



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003698
FtT No: PA/55952/2022;
LP/00616/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 22nd October 2024

Before

UPPER TRIBUNAL JUDGE BRUCE
UPPER TRIBUNAL JUDGE LODATO

Between

AF (Saudi Arabia)
(anonymity order made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr C. Cole, Parker Rhodes Hickmott
For the Respondent: Ms Z. Young, Senior Home Office Presenting Officer

Heard at Phoenix House (Bradford) on the 25th September 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 him. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant is stateless, formerly resident in Saudi Arabia. He was born in 2005. He seeks protection in the UK. In the alternative he seeks leave to remain on Article 8 'private life' grounds, on the basis that there are very significant obstacles to his integration in Saudi Arabia.
2. The Appellant arrived in this country as a minor and is being treated as a vulnerable witness.

Case History

3. The Appellant arrived in the UK on the 18th March 2022 and claimed asylum. He said that he is an undocumented 'Bidoon', formerly resident in Saudi Arabia. He is therefore stateless. He asserted that as an undocumented Bidoon he suffered discrimination amounting to persecution. In the alternative he submitted that discriminatory restrictions imposed on access to services such as education and healthcare amounted to 'very significant obstacles' such that it would be disproportionate to expect him to live in Saudi Arabia.
4. The Respondent refused the claim on the 23rd November 2022. She accepted that the Appellant is Bidoon, but not that he was undocumented. His evidence that his family had electricity and an internet connection where they lived in the Bani Malik area of Jeddah indicated that the family must have had a 'black card', the identity document which entitles Bidoon to access certain services in Saudi Arabia. The Respondent accepted that Bidoon may suffer some discrimination, but not that it amounts to persecution.
5. The Appellant appealed and on the 4th July 2023 his appeal was dismissed by First-tier Tribunal Judge Caswell. Central to the Tribunal's decision was the finding that the Appellant would be able to get a 'black card' from the Saudi authorities. This is a form of temporary residence card which would enable him to access various services. He had family living in Saudi Arabia. He would not in those circumstances be facing a level of difficulty in living his day to day life which would justify a finding of 'serious harm': cf NM (documented/undocumented Bidoon: risk) Kuwait CG [2013] UKUT 00356 (IAC). As to his private life, Judge Caswell found that there were not insurmountable obstacles to the Appellant resuming his life in Saudi Arabia. The appeal was thereby dismissed on all grounds.

Error of Law

6. The matter first came before the Upper Tribunal on the 17th January 2024, permission having been granted on the 21st November 2023 by Upper Tribunal Judge Rintoul. It was heard by Upper Tribunal Judge Bruce and Deputy Upper Tribunal Judge Saffer. At that hearing the Secretary of State was represented by Senior Presenting Officer Mr Diwnycz.
7. The first ground of appeal was that the Tribunal had erred in its approach to Article 8. The applicable test, then found in paragraph 276ADE(1)(vi) of the Immigration Rules, was whether there were 'very significant obstacles to integration', not whether there were 'insurmountable obstacles'. Mr Diwnycz

accepted that the wrong test had been applied. He further accepted that this was a material error. There is not always a material distinction between these two tests, but where much was accepted, and where the Appellant's case turned on the day to day difficulties he would face in establishing himself in Saudi Arabia as a stateless Bidoon, this was a misdirection capable of affecting the outcome of the Judge's enquiry.

