



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/00249/2020
(V)**

THE IMMIGRATION ACTS

**Heard at : Field House
On: 15 December 2020**

**Decision & Reasons Promulgated
On: 31 December 2020**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

CHARLES STANFORD ALBRITTON

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In Person

For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of the USA, born on 18 May 1943. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his human rights appeal.

2. The appellant entered the UK on 29 March 2019 on a six-month visitor visa valid until 29 September 2019, having previously travelled to the UK on a regular basis as a visitor. On 13 September 2019 he made a human rights application for leave on family life grounds, to remain in the UK with his wife whom he had married on 26 February 2008 in a religious, Islamic marriage and on 6 August 2012 in a civil marriage. The marriage took place in the UK and followed two previous marriages and divorces, the first from 1972 to 2002 and the second from 2003 to 2007.

3. The information provided by the appellant in his application was that he was born in the USA and lived there until June 1971, when he was deployed by the navy to Italy, as a Navy Lieutenant. He remained in Italy until 1976 and then returned to the USA for about a year before going to Saudi Arabia in 1978. He lived in Saudi Arabia until March 2019. He worked as a manager for Saudi Arabian airlines for 22 years and then as a consultant and trainer. During that time, he visited the UK on occasions. He met and commenced a relationship with his current wife in Birmingham in February 2008, and from that time he would visit the UK regularly for up to three months a year as well as meeting up with his wife for holidays in other countries. Due to his wife's deteriorating health condition he left Saudi Arabia four months before his residence work visa expired, on 29 March 2019, to be with his wife, and realised that it was time for them to remain together in one country, as his wife was not well enough to travel abroad as she had done previously. He returned to Saudi Arabia for a short period, from 18 to 28 June 2019 to cash a bank draft but otherwise had not left the UK since then. He had not returned to the USA for 41 years, aside from travelling there in 2002 to finalise his divorce, and he had lost all ties there. His family had all passed away and he had only three cousins remaining, whom he had not seen for 35 years. His wife did not want, and was not able to move to USA, because of her ill-health. They could not afford to pay for the medical care she required in the USA. He would not be able to return to live in Saudi Arabia as he would be unlikely to obtain a permanent residence permit at his age. His wife was a South African national who had become a British citizen in February 2011. They rented a Housing Association property and their rent was paid by housing benefit. They had no source of income other than public benefits.

4. The appellant's application was refused on 16 December 2019. The respondent considered that the appellant was unable to meet the eligibility immigration status requirement in Appendix FM of the immigration rules as he was in the UK as a visitor. It was accepted that the appellant had a genuine and subsisting relationship with his British wife, but the respondent considered that the requirements of paragraph EX.1 were not met because there were no insurmountable obstacles to family life continuing in the USA or Saudi Arabia. Alternatively, the appellant could return to the USA and apply for entry clearance to join his wife in the UK. Furthermore, the respondent considered that there were no very significant obstacles to the appellant integrating in USA or Saudi Arabia for the purposes of paragraph 276ADE(1) of the immigration rules and that his circumstances and those of his wife were not sufficiently compelling to justify a grant of leave outside the rules. The respondent considered that the appellant's wife, as a British citizen, did not have to leave the UK and that her medical treatment was not reliant upon the appellant's presence, so that she could remain in the UK whilst he applied for entry clearance. The respondent did not consider that there were legal impediments or unjustifiably harsh consequences to the appellant continuing his family and private life in Saudi Arabia or USA.

5. The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge Hobson on 26 February 2020. The appellant and his wife gave oral evidence before the judge. The appellant explained that he had

no income since leaving Saudi Arabia. He had tried to find out from the USA Federal Benefits Unit in London about his entitlement to social security payments in USA but had received no response to his many emails. He was concerned about his wife having to live in USA as she had never visited there and the stress would exacerbate her heart condition. He had skin cancer himself and would have no access to medical services in USA because he had lived outside the country for so many years. He could not return to Saudi Arabia because the cost of a residence visa was prohibitive and he would not be able to find employment there because of his age. He had made no financial provision for retirement because he had spent his earnings on living expenses and travelling to see his wife. His wife was unable to travel and they could not therefore maintain their long-distance relationship as previously. His wife explained that she lived in sheltered accommodation in the UK. She had had three heart attacks over the past seven years and had been taken to hospital by ambulance. She was on medication for her heart condition. She also had osteoarthritis and sometimes used a wheelchair and she also needed surgery on her knees.

