Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/49428/2014
IA/49431/2014
IA/49433/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22 March 2017	**On 15 May 2017**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

A M M (FIRST APPELLANT)
O A O (SECOND APPELLANT)
N A A (THIRD APPELLANT)
(ANONYMITY DIRECTION MADE)

Appellants

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr S Abbas, Legal representative
For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. The first appellant was born in 1981 and is a citizen of Saudi Arabia. The second and third appellants are her children, both citizens of Saudi Arabia, born in 1997 and 1999 respectively. The third appellant is still a minor. Given the sensitive nature of these

appeals, I make an anonymity order pursuant to rule 14 the Tribunal Procedure (Upper Tribunal) Rules 2008

2. The appellants appeal with permission against the decision of First-tier Tribunal Judge M A Khan, promulgated on 2 September 2015, dismissing their appeals against the decision made by the respondent made on 21 November 2014 to refuse them leave to remain in the United Kingdom. For the reasons set out in my decision promulgated on 27 October 2016 I concluded that the decision of the First-tier Tribunal involved the making of an error of law and directed that the matter be remade in its entirety in the Upper Tribunal. A copy of my decision is annexed to this decision.

The Appellants' Case

3. The first appellant, although born an Egyptian national, has lived in Saudi Arabia since the age of 13 and acquired Saudi citizenship when she married her now ex-husband. Her family considered that it was a good match; his father was a judge and were well-connected, one of her sisters being married into the Saudi family. Her husband was thirteen years older than her and had studied in the United States.

4. After their marriage, the first appellant went to live in the USA with her husband, having spent some time in Germany. It was whilst there that she began to realise that he was drinking and smoking Marijuana and after their arrival in the USA became violent towards her and, although in theory he was studying for a PhD he did not do so. The violence continued and after their first son was born in the United States they returned to Saudi Arabia in 1995. They returned to the US at the end of 1996 where their third son, the second appellant, was born in late 1997. After this there began to be physical violence then for a short period in 1998 they moved to Egypt. They returned shortly in 1999 to Saudi Arabia for four years which is where the third appellant was born. At this point the ex-husband's sister who had been supporting them got fed up with him and they went to live in Morocco where the violence became worse. The situation got worse when the family returned for a brief period to Saudi before in 2006/7 moving to Ireland and then to the United Kingdom. The family have, since August 2008, apart from a brief period remained in the United Kingdom, the first appellant is studying here. The violence and abuse continued as did the ex-husband's drug taking. Eventually she sought legal advice about obtaining a divorce. The first appellant was able to persuade her husband to divorce her.

5. The first appellant considers that there would be significant obstacles to her integrating again in Saudi Arabia as a divorced woman given the lack of support she would receive and the difficulties she would have owing to the existence of "guardianship" a system by which all important decisions would be taken by her guardian, most likely to be her older son. She is also concerned that her daughter, the third appellant, would be under the guardianship of the father and that her life would be severely restricted in consequence. She fears that she would lose custody of the children although the son is now over 18.

6. In respect of the second and third appellants, they have lived in the United Kingdom and prior to that in Ireland for a substantial period. They do not believe that they would be able to integrate again into life in Saudi Arabia particularly in the case of the third appellant owing to the lack of freedom and the severe restrictions which would apply to her as an unmarried minor, or for that matter, as an adult woman.

7. It is also the appellants' case that they would not be able to live together as the mother has no home and it would be difficult for her, culturally, to live with her sister-in-law; the son could not live as part of that family as he is an adult male who is not part of the nuclear family and could not live in the same house as the sister-in-law as she has daughters.

8. The third appellant particularly does not wish her life to be dictated to and although she speaks Arabic she is not able to read or write it. She considers she would never be able to adjust to a life in Saudi Arabia having grown up in the United Kingdom, having education and the freedom to dress and act as someone who grew up here. The second appellant also does not read or write Arabic, does not wish to be separated from his mother or to live in a culture which is completely different from that which he is used to, having lived outside of Saudi Arabia in the west for the greater part of his life.