8. The remaining grounds challenged the Tribunal's findings on the Appellant's protection claim. Mr Cole submitted that the Tribunal had made findings unsupported by reasons or indeed the evidence, in particular its conclusion that it could not be satisfied that the Appellant's family had now themselves left Saudi Arabia. Mr Cole submitted that no reasons were given for rejecting that part of the Appellant's evidence. The Tribunal had accepted that the family were Bidoon, that they were stateless and that their home had been razed along with the rest of the neighbourhood of Jeddah in which they had been living. It further accepted that the Bidoon suffer significant discrimination in Saudi Arabia. It had found the Appellant's evidence to be generally credible. That made the finding on this point hard to understand. Similarly the finding that the Appellant could, if he tried, obtain a 'black card' was not reasoned. Mr Cole pointed out that the country background evidence upon which the Tribunal had placed weight was itself equivocal not just about who could get a black card, but about what benefits such a card might bring. Overall Mr Cole submitted that the Tribunal's reading of the background evidence was incomplete. Mr Diwnycz made no submissions in defence of the Tribunal's decision in this respect.
9. The Tribunal was satisfied that these remaining grounds, relating to protection, were also made out. The First-tier Tribunal accepted that the Appellant's family home had been destroyed and that in his last contact with his parents they told him that they were leaving Saudi Arabia. It then rejects the evidence that he has no home to go to and that his family have left the country. With respect, there does appear to be something of an unresolved tension there between the evidence that is accepted, and the conclusions then drawn from it. The findings on the possibility of the Appellant getting a 'black card' are similarly difficult to understand. If such a document does, as contended by the Respondent, bring such significant benefits to the holder, the Tribunal does not appear to have considered why the Appellant did not himself obtain one whilst still living in Saudi Arabia.
10. The decision of the First-tier Tribunal was therefore set aside in its entirety, a decision notified by the Upper Tribunal in its written decision of the 18th January 2024. There followed a delay in relisting whilst investigations were conducted into whether this case would be a suitable vehicle for giving 'country guidance' on Saudi Bidoon, but in the end neither the parties nor the Tribunal considered this to be the case.
11. It proved difficult to find a suitable date for the appeal to reheard by the panel which had determined the 'error of law' (Judges Bruce and Saffer). Principal Resident Judge Blum therefore signed a transfer order and the matter has now come before this panel to be remade.
12. At the resumed hearing we heard brief evidence from the Appellant, and helpful and focused submissions from Ms Young and Mr Cole. We reserved our decision.

The Facts Relating to the Appellant

13. The facts accepted by the Respondent and/or Judge Caswell are as follows:
 - The Appellant was born in Jeddah in 2005
 - He and his family always lived in the Bani Malik area of the city
 - The Appellant's father worked
 - The family home had electricity and access to the internet
 - Since the Appellant left Saudi Arabia in December 2021 the area of Bani Malik has been destroyed, being razed to the ground by property developers. His family home has been destroyed
 - When he last had contact with them his family indicated that they were making arrangements to leave Saudi Arabia
 - The Appellant is a young man in good health who has had some education
 - He did not have a 'black card' whilst living in Saudi Arabia
14. Before us the Appellant said that his last contact with his family had been approximately one year ago. He had messaged with his sister via Snapchat. After her last message, he had not heard from them. She still has an account on that social media app, but he can see that his messages to her are going unread: his text has remained blue, and if the message has been read it would have turned white.
15. In respect of 'black cards' the Appellant acknowledges that he had heard of them. He had heard his family talking about people they knew who were trying to get one, or have an existing one renewed. He could recall it being said that if they expire its extremely difficult to do anything without one. People have to wait a long time for renewals to be issued. This kind of complaint was also seen on social media. He believes that at one time his father had applied for one, but was unsuccessful.
16. Having heard from the Appellant, and having had regard to all of the evidence before us, we accept his evidence as credible.

Saudi Bidoon: the Evidence

17. Before us the parties' submissions largely focused on the information contained in a document produced by the Home Office's Country Information Unit entitled '*Response to an information request Saudi Arabia: Stateless Bidoons*' ('the Response'). It is dated the 5th February 2024 and draws on evidence going back to 2015. We were also provided with an expert report by Mr Hugh Miles, dated 26th February 2023. Mr Miles is a journalist and author who has written widely on Saudi Arabia and the Middle East more generally. He runs two UK-based companies which specialise in Middle Eastern affairs, with clients including the United Nations and large commercial organisations. In recent years his work has been published/broadcast by the BBC, the Economist, the Daily Mail, MSNBC, the Independent, the Telegraph, the Guardian and various Arabic language media outlets. He has produced hundreds of expert reports, including for this Tribunal. Before us Ms Young took no issue with his expertise. Finally we were shown a series of reports from organisations including the United States' State Department, the Canadian Refugee Board, Amnesty International and Al Qst, a human rights campaign group run by Saudi dissidents from the UK.

