Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/11979/2016**

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision Promulgated**
On 18 December 2017	**On 3 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

K A G
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Loughran of Loughran & Co, solicitors
For the Respondent: Ms M O'Brien, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant, preserving the anonymity order made by the First-tier Tribunal.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Green promulgated on 16 August 2017, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 17 July 1980. He says he is an undocumented Bidoon from Kuwait.

4. The appellant arrived in the UK on 18 April 2016. He claimed asylum that day. On 14 October 2016 the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Green ("The Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 3 November 2017 Designated Judge Shaerf gave permission to appeal stating

> The first ground of appeal is that the Judge erred in consideration of the background evidence relating to the 1965 census and its consequences for an undocumented Bidoon. The appellant's bundle included extensive background evidence including from the respondent, the US Department of State, Amnesty International and Human Rights Watch. The Judge made no reference to any of these and consequently it is not clear to the losing party upon what basis the Judge has made findings about the 1965 census and its consequences: see paragraph 16(i) of his decision.
>
> The second ground for appeal challenges the Judge's treatment of the evidence of the appellant's supporting witnesses. The grounds assert the Judge failed to give adequate reasons for his analysis of the evidence leading him not to give weight to their evidence.
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> While the second ground is the weaker of the two grounds, I find the first ground discloses an arguable error of law and so I grant permission to appeal.

The Hearing

6. As soon as Ms Loughran moved the grounds of appeal, Ms O'Brien, for the respondent, told me that she was departing from the rule 24 notice dated 16 November 2017 and no longer resisted the appeal. Ms O'Brien told me that the issue of registration for Kuwaiti Bidoons is complex, and the Judge had failed to make clear reference to the objective materials that were before him. In addition, the Judge does not give adequate reasons for rejecting the evidence of witnesses who had been granted refugee status.

7. On joint motion, I was asked to remit this case to the First-tier because of the extent of the further fact-finding required and because the credibility of the appellant's witnesses requires assessment.

Analysis

8. At Paragraph 16(i) of the decision the Judge considers the Home Office COI dated July 2016. The appellant's bundle included extensive background evidence including the US State Department report, an Amnesty International report, and a Human Rights Watch report. The Judge makes no reference to the background materials produced by the appellant. The central issue in this case is whether or not the appellant is an undocumented Bidoon. That is a complex issue which requires analysis of the background materials. The decision requires more careful consideration of the 1965 census and the registration requirements between 1996 & 2000 or in 2010.

9. At [9] and [10] the Judge records that two witnesses gave evidence in support of the appellant. Both of those witnesses have been granted asylum. Although the Judge summarises the evidence that each witness gives, he does not explain (when dealing with their evidence at 16(v)) why he rejects the majority of their evidence. He does not explain why he finds that the evidence of witnesses who have been granted refugee status as undocumented Bidoons "*does not add anything to the appellant's claim...*"

10. In AC (Somalia) 2005 UKAIT 124 the Tribunal said the fact that a witness has been granted refugee status does not compel an Immigration Judge to believe her evidence about the basis on which she was granted that status. Whereas evidence at a hearing is tested by the adversarial procedure and the Judge must give reasons for his findings, the grant of status by the Home Office is a purely administrative decision, taken on the papers and with no reasons given. It carried weight as evidence but was not to be compared with the determination of a Judge following a hearing.

11. In AC (Somalia) a distinction is drawn between an administrative grant of refugee status and a grant of refugee status following a hearing before the First-tier Tribunal. The Judge does not properly consider the weight that should be given to the appellant's witnesses' evidence.

12. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

13. As the decision is tainted by material error of law I must set it aside. Parties' agents ask me to remit this case to the First -tier. I consider whether or not I can substitute my own decision, but find that I cannot do so because of the extent of the fact-finding exercise necessary.

Remittal to First-Tier Tribunal

14. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

> (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
>
> (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

15. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re-hearing is necessary.

16. I remit this case to the First-tier Tribunal sitting at Glasgow to be heard before any First-tier Judge other than Judge Green.

Decision

17. The decision of the First-tier Tribunal is tainted by material errors of law.

18. I set aside the Judge's decision promulgated on 16 August 2017. The appeal is remitted to the First-tier Tribunal to be determined of new.

Signed Paul Doyle Date 28 December 2017

Deputy Upper Tribunal Judge Doyle