



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

Appeal Number: IA/07327/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 21 April 2015**

**Decision & Reasons  
Promulgated  
On 5 May 2015**

**Before**

**THE HONOURABLE LORD BANNATYNE  
UPPER TRIBUNAL JUDGE WARR**

**Between**

**MISS RAOOM MOHAMMAD S FATANI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss P Solanki of Counsel instructed by Turpin & Miller Solicitors (Oxford)

For the Respondent: Mr N Bramble, Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Saudi Arabia born on 15 June 1988. On 18 January 2014 the respondent refused her application for further leave to remain in the United Kingdom on the basis of her private life as assessed under Rule 276ADE of the Immigration Rules. A decision to remove the

appellant under Section 47 of the 2006 Act was taken. The appellant appealed this decision and her appeal came before First-tier Judge Gillespie on 5 September 2014. The judge dismissed the appeal. Permission was refused by First-tier Judge Foudy on 3 November 2014 but the application was renewed and on 27 February 2015 Upper Tribunal Judge Rintoul granted permission in the following terms:

“It is arguable that the judge erred (1) in failing properly to address the appellant’s case that she has, through residing in the UK since she was 13 and becoming westernised, that she could not re-integrate into Saudi Arabian society, and failed to give adequate reasons for his decision; and (2) wholly failed to give any adequate consideration of Article 8.”

Upper Tier Judge Rintoul found all the grounds to be arguable.

2. As Upper Tier Judge Rintoul observes, the appellant has indeed been in this country for some years. She arrived in 2001 and completed her secondary school education. She took a BSc in food sciences at the University of Reading and then completed a masters degree in business management at Oxford Brookes University.
3. Judge Gillespie helpfully summarises the respondent’s case in paragraphs 3 to 5 of his determination as follows:

“3. The appellant now fulfils the role of guardian to her three younger siblings at [ ] Reading, Berkshire. Her parents are both resident in Saudi Arabia. Her mother is a university lecturer and her father is an airline pilot. The Secretary of State determined that the family life she was claiming with her relatives in the United Kingdom did not constitute family life as set out in Appendix FM of the Immigration Rules. Therefore, her claim was considered on the basis of her private life in accordance with Paragraph 276ADE of the Immigration Rules.

4. At the time of reconsideration of her leave, she was 25 years, 6 months and 18 days old. Even though she was aged between 18 years and 25 years at the time of her application, she had not spent half of her life in the United Kingdom. She had spent 12 years, 11 months and 26 days in Saudi Arabia before she came to the United Kingdom and 13 years, 6 months and 18 days living in the United Kingdom since the day she arrived to the date of her reconsideration, having spent 12 years, 11 months and 26 days in her home country before coming to the United Kingdom. The Secretary of State therefore concluded that she had not met the requirements of Rule 276ADE(iv) and (v).

5. The Secretary of State also considered whether her application raised or contained any exceptional circumstances which, consistent with the right to respect for private and family life contained in Article 8 of the European Convention on Human Rights, might warrant consideration by the Secretary of State of a grant of leave to remain in the United Kingdom outside the requirements of the Immigration Rules but found that there were no such exceptional circumstances.”
4. Judge Gillespie heard oral evidence from the appellant and her three brothers, who were born in 1994, 1997 and 2000 respectively. The judge also heard evidence from a friend of the appellant who believed that it would be devastating for the appellant’s brothers and sisters as well as for the appellant if she were to be sent back to Saudi Arabia. She shared the appellant’s concerns about having to adapt to life in Saudi Arabia. A female always needed a male companion to manage her simplest day-to-day activities such as going to work (as females could not drive), opening a bank account, renewing the national ID, and passport. The judge was referred to a number of background materials concerning discrimination against women in Saudi Arabia.
5. In submissions the Presenting Officer said that the appellant’s case was not an exceptional one and she referred to Section 117B introduced by the Immigration Act 2014 which stated that the maintenance of effective immigration controls is in the public interest. The appellant had a limited private life with her various hobbies in the United Kingdom and was no longer studying.
6. The appellant’s representative referred to Rule 276ADE(vi) and submitted that there were very significant obstacles to the appellant’s integration into Saudi Arabia having lived in the UK since the age of 13. She had spent a year in Saudi Arabia to obtain the qualification permitting her to obtain a scholarship. She had resided in the UK since her return after this year in 2005. Her mother by contrast had been brought up in Saudi Arabia from birth.
7. The judge found that the appellant was not able to satisfy the provisions of Rule 276ADE for the reasons given by the respondent. The appellant had had no difficulty in returning to Saudi Arabia to study for a year in order to obtain government funding for her further studies in the UK. Her parents resided in Saudi Arabia in good occupations. While reliance was placed on background evidence to show how oppressive life in Saudi Arabia could be the judge was not persuaded that these issues in the appellant’s case amounted to very significant obstacles to integration under Rule 276ADE(vi). The judge accepted the Secretary of State’s view that there were no exceptional circumstances and the appellant could make an application for an entry clearance under the points-based system.

