



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

Appeal Number: PA/08783/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 2<sup>nd</sup> January 2018**

**Decision & Reasons  
Promulgated  
On 13<sup>th</sup> February 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RENTON**

**Between**

**[N H]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr S Saeed of Aman Solicitors

For the Respondent: Ms Z Ahmad, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The Appellant is a male citizen of Kuwait born on [ ] 1976. After living in Iraq, the Appellant entered the UK illegally on 3<sup>rd</sup> February 2016 and applied for asylum that day. That application was refused for the reasons given in an Asylum Decision dated 3<sup>rd</sup> August 2016. The Appellant appealed, and his appeal was heard by Judge of the First-tier Tribunal Paul (the Judge) sitting at Taylor House on 18<sup>th</sup> April 2017. He decided to dismiss the appeal on asylum and humanitarian protection grounds for the

reasons given in his Decision dated 18<sup>th</sup> April 2017. The Appellant sought leave to appeal that decision, and on 18<sup>th</sup> October 2017 such permission was granted.

### **Error of Law**

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Appellant's case was that he was at risk on return to Kuwait as somebody who had lived in Iraq from 1992 until he came to the UK. In Kuwait therefore he would be at risk as an undocumented Bidoon who did not have Kuwaiti citizenship.
4. The Judge dismissed the appeal because he did not find the Appellant to be credible. There were inconsistencies in his account which the Judge also described as very vague. The Judge was therefore not satisfied as to the true status and origins of the Appellant.
5. At the hearing before me, Mr Saeed argued that the Judge had erred in law in coming to this conclusion. He referred to the grounds of application and submitted that the Judge had accepted the criticism of the Appellant's evidence made in the Respondent's refusal letter without analysis and without sufficient reasons. The Judge had failed to take into account the Appellant's evidence by way of rebuttal. The Judge failed to follow the Respondent's original position that the Appellant was from Kuwait. The Judge failed to make any finding as to whether the Appellant was deported from Kuwait. The Judge referred to a Country Advice from the Australian Government, but failed to deal with objective evidence submitted by the Appellant in his Bundle to the effect that the Appellant would not be able to obtain Kuwaiti nor Iraqi citizenship. The Judge also failed to deal with documentary evidence such as a marriage certificate and a letter from a local Mukhtar showing that the Appellant was a Bidoon.
6. In response, Ms Ahmad submitted that the arguments made on behalf of the Appellant were speculative. The Judge came to conclusions which were open to him on the evidence before him and which he adequately explained. It is trite law that the Judge did not have to deal with every item of evidence before him in the Decision. As decided in **SSHD (Appellant) v AH (Sudan) and Others (FC) (Respondents) [2007] UKHL 49**, for there to be an error of law something more was needed than just that the decision would appear harsh.
7. I find an error of law in the decision of the Judge which I therefore set aside. The decision of the Judge is based entirely upon his finding as to the credibility of the Appellant but in my judgment that finding is not flawless. At paragraph 25 of the Decision, the Judge relied upon the criticisms of the Appellant's evidence made in the Respondent's refusal letter without a detailed analysis of those criticisms and without taking into account the evidence of the Appellant by way of rebuttal. The Judge

also described the evidence of the Appellant as very vague again without a detailed analysis of that evidence, and in any event the Appellant's case was not dependent upon what he had experienced in Kuwait and Iraq but upon his claim to be a Kuwaiti Bidoon. The fact that the Appellant was a Kuwaiti was not disputed by the Respondent. The Judge erred in law by not dealing with documentary evidence showing the Appellant to be a Bidoon. Looked at as a whole, the Judge failed to give sufficient reasons for his finding as to the credibility of the Appellant.

8. I decided not to remake the decision of the First-tier Tribunal but to remit the appeal to the First-tier Tribunal for the decision in the appeal to be remade there. This is in accordance with paragraph 7.2(b) of the Practice Statements as proper findings of fact are yet to be made.

### **Notice of Decision**

9. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside that decision.

The decision in the appeal will be remade in the First-tier Tribunal.

### **Anonymity**

10. The First-tier Tribunal did not make an order for anonymity. I was not asked to do so and indeed find no reason to do so.

Signed

Date 9<sup>th</sup> February 2018

Deputy Upper Tribunal Judge Renton