



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

**Appeal Number: PA/12467/2016**

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 8 June 2018**

**Decision and Reasons Promulgated  
On 29 June 2018**

**Before**

**UPPER TRIBUNAL JUDGE HEMINGWAY**

**Between**

**MR MUSA RAKAN AL ENEZI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms A Hashmi (Counsel)  
For the Respondent: Mrs R Pettersen (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is the claimant's appeal to the Upper Tribunal, brought with the permission of a Judge of the First-tier Tribunal, from a decision of the First-tier Tribunal (hereinafter the tribunal) which it made on 8 August 2017 and which was sent to the parties on 17 August 2017. The tribunal decided to dismiss the claimant's appeal against a decision of the Secretary of State, which she had made on 26 October 2016, to refuse to grant him asylum or any other form of international protection.

2. The tribunal does not appear to have received a request from or on behalf of the claimant for it to direct anonymity. No such direction was issued. When the appeal came before me I similarly received no such request. The claimant was, of course, represented by Counsel before the tribunal and before me. In the circumstances I have not directed anonymity.

3. By way of background, the claimant says he is an undocumented Bidoon from Kuwait. He entered the United Kingdom (UK) illegally on 29 April 2016 and then claimed asylum. He attended a screening interview on that day and then a substantive interview on 3 October 2016. The decision under appeal was then made on 26 October 2016. The Secretary of State refused the claim because she did not believe the claimant to be an undocumented Kuwaiti Bidoon.

4. The claimant's case to the tribunal was as, in summary, as follows: He is an undocumented Kuwait Bidoon. He had been born in Kuwait on 26 January 1982. He is a Shia Muslim. He lived with family in Sulibyah in Kuwait. His father had worked as a shepherd. His father had failed to register in "the 1965 census". He had subsequently attempted to register himself and the claimant with the Kuwaiti authorities in 1997 and 1998. However, on both occasions, the Kuwaiti authorities had refused to issue any form of official documentation. On 1 January 2014 he had married a Jordanian national who had come to Kuwait because she has an uncle who lives there. On 18 February 2014, despite not having been involved in previous protests or demonstrations, the claimant attended a planned street demonstration which had been organised to protest about the situation faced by undocumented Bidoons. It was being held on the anniversary of other demonstrations which had taken place three years ago. At the demonstration there were some arrests. The claimant says that his friend Salim had urged him to attend the demonstration but that when it was dispersed he had not seen what had happened to Salim. He says that later that night members of the Kuwaiti authorities came to his home, took him away, kept him in prison for a period of 10 days and ill-treated him. He says he was questioned but was unable to give the authorities any useful information. He was asked to become a collaborator. He was released after signing a document which he was unable to read (he is illiterate) but he was told he was effectively agreeing to work for the authorities and provide information about the organisers of the protests. Shortly after his release his maternal uncle made arrangements with an agent for him to be taken out of Kuwait. He says that he travelled through Turkey, Greece and other unknown European countries before reaching France and eventually travelling from there to the UK. He says he will be harmed by the authorities if he is to be returned to Kuwait. It is also asserted on his behalf that he would suffer persecution or serious harm or ill treatment contrary to Article 3 of the European Convention on Human Rights (ECHR) as an undocumented Kuwaiti Bidoon if he is returned to Kuwait.

5. The tribunal considered the appeal by way of an oral hearing which took place on 1 August 2017. Both parties were represented at that hearing and, indeed, the claimant was represented by Ms Hashmi who also represented him before me. The claimant gave oral evidence and was cross-examined. One witness, a Mr Alanzi was called on his behalf. It was part of the claimant's case that he and Mr Alanzi are related, that they had known each other in Kuwait, that Mr Alanzi has subsequently been granted international protection as an undocumented Kuwaiti Bidoon and that they had happened to meet up unexpectedly in the UK.

6. The tribunal disbelieved much of what the claimant had to say. It explained its adverse credibility findings in this way:

“ 35. The appellant's credibility is damaged by a number of matters.

36. He failed to claim asylum in the first safe country he entered but he was under the control of an agent and I find that any damage to his credibility is slight.

