Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04774/2019

THE IMMIGRATION ACTS

Heard at The Royal Courts of Justice	**Decision & Reasons Promulgated**
On 9 December 2019	**On 11 March 2020**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

HS
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Dolan, Counsel, instructed by Shawstone Associates
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Judge of the First-tier Tribunal K Swinnerton (the judge) who, in a decision promulgated on 12 September 2019, dismissed the appellant's asylum, humanitarian protection and human rights appeal against the respondent's decision of 9 May 2019 to refuse her protection and human rights claim and her claim for humanitarian protection.

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Background

2. The appellant is a national of Yemen. At the date of the First-tier Tribunal decision she was 31 years old. She was born in Saudi Arabia and had lived in Jeddah all her life. I summarise the appellant's claim.

3. The appellant lived with her maternal aunt after her mother moved to the UK in 2003/4. The appellant has two maternal aunts who work in Saudi Arabia and who are both Saudi Arabian nationals. Another maternal aunt, uncle and grandmother also live in the UK. She has a sister who lives in Germany and another sister and brother who live in the United Arab Emirates (UAE).

4. The appellant graduated from medical College in 2012. She began working for the Laperle Perle Dental Spa in 2015. She claims the dental practice changed its name to 'Dr Susan Banjar' around December 2017/January 2018. On 2 May 2017 the appellant was issued with a multi-entry visitor entry clearance. She arrived in the UK by plane on 13 October 2018 pursuant to her entry clearance. Prior to her arrival in the UK, but in the same month, an Egyptian colleague in the same dentistry practice was made redundant.

5. A few days after her arrival in the UK she received an email from her employer in Saudi Arabia informing her that her employment had been terminated. She believes her redundancy was part of a 'Saudisation' policy through which Saudi businesses are required to ensure that their workforce is comprised of Saudi nationals up to certain levels.

6. The appellant claimed asylum on 27 November 2018. She feared that she would be persecuted if removed to Yemen, and that if removed to Saudi Arabia, the Saudi authorities would remove her to Yemen because she had been made redundant and had lost her right to reside, and because of the 'Saudisation' policy.

7. The respondent rejected both the appellant's claim to have been made redundant from her job as a dentist in Saudi Arabia, and her claim that her Saudi Arabian residence permit had expired. The respondent believed the appellant could return to Saudi Arabia and continued in her profession and renew her residence permit. The Reasons for Refusal Letter referenced background evidence indicating that there was a non-deportation policy for Syrians and Yemenis living in Saudi Arabia, and that there were more than 603,000 Yemeni nationals living in the country who were considered visitors and not officially recognised refugees.

8. Although the respondent accepted that the appellant would be at real risk of persecution in Yemen, and that she would face a real risk of a breach of her ECHR rights, the respondent was not satisfied that the appellant had

established a real risk of persecution or breach of ECHR if she was returned to Saudi Arabia and considered that the appellant could be removed to Saudi Arabia.

9. The appellant exercised her right of appeal under s.82 of the Nationality, Immigration and Asylum Act 2002.

The decision of the First-tier Tribunal

10. The appellant provided two bundles of documents for her appeal. The first bundle ran to 482 pages and included, *inter alia*, a statement from the appellant dated 16 August 2019, a statement from her maternal aunt resident in the UK, a country expert report and Saudi Arabia written by Dr Imranali Panjwani dated 17 July 2019, medical records relating to the appellant, documents relating to the La Perle dental practice, several media reports and articles relating to the Saudization policy, some with specific reference to dentists, and various human rights reports relating to both Yemen and Saudi Arabia. The 2nd bundle ran to 50 pages and included, *inter alia*, a witness statement from the appellant's mother, a medico-legal report authored by Dr Syed Zia Ali dated 22 August 2019, and a Wikipedia entry on Saudi Arabian nationality law. Also produced to the judge was a skeleton argument authored by Mr Dolan.

11. The appellant gave oral evidence. The judge indicated that he would treat the appellant as a vulnerable witness for the purpose of the hearing. The judge noted that the appellant was taking medication to help with sleep and an antidepressant that had been prescribed two days prior to the hearing. The judge also heard oral evidence from the appellant's aunt and mother.

12. In the section of her decision headed 'findings of fact and reasons', the judge found that the appellant had not given a truthful and accurate account of events that caused her to make her protection claim. The judge rejected the appellant's evidence, given during her substantive asylum interview, that she never thought that the Saudization policy would include "professionals like doctors and engineers and high profile professionals" in circumstances where her Egyptian colleague had been made redundant a short time before the appellant came to the UK [21]. The judge found that the expulsion of the appellant's Egyptian dentist colleague from the practice "would have been the most clear and direct form of evidence to her that it did apply to people in exactly the same situation as the appellant and that she would have been acutely aware of this prior to leaving Saudi Arabia in October 2018."

