



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2023-000311**  
**First-tier Tribunal No:**  
**PA/00545/2022**  
**(Previously PA/51146/2022)**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 15 April 2024**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**HNAA**  
**(Anonymity Order made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms S Alban, of Asylum Justice

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

**Heard at Cardiff Civil Justice Centre on 4 April 2024**

**DECISION AND REASONS**

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his asylum and human rights claim.

2. The appellant was born on 17 August 1983 and claims to be an undocumented Kuwaiti Bidoon who faces persecution in Kuwait on account of his status. The respondent considers him to be a national of Kuwait and does not accept his claim to be an undocumented Bidoon.

3. The appellant arrived in the UK on 9 September 2019 and claimed asylum the same day. His asylum claim was refused on 7 February 2020 and his appeal against that decision was dismissed on 16 October 2020. He became appeal rights exhausted

on 22 January 2021 and subsequently lodged further submissions on 23 December 2021. His submissions were treated by the respondent as a fresh claim, but the claim was refused on 9 March 2022. The appellant appealed against that decision.

4. The appellant claimed that he had been persecuted in Kuwait as an undocumented Bidoon and that he would continue to be persecuted if he returned to Kuwait. He claimed that his grandfather and father did not register in the 1965 census and he was consequently not issued with a birth certificate and did not attend school, but worked as a handyman and sold vegetables. He became of interest to the Kuwaiti authorities when he attended a demonstration on 18 February 2014 and was arrested and detained for 30 days. He was released on condition that he spied on other Bidoons. However he did not do that and instead went into hiding for approximately 5 years and then left the country with the assistance of a friend who had been looking after him and who arranged an agent to take him out of the country.

5. The respondent did not accept the appellant's claim and considered that he was a Kuwaiti national and would be at no risk on return to Kuwait.

6. The appellant's appeal against that initial decision was dismissed on 16 October 2020 by First-tier Tribunal Judge Boyes following a hearing on 12 October 2020 at which the appellant and two witnesses gave oral evidence. The two witnesses had been granted refugee status in the UK as undocumented Kuwaiti Bidoon and supported the appellant's claim. Judge Boyes did not accept the appellant's claim relating to a demonstration in 2014 and his subsequent arrest. He found the two witnesses to be unreliable and he concluded that the appellant had fabricated his entire claim and was not undocumented. He considered that the appellant could safely return to Kuwait and continue his life there.

7. In his further submissions of 23 December 2021, the appellant maintained his claim to be an undocumented Bidoon from Kuwait and produced further evidence in support of his claim, namely a letter dated 25 August 2021 purportedly from the Mayor of Sulebiyah where his family lived which he claimed had been obtained by his family on his behalf, a letter of support from a further witness, AF, who had been granted refugee status as an undocumented Bidoon and who claimed to have known the appellant in Kuwait, and the DHL envelope in which the Kuwaiti document had been sent to the UK.

8. The respondent treated the further submissions as a fresh claim but did not accept the claim. The respondent had regard to the findings of Judge Boyes, noting the adverse credibility findings made in his decision. The respondent considered the documentary evidence in line with the principles in Tanveer Ahmed and concluded that little weight could be accorded to the Mayor's letter or the letter of support from the appellant's witness. The respondent did not accept that the appellant was an undocumented Kuwaiti Bidoon and did not accept that the Kuwaiti authorities had any adverse in him. It was not accepted that he would be at risk on return to Kuwait.

9. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Lester on 10 November 2022. The appellant and his witness, AF, gave oral evidence before the judge. The judge gave little weight to the evidence of the witness owing to his inability to give proper reasons as to how he knew that the appellant was an undocumented Bidoon and owing to the appellant's conflicting evidence as to why he had not asked him to attend the previous hearing. The judge also gave little weight to the evidence of the village Mukhtar (Mayor), as the content of his letter conflicted with the appellant's evidence, the appellant having said that he had never met the Mukhtar but the Mukhtar stating that he had not seen the appellant since 3 September 2012.

The judge did not find the appellant's claim to be credible and he accordingly dismissed the appeal, in a decision promulgated on 14 December 2022.

10. The appellant sought permission to appeal to the Upper Tribunal on the ground that the judge had erred in his approach to the Mukhtar's letter. It was asserted that the judge had unfairly presented the language used and had misunderstood the role of the Mukhtar.

11. Permission was refused in the First-tier Tribunal but was subsequently granted in the Upper Tribunal on 21 February 2023, on the following basis:

"1. The appellant makes a protection claim as an undocumented Bidoon from Kuwait. His appeal was dismissed by the First-tier Tribunal sitting in Newport. This is a renewed application for permission to appeal that decision.