37. However, he was inconsistent in his evidence about the journey from Kuwait referring to a flight to France when interviewed yet adamant at first in oral evidence that the only flight was from Kuwait to Turkey.

38. He was adamant that an undocumented Bidoon or rather a Bidoon who did not register in the 1965 census could get no documentation or ID at all, relying solely on his assertion that he and his father had been told that was the position in 1997 and 1998.

39. However, the external and country evidence is somewhat different.

40. It is not at issue that an undocumented Kuwaiti Bidoon has no legal status and no access to education or healthcare with poor economic and social standing and NM leads me to the view that undocumented Bidoons face a real risk of persecution or breach of their protected human rights. The distinction is maintained between documented and undocumented but the relevant crucial document is the security card rather than the civil identity documents referred to in previous country guidance. External country evidence referred to in the refusal letter is that Bidoons who did not register in the 1965 census have been able to apply for and have obtained certain documentation albeit not necessarily ID as such and renewable. There has been a Central System of registration set up but the external evidence demonstrates that the system is inconsistent, limited, arbitrary in decision making and not transparent. The latest CIG of July 2016 does indeed refer to a security card officially known as the Review Card issued or set up in 2010 which can determine whether a Bidoon is documented or not but there are other types of document that a Kuwaiti Bidoon may hold which are relevant to determine nationality. They are renewable. A Bidoon who did not register between 1996 and 2000 and hence did not obtain security cards are undocumented Kuwaiti Bidoons.

41. I do not find it credible that despite a system in place for some years albeit unsatisfactory and arbitrary that the appellant would be unaware of the possibility of applying for some form of documentation.

42. The appellant claims to have fallen in love with and married 'an educated lady' who was a previously married and divorced Jordanian national with children and who was staying nearby with her uncle and with a visa as a visitor. They married despite his lack of status and despite his family's initial opposition. His wife's uncle was a Jordanian national with a residence permit as a worker. The appellant claimed that she had long term plans to live in Kuwait with him. He said in his statement that she was pleased that he was good with her children and looked to him for protection whereas in oral evidence he said she did not have her children with her when she visited her uncle. I agree with Mr Spence that such a woman would be unlikely to seek protection from the appellant as an undocumented Bidoon without status and rights in Kuwait and he produced nothing from his wife, her uncle or indeed from his wife's family in support of what he says.

43. The media report about the demonstration was not challenged by Ms Hashmi and there is apparently a video of the demonstration on You Tube although the appellant said he was unaware of this. The newspaper article describes what is shown on the video and refers to a speaker holding a flag and there being children present; indeed a 12 year old being amongst those arrested. External evidence and in particular a Human Rights watch report indicate that Bidoons have frequently taken to the streets to protest despite a ban on public gatherings. The first major protests took place in February 2011 and these were suppressed. They were followed by small scale protests which were in turn followed by dispersals and arrests with the security forces targeting the main activists and organisers. The demonstration on 18 February marked the third anniversary of a renewed round of protests. The crowd is described as small in the report which is consistent with other external evidence of small scale protests. One of the speakers Atallah was arrested later that evening as was another activist and those arrests were followed by a cycle of protests and arrests of activists and organisers including the 12 year old boy. The appellant did give lengthy information about the demonstration when interviewed and he said he learned about the demonstration a week before when people were gathered and talking about it. He said the demonstration was about Bidoons going out to ask for rights but information about the former protests and the demonstration and its aftermath are in the public domain. He was persuaded to attend by his friend Salim although he had no previous involvement in demonstrations or protests.

44. The oral evidence of the appellant and Mr Alanzi was contradictory. Mr Alanzi who is claimed to be the appellant's cousin said that he had known the appellant all his life and they lived relatively close together in Sulaybah meeting at each other's houses, on social occasions and on the street. He said the families talked about their lack of rights as Bidoons whereas the appellant said he had never previously discussed matters concerning Kuwaiti Bidoons with his cousin nor did he tell him he would be attending the demonstration. Both said that neither knew that the other was to attend nor did they see each other there which I do not find credible. The appellant claims to have attended the first day of the demonstrations and said he was there for about 30 minutes from afternoon prayers with about 200 to 250 other people. They gathered in Liberation Square and were close to the Mosque when the demo was broken up. He Mr Alanzi gave conflicting evidence about where the demonstration was when disrupted by the police. At first, the appellant denied seeing children there although the report clearly states there were then qualified his reply by saying that children could have been playing in the square. He was unaware when interviewed and in oral evidence at first until led to again qualify his answer in cross-examination that there was any significance in the date of the demonstration i.e. that it was the anniversary of demonstrations begun 3 years previously.