13. At [22] the judge stated that no evidence of the change of name of the dental practice from 'Laperle Perle Dental Spa' to 'Dr Suzan Banjar' had been provided. The judge referred to undated documents from Laperle Perle Dental Spa detailing the dentists at the practice, including the Egyptian dentist, but noted that neither the name nor details nor photograph of the appellant were

included in the team of professionals. The judge agreed with the respondent that the email document submitted by the appellant which attached the letter of redundancy was not in an email format. The email document included a 'from and to' bar indicating that it was sent on 24 October 2018 at 6:59:50 2 PM GMT +1 from 'accountant@laperlemedical.com'. The judge noted that it was not sent from 'Dr Suzan Banjar', the claimed new name of the dental practice, and that no explanation for this was provided. The judge stated, "I fail to see why the letter upon which the Appellant relies is not from Laperle Dental when the Appellant has provided a termination e-mail sent to her from the accountant at Laperlemedical and undated pages detailing the dentists at Leperle Dental. Regardless of the issue as to the name of the dental practice, I do not place much weight upon the documents provided by the Appellant to evidence her termination of employment in October 2018."

14. At [23] the judge found that no evidence was provided by the appellant that her Saudi Arabian residency had ended. The judge noted that in her screening interview conducted in November 2018 the appellant claimed her Saudi residency expired in July 2019, that in her substantive asylum interview in April 2019 she stated that her residence permit had already expired because she had been made redundant and because she did not return within a specified period, and in her witness statement she stated that her residency card was valid until 23 August 2020, but that as she was no longer employed as a dentist she would be unable to return to Saudi Arabia.

15. At [24] the judge noted that the appellant answered 'no' when asked in both her screening interview and substantive asylum interview whether she had any medical conditions or mental health problems. The judge noted that the appellant had been prescribed antidepressant medication two days prior to the appeal hearing and that the report by Dr Ali was based upon an examination of the appellant on 17 August 2019. The judge found that Dr Ali's opinion that the appellant presented with symptoms indicating severe depression and PTSD were at odds with the content of the GP medical records provided and that Dr Ali gave little by way of analysis or reasoning to support his opinion.

16. At [25] the judge considered the report from Dr Panjwani, the country expert. The judge noted the country expert's opinion that, although the appellant had a valid residence permit, she did not have secured employment or a sponsor to guarantee her residence permit and would be charged financial penalties and could be deported, but found that this differed from the appellant's account that, as she no longer holds her dentist role, she cannot return to Saudi Arabia.

17. At [26] the judge indicated that she weighed up her concerns with the appellant's credibility with the contents of the expert reports from Dr Ali and Dr Panjwani. At [27] the judge found that the appellant was not a credible witness, that her employment had not been terminated, and that even if her employment was terminated, she would nonetheless be able to return to Saudi

Arabia where she could continue to live with her aunt and seek to obtain other employment.

18. The appeal was dismissed on all grounds.

The challenge to the judge's decision

19. The grounds raise several challenges to the judge's decision. They contend that the judge misdirected herself on the issue of subsidiary protection, with reference to both paragraph 339C(iii) of the immigration rules and the definition of 'a person eligible for subsidiary protection' in Article 2 of the Qualification Directive (Council Directive 2004/83/EC), as the judge should have asked herself whether the appellant could avail herself of the protection of Yemen. The judge should have considered the distinction in Article 2 between "country of origin" and "country of habitual residence". The grounds contend that the appellant could not avail herself of the protection of Saudi Arabia and Saudi Arabia is not a signatory to the 1951 Refugee Convention and that the judge failed to consider the content and conclusions of the country expert report and failed to give adequate reasons for rejecting Dr Panjwani's evidence.

20. The grounds further contend that the judge failed to give adequate reasons for rejecting the expert report from Dr Ali and failed to consider the diagnostic criteria supporting the medical diagnosis. The grounds further contend that the judge failed to properly consider the appellant's claimed vulnerability, with reference to the Joint Presidential Guidance Note No 2 of 2010 and the decision in **AM (Afghanistan)** [2017] EWCA Civ 1123. The grounds finally contend that the judge failed to determine whether the appellant would face very significant obstacles to her integration in Saudi Arabia.

