order by the First-tier Tribunal pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Neither party invited me to rescind the order and I continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

2. The Secretary of State appeals against the decision of the First-tier Tribunal (Judge Archer) allowing the appellant's appeal on asylum and

human rights grounds against a decision taken on 1 August 2014 to remove the appellant to either Syria or the Kingdom of Saudi Arabia ("KSA").

3. For convenience, I will refer to the parties as they appeared before the First-tier Tribunal.

Introduction

4. The appellant is a citizen of Syria who was born on 1 January 1985.

5. The appellant claims that he arrived clandestinely in the UK concealed in a lorry on 17 June 2014. He claimed asylum. Following a screening interview on 17 June 2014 and an asylum interview on 21 July 2014, in a decision dated 1 August 2014 the Secretary of State refused the appellant's claim for asylum, humanitarian protection and under Articles 3 and 8 of the ECHR.

6. In that decision, the Secretary of State accepted that the appellant was a national of Syria and had established a "real risk of persecution" or a breach of the ECHR in Syria (see para 32). However, the Secretary of State concluded that the appellant could be safely removed to the KSA where his wife and son were born and lived and where he had married his wife, and where he had visited several times.

The Appeal

7. The appellant appealed to the First-tier Tribunal. Judge Archer accepted, on the evidence, that the appellant was a citizen of Syria and so was his wife. At para 23 of the determination, Judge Archer found, on the evidence, that the appellant had no right to reside in the KSA. He said this:

> "23. The objective evidence submitted in the appellant's bundle at C1-C6 confirms that foreign workers require a residence permit. I find that [S's] residence in KSA was based upon her father's residence permit. The appellant has never had a residence permit in KSA and has only ever visited for the Hadj. I find that it is reasonably likely that he overstayed his Hadj visa as claimed and then paid a bribe to return to Jordan. He has never worked in KSA. He has no status there. There is no basis upon which he can apply for KSA citizenship. [S] is not a KSA citizen and the appellant cannot acquire citizenship through her. Contrary to paragraph 31 of the refusal letter; there is no evidence that the appellant can live freely with his family in KSA."

8. In her decision letter, the Secretary of State relied on the decision in MA (Ethiopia) v SSHD [2009] EWCA Civ 289 to the effect that the appellant was (at para 29):

> "… required to act *bona fide* and take all reasonable practical steps to seek to obtain the requisite documents to enable return to KSA. It is

> considered you have failed to advance, or establish, that it is unreasonable for you to do this. It is concluded that, as with the appellant in the case of **MA [2009]**, there is no reason why you should not yourself take the necessary steps to do this."

9. At para 24, Judge Archer rejected reliance upon MA in the following terms:

> "24. I have carefully considered the legal arguments. I find that the respondent has misinterpreted **MA (Ethiopia) v SSHD [2009] EWCA Civ 289**. The appellant is not a KSA citizen and there is no requirement for him to take *bona fide* steps to obtain authorisation from KSA. The respondent accepts that KSA is not the appellant's country of nationality. He has no residual entitlement to KSA nationality. He is not entitled to KSA citizenship, any more than he is entitled to Jordanian citizenship. I therefore accept the submissions made at paragraphs 10-14 of Mr Hoshi's skeleton argument."

10. Consequently, the judge found that the appellant had no right to reside in the KSA and, accepting the submissions of the appellant's Counsel, rejected the Secretary of State's reliance upon MA which related only to establishing entitlement to citizenship of a second, safe country of nationality.

The Appeal to the Upper Tribunal

11. The Secretary of State sought permission to appeal on the following single ground:

> "In this case it was the intention of the respondent to remove the appellant to KSA. At para 23 of the determination the FTTJ acknowledges the objective evidence submitted by the appellant as to the fact that foreign workers require a residence permit. He goes on to accept the appellant's account that he had only ever visited KSA for the Hajj and never had a residence permit.
>
> This finding totally ignores the reference in the Refusal Letter at Para. 10 to the fact that the appellant had said that he had visited KSA twice because he had a work permit there. This information appears in the Screening Interview at para 2.1 which was before the FTTJ.
>
> In failing to consider this vital piece of information the FTTJ has made flawed findings in relation to the possibility of the appellant obtaining residence in KSA as per the appellant's own objective evidence mentioned above."

12. On 29 December 2014, the First-tier Tribunal (Judge Kelly) granted the Secretary of State permission to appeal on that ground.