45. External evidence indicates that arrests were limited and generally of the leaders. Those organisers or leaders who were arrested were held for 2 weeks and I agree with Mr Spence that it is not credible that the appellant as someone with no profile would be treated as severely as an organiser despite telling the security forces that he knew nothing worthwhile. It is not credible that they would seek to rely on someone in the appellant's position to provide information which he clearly did not have nor is it credible that they would make regular and subsequent visits to his home and have any continued interest in him given his low level role or involvement and some 2 years later.

46. The appellant has asserted that Salim was arrested, released than fled Kuwait and based that assertion on information given when Salim's mother and sister visited his home after his release. He does not give a cogent explanation as to why Salim would have been arrested or whether he had any profile with the security forces and why the appellant would be arrested even if Salim gave his name which he was told he did under torture because the appellant certainly had no profile. He gave no cogent or credible explanation why he would be held for 10 days when he clearly had nothing to tell the security forces and nothing to give them by way of names later following his release. He gave no names to the authorities and told them he knew none.

47. I noted the statement and oral evidence of Mr Alanzi who is claimed to be the appellant's cousin although there was no other evidence to show how they were related if at all. They both said that they had last seen each other at the appellant's wedding in Kuwait. Mr Alanzi has been granted refugee status as an undocumented Bidoon but I had no detail of the evidence put forward or relied upon to substantiate his claim. They last saw each other at the appellant's wedding before meeting in North Wembley in London in May 2016. Mr Alanzi said he was on his way out from seeing his solicitor and saw the appellant by chance on the steps. The appellant said "there he was when he arrived for his appointment". He said he was surprised to see his cousin (their fathers are claimed to have been half-brothers) and they shook hands but he did not ask him why he was there. It certainly was a coincidence meeting up at a Solicitor's office in London, both happening to be there at precisely the same time for appointments and when neither knew of the other's existence in the UK. Such coincidences do happen and such an unexpected meeting is not wholly implausible but what lacks credibility is the appellant's lack of interest in his cousin after such a time when as Mr Alanzi claimed they had been close and known each other all their lives.

48. The appellant said that he remained hidden in the desert for some 18 months whilst the security forces were actively looking for him. He was not in fact far from home and he gave no real detail of his period of stay in the desert or why he remained there for so long before leaving Kuwait.

49. The appellant's credibility is damaged for the reasons stated above and by the inconsistencies in his account.

50. It is clear that having considered the evidence in the round and given the large measure of inconsistencies, contradictions and general lack of credibility in the appellant's account I do not find that he has established that the appellant is a refugee."

7. The tribunal had identified, at an early stage in the written reasons, that the only issue it had to decide was whether or not the claimant was an undocumented Kuwaiti Bidoon. That is because it was accepted that, if he did indeed have that status, then he would succeed. It seems to have been accepted (and there really is no viable argument to the contrary) that failure to demonstrate that status, to the necessary standard, would result in failure. The appeal did indeed fail because of the tribunal's view that the claimant had failed to demonstrate, to the necessary standard, that he is an undocumented Kuwaiti Bidoon.