6. The judge considered there to be no evidence to support a finding that the appellant would not be entitled to some state support in USA as a US citizen and did not accept that he was likely to face destitution. She did not accept that the appellant's wife could not travel to the USA and live with him there. The judge did not accept that there were very significant obstacles to integration in the USA and was not satisfied that the requirements of paragraph 276ADE(1) were met. She considered that neither the appellant's wife having to move to the USA or remain in the UK without the appellant would be unjustifiably harsh and that the respondent's decision was therefore proportionate. She accordingly dismissed the appeal.

7. The appellant sought permission to appeal Judge Hobson's decision and permission was granted in the First-tier Tribunal on 24 July 2020, on the following basis:

"For the reasons set out in the application, it is arguable that (a) there was no evidential basis for the Tribunal's finding that the appellant is "likely to have some financial support and access to healthcare" on return to the USA [27], (b) whilst acknowledging the medical problems of the appellant's British wife and the fact that she would not have access to healthcare in the USA [26], the Tribunal failed to attach any weight to this factor in the proportionality assessment under Article 8 of the Human Rights Convention, and (c), it was perverse in all the circumstances to conclude that it would not be "unjustifiably harsh" to expect family life to continue by the appellant "making regular visits to see his wife in the United Kingdom in the future" [33]."

8. The matter then came before me for a remote hearing conducted through Skype for Business. The appellant appeared in person, without a representative. Mrs Aboni submitted that the judge had considered all the evidence and had given adequate reasons for her findings. The decision should be upheld. Mr Albritton, in his response, submitted that the decision was disproportionate. He was not eligible for social security in USA and would return

there with just the clothes on his back. If he returned to USA he would never be able to get a visa to return, in light of the current refusal, and in any event could not afford to do that. If he and his wife were separated, they would die alone.

Discussion

9. I am unable to agree with Mrs Aboni in her submission that the judge considered all the evidence and gave adequate reasons for her findings. It seems to me that the judge's assessment of the evidence was cursory and her findings were speculative.

10. Although the evidence submitted by the appellant was limited, the judge failed to give full and proper consideration to the extent of the difficulties he may face in being required to return to the USA and failed to accord appropriate weight to relevant factors such as the impact of his lengthy absence and to his wife's lack of entitlement to medical care in USA. Whilst apparently accepting, at [26], that there was such a lack of entitlement, the judge simply dismissed that on the basis that the appellant's wife's condition was currently under control, and, aside from the brief summary at [25], the judge simply failed to engage with the evidence as to the extent of her health concerns and the necessity of ongoing care. Likewise, although there was a brief reference to the evidence at [27], there was no proper assessment by the judge of the information provided in the two emails about the level of income the appellant may be able to access in the USA as set against the cost of living, and no proper assessment of where the appellant and his wife would live and how they would in reality be able to support themselves.

11. As to the judge's consideration, at [33], of the alternative to the appellant's wife relocating to the USA, her conclusions were equally dismissive. The judge concluded that the appellant and his wife could simply continue to conduct their family life through visits, as they had previously. However, in so doing, she failed to give any weight to the appellant's reasons for wanting to change those arrangements, namely the fact that he and his wife were older, that he could no longer continue to be employed owing to his age and that his wife's health condition had significantly deteriorated such that she was no longer able to travel and he was worried about leaving her. To simply dismiss the matter as being 'distressful' was, it seems to me, bordering on perverse.

12. Accordingly, I find that the judge's decision is materially lacking in its assessment of the evidence, its findings of fact and its reasoning and that it cannot be upheld. It seems to me that the appropriate course would be for the matter to be heard afresh before another judge, in order for proper findings of fact to be made on the evidence. The appellant, for his part, needs to provide more comprehensive evidence as to his likely circumstances if he were to return to the USA, in terms of his entitlement to state support and medical care for his wife in that country, and as to his current financial circumstances and his wife's (and his own) current state of health.

DECISION

13. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh, pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(a), before any judge aside from Judge Hobson.

Signed: S Kebede
Upper Tribunal Judge Kebede

Dated: 16 December 2020