



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01747/2016**

THE IMMIGRATION ACTS

Heard at Liverpool

On February 6, 2018

**Decision & Reasons
Promulgated
On February 9, 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

[A J]

~~(NO ANONYMITY DIRECTION MADE)~~

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Adebayo, Solicitor

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

Interpreter: Ms Swareldhab

DECISION AND REASONS

1. I do not make an anonymity order.
2. The appellant is a Kuwaiti national. He entered the United Kingdom clandestinely on November 17, 2015 and claimed asylum the same day.
3. The respondent refused his protection claim on February 11, 2016 under paragraphs 336 and 339F HC 395. The appellant lodged grounds of appeal on February 22, 2016 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. His appeal came before Judge of the First-tier

Tribunal Sharkett (hereinafter called “the Judge”) on April 4, 2017 and in a decision promulgated on May 4, 2017 the Judge refused the appeal on all grounds. The appellant appealed this decision on May 17, 2017. Permission to appeal was granted Judge of the First-tier Tribunal Gibb on September 1, 2017 and on December 6, 2017 I heard submissions on whether there was an error in law.

4. I agreed with Mr Adebayo that the Judge failed to take into account that the respondent had already accepted, in February 2016, that the appellant’s brother and sister were undocumented Bidoons as was the appellant’s sister’s husband. The fact the respondent had accepted the appellant’s brother was an undocumented Bidoon was something the Judge should have given due consideration to and in my opinion it should have been at the forefront of her mind.
5. Mr Adebayo’s firm had taken over conduct of this matter and requested a short adjournment to consider whether any further evidence would be called. I agreed to this request.
6. An additional statement from the appellant was served late yesterday but in truth this statement took the case no further as the content of this statement was contained in the original statement and formed part of his oral evidence as recorded by the Judge. A second statement from [HA] was not relied on due to the late service of the bundle.
7. Having read the papers I indicated to Mr McVeety that the difficulty the respondent had was that the appellant’s two siblings (similar age to the appellant) had both been recognised as undocumented Bidoons. The respondent had accepted this as fact in February 2016 and referred to it in the decision letter.
8. I posed the question to him that unless he was submitting the adverse credibility points outweighed the starting point that undocumented Bidoons were at risk of persecution then this appellant must win his appeal bearing in mind the country guidance decision of NM (documented/undocumented Bidoon risk) Kuwait CG [2013] UKUT 356 (IAC).
9. Mr McVeety agreed that bearing in mind the agreed evidence about the appellant’s siblings and applying the lower standard of proof it would be very difficult for him to argue constructively that the appellant was not an undocumented Bidoon. He agreed that if the appellant was an undocumented Bidoon then he won his appeal.

FINDING

10. When the appeal came before the FTT Judge no consideration was given to the fact the appellant’s siblings were undocumented Bidoons. The Judge assessed credibility solely on the appellant’s account of what happened but attached no weight to the fact his two siblings had been accepted as undocumented Bidoons.

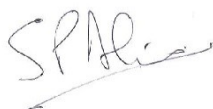
11. Even if he had exaggerated or lied about aspects of his claim the fact remained he was the sibling of two people recognised as undocumented Bidoons. It lacked credibility that one sibling (of a similar age) would be documented and his other two siblings would not.
12. In the circumstances I was satisfied, based on the written evidence of the appellant and his two siblings and the DNA evidence which confirmed their relationship, the appellant was also an undocumented Bidoon and as such he would be at risk of persecution.

DECISION

13. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
14. I set aside the FTT Judge's decision.
15. I have remade the decision and allow the appeal on protection grounds.

Signed

Date 06/02/2018



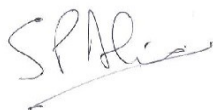
Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I make no fee award as no fee was paid.

Signed

Date 06/02/2018



Deputy Upper Tribunal Judge Alis