



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

Appeal Number: PA/12309/2017

THE IMMIGRATION ACTS

Heard at Field House

On 30th April 2018

**Decision & Reasons
Promulgated
On 8th May 2018**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

AJSA

**Appellant
and**

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Adeyayo, Solicitor of A2 Solicitors

For the Respondent: Mr P Durm, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, born on [] 1975, claims to be an undocumented Bidoon from Kuwait. His claim for asylum and humanitarian protection made on 29th February 2016 was refused by the respondent in a detailed decision of 14th November 2017.
2. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Walker on 2nd January 2018. In a decision promulgated on 10th January 2018 the appeal was dismissed.

3. Challenge has been made to that decision on a number of grounds including the fact that the incorrect standard of proof had been applied. Leave to appeal to the Upper Tribunal was granted by the First-tier on 27th February 2018. Thus it is that the matter comes before me to determine the issues.
4. In the course of the decision the Judge looked at a number of factors in coming to the conclusion that the appellant had not discharged the burden upon him to show that he was an undocumented Bidoon. The conclusion of the Judge was that the appellant had failed to establish that he was not an Iraqi citizen.
5. The starting point for that consideration was that the appellant produced an Iraqi passport to the US Embassy in Baghdad on 5 May 2013 in order to try and obtain a visa. Fingerprints were taken at the time.
6. Although the appellant in his interview refers to only one application, it became clear from the statement of MJ dated 14th November 2017 that two separate applications had been made, both in Baghdad, one on 5th May 2013 and the other on 17th June 2013. Thus the Judge concluded that the applicant was not being truthful as to the time that he had spent in Iraq. Although the applicant contended that the passport which he used was false, the Judge concludes that it was not on the basis that the US authorities would be more likely than others to identify forgeries, particularly upon repeat presentations.
7. The appellant stated that in January 2015 he and his brother took their father to hospital. The doctors refused to treat him as an undocumented Bidoon. The appellant was angry and that resulted in his being arrested, taken to the police station and tortured. He was released on the promise that he would be an informant, but nevertheless then sought to leave Kuwait coming to the United Kingdom via France.
8. He confirmed that in coming to the United Kingdom he used an Iraqi passport and documents and also an agent. It was the view of the Judge that the financial outlay of that trip, albeit said to be paid by a landowning farmer, did not meet the profile of an undocumented Bidoon.
9. The fact that he was a Bidoon was supported by two witnesses claiming to have known the appellant in Kuwait. They had met the appellant by chance in the United Kingdom. It was the finding of the Judge that neither seemed to know very much about the circumstances of the appellant and, for the reasons set out in the decision, the Judge gave little weight to their evidence.
10. The Judge considered also a letter from the Kuwaiti Community Association dated 12th December 2017, but gave reasons why little evidential weight was attached to that evidence.

11. The Judge acknowledged that the appellant had given details concerning the Bidoon community in his interview but concluded, as had the respondent in the decision, that such information was obtainable elsewhere and was not of itself indicative that the appellant was what he claims to be. It was also noted that the appellant failed to claim asylum in France, this being a matter further undermining the claim.
12. Challenges to all those matters are made in the grounds of appeal. Reliance is placed upon the country guidance case of **NM (documented/undocumented Bidoon: risk) Kuwait CG [2013] UKUT 00356 (IAC)**. It is contended that the Judge failed to grapple with the essential issue in the matter as to whether the appellant was an undocumented Bidoon. It was submitted that the conclusions made by the Judge were unreasoned and unbalanced and hence deeply flawed.
13. I find, however, that the reasons were given by the Judge for the conclusions arrived at were not so outside the reasonable range of responses as to render the same irrational or unfair.
14. There are perhaps three matters which seem to me to be important to be borne in mind in this appeal. The first, and indeed the specific reason why permission to appeal was granted was the contention that at paragraph 11 the Judge states the standard of proof is on the balance of probabilities rather than of the lower standard. At paragraph 42 however the correct burden and standard is applied.
15. It is apparent from reading paragraphs 10 and 11 in particular that this is an unfortunate example of “cut and paste” in which passages are set out either as precedents or taken from other sources. Paragraph 10 is referring to “appellants” and returning them to Gambia, which is clearly not this case, and paragraph 11 continues to refer to “the appellants”. Thus it is entirely clear that, in the context of paragraphs 10 and 11, they are not specifically referring to the appellant and that clearly must be a matter of concern as to standard of proof and the anxious scrutiny to detail given in this case.
16. It is clear however that when the Judge considers the nature of the claim as presented by the appellant, the focus of the decision is very much upon the appellant and what he and others have to say. There is no deviation to other matters. It is not apparent from the reading of the decision as a whole that the higher standard of proof has been adopted. There was nothing to show that the findings of fact could not have been made upon the lower standards applicable to asylum and protection cases.
17. The second matter of concern is the suggestion that the remarks at paragraph 40 by the Judge do not reflect accurately the case of **NM**. The Judge commented:-