8. The tribunal's dismissal of the appeal was not the end of the matter because the claimant, aided by his legal representatives, applied for and obtained permission to appeal to the Upper Tribunal. There were two grounds of appeal. Ground 1 was a contention that the tribunal had erred by relying upon what was asserted to be "factually incorrect objective evidence". To explain that a little, the Secretary of State's written explanation for her decision made reference to background material which appeared to suggest that persons who had not been registered in the 1965 census were, nevertheless, able to apply for some forms of official documentation the obtaining of which would, in practical terms, mean a recipient was not an undocumented Bidoon. That, said the author of the grounds, was simply incorrect. Ground 2 represented a partial attack

upon the tribunal's credibility assessment. It was argued that the tribunal, in saying what it did at paragraph 42 of its written reasons, had misunderstood what the claimant had meant when he had asserted that his wife had married him for "protection". It was suggested that the tribunal had erroneously assumed he had meant protection in the sense of "immigration status and a right to remain in Kuwait" as opposed to what the claimant had actually meant which was to do with "honour and cultural status". It was further asserted that the tribunal, at paragraph 44 of its written reasons, had wrongly seen an inconsistency in its being said that the claimant's family and the family to which his witness had belonged had talked about the lack of rights for Bidoons in Kuwait whilst it was also said that the claimant and his witness had not actually discussed those matters between themselves. The two were said not to be mutually exclusive.

9. The Judge who granted permission to appeal said this:

"The grounds alleged that the judge relied upon factually incorrect objective evidence and misdirected himself as to the evidence provided during the hearing. The judge sets out, at para 40, country information relied upon in terms of documentation of Kuwaiti Bidoons and found it lacking in credibility that the appellant as unaware of the possibility of applying for documentation. The appellant's representative claims that this country information was factually incorrect but fails to substantiate this in the grounds of appeal. However, there is no indication in the judge's decision that this country information was put to the appellant for comment at the hearing before negative credibility findings were made. This arguably breaches the rules of natural justice. I am satisfied that the grounds set out at paras 7 and 8 are reflected in the judge's decision and that the judge may have misunderstood the evidence. I found that these are arguable errors of law."

10. Permission having been granted there was a hearing before the Upper Tribunal` (before me) to aid consideration as to whether or not the tribunal had erred in law and, if it had, what should flow from that. Representation was as stated above. Essentially, Ms Hashmi (though not the author of the grounds) maintained the grounds as drafted. She also argued that the tribunal ought to have put its concerns stemming from what was said in the background country material to the claimant for comment (the point made by the judge who granted permission). Mrs Pettersen argued that the tribunal was under no such obligation given that those concerns had been raised in the Secretary of State's written decision. The tribunal had been entitled to take the view it had with respect to the "protection" point and that was only one component of the credibility assessment anyway.

11. After the hearing I reserved my decision as to whether or not the tribunal had erred in law. Having considered matters I have decided that it did not do so. I shall explain why I have so decided below.

12. I have had careful regard to a Country Information and Guidance Note issued by the Home Office in July of 2016. I am told that that document was provided to the tribunal at the oral hearing of the appeal although there was no copy of it in the file. Ms Hashmi helpfully obtained one for me. It is referred to in the Secretary of State's written reasons and contains information regarding the availability of certain documentation to Bidoons in Kuwait. I have also had careful regard to the country guidance decision concerning Kuwaiti Bidoons in *NM (documented/undocumented Bidoon: risk) Kuwait CG [2013] UKUT 00356 (IAC)*. I have had similarly careful regard to all of the other documentation before me and to the various arguments which have been put to me.

13. As to Ground 1, the Secretary of State in the written explanation for her decision referred, in the context of background material, to the Country Information and Guidance Note of July 2016 which I have just mentioned, and also to an unspecified Human Rights Watch report. The author of the grounds says that what is referred to by the Secretary of State as being a Human Rights Watch report is "in fact a response by the Kuwaiti Government to questions asked by Human Rights Watch". He suggests, as I understand it, that it is those responses which contain incorrect information.

14. In fact, it seems obvious to me that the particular Human Rights Watch report which is referred to by the Secretary of State at paragraph 37 of her written reasons, is the same Human Rights Watch report which was referred to by the Upper Tribunal in *NM*. In looking at what was said in *NM* it is clear that the report to which the Upper Tribunal had regard was not a response from the Kuwaiti Government to questions put to it by Human Rights Watch. I am satisfied that the author of the grounds has, here, simply made an incorrect assumption and has the wrong document in mind. But if what is being contended is that the Country Information and Guidance Note of July 2016 contains incorrect information (a document also referred to by the Secretary of State in her written reasons) then nothing has been produced to verify that assertion. Ground 1 is simply not made out.

