



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

Appeal Number: PA/08052/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 17th April 2018**

**Decision & Reasons Promulgated
On 10 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**MISS D A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Thomas instructed by Freemans Solicitors

For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Saudi Arabia, appealed to the First-tier Tribunal against a decision of the Secretary of State dated 1st August 2017 to refuse her application for asylum. First-tier Tribunal Judge P J S White dismissed the Appellant's appeal in a decision promulgated on 30th November 2017. The Appellant now appeals against that decision with permission granted by Upper Tribunal Judge Canavan on 21st February 2018.
2. The background to this appeal is that the Appellant was issued with a multi-visit visa on 7th April 2015 valid for two years. She says that she

travelled to Bahrain and then to the UK, Dubai and Kuwait before returning to the United Kingdom on 30th June 2016. She claimed asylum on 24th January 2017. The basis of her claim is that she lived in Saudi Arabia with her mother and brother and that her parents divorced when she was 2 and thereafter her father mainly lived in Kuwait and, although she had nothing to do with him, he remained her guardian. She says that she studied for a time in Jordan accompanied by her brother. She visited the UK a number of times accompanied by her mother. She says that in 2014/15 four men approached her father asking for permission to marry but each time he refused. As she wanted to be married she brought a case against him in the court in her mother's name. She claims that the court case was thrown out by the judge who she believes had been pressurised by her father who is a wealthy businessman. She claims that her father contacted her mother and then her brother making threats to kill the Appellant because she had sued him and shamed the family. She claims that she left Saudi Arabia in November 2015 travelling hidden in a car without her father's permission.

3. The Secretary of State refused the application. The Appellant's identity and nationality were accepted and it was accepted that women in Saudi Arabia were a particular social group. However the Secretary of State did not accept any other element of the Appellant's claim.
4. The judge heard oral evidence from the Appellant and made findings at paragraphs 17 to 33 of the decision. The judge stated at paragraph 17 that it is not in dispute that women in Saudi Arabia are subject to a restrictive guardianship system under which they require permission of a male guardian to do many things including travelling or marrying. The judge considered the Appellant's claimed situation and found that it is probable that her father does indeed remain the Appellant's guardian [18]. The judge considered a number of court documents produced by the Appellant from Saudi Arabia and expressed concerns in relation to these documents including the fact that they appeared to be addressed to the General Court rather than the Family Court who it appeared would have jurisdiction in relation to family matters [21]. The judge also expressed concerns in relation to the nature of the court proceedings said to have been brought noting that the court papers referred to proceedings in relation to the Appellant's brothers and find that it is "rather unclear what was in fact going on in these proceedings"[22]. The judge also considered it unclear why the father's hostility should be directed solely at his daughter. The judge expressed surprise that some details in relation to the Appellant's father's connections with the Saudi Royal family had not been mentioned until the Appellant gave oral evidence [24]. The judge went on to say "I do not find this account of events entirely consistent or plausible" and went on to consider a number of factors about the fact that it was said that the Appellant's was said to have brought the case [26]. The judge raised other issues in relation to the plausibility of the Appellant's claim. The judge considered that the delay in the Appellant claiming asylum was not a factor to which he attached too much weight [30]. The judge reached conclusions at paragraph 31 saying

“...the overall effect is that I am not satisfied, even to the low standard required, that the Appellant has indeed been threatened by her father, or is in fear of him, or that she is at real risk of being killed on return. Nor am I satisfied that she has in fact brought proceedings against him as claimed. She may well wish to escape from the restrictions faced by women in Saudi Arabia but that does not mean that she is at risk of persecution”.

5. It is contended in the grounds as amplified by Ms Thomas at the hearing that the crux of the complaint in this case is that the judge got so far with his findings but did not go onto consider whether the Appellant is at risk of persecution on the basis of the facts as found. She submitted that the crux of the Appellant's case is that her father had rejected four marriage proposals but there is no finding by the judge as to this key issue. She accepted that the judge had, at least in part, made adverse findings in relation to the court case. However she contended that it was incumbent on the judge to consider whether the fact that four marriage proposals had been turned down amounted to persecution in light of the Appellant's evidence and the background information. She highlighted Article 9 of the Qualification Directive and submitted that the right to marry is a fundamental right and it is a strong right. Reliance was placed on **R (Baiai) v Secretary of State for the Home Department [2008] UKHL 53** in the submission that marriage is a fundamental right and that national laws must be non-discriminatory and consistent with the fundamental principles of dignity and freedom which underlie the whole Convention. She submitted that in circumstances where the Appellant's father has consistently refused to grant his daughter permission to marry she would be exposed to a real risk of a severe violation of her basic human rights and that in turn would amount to persecution. She submitted that the judge had failed to make proper findings in relation to the Appellant's claim that her father had refused to grant her permission to marry and that, had the judge properly engaged with this issue, then the wider issues of discrimination amounting to persecution were in play. She contended that it is clear from the findings in paragraphs 22, 23 and 26 that the judge appeared to accept that court proceedings had been taken but from the conclusion at paragraph 31 it indicated that the judge was not satisfied that they were brought by the Appellant. However in her contention it is clear from the submissions and the case put to the First-tier Tribunal Judge that the case was brought by her mother.
6. In his submissions Mr Duffy accepted that there were no findings in the decision as to what the Appellant's current situation is and what would happen to her upon her return to Saudi Arabia. He accepted that there was a lacuna in the findings as to whether the court case was taken and who had taken it. He accepted that further consideration of that issue is required.
7. I have taken into account Mr Duffy's concession. In my view paragraph 31 of the decision is unclear. It is unclear whether or not the judge accepted that the Appellant's mother brought court proceedings in Saudi Arabia as

claimed in which the mother sought some type of authority from the court in relation to the marriage of the Appellant. In the absence of a clear finding as to this aspect of the Appellant's claim it is not possible to evaluate whether the Appellant is at risk of persecution upon return to Saudi Arabia.

8. In these circumstances and given that this goes to the crux of the Appellant's appeal I find that the failure to make clear findings of fact as to central aspects of the Appellant's case amounts to an error of law. As it is not possible to reach sound conclusions as to any risk faced by the Appellant in the absence of such findings I set the decision of the First-tier Tribunal aside. In order to remake the decision it is necessary to make full findings of fact. In light of the nature and extent of such fact finding I consider it appropriate that the matter is remitted to the First-tier Tribunal for the matter to be considered afresh.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law.

I set it aside.

I remit the appeal to the First-tier Tribunal to be heard afresh.

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: 3rd May 2018

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT FEE AWARD

As the matter has not yet been determined by the First-tier Tribunal a fee award should be considered when the appeal is considered there.

Signed

Date: 3rd May 2018

Deputy Upper Tribunal Judge Grimes