8. The judge refers to **Nagre v Secretary of State [2013] EWHC 720 (Admin)**. The judge considered the guidance in relation to exceptional circumstances –  
“‘exceptional’ means circumstances in which refusal would result in unjustifiably harsh consequences for the individual such that refusal of the application would not be proportionate. That is likely to be the case only very rarely.”
9. The judge found that unjustifiably harsh consequences was clearly a high threshold which on the facts he found the appellant could not meet. While life in Saudi Arabia might be uncongenial it was not the responsibility of the respondent to ensure that those who did not like their country of origin were given a right to remain.
10. The determination concludes as follows:  
  
“The particular domestic arrangements that the appellant oversees towards her younger brothers and which are properly the responsibility of her parents do not give rise to rights in the appellant protected under Article 8. On a proportionality assessment, I conclude that the public interest considerations under Section 117B of the Immigration Act 2014 should prevail in this case.”
11. Miss Solanki relied on her skeleton argument and submitted that the judge’s reasons were inadequate in relation to his finding under paragraph 276ADE on the issue of very significant obstacles to integration. Counsel submitted that the judge had failed to have regard to the fact that the appellant had resided in the UK from December 2001 to 2004 – between the ages of 13 and 16. Ten years had passed since her return to Saudi Arabia in 2004. She had then spent a lengthy period in the UK from 2005 to 2014 when she was aged 18 to 27. She had spent almost all of her teenage years and her adult life residing in the UK. She had strong family life with her siblings in this country. She had become integrated and westernised. She would face difficulties in coping with the different lifestyle and discrimination in Saudi Arabia. The judge had failed to make a finding on the core issue which was the level of her integration and westernisation. A rounded assessment should have been made in the light of **Ogundimu (Nigeria) [2013] UKUT 60**.
12. It was also submitted that the judge had approached Article 8 and Section 117B in an erroneous matter. In the light of **Dube [2015] UKUT 00090 (IAC)** judges were required to take into account the considerations in Sections 117A - 117D. All that the judge had said was that the public interest considerations under Section 117B should prevail in this case. He had not taken into account for example that while the maintenance of effective immigration controls was in the public interest under 117B(2) it was in the public interest that those who sought to enter or remain in the United Kingdom were able to speak English – which the appellant did. It was also a relevant factor under 117B(3) that it was in the public interest

that those who sought to enter or remain in the United Kingdom were financially independent - again the appellant was. Furthermore the appellant had throughout been in the United Kingdom lawfully and accordingly did not have to meet the arguments about giving little weight to private life established by those whose position was unlawful or precarious (117B(4)). The appellant was fully integrated and it was clear in the light of **Dube** at paragraph 27 that the judge had failed to apply the statutory considerations in substance. Apart from being financially independent the appellant had paid international student fees and had worked voluntarily as a teaching assistant.

13. The judge had conducted no real Article 8 analysis.
14. Mr Bramble accepted that paragraph 22 of the determination was quite brief but he submitted that it was sufficient if the points made in the refusal letter were taken into account. The periods of residence in the UK and Saudi Arabia had been specified in the respondent's decision and the judge had been entitled to find as he did. The appellant had been 16 years old when she had spent a year in Saudi Arabia. He had not ignored the country information. It was clear that the judge had taken into account the submissions of the Presenting Officer when considering the impact of Section 117B. It was not necessary for a judge to conduct a tick box exercise. The judge had considered that the public considerations outweighed the private life aspects. The key matter was that the judge had not directly addressed the interplay between the appellant and her siblings and the westernisation of the appellant but the judge had been clearly aware of the appellant's evidence. He had referred to the factual issues at paragraphs 3, 7 and 8 of the determination. They were clearly in his mind. The judge had been potentially in error, as argued by Miss Solanki, in taking into account the possibility of the appellant applying to re-enter the UK under the post-study route but this did not take matters further forward.
15. In answer to questions from the Tribunal Miss Solanki could not assist whether family life issues had been argued before the First-tier Tribunal. She confirmed that the appellant's visit to Saudi Arabia in 2013 for the purpose of obtaining entry clearance had only lasted seventeen days. If an error of law was identified she would request that the matter be remitted to the First-tier Tribunal. Mr Bramble accepted that this would be appropriate depending on the nature of the fact-finding required.
16. At the conclusion of the submissions we reserved our decision. We remind ourselves that we can only interfere with the determination of the First-tier Judge if it was materially flawed in law.
17. It does appear to us that there are difficulties as pointed out by Counsel in the judge's approach to the issues in this case. The judge placed heavy reliance on the fact that ten years previously in 2004 the appellant had returned to Saudi Arabia to do her A levels. Apart from that period she

had resided in the United Kingdom since 2001. She had paid a very brief visit in 2013 simply to obtain a visa. It does not appear to us that the judge has given proper consideration to Section 117B since the appellant speaks English and is financially independent and has not resided in this country unlawfully. It is appreciated of course that the judge did not have the benefit of the decision in **Dube**, which was promulgated after the determination in this case.

18. While Mr Bramble invites us to look at the determination as a whole we do consider that on the facts of this case more was required from the judge to make it clear that he had had regard to all relevant considerations and we do not find that the determination is satisfactorily reasoned on the issue of exceptional circumstances and Article 8. We also agree that the judge gave insufficient consideration to the issues of integration and westernisation. We find that the determination is materially flawed in law. Having considered the submissions to the parties we find that the appropriate course in this case is for the matter to be remitted for hearing afresh by the First-tier Tribunal by a judge other than Judge Gillespie.

Signed

Date 24 April 2015

Upper Tribunal Judge Warr

**TO THE RESPONDENT**  
**FEE AWARD**

We have remitted the appeal for re-hearing; we have considered making a fee award at this stage and have decided to make no fee award