



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/02922/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 9 July 2018

Decision & Reasons Promulgated  
On 13 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

SALEH [D]  
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Ms H. Naz, Solicitor, Fountain Solicitors  
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, who is a national of Kuwait, appeals from the decision of the First-tier Tribunal (Judge Sweet sitting at Hatton Cross on 6 April 2018) dismissing his appeal against the decision of the Secretary of State to refuse to recognise him as a refugee on account of him being an undocumented Bidoon as was his younger brother,

Mohammed [D], who had been recognised as a refugee on this basis. As there was no DNA evidence to show that the appellant was related to Mohammed [D] as claimed, Judge Sweet dismissed the appeal.

2. The First-tier Tribunal did not make an anonymity direction, and I do not consider that the appellant requires anonymity for these proceedings in the Upper Tribunal.

### **The Reasons for the Grant of Permission to Appeal**

3. On 15 May 2018 First-tier Tribunal Judge Grimmett granted permission to appeal for the following reasons: *“It is arguable that the Judge erred in failing to consider whether the witness was reasonably likely to be the appellant’s brother particularly as the relationship was mentioned in the appellant’s screening interview.”*

### **The Hearing in the Upper Tribunal**

4. At the hearing before me to determine whether an error of law was made out, Ms Everett conceded that the decision of the First-tier Tribunal was vitiated by a material error of law for the reason identified by Judge Grimmett and for the additional reason that the Judge had not made findings of fact on the appellant’s account of past persecution; and also the Judge had not engaged with the case advanced in the refusal decision that the undocumented status of the appellant’s brother – who was fifteen years younger than the appellant – was not determinative of the question whether the appellant was also undocumented. She agreed with Ms Naz that the decision should be set aside in its entirety and the appeal remitted to the First-tier Tribunal for a fresh hearing.
5. I ruled that an error of law was made out, and I gave my reasons for so finding in short form, with written reasons to follow.

### **Reasons for Finding an Error of Law**

6. The sole reason given by Judge Sweet for dismissing the appeal was *“the absence of ... DNA evidence supporting the appellant’s relationship with his brother”*.
7. This was not an adequate reason from the appellant’s perspective as he only needed to prove his case to the lower standard of proof; and the Judge did not ask himself whether the relationship was established to the lower standard by the attendance of the claimed brother to give oral evidence in support of the appeal; the fact that he shared the same surname as the appellant; and the fact that his presence in the UK had been mentioned by the appellant in his screening interview.
8. The Judge’s reasoning was also wholly inadequate from the respondent’s perspective as it wrongly implies that the claimed brother’s status as an undocumented Bidoon is determinative of the question whether the appellant is also an undocumented Bidoon as opposed to a documented one; and, by the same token, it wrongly implies that the credibility of the appellant’s account of his claimed past experiences in Kuwait is irrelevant.

9. In conclusion, I consider that both parties have been deprived of a fair hearing in the First-tier Tribunal on the core issue of whether the appellant qualifies for recognition as a refugee. There is also a lack of adequate reasoning on this issue. The decision is thus unsafe and it must be set aside in its entirety.

**Notice of Decision**

The decision of the First-tier Tribunal contained an error of law, and accordingly the decision is set aside and must be remade.

**Directions**

**This appeal is remitted to the First-tier Tribunal at Hatton Cross for a fresh hearing (Judge Sweet incompatible), with none of the findings of fact made by the previous Tribunal being preserved.**

**My time estimate for the hearing is 3 hours.**

Signed

Date 10 July 2018

Judge Monson  
Deputy Upper Tribunal Judge