18. The Home Office case, as set out in the refusal letter, rests on a passage from the United States' State Department 2021 human rights report on Saudi Arabia:

"Saudi Arabia has a large number of habitual residents who are legally stateless, almost all of whom were native-born residents known locally as Bidoon. As a Bidoon from Saudi Arabia, on return, you can access to a five-year residency permit (black card) to facilitate your social integration and access to services in Saudi Arabia"

It goes on:

"As noncitizens, Bidoon are unable to obtain passports. The government sometimes denied them employment and educational opportunities, and their marginalized status made them among the poorest residents of the country. In recent years the Ministry of Education encouraged Bidoon children to attend school. The government issues Bidoon five-year residency permits to facilitate their social integration in government-provided health care and other services, putting them on similar footing with sponsored foreign workers".

19. The refusal letter further refers to material produced by the Research Directorate, Immigration and Refugee Board of Canada in 2016 which was provided with evidence that Bidoons are considered "illegal residents" by the Saudi government and are not eligible for Saudi citizenship. Sources report that Bidoons in Saudi Arabia are "marginalized" and remain the poorest segment of the Saudi population, facing "widespread discrimination", including in accessing employment. The Board cite a US State Department 2015 report to the effect that the Saudi government "sometimes" denied Bidoons access to education and employment, but that "[i]n recent years, the Ministry of Education encouraged them to attend school". Another unnamed researcher told the Canadians that "Bidoons are issued identity documents, known as 'black cards'. According to the researcher, the government began to issue these 'temporary resident cards' in approximately 2009". Another agency reporting that 'black cards' are issued for a period of five years is the Agence France-Presse (2013). The AFP report explains that the black card provides the holder with a social security number that in turn grants access to "services" (18 July 2013). Bidoons who possess the black card 'should be able' to access some government services, including "some" educational institutions, and "some" employment; she added that the black card enables them to open a single bank account (26 May 2016).
20. In his report Mr Miles is unable to be any more precise. He cites similar sources to the effect that *some* Bidoon are able to get cards and that the cards can bring *some* benefits, but he notes that information can be hard to come by due to the secrecy of the Saudi regime. Independent journalism does not exist, and human rights organisations are prohibited from operating in the country. In the absence of independent information, Mr Miles writes that it is not possible to confirm whether the Home Office is correct when it says that the Saudi government is still issuing identity documents.
21. This lack of information is also acknowledged in the Response, which cites a 2013 Reuters report that: "...when it comes to the bidoon, there is almost no publicly available information, little press commentary and close to zero public

awareness” [at 3.1.2]. There is even a lack of reliable information about how many Bidoon are living in Saudi Arabia, with estimates of between 70,000 and 250,000 [the Response, 1.1.4].

22. We pause here to note that the central theme to emerge from the foregoing evidence is an utter lack of clarity. There are Bidoon living in Saudi Arabia. Their numbers are unknown. There are “some” Bidoon who have been issued with what is known as a ‘black card’ which entitles them to “some” of the rights and benefits that accrue to Saudi citizens. Their numbers are unknown. There is another subset who are undocumented, and who lack access to basic services such as housing, education, health and the job market. Their numbers are unknown. There is further a distinct lack of information about who might qualify for a black card and what one needs in order to apply for one. The closest that any of the evidence before us comes to providing an answer to that question is this, set out at [2.2.3] of the Response:

2.2.3 The European Saudi Organisation for Human Rights (ESOHR) in their report ‘Deprivation of nationality in Saudi Arabia’, published 31 March 2016, stated:

‘In 1979, the Saudi Authorities issued temporary cards binding their holders to stay in Hafr al-Batin province and preventing them from moving more than 60 kilometers far from it.

‘...In 2015, the validity of all the “Bidoon” documents expired and each one who wants to renew his documents became forced to sign a pledge to bring a document from another country indicating his ties to a lineage or the like outside Saudi Arabia, before the end of the new five years in 2020, which raises concerns about their future.

‘...The Bidoon who have not signed the pledge required for the renewal of the documents and which took force in 2015 cannot get a job for they do not have renewed documents, therefore, some may be forced to sign the pledge.

‘...The newborn Bidoons of those having valid cards can be registered whether they are from the Allied Tribes or from the Four Tribes, whereas, those having expired documents and birth certificates would not be registered, instead they would get a paper for the mayor of the district. Some documents might be stamped by the police station after being issued by the mayor. Some Bidoon do not have any documents.

