



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003469
FtT No: PA/60190/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 6th of November 2024

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

AS (KUWAIT)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Sadiq, Solicitor, Adams Solicitors

For the Respondent: Mr A McVeety, Senior Presenting Officer

Heard at Field House on 31 October 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellant appeals the decision of First-tier Tribunal Judge Gould (“the Judge”) refusing his asylum and human rights appeal. The Judge’s decision was sent to the parties on 12 June 2024.

Anonymity Order

2. The Judge issued an anonymity order. Neither party requested that it be set aside. As the appellant seeks international protection, I consider that his rights protected under article 8 ECHR outweigh the right of the public to know his identity as a party to these proceedings, the latter right being protected by article 10 ECHR.
3. The anonymity order is detailed above.

Brief Facts

4. The appellant is accepted by the respondent to be a national of Kuwait. He is aged 29. Dependent upon his asylum claim are his wife, aged 22, and their child, age 4, who was born in Germany.
5. He states that he is an undocumented Bidoon. He asserts that consequent to his undocumented status he enjoys no citizenship rights in Kuwait, and that he was not issued with any official documentation by the Kuwaiti authorities.
6. He details that he was detained by the authorities for nine days in July 2019, having participated in anti-government demonstrations seeking rights for Bidoons. He states that he was isolated in detention and seriously ill-treated. Following his release, he hid for approximately three months before fleeing the country.
7. The appellant confirms that he left Kuwait with his wife in October 2019, using a false passport to travel to Turkey. They then travelled to Greece where he applied for asylum. They remained in that country for approximately three months before leaving at a time when his claim was still being processed. The couple travelled to Germany via Albania and Italy. They remained in Germany for ten months and their child was born in that country. Consequent to his asylum claim being refused by the German authorities, the family travelled to the United Kingdom via France. Mr Sadiq accepted, and it is recorded in interview, that the couple used a false identity and claimed to be Iraqi nationals when seeking asylum in both Greece and Germany. However it is important to observe that by her decision letter dated 31 October 2023, the respondent noted the previous use of false identity but was content to accept that the appellant is a Kuwaiti national.

First-tier Tribunal Decision

8. The hearing came before the Judge sitting at Manchester on 3 June 2024. The appellant attended the hearing and gave evidence. The Judge concluded, *inter alia*:
- The appellant displayed some knowledge of the Bidoons, but such knowledge was limited in nature and lacking on central aspects, at [25] of the decision.
 - His lack of knowledge as to Bidoons was inconsistent with his claim to have engaged in an anti-government demonstration concerned with Bidoon rights, at [25].
 - He displayed a lack of knowledge of the historical processes afforded to the Bidoons to register, which undermined his claim to be a Bidoon, at [26].
 - The assertion that he was employed in Kuwait and rented accommodation undermined his claim to be a Bidoon, at [27].
 - He was inconsistent in his account about attending a demonstration, initially stating it was in September and then in July 2019. His assertion that this inconsistency was due to an interpreter error was not accepted, as he confirmed at the conclusion of the interview that there was nothing he wished to change, at [28].
 - The ease of leaving Kuwait was inconsistent with the appellant's claim of being released on conditions, at [31].
 - The explanation as to how the appellant secured his false passport, its cost, his exit plan and payment to the agent, was absent the detail expected if the departure was planned and executed to avoid detention, at [31],
 - Adverse findings were placed upon the failure by the appellant to claim or pursue asylum in several countries en route to the United Kingdom, at [33].
9. The Judge concluded that the appellant's evidence was incredible, lacking in detail and implausible, at [35].

Grounds of Appeal

10. The appellant relies upon two documents as advancing his grounds of appeal, dated 21 June 2024 and 24 July 2024.
11. The grounds fail to clearly identify individual challenges. Mr Sadiq confirmed that the June 2024 document advances one grounds of appeal, namely a reasons challenge directed to [25] - [27] and [29] of the Judge's decision. The challenge as advanced is addressed at [3] to [7] of the grounds. It is appropriate to identify [4] in full:

“4) It is found at paragraph 25 that the Appellant did not display relevant knowledge of undocumented Bidoon in Kuwait. It is telling and in legal error that the Tribunal has not set out what the relevant lack of knowledge was. It remains the contention that the appellant’s knowledge of the situation of Bidoon displayed in his case is in fact impeccable. This is a significant shortcoming in the finding of the Tribunal.”

12. The July 2024 document advances, in addition, further instances said to support the reasons challenge identified in the June 2024 grounds.

13. In granting permission to appeal by a decision sent to the parties on 28 August 2024, Upper Tribunal Judge Gill reasoned:

“I am just about persuaded that it is arguable, as contended at para 4 of the original grounds ..., that Judge of the First-tier Tribunal [Gould] either did not explain in what way he considered (para 25 of the judge’s decision) that the appellant’s knowledge lacked detail about the Bidoons and that, if he was referring to the deficiencies set out in the respondent’s decision letter, he arguably failed to engage with the appellant’s explanations in his witness statement.”

Discussion

14. The appellant contends the Judge’s finding that he is not an undocumented Bidoon is erroneous for lack of lawful reasoning. The challenge is directed towards [25] - [29] of the decision, which I detail in full below:

“25. Although the Appellant displayed some knowledge of the Bidoons such knowledge he had was limited in nature and on central aspects the Appellant’s lack of detail about the Bidoons and their history was inconsistent with his claim to have engaged in an anti-government demonstration because of his commitment to their cause.