21. In granting Judge of the First-tier Tribunal Bristow noted that the judge considered whether the appellant could avail herself of the protection of Saudi Arabia and that it was arguable that she should have considered whether the appellant could avail herself of the protection of Yemen. Permission was granted on all grounds.

22. Mr Dolan adopted the grounds at the 'error of law' hearing. He submitted that the judge failed to assess the appellant's credibility in light of the evidence that she was a vulnerable individual, and that she met the definition of vulnerability in footnote 2 on page 1 of the Joint Presidential Guidance note as she was receiving healthcare. Mr Dolan submitted that the judge failed to engage with the opinion of the country expert in respect of the appellant being able to look for work as a dentist, failed to adequately consider the evidence of Saudisation detailed by the country expert, and failed to consider the expert's opinion that the appellant's aunts could not act as her sponsors in Saudi Arabia. Even if the appellant was still employed, her residence permit expired on 23 August 2020

and the background evidence suggested that she would be unlikely to be able to remain employed as a dentist.

23. Mr Lindsay submitted that the immigration rules relating to subsidiary protection were clear and that the "country of return" in the present case was Saudi Arabia and not Yemen. He further submitted that the "country of origin" in the Qualification Directive was also clearly Saudi Arabia given that the appellant was born there and always lived in that country. The fact that Saudi Arabia was not a signatory to the 1951 Refugee Convention was not strictly material to the outcome of the appeal. The issue I had to determine was whether there was a real risk the appellant would be removed to Yemen from Saudi Arabia. There was no evidence that someone in her position, who was born and lived in the country, would be removed to Yemen. The expert report failed to consider the appellant's particular characteristics and failed to breakdown the circumstances of different returnees who had been removed from Saudi Arabia, and the statistics were advanced without consideration of their relevant context and were of little evidential value. With respect to the adverse credibility findings and the psychiatric report, it was submitted that the appellant gave a similar account of her mental health in her substantive asylum interview on 8 April 2019 as she did in her screening interview on 20 November 2018, and that there was an absence of any reference to any mental health issue in the GP records. Mr Lindsay submitted that the reasons given by the judge for discounting the appellant's evidence did not depend on the vulnerable witness guidance.

Further directions following the hearing

24. Following the hearing the Upper Tribunal became aware of the decision of the Vice-President of the Upper Tribunal in **Abunar (Para 339C: "Country of return")** [2018] UKUT 00387 (IAC). On 22 January 2020 the Upper Tribunal issued directions requiring the appellant to provide further written submissions relating to the applicability of **Abunar**, to be served on the respondent and the Upper Tribunal no later than Thursday 30 January 2020. The respondent was directed to file any further written submissions concerning the applicability of **Abunar**, to be served on the appellant and the Tribunal no later than 5 February 2020. The Upper Tribunal received further submissions from the appellant's legal representatives on 29 January 2020. The Upper Tribunal received no further submissions from the respondent.

Discussion

25. I am not persuaded that the judge either erred on her legal approach to the psychiatric report prepared by Dr Ali, or that the judge failed to take into account the appellant's vulnerability. The judge was rationally entitled, at [24], to consider the appellant's answers in both her screening interview and her asylum interview indicating that she had no mental health problems, the

absence of any specific mention of any recent mental health issues in the appellant's GP medical records, and the fact that the appellant was only prescribed anti-depressants two days before the hearing. The psychiatric report was based on information provided by the appellant and there was no assessment of whether the appellant could be feigning her symptoms. I note that the psychiatrist considered the position for those suffering from mental health in both Yemen and Saudi Arabia, but this was outside the scope of his expertise. The judge nevertheless agreed to treat the appellant as a vulnerable witness and there is nothing to indicate that she did not apply this approach in practice. The judge's adverse credibility findings were not of a kind that could be attributed to any of the symptoms considered in the psychiatric report. For example, the judge found incredible the appellant's claim that she did not appreciate that she may be subject to the Saudisation policy following the alleged expulsion of her Egyptian colleague from the practice. This is not the result of an inconsistency or any problems with memory. The judge also relied on the absence of any evidence that the dental practice changed name, as claimed by the appellant, and concerns identified with the email format of a document upon which the appellant relied.