The Respondent's Case

9. The respondent's case is set out in the refusal letter dated 21 November 2014. The respondent concluded that the applicant was not entitled to Indefinite Leave to Remain as a victim of domestic violence as her husband is not settled in the United Kingdom. She also considered they were not entitled to remain pursuant to Appendix FM given that none of the parties were settled and that neither of the children had lived in the United Kingdom for seven years immediately preceding the date of application. Similarly, the respondent concluded the applicants were not entitled to leave to remain pursuant to paragraph 276ADE of the Immigration Rules given they had not lived continuously in the United Kingdom for at least twenty years; had not lived continuously in the United Kingdom for seven years in the case of the children nor had lived half of their life here continuously; or, that there would be very significant obstacles to their integration into the country where they would have to go if required to leave the United Kingdom. It was considered also there were no exceptional circumstances such that leave should be granted outside the Rules. Leave to remain as a Tier 4 Student was in the case of the first appellant curtailed.

The Law

10. The relevant provisions of the Immigration Rules are set out in paragraph 276 ADE (1) which provides: -

    276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:

(i) does not fall for refusal under any of the grounds in Section S-LTR 1.2 to S-LTR 2.3. and S-LTR.3.1. to S-LTR.4.5. in Appendix FM; and

(ii) has made a valid application for leave to remain on the grounds of private life in the UK; and

(iii) has lived continuously in the UK for at least 20 years (discounting any period of imprisonment); or

(iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or

(v) is aged 18 years or above and under 25 years and has spent at least half of his life living continuously in the UK (discounting any period of imprisonment); or

(vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.

11. In addition, sections 117A and 117B of the 2002 Act are applicable:

117A Application of this Part

(1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts—

(a) breaches a person's right to respect for private and family life under Article 8, and

(b) as a result would be unlawful under section 6 of the Human Rights Act 1998.

(2) In considering the public interest question, the court or tribunal must (in particular) have regard—

(a) in all cases, to the considerations listed in section 117B, and

(b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

(3) In subsection (2), "the public interest question" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

117B Article8: public interest considerations applicable in all cases:

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

(a) are not a burden on taxpayers, and (b) are better able to integrate into society.

(4) Little weight should be given to—

(a) a private life, or

(b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

The Appellants' Evidence

12. I heard evidence from all the appellants.

13. The first appellant adopted her witness statements and was cross-examined. She confirmed that she had been divorced in 2014, her husband having agreed to this and the divorce taking place in Saudi Arabia. She said that he had done so only under the threat of proceedings being commenced in the United Kingdom. She said she had consulted a solicitor and had shown the draft proceedings.

14. The first appellant confirmed that her two older sons were studying. She said that the issue of who her "guardian" would now be following her divorce had been discussed, being likely that it would be her older son appointed but she added she would have difficulty in returning to Saudi Arabia as the "yellow page" in her passport which set out permission from her guardian to travel had expired. She said that her younger son could not be her guardian as he was under 21.

15. The first appellant said that her ex-husband had not had any input into the children's education and that it was his sister (her sister-in-law) who was paying for them. She said that she had some contact with her ex-husband but had much greater contact with her children and appeared a relatively good relationship. She said he was not

doing anything at present in Saudi Arabia whereas in the past he had said he would take her children from her. She said that the sister-in-law was prepared to support them as long as the children were in education but no longer. She said it would not be possible to live with the sister except for a very short period for cultural reasons. She said she could not live with her sister either for cultural reasons as well as religious reasons and her son would not be able to live in the same house as her sister as her sister had daughters. She said it would be difficult for her to get work because of the expiry of the guardianship note in her passport and as she is over 40. She said she had never worked in the United Kingdom but had only been her to study.

16. In response to my questions the first appellant said that she had last lived in Saudi Arabia for an extended period in the two years prior to leaving in 2007.She said that she had spent one and a half months in Saudi in 2011/12 whilst awaiting a visa.

17. I heard evidence from the third appellant who adopted her witness statement saying that she is currently studying at Uxbridge College for a BTEC. She says she is in contact with her father despite the personal problems and she confirmed that she is supported by her father's sister. She said she had little contact with her, communication being through her mother.

18. In response to my questions the third appellant said that her father does make comments about how she dresses which meant that while he had been with them he had told her how to dress. That, however, might not have been so bad as she was much younger at the time.

19. I heard evidence from the second appellant who adopted his witness statement, agreeing with what his sister had said.

20. I then heard submissions.

21. Mr Kotas submitted that none of the appellants met the grounds of the Immigration Rules given they had failed to show that they came anywhere near the test to show that there would be very significant obstacles to their integration into Saudi Arabia, even though in the case of the second and third appellants they had not lived there for an extended period. He submitted that they would be able to integrate into Saudi Arabia despite any difficulties that may occur through the guardianship system. Mr Kotas submitted that the second appellant did not meet the requirements of paragraph 276ADE(1) (iv) as she had not lived here seven years prior to the date of application.