“The relevant part of this Country Guidance is that most Bidoon carry security cards and therefore are documented. The appellants evidence

that he and his family did not register between 1996 and 2000 I do not accept.”

The Judge’s comments seem to be reflective of item 4 in the head note of the case:-

“It must be assumed that Bidoon who did not register between 1996 and 2000, and hence did not obtain security cards, are as a consequence undocumented Bidoon, though this must be seen in the context of the evidence that most Bidoon carry security cards.”

18. As Mr Adeyayo indicated, the process of registration required permission from the committee, which deals with applications on a completely discretionary basis. Mr Adeyayo relies upon the evidence of a Mr S as set out, particularly in paragraph 47 of the decision in NM in which it is estimated that no more than 20% Bidoon were able to fulfil the restrictive conditions laid down by the law.
19. Reading the judgment in NM it is not entirely clear how the comment of the expert fully ties in with the conclusions as set out by the Tribunal that most Bidoon are documented Bidoon. However, there is merit in the contention that paragraph 40 of the determination is largely unreasoned.
20. In the context to the overall findings it is perhaps to be considered an unnecessary finding to have made, in the context of the overall findings which were made, namely that the appellant has failed to show that he was not an Iraqi citizen using a genuine Iraqi passport.
21. The third concern is the suggestion that the Judge did not engage with the evidence that was submitted concerning the attempts made on behalf of the appellant in writing and upon his visit to the Iraqi Embassy to clarify his status. It is submitted that the appellant was keen to invite the Iraqi Embassy to confirm whether he was an Iraqi national or not. No reply was received to the letter of 20th December 2017 and when the appellant presented himself at the Embassy he was not allowed to enter it. It was said that it was important for the Judge to bear in mind such matters in fairness to the appellant as being an opportunity which he sought to take to clarify his identity. However, as he claims not to be an Iraqi it is difficult to understand how the Iraqi Embassy could be expected to find anything in their records to assist the appellant in his current identity, when it seemed that the passport had been used in another name. In the absence of full details of dates and places of birth and family matters it would be difficult for any Embassy to confirm or deny citizenship. None of these were supplied in the Solicitor’s letter.
22. Mr Adeyayo seeks to persuade me that the three matters highlighted, together with the other challenges are such as to render the decision both unfair and unreliable.
23. At the outset of the appeal there may perhaps be considered to be three issues that fell for consideration, the first being whether or not the

appellant was an Iraqi citizen or a Kuwaiti citizen. Such would depend upon whether the passport used was one as issued to him or not.

If not then consideration would then need to be given as to whether the appellant was a citizen of Kuwait.

If so, whether he was a documented or undocumented Bidoon.

24. The Judge focused upon the first issue and concluded, as I so find for sustainable reasons, that the appellant was a citizen of Iraq having used a passport in that capacity, or alternatively had failed to discharge the burden that he was not. Such seems to me to be the proper and preliminary focus of the enquiry. Clearly in coming to the conclusion the Judge had to focus upon the positive evidence that he was a Bidoon and that I find the Judge did. It was open to the Judge to find the same unreliable.
25. Given the conclusions of the Judge upon the issue of Iraqi nationality it is perhaps arguable that it was unnecessary to go any further in the analysis.
26. In all the circumstances I do not find there to be a material error of law.
27. Consequently the appeal before the Upper Tribunal is dismissed. The decision of the First-tier Tribunal Judge shall stand, namely that the asylum appeal is dismissed as is that of humanitarian protection. The appeal in respect of human rights is also dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Signed

Date 3 May 2018

Upper Tribunal Judge King TD