26. Nor am I persuaded that the judge erred in law in his approach to the expert country report. The judge found that the appellant's employment in Saudi Arabia had not been terminated, and the appellant accepted that she held a residence permit valid until 23 August 2020. Much of the expert report was concerned with the difficulties the appellant may encounter in trying to find a new dentist job, but the judge found that the appellant still had her job. The extracts upon which the expert relied (at page 99) did not support his contention that dental contracts had been terminated as a consequence of the Saudisation policy. The lack of any clear evidence that the Sauidsation policy caused dentists to be fired from their jobs further undermined the appellant's credibility. I additionally accept the criticism mounted by Mr Lindsay that Dr Panjwani failed to consider the appellant's particular circumstances in determining what will happen to her on return to Saudi Arabia, particular the fact that the appellant had been born in Saudi Arabia and lived there all her life, and that she has two family members (her two aunts) who are Saudi nationals. Given that the appellant would have two family members who are Saudi nationals who could assist and support her on her return, and given that the appellant was found to still have a job and a valid residence permit, and in light of the judge's findings relating to the appellant's mental health, there was no arguable breach of paragraph 276ADE(1)(vi).

27. I turn now to the grounds relating to subsidiary protection. Paragraph 339C(ii) of the immigration rules provides that a person will qualify for international protection if substantial grounds have been shown for believing that the person concerned, "if returned to the country of return", would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail themselves of the protection of that country. The definition of a 'person eligible

for subsidiary protection' is contained in Article 2(e) of the Qualification Directive. This reads,

> (e) person eligible for subsidiary protection' means a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country.
>
> (k) 'Country of Origin' means the country or countries of nationality or, for stateless persons, of former habitual residence."

28. There is a difference between 'country of return' in paragraph 339C and 'country of origin' in the Directive. The Upper Tribunal considered this difference in **Abunar**. Mr Abunar (the claimant) was a Syrian national who had lived for many years in Egypt since he was 6 years old. The claimant had, or had had, a valid Egyptian residence permit. He did not leave Egypt fearing persecution in that country and would not be in danger on his return to Egypt. The Secretary of State accepted that the circumstances in Syria were such as to engage Article 15(c) of the Qualification Directive. The Secretary of State's position however was that the claimant could be removed to Egypt. The judge allowed the appeal on humanitarian protection grounds. The Secretary of State was granted permission to appeal on the basis that the judge failed to consider that the claimant could potentially return to Egypt.

29. Having set out the relevant provisions of the Immigration Rules and the Qualification Directive the Vice-President found that the issue of whether the Secretary of State could refuse humanitarian protection to the claimant on the ground that he could be removed to Egypt was "a matter of potential difficulty" [6]. The Vice President's analysis is contained in [9] and [10].

> 9. It is therefore right to say, as Judge Phillips did say, that paragraph 339C does not refer to the country of nationality. However, the phrase used in the Directive is "country of origin", but the phrase used in paragraph 339C is "country of return". The latter phrase does not appear to be defined in the Immigration Rules, and it must therefore be assumed that it applies to a country of proposed return, whether or not that country is the claimant's country of origin. It appears to follow that paragraph 339C does not correctly transpose the relevant provisions of the Directive.
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> 10. Mrs O'Brien did not ask us to apply the Immigration Rules rather than the Directive. There is no doubt that the wording of the determination is unfortunate: the judge had no power to grant the claimant humanitarian protection. It is, however, clear from her findings that the claimant was, on the basis of those findings, entitled to a grant of humanitarian protection. We therefore dismiss the Secretary of State's appeal. With great assistance from Mrs O'Brien, we were able

to satisfy ourselves during the course of the day that the claimant had access to housing and other assistance in the light of his successful claim.

30. The Vice-President found that paragraph 339C did not correctly transpose the relevant provisions of the Directive. A person, such as the appellant, will be entitled to humanitarian protection if they would face in their 'country of origin', that being, according to the Qualification Directive, their country of nationality, a breach of Article 15(c) of the Qualification Directive, even if they were not going to be removed there. The respondent accepted in her Reasons for Refusal Letter that the appellant would face a real risk of Article 15(c) if she were removed to Yemen. The CPIN, January 2019, confirms this at 2.3.4 to 2.3.12. As the Qualification Directive is directly effective, and in light of the decision of the Upper Tribunal in **Abunar**, I am satisfied that the appellant was, at the date of the judge's decision, and at the date of this error of law decision, entitled to a grant of humanitarian protection, and that the judge was wrong in law in concluding otherwise.

Notice of Decision

The appeal is allowed on the basis that the appellant is entitled to humanitarian protection.

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

Unless and until a Tribunal or court directs otherwise, the appellant in this appeal is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her 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.

D. Blum

Signed
Upper Tribunal Judge Blum

10 March 2020

Date