22. Turning to Article 8 Mr Kotas submitted that the fact that the applicants did not meet the requirements of the Immigration Rules in and of itself a significant reason for attaching significant weight to the public interest in maintaining immigration control and requiring the appellants to return to Saudi Arabia. He submitted that the first appellant, having grown up in Saudi Arabia, could be expected to live under the guardianship system and that she had failed to show that there were any specific difficulties which would arise. He submitted that in reality she would not be

destitute or homeless as she had the support of family nor was there any indication that she would face significant problems as a result of having to have a guardian, as her oldest son would have that role, nor was there any reason why there would be any difficulties in her obtaining employment as she had done in the past.

23. Mr Kotas submitted further that there was no reason why the children's father would treat the second and third appellants harshly, given he had shown no interest in the past that he did not want them to be educated and, had agreed to a divorce. With regard to Section 117B(6) he submitted that although Noor may have developed a private life in the United Kingdom it was nonetheless, reasonable for her to return to Saudi Arabia as she would be going there with her mother and brother. Mr Kotas cautioned against making moral judgments about the system of guardianship which exists in Saudi Arabia.

24. Mr Kotas submitted further that note to be taken of the fact that the family's leave to be here had at all times been precarious, following Rajendran s117B - family life) [2016] UKUT 138 (IAC), notwithstanding any indications to the contrary in MA (Pakistan) v SSHD [2016] EWCA Civ 705 or Rhuppiah [2016] EWCA Civ 803

25. Mr Abbas relied on his skeleton argument. He submitted that the applicants did fulfil the requirements of paragraph 276ADE(vi) given the significant difficulties that they would have in adjusting again to life in Saudi Arabia, drawing attention to what is meant by integration. He submitted further that in considering Article 8 in this case it would be unreasonable to expect Noor given her history, how she had spent in the United Kingdom prior to that in Ireland and the extent to which she was acculturated to life in the west for her to return to Saudi Arabia where she would be under the guardianship of her father whose behaviour had in the past at the very least been erratic and had subjected her mother to significant an serious domestic violence and abuse.

26. Mr Abbas submitted that the nature of guardianship was so restrictive, and peculiar, to Saudi Arabia. He submitted that the situation should, following Treebhawon and Others (NIAA 2002 Part 5A - compelling circumstances test) [2017] UKUT 13 (IAC) be viewed as a whole and that it was evident that the family would in fact be outsiders if returned. The second and third applicants were, he submitted, in reality British having spent the most important part of their education here. He submitted that there were compelling reasons on the particular facts of this case why their removal to Saudi Arabia is not proportionate.

Discussion

27. Although this is not a protection claim it is necessary to consider background evidence as to how the first and second appellant would be able to live on return to Saudi Arabia given the status accorded to women in that country.

28. I consider that regard must first be had to the nature of the guardianship system which exists in Saudi Arabia. No challenge has been made to the evidence about it

set out in the report "Boxed In: Women and Saudi Arabia's Male Guardianship System" (Human Rights Watch) 16 July 2016. I am satisfied from that report that under the guardianship system, every Saudi woman must have a male guardian, normally a father or a husband but in some cases a brother or even a son who has the power to make critical decisions on their behalf. An adult woman must obtain permission from her male guardian to travel, marry, and may require consent in order to work or access health care. They will also find difficulty conducting a range of transactions without a male relative from renting an apartment to filing claims. I particularly notice the passage at page 7 :

> "The extreme difficulty of transferring male guardianship from one male to another and severe inequality in divorce rules make it difficult for women to escape abuse. Men remain women's guardians with all the associated levers of control during court proceedings and until a divorce is finalised. There is deeply entrenched discrimination within the legal system, and courts recognize legal claims brought by guardians against female dependents that restrict women's movement or enforce a guardian's authority over them.
>
> Women who have escaped abuse in shelters may, and in prisons do, require a male relative to agree to their release before they may exit state facilities"..