15. As to Ground 2, there are really two components to this being the “protection” issue and the “inconsistency” issue.

16. As to protection, the claimant was asked in his substantive asylum interview why it was that given his wife was from Jordan she would leave everything to live a Bidoon area of Kuwait. The claimant said in response that she had a problem in Kuwait and added “she was looking for somebody to protect her at the same time”. In the Secretary of State’s written explanation it was suggested (paragraph 43) that the claimant’s response had not dealt with the question and that it had not been explained why her family members would agree to her marrying the claimant if he was an undocumented Bidoon given that such status would mean a lack of access to State support and State facilities. The claimant had sought to meet that in a witness statement of 10 March 2017 and had said:

“ 6. In response to paragraph 43, I maintain what I said in my interview. The protection I refer to is an issue of honour. As a divorcee my wife would be subject to cultural problems and as someone who was married, her honour would be intact. Our relationship was built up over time, I knew her uncle well and we fell in love and it was simply our destiny to marry each other. I was also good with her children and she liked that as well. The fact that her children could never have Kuwaiti nationality did not bother her.”

17. The tribunal said at paragraph 42 of its written reasons (as set out above) that it agreed with the Secretary of State’s representative’s submission “that such a woman would be unlikely to seek protection from the appellant as an undocumented Bidoon without status and rights in Kuwait and he produced nothing from his wife, her uncle or indeed his wife’s family in support of what he says”.

18. There has been much focus upon this aspect of the case. But it does not seem to me to be pivotal. I am not sure to what extent it does touch upon the genuineness or otherwise of the claimant’s key contention to be an undocumented Bidoon although, I suppose, it might be thought that a person of such status might not be a prime candidate for marriage to someone who is not in a similar position. I suspect not all tribunals would have found it necessary to even reach a view on the point. Further, as Mrs Pettersen points out, that was but one relatively small component of the overall adverse credibility conclusion. I cannot go so far as to conclude that the tribunal’s conclusion on this particular issue was perverse or irrational. Nor was it unreasoned. So, there was no error. But additionally it seems obvious that for the other reasons it gave it would have found the account not to be credible anyway.

19. There remains one further attack upon the credibility assessment as contained in the grounds. As to that, the tribunal saw inconsistency in the claimant’s witness having said their respective families talked about their lack of rights as Bidoons, and the claimant having said in his evidence that he and the witness had never previously discussed such matters. I agree that the two are not necessarily inconsistent. It is possible for the wider family members to have had such discussions and the claimant and the witness not to have done so. But if the families did enter into

such discussions that does make it more likely that there would have been discussions between the claimant and the witness. I am not persuaded, therefore, that it was not open to the tribunal to detect such an inconsistency. I conclude that the tribunal did not err in law in that regard. However, even if it had done, I would have regarded it as being such a relatively small and unimportant component of the adverse credibility assessment as to be incapable of making a difference to the outcome.

20. That only leaves the additional point identified when permission was granted. That was to the effect that the tribunal had relied upon background country material for its view that Bidoons who had not registered in the 1965 census could not now become documented without putting it to the claimant for comment. But I agree with Mrs Petersen. The point had clearly been taken by the Secretary of State in her written reasons. The claimant and his representatives would, therefore, have known the case against him. It was for them to respond to it. Against that background the tribunal was not required to specifically put its concerns to the claimant and its failure to do so did not represent any breach of the rules of natural justice and was not unfair.

21. In light of all of the above it follows that the claimant's appeal to the Upper Tribunal is dismissed.

**Decision**

The decision of the First-tier Tribunal did not involve the making of an error of law. Its decision shall, therefore, stand.

Signed: Date: 28 June 2018

Upper Tribunal Judge Hemingway

**Anonymity**

I make no anonymity direction.

Signed: Date: 28 June 2018

Upper Tribunal Judge Hemingway

**TO THE RESPONDENT  
FEE AWARD**

Since no fee is payable I make no fee award.

Signed: Date: 28 June 2018

Upper Tribunal Judge Hemingway