



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/13407/2016

**THE IMMIGRATION ACTS**

Heard at: Manchester Piccadilly  
On: 22<sup>nd</sup> May 2018

Decision Promulgated  
On: 26<sup>th</sup> June 2018

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

HMA  
(anonymity direction made)

Appellant

And

Secretary of State for the Home Department

Respondent

For the Appellant: Mr H. Sadiq, Adam Solicitors  
For the Respondent: Mr Bates, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant claims to be an undocumented 'Bidoon' from Kuwait. As such he claims to be stateless. He was born in 1984. He appeals with permission<sup>1</sup> the decision of the First-tier Tribunal (Judge G. Tobin), dated the 25<sup>th</sup> July 2017, to dismiss his protection appeal.

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<sup>1</sup> Permission was refused on the 19<sup>th</sup> October 2017 by First-tier Tribunal (Judge Pedro) but was granted upon renewed application by Upper Tribunal Grubb on the 18 December 2017.

2. The substance of the appeal before the First-tier Tribunal was that the Appellant has, in relation to Kuwait, a well-founded fear of systematic discrimination, denial of basic rights and physical ill-treatment amounting to persecution. Although the Appellant advanced an account of political involvement prior to his having left Kuwait, it was common ground that the appeal did not turn on whether or not that account was true. The real question was whether the Appellant is in fact an 'undocumented Bidoon'. If he is, then he is entitled to refugee status in accordance with the extant country guidance: HE (Bidoon – statelessness – risk of persecution) Kuwait CG [2006] UKAIT 00051, NM (documented/undocumented Bidoon: risk) Kuwait CG [2013] UKUT 00356 (IAC). It is perhaps evident from the foregoing that the only matter of substance in issue before the First-tier Tribunal was whether the Appellant so qualified.
3. The First-tier Tribunal heard evidence from the Appellant and had placed before it various country background reports, the relevant country guidance, and a report by Dr Aman Durrani, a Psychiatrist who had seen the Appellant on one occasion, in October 2016. Dr Durrani concluded that the Appellant was suffering from Generalised Anxiety Disorder. The Appellant further relied on the evidence of a witness, a Mr A. Mr A has been recognised as a refugee on the grounds that he is an undocumented Bidoon. Mr A avers that he is the Appellant's cousin, and produced a DNA profiling report which indicated that Mr A and the Appellant were indeed related as claimed. It was part of the Appellant's claim and that he and Mr A had both attended the same demonstration in 2014 which led the Appellant to flee Kuwait.
4. Having had regard to that evidence the First-tier Tribunal gave several reasons for rejecting the Appellant's credibility as a witness:
  - i) The Respondent had identified several errors/lacunae in the Appellant's knowledge of the Bidoon;
  - ii) He had given inconsistent evidence about what relatives he had in Kuwait;
  - iii) His account of attending the demonstration at the invitation of a friend was not convincing and sounded "odd";
  - iv) He and Mr A had been vague and inconsistent about whether they had seen each other on the demonstration;
  - v) It was not credible or convincing that after the Appellant fled police he managed to hide in some sheep pens for 1 year 3 months without being detected, particularly when the authorities came and searched those pens;

- vi) Nor was it credible or convincing that Mr A and the Appellant were both hiding in the same set of sheep pens for such an extended period and yet never saw each other there. This story was implausible and unbelievable;
  - vii) The Appellant had failed to claim asylum in a safe third country;
  - viii) The Appellant's evidence was evasive and unconvincing;
  - ix) The DNA report could not be relied upon since the report itself acknowledged that the samples had not been collected under a strict chain of custody by a neutral third-party;
  - x) Dr Durrani's "rather perfunctory" medical report was of limited assistance.
5. The Tribunal dismisses the appeal, concluding at paragraph 32: "his lack of knowledge of the recent experiences of the Bidoons in Kuwait, as set out in the reasons for refusal letter, convinces me that the appellant is not a Bidoon".
6. The Appellant now contends that the decision of the First-tier Tribunal is flawed for the following material errors in law:
- i) Failure to make findings/ give reasons on the core matter in issue, namely whether the Appellant is an undocumented Bidoon;
  - ii) Failure to give adequate reasons for negative credibility findings;
  - iii) Failure to consider the Appellant's evidence/submissions in the round;
  - iv) Basing its negative credibility findings on plausibility.