29. It is of note that many aspects of the system are not codified in law but stem from informal practice so that guardianship restrictions placed on women vary widely based number of factors such as socioeconomic status, education level and place of residence. Further, when a guardian dies or a woman divorces a new guardian is appointed generally the next oldest mehram and although women may transfer legal guardianship to another male it is extremely difficult legal process. It can only be done through a court order and it can be difficult to establish the requisite level of proof.

30. With regard to the nature of restrictions placed on women I observe that in practice some women are prevented from leaving their homes without their guardian's permission given that they cannot drive. A guardian's permission is required to obtain a passport and women need permission to travel outside the country. It appears also that in reality it is easy for male guardians to force women to remain indoors to prevent them leaving the house without permission. At page [33] of the report, it is stated that the courts in Saudi Arabia provide support for this practice:

> "the Ministry of Justice explicitly bolsters a guardian's authority to deny women freedom of movement. The Ministry's website contained a list of complaints that can be filed through its electronic complaints system including two which request that a judge order the return the return of a woman to a mehram or a wife to the marital home".

31. I note also that in Saudi Arabia khilwa (mixing unrelated members of the opposite sex) is prohibited, this being justification for the ban on women driving.

32. I accept also that some forms of violence such as spousal abuse and violence against women and children are linked to these guardianship systems. I find also that the legal system makes it exceptionally difficult for victims of violence to seek protection or obtain redress.

33. I am also satisfied that in addition to the difficulties in obtaining a divorce, limits are placed on the woman's ability to enter freely into marriage, and that forced marriages continue to occur as do child marriages.

34. In addition to the guardianship system, there are laws which require the physical separation from related men and women in all public areas to limit the ability of women to independently manage any assets or access banks or other financial services (see Appellants' bundle A115). The Commission for the Promotion of Virtue and Prevention of Vice police are also responsible for maintaining gender segregation in public places and purportedly are arbitrary and vindictive in their interpretation of laws relating to contact with other women and other aspects of "morality", often harassing and physically abusing women who they deem to be breaking the law (Gender Index, page 115). This is in addition to the very restrictive rules of dress.

35. None of these restrictions are necessarily Islamic; indeed there is a strong indication in the material particularly in Human Rights Watch that these arise from culture and tradition.

36. The cumulative effect of this is, as the report indicates, to restrict severely the right of a woman to be an autonomous person in her own right.

37. I found the appellants to be credible witnesses. I find the accuracy of the testimony was not undermined by cross-examination conducted and I accept the account given of how the first appellant was ill-treated throughout the whole of her marriage including a significant degree of violence.

38. I accept, as Mr Kotas submitted, that it is somewhat unusual that the husband agreed to a divorce but I do not doubt that he acceded to the pressure from his wife that she would force him to divorce through the courts of the England and Wales. I do not, however, consider that it flows from that that he would be in any way well-disposed to her or the children. Overall, the situation would be entirely different if they were all in Saudi Arabia where the women would, in effect be powerless against him.

39. I am satisfied that if the appellants return to Saudi Arabia the second appellant would fall under the guardianship of the father. There is no indication that the law applicable would have any other effect, nor that she could seek to have another guardian appointed.

40. It is difficult to predict how the second appellant's father would compel her, as she has said, to dress and behave in a different way from that which she has become accustomed. She would also be forced to live in the very restricted way in which a Saudi woman must live.

41. In assessing whether the requirement of 276ADE (6) is made out I note that as for what was said in Treebhawon at 37 to 38:-

> 37. The two limbs of the test to be addressed are "*integration*" and "*very significant obstacles*". In Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813, the Court of Appeal held that " *integration*" in this context is a broad concept. See [14]:
>
> > " *It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a Court or Tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of 'integration' calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day to day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life*".
>
> The other limb of the test, " *very significant obstacles*", erects a self-evidently elevated threshold, such that mere hardship, mere difficulty, mere hurdles and mere upheaval or inconvenience, even where multiplied, will generally be insufficient in this context. The philosophy and reasoning, with appropriate adjustments, of this Tribunal in its exposition of the sister test "unduly harsh" in MK (Sierra Leone) [2015] UKUT 223 at [46] apply.
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> 38. The finding that Mr Treebhawon's case does not satisfy the test enshrined in paragraph 276ADE(1)(vi) of the Rules is readily made. If required to leave the United Kingdom, his future will lie in the country of his birth where he has spent most of his life (33 of his 46 years). He is an educated, evidently intelligent man with a command of all of the languages commonly used in Mauritius. He is plainly familiar with the culture of the country. There is no apparent reason why he will be unable to renew certain relationships and friendships and develop others. He has overcome ill health and is now fit for work, albeit we accept that finding employment will not be easy. He has maintained some contact with his mother and sister and we refer to our finding above that, as a matter of probability, he and his children will return to the mother's home where they lived previously. In sum, the "very significant obstacles" test is not satisfied by some measure. It follows that no error of law has been committed on behalf of the Secretary of State in failing to find that Mr Treebhawon's case satisfies this (or any) provision of the Rules.