23. This accords with other information provided by the Response. At [2.2.1] there is reference to an item on the Fox News website dated the 18th July 2013 which recites UNHCR information that black cards are only valid for five years and that holders have to travel to Hafr el-Batin, in the north east of the country, in order to renew them. Renewing the card “takes months”, and that this delay causes holders a lot of problems. People can, for example, lose access to their bank accounts and can even be banned from driving during that time. A Landinfo report from 2015 is to similar effect, except this states that the renewal process can take “several months” and that waiting for a new permit “can cause major problems” [at 2.2.2]. An AFP report cited by the Immigration and Refugee Board

of Canada [at 2.2.5] states that “renewal of the card can take months, sometimes up to five years”.

24. The consequence of not having a card are well summarised by Al Qst in evidence set out at [3.1.9] of the Response:

“Whatever the reasons for their statelessness, the Bidoon today struggle and suffer hardship in every aspect of their lives. There are no clear or specific arrangements for their education, and while some manage with great difficulty to enrol in primary education, others are unable to do so – and higher education is completely out of reach. Stateless persons are not entitled to medical treatment either, and there have been cases where hospitals have turned them away, even in emergencies, because they do not have a Saudi ID card or passport. As a general rule, the Bidoon cannot work or earn an income, yet the government offers them no financial support. The authorities do not normally allow them to work in the public sector, but neither do they let them register private businesses or property, so sometimes the only way they can live is by doing menial jobs in the informal economy or with the help of charities. Being deprived of both their civil and political rights and their economic, social and cultural rights, stateless persons in Saudi Arabia have an extremely hard existence and are often forced into a life of grinding poverty or crime. The numbers of Bidoon are growing, and with no serious or swift solutions in sight the situation is likely to become even worse”

25. We note that the deprivations outlined here are largely consonant with those identified in NM (documented/undocumented Bidoon: risk) Kuwait CG [2013] UKUT 00356 (IAC) as cumulatively amounting to persecution in that case. Ms Young did not seek to dissuade us that the systematic denial of rights on the scale that it is outlined by Al Qst would be sufficient to meet the threshold of what amounts to persecution. She did however submit that it would be reasonable to expect the Appellant to endure these conditions for a short period of time, until a card could be obtained. It would depend on the facts, but Ms Young agreed that an extended period in these conditions would be sufficiently serious as to amount to a breach of the UK’s obligations.
26. We have considered all of the evidence in the round. We note that the evidence of delay in the issuance of cards is entirely consistent with evidence given by the Appellant that he had always heard, anecdotally, that there are long delays in renewing black cards. Although none of the country background evidence went directly to the point, Mr Cole asked us to infer that there would likely be as great, or possibly greater, delay in obtaining a new card, if indeed it is ever possible to do so. We are prepared to draw that inference for the following reasons. Whilst the evidence is unclear about who can get one and in what circumstances, the reports are all consistent in indicating that a great many Bidoon remain without black cards. We must assume, given the problems that are faced by those without them, that this is not a voluntary state of affairs. Certainly nothing in any of the material before us indicates that Bidoon remain undocumented because they choose to be. This would logically suggest that it is generally difficult to get a card.

27. The Appellant has never had a card; nor has his father. If the Appellant's family are still in Saudi Arabia somewhere, he does not know where. It is accepted that his neighbourhood in Jeddah has been bulldozed to make way for a large scale new development and the communities who lived there have been displaced. We accept Mr Cole's submission that these factors are likely to exacerbate the challenges faced by the Appellant in trying to obtain documentation. We are satisfied that it is reasonably likely that the process, even if successful, will take several months. During that period the Appellant will be without family support, a place to live or any lawful means of supporting himself. He will face hardship in "every aspect" of his life, and we are satisfied that the conditions that he would endure in this period would amount to persecution inflicted for reasons of his ethnic identity/membership of a particular social group.
28. It follows that the appeal must be allowed on protection grounds and we need therefore say nothing at all about 'very significant obstacles', the alternative way in which Mr Cole put his case, other than to find that on the facts we have found, that test would be made out.

Decisions

29. The decision of the First-tier Tribunal is set aside.
30. The decision is re-made as follows: the appeal is allowed.
31. We have made an order for anonymity in this ongoing protection appeal.

Upper Tribunal Judge Bruce
Immigration and Asylum Chamber
14th October 2024