2. The grounds, in short summary, assert that the decision of the First-tier Tribunal is insufficiently reasoned in concluding that there was a discrepancy between the evidence of the appellant and that of the Muhtar in his letter of support for the appellant's claim. The appellant had said in his evidence he had never met the Muhtar personally, and this was not inconsistent, as the First-tier Tribunal finds, with the Muhtar who said he had last seen the appellant in 2012 particularly when it was considered that the appellant was an unimportant young person and the Muhtar a person of status. It is argued therefore that the decision not to give weight to this evidence errs in law.

3. I find that the ground is arguable.."

12. The respondent filed a rule 24 response on 15 March 2023 responding to the grounds of appeal, and stating as follows:

"3. The grounds, though lengthy, are nothing more than a disagreement with the findings of the First Tier. On the basis of the evidence it was clearly open to the FTT to draw an adverse conclusion from the differences in evidence between the appellant and letter from the Mukhtar. There is no error of law."

### **Hearing and Submissions**

13. The appeal came before me on 4 April 2024. Both parties made submissions.

14. Ms Alban submitted that the wording of the Mukhtar's letter was different to how the judge viewed it and there was an unfair representation of the language used. The Mukhtar had not provided a date when he last saw the appellant but was providing a date for when the appellant was last recorded as being in the area. The judge failed to consider the role of the Mukhtar and the fact that it was unlikely that the Mukhtar would have met the appellant personally. The judge had failed to consider that there was evidence of the provenance of the letter since the appellant had provided the envelope and had explained how the letter was obtained. Ms Alban submitted that the judge's decision ought therefore to be set aside and the decision re-made.

15. Mr Bates submitted that the judge had been entirely correct to categorise the matter as a conflict in the evidence. It was open to the judge rationally to conclude that by using the word "seen", the Mukhtar meant that he had seen the appellant in person. It was the content of the document which concerned the judge, not the evidence of its provenance, and the fact that the envelope had been produced was therefore immaterial. The judge considered the Mukhtar's letter together with the other evidence in accordance with Tanveer Ahmed and was entitled to accord it the weight that he did. The grounds were simply a disagreement with his decision.

## **Analysis**

16. The only ground of challenge made by the appellant was to the judge's finding on the letter from the Mukhtar. I agree entirely with Mr Bates that the judge was entitled to categorise the issue arising from the letter and the appellant's evidence as a conflict. The appellant's evidence was that he had never met the Mukhtar, whilst the Mukhtar's letter stated that "*from 02-09-2012 till now, I haven't seen [HNAA]*". Ms Alban sought to suggest ways in which the Mukhtar's statement could be read differently, such as that the appellant had not been in the area since 2012 rather than not having seen him personally since that date, and she submitted that it was unlikely that the Mukhtar would have met the appellant personally, or recalled meeting him in any event, given his role and status as compared to that of the appellant. However, the fact is that the letter used the word "seen" and the judge was perfectly entitled to accord that the meaning that he did. That was particularly so when considering the issue in the context of the various other concerns about the appellant's evidence.

17. As Mr Bates submitted, the judge considered the evidence in the round, in accordance with the principles in Tanveer Ahmed. The judge was aware that the appellant's claim had been rejected by a previous Tribunal as lacking in credibility, with his witnesses at that time being found to be unreliable. The judge properly reminded himself that that decision was his starting point in accordance with the guidance in Devaseelan. The other evidence relied upon by the appellant was the testimony of the new witness, AF, but the judge identified cogent reasons for according his evidence little weight, including in particular the fact that the appellant's explanation for not having asked him to attend the previous hearing made no sense and was not credible. In addition, at [31], it was pointed out that the appellant had not sought to obtain a letter from the Mukhtar previously and further, as Mr Bates submitted, there was no opportunity for the Mukhtar's evidence to be tested.

18. Taking all of those matters into account, it seems to me that the judge was perfectly entitled to reach the adverse conclusion that he did about the Mukhtar's letter and to accord it the limited weight that he did. I agree entirely with the respondent's rule 24 response and with Mr Bates' submission, that the appellant's grounds of challenge are, in reality, nothing more than a disagreement with the judge's decision and an attempt to re-argue the matter.

19. For all these reasons the grounds are simply not made out. The judge reached a decision which was fully and properly open to him on the evidence before him. His decision is accordingly upheld.

## **Notice of Decision**

20. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

## **Anonymity Order**

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Appeal Number: UI-2023-000311 (PA/00545/2022)

Signed: S Kebede  
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
4 April 2024