13. In a rule 24 response dated 22 January 2015, the appellant sought to uphold Judge Archer's determination on the basis that the judge's factual finding that the appellant could not reside in the KSA was properly open to

him and the respondent's reliance upon MA was erroneous as that was only concerned with citizenship and it could not be said that even if he held a KSA work permit he was entitled to citizenship in the KSA.

14. Thus, the appeal came before me.

15. In his oral submissions, Mr Richards, who represented the Secretary of State, relied upon the grounds of appeal. In essence, he submitted that the judge had failed to deal with the whole of the appellant's evidence in relation to his connection with the KSA and in particular his evidence in his screening interview that he had a work permit for the KSA. Mr Richards submitted that the appellant had extensive family connections with the KSA, including that his wife and child were born there. The appellant had not made a bona fide attempt to demonstrate that he could not live in the KSA. Consequently, although Mr Richards accepted that the appellant was a refugee, the FtT had been wrong to allow his appeal on the basis that he could not safely be removed to the KSA.

16. On the factual issue, Mr Hoshi submitted that the judge had, in effect, set out the appellant's evidence given in his screening interview that he had previously had a "work permit" for the KSA at para 15 of his determination. However, having heard the appellant give evidence orally which was consistent with his written evidence that he had not worked in the KSA and had only visited the KSA for the purposes of the Hadj, the judge's finding was properly open to him on the evidence.

17. Further, Mr Hoshi submitted that the Secretary of State's reliance on MA was wrong in principle as there was no basis for suggesting that the appellant was entitled to citizenship of the KSA based upon, for example, his residence or that of his wife in the KSA.

Discussion

18. As I have already indicated, both in the refusal letter and before me, the Secretary of State accepted that the appellant was a refugee from Syria. However, the removal direction contemplated his removal either to Syria or the KSA.

19. The appellant's claim that his removal would breach the Refugee Convention depended upon him, first not having or being entitled to the citizenship of a second country (here the KSA) in which he could be safe; and secondly, if no such second country of nationality existed, he could nevertheless be safely removed to a third country (here the KSA) where he could reside.

20. In her refusal letter, it appears that the Secretary of State relied upon both these matters to reject the appellant's claim. Certainly at paras 26-28, including a quotation from MA, the Secretary of State appears to consider whether the appellant was entitled to citizenship of the KSA. However, at paragraph 29-32, the Secretary of State's reasoning appears

to reflect the second issue, namely whether the appellant could be safely removed to the KSA based upon a right of residence there, even if he did not have or was not entitled to citizenship of the KSA.

21. In his determination, Judge Archer found in para 23, which I have set out above, that the appellant was not entitled to citizenship of the KSA. That decision is not challenged in the grounds and stands. On the evidence, it was clearly legally unassailable.

22. The only remaining issue, therefore, before Judge Archer was whether the appellant could be safely returned to the KSA where he was entitled to reside. The judge found that he had no right to reside there based upon his wife's residence or that of her family. He found that the appellant had never worked in the KSA. It is a challenge to that factual finding which is the sole ground on which the Secretary of State sought, and was granted, permission to appeal.

23. So far as the ground relies upon the judge's failure to consider the appellant's evidence given at section 2.1 of his screening interview, it is clear that the judge did have that evidence in mind when reaching his finding. That evidence was:

> "I left Syria Feb 2012. I went to Jordan with a smuggler by car. I stayed there until approx six weeks. However in this time I travelled to Saudi Arabia as I had a work permit there. I went there and back twice, the longest being six months ..."

24. At para 12 of his determination the judge, in effect, summarises that evidence when he says:

> "The appellant states that he left Syria for Jordan in 2012 and stayed there for six weeks. He has been to the Kingdom of Saudi Arabia (KSA) twice as he had a work permit there."

25. There is, in my judgment, no basis for concluding that the judge failed to take that evidence into account, which he in effect set out at para 12 of his determination, when reaching his findings at paras 21-25 even though he made no express reference to it there. The determination has to be read as a whole and I have no doubt that this experienced Immigration Judge had well in mind what he said in para 12 of his determination when he reached his findings in paras 21-25 in the appellant's favour.

26. In reaching his conclusions, the judge had other evidence which was consistent with his factual finding.

27. First, in the appellant's screening interview (at questions 25 and 26) the following appears:

> "Q25: Have you lived anywhere outside of Syria? A: No.
>
> Q26: Have you ever worked anywhere outside of Syria? A: No. I used to work in Jordan for short periods, just lately, before I left Syria."