42. In assessing the difficulties faced by the appellants on return to Saudi Arabia I have considered also the report of Mr Hugh Miles, who I am satisfied has the sufficient expertise to be treated as an expert.

43. I accept that there is a family life between the first and second appellants. They are mother and daughter, and the daughter is 17. They live together as a family unit. I accept also on their evidence that the relationship is a close one, given the extent to which they have lived together as a unit, with the third appellant. I accept that living in what is to them a foreign country and apart from any wider family or community, that their relationships are closer than might be expected, this arising also out of the difficulty in the parents' now dissolved marriage, in which there was significant violence. This, I find, has resulted in a tightly-bonded family unit in which there is an

unusually close relationship between all three to the extent that I am satisfied that all three share a family life. I am satisfied that a family life does exist between the first and third appellants. He still lives at home and is part the unit. He is dependent, effectively on his mother, and he is relatively young, being under 21. I am satisfied that the particular nature of his upbringing has, unusually, resulted in their still being a strong family life between him and his mother.

44. The second appellant has lived by far the greater part of her life in the west. Apart from a short period in 2011/2012 she has lived in and been educated for the most part in Ireland and in the United Kingdom. Her entire experience of life outside the family is in a western milieu.

45. Apart from her immediate family she has not lived in, for example, a Saudi community or for that matter a Muslim community. She is now a young woman who has become accustomed to making decisions for herself, dressing how she chooses and socialising with men and woman of her own age and to attending school with them. I am satisfied that the difference between what she has become accustomed and the circumstances in which she would have to live in Saudi Arabia under the guardianship of her father are so wide and different that she would find it difficult if not impossible to integrate into society there. She would by no means be an "insider" and, would have I consider significant difficulties in being able to participate in life in that society given how different and alien it is from that which she has grown up. She would, I consider, find it difficult to know how she was expected to behave towards men, how to dress and the very nature of her private life would be entirely different from that which she now has. More importantly, she would not have control over that private life given that her father would have guardianship over her. At best this would put significant obstacles into her living her life, if not effectively extinguishing the private life she has.

46. I note Mr Kotas' submission there is no indication that she would be at risk from her father given his attitude towards her. I accept the second appellant's evidence that her father has already made comments about how she dresses and behaves. I bear in mind also how he behaved towards her mother and how he treated her as a woman. At best his behaviour has been erratic and he has shown himself capable of making threats and using violence towards her mother. Further, she would have no realistic prospect of any redress against any abuse.

47. On the particular and unusual facts of this case the obstacles that the second appellant would face on return to Saudi Arabia would be the entire restructuring of her private life against her will. While I accept that she has relatives in Saudi Arabia, the difficulties with her father have already been identified. She is not particularly close to her aunt and although she is likely to be able to receive financial support from her, that is simply one issue which has to be placed against the other significant difficulties which would occur in this case. Given the effect of the guardianship the second appellant would inevitably be separated from her mother.

48. Were it not for the fact that the second appellant is under 18, I would have no hesitation in finding that she would meet the requirements of paragraph 276 ADE (1) (vi) given the very real difficulties she, as a woman who has no real understanding of life in Saudi Arabia would face in integrating to life there.

49. With regard to the first appellant, I consider that her situation is somewhat different. I accept that there will be significant difficulties to her reintegration into Saudi Arabia but I accept also that she has in the past lived there both as a young woman and as an adult. I accept that she was not subject to the guardianship system until she acquired Saudi citizenship after her marriage but she will have had some experience of living under the system. It was under that system that she was subjected to significant and serious abuse from her husband, and it was only recently that she was able to obtain a divorce from him.

50. That said, I do not diminish the fact that she will have significant difficulties in finding somewhere to live and in obtaining employment but she does have a sister there and has in the past received some assistance albeit just for the education of her children in Saudi Arabia from the sister-in-law unlike the children, she does read and write Arabic and has additional qualifications she has obtained in the United Kingdom.