26. The Appellant displayed limited knowledge in his AIR of the historical processes afforded to the Bidoons to register and this undermined his claim to be committed to their cause. Mr Faraj [the appellant’s legal representative] submitted that it was credible for the Appellant not to know about the enrolment process, but I do not accept this submission because it is inconsistent with the Appellant’s claim to have protested to secure rights for the Bidoons. I am satisfied that such a lack of detail undermines his claim to be an undocumented Bidoon.

27. The lifestyle that the Appellant asserts he had in Kuwait also undermines his claim to be an undocumented Bidoon. The Appellant accepts he had employment (as did other members of his family) and he rented accommodation and although it is not impossible that an undocumented Bidoon would be prevented from doing so external evidence suggests it would be unlikely (CPIN April 2021, 2.4.8).

28. The Appellant was inconsistent in his account about attending a demonstration, initially stating it was in a month inconsistent with external evidence and this further undermines his claim to be an undocumented Bidoon and at risk because of his engagement in a demonstration for their rights. The Appellant explained that this inconsistency was due to the interpreter's error, but this is at odds with the Appellant's confirmation at the end of his interview that he had understood all of the questions and that there was nothing he would like to add or change in his responses.
 29. The Appellant lacked detail in the reasons behind the demonstration and the injustice that triggered the demonstration, and I am satisfied that if the Appellant was as motivated as he claims to be to challenge the Kuwaiti authorities he would have a greater depth of knowledge about the background to the demonstration."
15. It is well-established that although there is a legal duty to give a brief explanation of the conclusions of the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the Judge: *Shizad (Sufficiency of reasons: set aside)* [2013] UKUT 85 (IAC). I further observe that the parties are aware of the evidence presented before the Judge, both orally and in documentary form.
 16. I am satisfied that [25] has properly to be read as an introductory paragraph setting out the Judge's conclusions. The Judge's reasoning follows in subsequent paragraphs.
 17. As discussed with the representatives at the hearing, the primary focus of this appeal fell upon [26]. Ultimately, I am satisfied that the Judge has failed to give adequate reasons for his conclusion that the appellant has very limited knowledge in his interview of the historical processes forwarded to the Bidoons to register. It was for this reason that the appellant's credibility was said to be undermined, being mindful that he had been politically active in respect of Bidoon rights. It may well be that the Judge was mindful of the adverse credibility observations made by the respondent in her decision letter, including what was said to be a lack of detailed understanding by the appellant's enrolment and other historical issues. However, I agree with Mr Sajid that in answers to various questions during two Home Office interviews, the appellant provided information as to the historical position for Bidoons in Kuwait. It has proven impossible when reading the Judge's decision to understand as to why the answers given were properly to be considered as "limited". It may be that they are. It could be that they are not. However, this Tribunal is entirely unable to ascertain why they are said to be limited. At the conclusion of the hearing, I informed the representatives that on this fundamental point, namely whether the appellant has sufficient knowledge of the position of undocumented Bidoons in Kuwait, the Judge's reasoning was so fatally flawed as to adversely infect all other reasons and in the circumstances the decision was properly to be set aside.

18. It is appropriate to observe Mr McVeety's acceptance that [27] is not well-reasoned. The appellant was clear at interview that he was unlawfully employed, on the basis that was all he could secure as an undocumented Bidoon. This Tribunal finds it very difficult to understand how the mere fact that the appellant was employed, on his evidence on the black market, undermines his assertion that he was an undocumented Bidoon. I also agree with Mr McVeety, reading [27] in the round, the Judge appears not to have applied the lower standard of proof.
19. In these circumstances it is appropriate the decision be set aside.
20. I am not at this moment in agreement with Mr Sadiq that the acceptance by the respondent that the appellant is a Kuwaiti national is sufficient by itself to establish that he must win his appeal. Mr Sadiq relies upon both the country guidance decision in *NM (Kuwait)* [2013] UKUT 357 and [28] to the annex of the Home Office's CPIN "Kuwait, Bidoons" version 3.0 - replaced in September 2024 - as establishing that a genuine Kuwaiti national is unlikely to wish to seek asylum anywhere else in the world due to the financial and psychological advantages of life in Kuwait, one of the wealthiest countries in the world. The elephant in the room in this case is that both the appellant and his wife, who are accepted to be Kuwaiti nationals, travelled to both Greece and Germany amongst several other countries, claiming asylum in the identity of Iraqi nationals and not as undocumented Bidoons. This is an issue that is properly to be addressed at the resumed hearing.
21. The appellant may be aided by a focused skeleton argument at the resumed hearing.

Remaking

22. I observe the guidance in *Begum (remaking or remittal) Bangladesh* [2023] UKUT 00046 (IAC). As I have set aside the Judge's decision in its entirety, and being mindful that detailed fact-finding will be required in this matter, noting the likelihood of further witness statement evidence and observing that this matter is concerned with asylum, I am satisfied that it is proper that the remaking of this decision be remitted to the First-tier Tribunal.

Notice of Decision

23. The decision of the First-tier Tribunal sent to the parties on 12 June 2024 is subject to material error of law. The decision is set aside in its entirety.
24. The decision is remitted to the First-tier Tribunal sitting at Manchester to be heard by any Judge other First-tier Tribunal Judge Gould.
25. An anonymity order is confirmed.

D O'Callaghan
Judge of the Upper Tribunal

Immigration and Asylum Chamber

4 November 2024