28. Secondly, in his witness statement the appellant stated at paras 13-15 that he had visited Saudi Arabia for the Hadj and on one occasion had spent eight months there during the time of his marriage. He did not claim to have worked there or had a work permit to do so. The appellant's evidence was as follows:

> "13. I used to go to Saudi Arabia most years for the Hadj. When you travel for the Hadj you are given entry for that purpose. It is valid for about a month. The most time I spent there was eight months during the time of my marriage.
>
> 14. When I stayed in Saudi Arabia for eight months I got the visa in Syria and travelled overland through Jordan to Mecca for the holy visit. Syrians enter Saudi Arabia though Jordan but do not require visas to enter Jordan. I overstayed my visa in order to get married and then made a few phone calls and paid bahshish (a 'back-hander') at the Saudi-Jordanian border on my [way] out to 'pay' for my overstay.
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> 15. In answer to the Home Office, I cannot live lawfully in Saudi Arabia because my wife, my child, and my in-laws are Syrian nationals. We do not have lawful residence in Saudi Arabia and we do not have the protection of the Saudi authorities. While living in Saudi Arabia we could be removed at any point to Syria. The only time I have spent legally in Saudi Arabia is while doing the *Hadj*. I do not know what status [S's] parents had while living in Saudi Arabia but I do know that they are no Saudi nationals and I also know that it is very common for Syrians to work in Saudi Arabia for financial reasons but they are never given Saudi nationality even if they are born there."

29. Mr Hoshi pointed out that the appellant's credibility was not challenged at the hearing except to the extent that he had not claimed asylum in France prior to reaching the UK which, he told me, the Presenting Officer had described as a "minor" factor. Mr Richards did not dispute Mr Hoshi's submission, having been present at the hearing, that the appellant was not cross-examined on any inconsistency between his screening interview and his other evidence and no inconsistency in that regard was relied upon by the Presenting Officer in his submissions.

30. It is trite to state that factual matters are primarily for the tribunal of fact, here, the First-tier Tribunal. The judge had an opportunity to consider the appellant and his evidence which he gave orally. He formed a positive view of the appellant's credibility and made his factual finding preferring the appellant's written evidence, adopted at the hearing, that he had never had a work permit in Saudi Arabia. As I have said, I do not accept that the judge failed, in reaching his positive finding, to bear in mind that the appellant had stated in his screening interview that he had a "work permit". However, that apparent inconsistency was not relied upon by the Presenting Officer at the hearing and the appellant was not cross-examined upon it.

31. I see no basis upon which it can be said that the judge was not properly entitled to prefer the appellant's later evidence and to find in para 23 of his determination that the appellant had never worked in the KSA and had no right of residence. There was no other evidence that the appellant had a current right to reside in the KSA and so could be safely returned there despite the real risk of persecution to him in his country of nationality, Syria. The Judge's finding was adequately reasoned and not irrational given the evidence.

32. The grounds do not rely upon any other basis to challenge the judge's decision to allow the appellant's appeal.

33. In particular, the Secretary of State's grounds do not rely upon MA and the judge view that it did not apply where the issue is not whether the individual is entitled to citizenship of a second, safe country. It is readily apparent why an individual should, as a generality, in proving his claim to be at risk in his country or countries of nationality, produce supporting evidence of his citizenship if disputed, including, where relevant, contact with a relevant government or embassy that he is not entitled to citizenship of a country where it is proposed he should be returned. Had it been necessary to decide the point not, as I say, relied upon in the grounds by the Secretary of State, I would have preferred Mr Hoshi's submissions (as did Judge Archer) that the evidential obligation, and it is no more than that, has no application where the issue is whether an individual could reside (apart from rights based upon citizenship) in a country to which the respondent intends to remove the individual. At least, I would so conclude in a case such as the present where there is a finding that the basis upon which the respondent claimed that the individual could reside in that country is rejected, namely as here that the appellant had a work permit in the past.

Decision

34. Consequently, for the reasons I have given, the First-tier Tribunal did not err in law in allowing the appellant's appeal on asylum grounds and under Articles 2 and 3 of the ECHR. That decision stands.

35. The Secretary of State's appeal to the Upper Tribunal is, accordingly, dismissed.

Signed

A Grubb
Judge of the Upper Tribunal