51. I accept that she would have to have a guardian and this is likely to be her oldest son. She will thus cease in effect to be an adult person with all the rights that go with that. She would at best be beholden on her oldest son albeit that there is no indication that he would put any obstacles in her way. Whilst I note Mr Kotas' submission that the younger son may be able to take over, I consider this in the light of the background material to be unrealistic not least as the son is 21.

52. It is however, inevitable that she would not be able to live with her daughter given the guardianship system. Contact between them would be difficult and subject to the control of her ex-husband. Family life could not continue in the same manner as exists in the United Kingdom. Similarly, it would be difficult for the third appellant to live with his mother unless they formed a household on their own. I accept the first appellant's evidence that as a male, the third appellant would not be able to live in a household where women (or girls) who were not his mother or sister (or wife) lived, this being unacceptable in Saudi society.

53. The third appellant is in a different situation from his sister. As the expert notes, he would not require a guardian and the restrictions placed on him as a man in Saudi Arabia are considerably less than would be places on his mother or on his sister. I accept that it would be difficult for him to return but I do not consider the difficulties as such amount to very significant obstacles to integration albeit that I accept that he would be having to integrate into society about which for the same reasons as his sister, he knows little or nothing.

54. Taking these findings into account, and viewing the evidence as a whole, I am satisfied that the effect of removal would be to separate the first and second

appellant and this, taking into account the other difficulties that face the mother, have the effect that there would on the particular facts of this case, be very significant obstacles to her integration into Saudi Arabia, and that this she meets the requirement of the Immigration Rules

55. I now turn to the situation outside the rules.

56. I bear in mind that neither the second or third appellants currently meet the requirements of the Immigration Rules; that situation may change in a matter of months for the second appellant as she may, not long after reaching 18 years of age, have spent more than half her life here.

57. For the reasons set out above, I am satisfied that the appellants have a family life in the United Kingdom, and that on the facts of this case, that would be disrupted by removal to Saudi Arabia as they could no longer live together as a unit. That interference is in accordance with law.

58. I am satisfied also that all three appellants have established private lives in the United Kingdom. In the case of the second and third appellants, this was developed while they were children, and having had regard to Rhuppiah and MA (Pakistan), given that this was established while under the control of their parents I am not satisfied that it was established while their situation was precarious. I do, however, note that the mother's status was precarious, but for the reasons given I have found that she meets the requirements of the Immigration Rules.

59. There is I find significant weight to be attached to the need to maintain Immigration control; that is particularly so where, as here, the second and third appellants do not meet the requirements of the Rules.

60. I am satisfied that all three appellants speak English and are not dependant on public funds. I am satisfied also by the evidence that they will continue to be supported for the foreseeable future by the sister-in-law. Those are not factors in their favour but are neutral. The family are not, however, financially independent in that they do not have their own resources, and that is a factor which I consider increases the public interest in their removal, albeit to a small degree.

61. The family life developed was established while all the appellants had leave to remain, but again that is not a factor in their favour; it is neutral.

62. I consider also on the facts of this case, in the light of these findings, that the second appellant has been present in the United Kingdom for more than seven years and that thus Section 117B (6) of the 2002 Act applies to her circumstances. I am satisfied

63. I am satisfied also that the first appellant has parental responsibility for her daughter, and that the family life between them would effectively be severed if they were to return to Saudi Arabia due to the father being the daughter's guardian. This is a matter which I consider bears significant weight in the appellants' favour and in the first and second appellants being granted leave.

64. The effect of removing only the third appellant would be to breach the family life that exists between him and his mother. That is a family life which has been established in the United Kingdom while their presence here was lawful.

65. It would also appear that during the course of this appeal the third appellant fell within the terms of Section 117B (6) as the family entered the United Kingdom in August 2008 with a valid visa. Thus, the latest by 1 September 2015 the third appellant had acquired seven years' continuous residence allowing for a short gap in 2011/12 of one and a half months however, he ceased to be a minor on 6 December 2015.

66. If the third appellant is removed, there will be an effective severing of the ties he has with his sister, and of the family life he has with his mother. The interference with that life can be avoided only if the family life with her daughter is severed. While the nature of that latter interference is significantly more serious than the interference with the family life with the son, viewing the unique situation of this family as a whole, I conclude that while there is significant weight to be attached to the public interest in removing the applicants, that it is on the unique facts of this family's situation outweighed such that their removal would be disproportionate.

