



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

Appeal Number: PA/10859/2017

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 26 February 2019**

**Decision & Reasons  
Promulgated  
On 22 March 2019**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**AA**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Hussain

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. By a decision promulgated on 16 August 2018, I found that the First-tier Tribunal had erred in law such that its decision fail to be set aside. My reasons were as follows:

1. The appellant, AA, was born in 1986 and is a citizen of Eritrea but was born in and has lived in Saudi Arabia all his life before he came to the United Kingdom in May 2017 and claimed asylum. By a decision of the respondent dated 12 October 2017, the appellant was refused international protection. He appealed to the First-tier Tribunal (Judge Kempton) which, in a decision promulgated on 7 December 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Judge Kempton recorded [23] that the appellant's returning to Eritrea "is not an issue"; the respondent proposes to return the appellant to Saudi Arabia. Granting permission, Judge Robertson on 8 January 2018 wrote:

There was some arguable merit in the grounds in that, given that it is accepted that the appellant is a national of Eritrea, the judge has not considered what risk there is to the appellant if he is returned to Saudi Arabia in view of the background evidence as to the crackdown on illegal working in Saudi Arabia, even if he was not deported to Eritrea when he lived there. The risk of refoulement has not been considered by the judge, particularly as there was no evidence before him that the appellant had any qualifications which would enable him to apply for a residency permit.

3. The appellant argues that he could not obtain Saudi Arabian nationality. He would, therefore, require an entry visa. He claims that there was no likelihood that, as a grocery delivery driver having no higher level skills, he would be able to obtain a visa. The appellant argues that there is no visa category in which he could apply for entry to Saudi Arabia.

4. Mr Diwnycz, who appeared for the Secretary of State before the Upper Tribunal, acknowledged that the decision of the First-tier Tribunal Judge was flawed. The judge correctly noted [47] that the burden of proof rested on the appellant. He went on to say:

[The appellant] has not met that burden [of proof] as he has not proved that he has taken steps in that regard or that the Saudi authorities are unwilling to grant his residence. He has not shown that he cannot obtain residence by applying for employment with a sponsoring employer in Saudi Arabia. He has not shown that he has taken any steps in that regard since he has been in the UK. He has to be seen to have exhausted all possibilities before claiming asylum.

5. The circumstances of the appellant differ from those of asylum seekers who may be expected, whilst within the United Kingdom, to take steps through the London Embassy of the country of which he or she may be a citizen in order to obtain a passport or other entry document so that return to the country of nationality might be facilitated. It is agreed that the appellant has no entitlement to Saudi nationality notwithstanding his long residence in the country. I accept,

therefore, that he would require an entry visa which will only be issued to him if, as the background material indicates, he has an employer or sponsor in Saudi Arabia. It would seem, therefore, that the Secretary of State is arguing that the appellant is not simply concerned with obtaining an entry document from an embassy but, before he approaches the embassy, identifying a potential employer, obtaining employment to commence at some future date in Saudi Arabia and then successfully applying for a visa whilst still in the United Kingdom. On the face of it, those are steps which the appellant may be able to undertake but the First-tier Tribunal has not examined the likelihood of each or all of those steps proving feasible in practical terms. Moreover, as Judge Robertson observed, there was no discussion in the judge's decision of the possibility of refoulement to Eritrea given a recent crackdown on illegal working in Saudi Arabia. I find that the judge's analysis is incomplete and I set aside his decision.

6. Mr Hussain urged me to remake the decision allowing the appeal. I am not satisfied that I should do so. Before remaking the decision in the Upper Tribunal, I wish to hear further submissions and, should the parties wish to adduce it, additional evidence addressing the matters which I have set out above, including refoulement. It may be necessary for the appellant to obtain an expert report dealing with Saudi Arabian visa conditions and also with the likelihood of refoulement to Eritrea. The parties may, therefore, adduce further evidence provided that they send that evidence to the Upper Tribunal and serve it on the other party no less than 10 days before the resumed hearing.

#### **Notice of Decision**

7. The decision of the First-tier Tribunal which was promulgated on 7 December 2017 is set aside. None of the findings of fact shall stand. The decision will be remade in the Upper Tribunal (Upper Tribunal Judge Lane) following a resumed hearing on a date to be fixed in Bradford (3 hours allowed).

2. At the resumed hearing Bradford on 26 February 2019, the appellant gave evidence in Arabic with the assistance of an interpreter. He was cross-examined by Mrs Pettersen, who appeared for the Secretary of State. He was asked why a document which he had produced in evidence which he claims shows that his leave to remain in Saudi Arabia had been cancelled shows an expiry date of 2020. I found his answers to be unsatisfactory. What he said in an attempt to explain the existence or absence of current residence permit continued to conflict with the contents of the document itself.
3. However, the appellant relies upon the expert report of Mr John Campbell of the University of London (SOAS) which is dated 11 February 2019. Mrs Pettersen did not seek to challenge the contents that report or the credentials of the author. Mr Campbell's evidence indicates that there has been a crackdown on foreign workers in Saudi Arabia; their treatment by the government there has been criticised by international agencies for its harshness. It is also clear from the report that there is no question that the appellant, an Eritrean citizen, would be able to obtain the right to reside in

Saudi Arabia by gaining naturalisation as a citizen. Most significantly, the report indicates clearly that possession of leave to remain or enter Saudi Arabia is, for a foreign worker, not sufficient if it is not also accompanied by written evidence of sponsorship by a Saudi employer. Such sponsorship has to be approved by both the Foreigners Control Office and the Labour Department. It is apparent that the appellant, even though it appears on the face of the documents continues to have a valid residence permit, does not possess sponsorship provided by a Saudi employer and that he would be unable to arrange such sponsorship before seeking to enter the country. In such circumstances, Mr Campbell's conclusion is categorical; the appellant would be arrested upon return to Saudi Arabia and he would be first imprisoned, then refouled to Eritrea where both parties accept he would face a real risk of persecution. In the circumstances, I find that his appeal should be allowed on asylum and Article 3 ECHR grounds.

### **Notice of Decision**

4. The appellant's appeal against the decision of the Secretary of State dated 12 October 2017 is allowed on asylum grounds and human rights grounds (Article 3 ECHR)

Signed

Date 26 February 2019

Upper Tribunal Judge Lane

### **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 his 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.