### **Discussion and Findings**

7. Judge Grubb was prepared to grant permission in this case because he considered it arguable that the Tribunal had erred in relying *in extenso* on the Respondent's reasons for refusal (in respect of the Appellant's alleged lack of knowledge about Bidoon affairs) without, apparently, having any regard to the Appellant's explanations (set out in the witness statement), or the submissions made on his behalf (for which I am referred to Mr Sadiq's skeleton argument before the First-tier Tribunal). Mr Bates for the Respondent acknowledged that the determination has not expressly summarised the Appellant's evidence about these matters or addressed the submissions made, but he asked me to find that

in the context of the decision overall any such omission was not material. The determination read as a whole was sustainable.

8. Mr Sadiq pointed to the skeleton argument he had lodged with the First-tier Tribunal. This explores in some detail what it calls the “profound flaws” in the Respondent’s reasoning. It suffices to give only two examples here. The Respondent had drawn negative inference from the Appellant’s lack of knowledge about the education available to Bidoons in 1987; since he was only three at the time it is difficult to see what negative inference could be drawn. Secondly the Respondent had rejected the Appellant’s evidence that tear gas and water cannon had been used at the demonstration, whereas the Appellant’s representative produced evidence relating to both which corroborated the Appellant’s account. Mr Sadiq directed me to paragraph 32 of the decision in which the Tribunal makes clear that it is the Appellant’s alleged lack of knowledge about the Bidoon which leads it to reject his claimed ethnicity [see my §5 above]. He submitted that the error was plainly material and asked me to evaluate the ground of appeal in light of the following matters:
  - a) Most of the First-tier Tribunal’s reasoning was concerned with whether the Appellant attended a demonstration and thereafter spent some 15 months in hiding in a sheep pen in the desert;
  - b) All of that could have properly been rejected but it did not dispense with the central issue of the Appellant’s ethnicity/civil status in Kuwait;
  - c) Had the Tribunal specifically directed its mind to that issue it would have had to weigh in the balance the Appellant’s response to the Respondent’s reasoning and his representative’s objective rebuttal of the points made in the refusal letter.
9. I am satisfied that this ground must be made out. The skeleton argument (read with the witness statement) constitutes a point-by-point response to the ‘reasons for refusal letter’. The determination indicates that it is the Tribunal’s uncritical adoption of the Respondent’s reasoning which has led it to reject the Appellant’s evidence on the core issue of his ethnicity. Even if Mr Bates is correct in his assumption that in fact the Tribunal must have weighed in the balance all those other negative findings, the omission is such that the error is made out regardless, because the Tribunal failed to weigh all of the evidence in the round.
10. It follows that I need not address the remaining grounds in any detail but I would say this. The determination repeatedly makes reference to the Tribunal needing to be “convinced” of matters advanced on behalf of the Appellant. This is an unfortunate expression apt to giving the impression that the Tribunal has applied a far higher standard of proof than that which was appropriate here. The

Tribunal did not have to be convinced of anything. It had to be satisfied to the lower standard of proof.

### **Anonymity Order**

11. This appeal concerns the Refugee Convention. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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 to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

### **Decision**

12. For the reasons set out above I am satisfied that the decision of the First-tier Tribunal contains a material error of law. The decision is set aside.
13. The decision in the appeal is to be re-made following *de novo* hearing in the First-tier Tribunal, in light of the extensive findings of fact that must be made.
14. There is an order for anonymity.

Upper Tribunal Judge Bruce  
2<sup>nd</sup> June 2018