SUMMARY OF CONCLUSIONS

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

2. I remake the decision allowing the appeal of the first appellant under the Immigration Rules.

3. I remake the decision allowing the appeals of the second and third appellants on human rights grounds.

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

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify him or anthem or any member of their family. This direction applies both to the appellant sand to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 9 May 2017

Upper Tribunal Judge Rintoul

ANNEX – ERROR OF LAW DECISION

IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/49428/2014,
IA/49431/2014 & IA/49433/2014

THE IMMIGRATION ACTS

Heard at Field House
On 13 October 2016

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

A A M
O A O
N A A

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr S Abbas, Imperium Group Immigration Specialists
For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants appeal against the decision of First-tier Tribunal Judge M A Khan promulgated on 2 September 2015 in which he dismissed their appeals against the decisions of the Secretary of State to refuse them leave to remain in the United Kingdom and to remove them from the United Kingdom to Saudi Arabia, the country of which they are all citizens.

2. In brief, the appellants' case is that they would have significant difficulties on return to Saudi Arabia because the principal appellant would not have custody of the children because under Saudi Arabian law that would be given to the father. Second, that she would not be able to work on her return to Saudi Arabia and she would have significant difficulties as a result of that and in living her life generally, given the restrictions on women in Saudi Arabia. It is also submitted that the children would experience significant difficulties given the control over them that their father would have, and in the particular case of the second appellant as she is a female, under age, and would be in the custody of her father.

3. The Secretary of State refused the applications for the reasons set out in the refusal letter which it is not necessary to recite at this point.

4. When the matter came before Judge Khan he found: first, that he did not accept the appellant's evidence that she would lose custody of her children. Second, that she would not be able to work and there would be impermissible restrictions on her rights. Third, that there was no reason to think that she would not be able to support herself by working on return to Saudi Arabia and that the children would be able to continue with their higher education in Saudi Arabia and dismissing the appeal under the Human Rights Act.

5. The appellants sought permission to appeal against that decision on the grounds that in substance the judge had in effect failed properly to have any regard to the background material in reaching conclusions with regard to the loss of custody and the difficulties that the appellant would face on return to Saudi Arabia.

6. Mr Walker did not seek to support Mr Khan's decision or suggest that it was in any way sustainable. In my view that was entirely sensible. There is no indication in the decision that the judge had any regard to the background material which indicates the very real difficulties that any woman would have in retaining custody over her children, male or female; the difficulties that the appellant or her daughter would face, given the guardianship system applicable in Saudi Arabia whereby they would not be able to live, move or indeed do almost anything without the permission of a male guardian.

7. I consider that in failing to take into account the unchallenged background evidence or even to refer to it in any way is a serious material error infecting the decision making it unsustainable and I therefore set it aside.

8. I consider that in the circumstances of this case albeit that there has been some change in the circumstances given the age that the daughter is now an adult, that it would be appropriate to remain this case in the Upper Tribunal subject to detailed directions which I now give.

Directions

1. The Upper Tribunal will consider all issues afresh, including whether paragraph 276 ADE of the Immigration Rules is met in the case of each of the appellants.

2. The parties are to prepare for the hearing on the basis that the following issues will be of interest to the Upper Tribunal

   (a) Whether each of the appellants will be subject to a guardian, and, if so, who that guardian will be;

   (b) What difficulties and restrictions guardianship will have on each of the appellants, in particular in obtaining somewhere to live, education, work, ability to travel or move around the local area;

   (c) Given the length of time the appellants have lived outside Saudi Arabia, the extent to which they may have acquired and have become accustomed to living life in a way which would not be acceptable in Saudi Arabia; and, the consequences which would flow from that;

3. The appellants are expected to compile a bundle of relevant material relating to the situation the appellants face, including Human Rights' Watch Report: "Boxed in – women and Saudi Arabia's male guardianship system", published 2016

4. The Upper Tribunal may be assisted in this case by expert evidence, particularly as to the position of the second appellant, and the restrictions placed on him.

5. In addition, the appellants are to produced detailed witness statements, capable of standing as evidence in chief, setting out the difficulties each of them would have on return to Saudi Arabia.

Signed Date 9 May 2015

Upper Tribunal Judge Rintoul