



IAC-FH-AR-V1

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

Appeal Number: OA/07868/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 30 September 2015**

**Decision & Reasons Promulgated
On 23 October 2015**

Before

**THE HONOURABLE LORD BURNS
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE McWILLIAM**

Between

**AHM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Adebayo, Counsel, instructed by A2 Solicitors

For the Respondent: Mr A Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, who claims to be a stateless Kuwaiti Bidoon, applied on 9 April 2014 for entry clearance under family reunion in the United Kingdom under paragraph 352A of the Rules. The respondent refused his application by letter dated 4 June 2014. He appealed to the First-tier Tribunal who heard evidence and considered documents at a hearing on 31 March 2015 and thereafter refused the appeal.

2. The respondent had refused the application because, first, the appellant had not produced the documentation which the Immigration Rules required in order to establish identity and nationality and, secondly, had not satisfied the respondent that he was in a subsisting relationship and intended to live permanently within the UK.
3. Before the First-tier Tribunal the appellant, who was represented, contended that the respondent had failed to take into consideration the guidance on the situation of “undocumented Bidoons”. The marriage contract, the original of which was produced, was the only form of evidence available to prove his marriage. Bidoons are denied other original documents. He offered to provide evidence of contact and ongoing relationship with his wife (the sponsor).
4. Evidence was led from the appellant, the sponsor and her sister. A birth document was produced showing the appellant’s date of birth in 1975 but this bore to have been issued by a health centre rather than the ministry of health. It was dated 2007. A marriage certificate was also produced. The sponsor spoke to the marriage which took place in May 2010 as did her sister, who claimed to have been present. It was said that the couple lived together in Kuwait until April 2013 when the sponsor fled to the UK because of persecution. She has been granted refugee status.
5. The sponsor spoke to continuing contact by telephone after a period during which the appellant had been in detention in Kuwait.
6. On consideration of the documents produced, the Tribunal noted that the terms of rule 320(3) of the Immigration Rules were mandatory. The failure to produce “a valid national passport or other document satisfactorily establishing his identity and nationality” is a ground on which entry clearance or leave to enter “is to be refused”. It found that the documents provided, namely the birth certificate and marriage contract, did not satisfactorily establish identity or nationality and agreed with the reasons for refusal given in the refusal letter of 4 June 2014. It went on to find that the relationship between the appellant and the sponsor did not comprise a genuine and subsisting marriage and that they did not intend to live together permanently in the UK. Article 8 was not therefore engaged. There was no family or private life. The Tribunal therefore dismissed the appeal under the Rules and under Article 8.
7. Before this Tribunal, Mr Adebayo argued that the First tier Tribunal had misinterpreted Rule 320(3) of the Rules. By definition, the appellant could have no documentation a literal interpretation of the Rules should not have been imposed.
8. What the First-tier Tribunal did, it appears to us, was to identify that the provision of documentation establishing identity was a requirement of the rules. However, it was not necessary to provide,

for example, a valid passport. What is required is some documentary evidence which, in the view of the decision maker, “satisfactorily” establishes nationality or identity. The First tier Tribunal adopted the correct approach. What was offered up to it was a marriage contract and a birth document. Those are described by the tribunal at paragraph 18(1) and 18(2) and it gives cogent and sustainable reasons why it found that those documents did not meet the requirement of the rules. The tribunal was entitled to reach that view. It then went on to examine other evidence which was, or might have been, available and commented that there was no evidence given as to the appellant's identity from, for example, parents, siblings or wider family.

9. It was legitimate for the Tribunal to test the provenance and reliability of the documents that were before it against the presence or absence of other documentation or evidence. For example, it is stated at 20.2(ii) that no explanation was given as to whether the appellant carried a security card. That is not used as a discrete reason for refusal but is simply a comment that the appellant's possession of a security card is left unexplained. It was for the appellant to prove his case. The tribunal decided on the basis of its analysis of the evidence that he had failed to do so. We cannot fault that conclusion. Nor do we consider that the Tribunal fell into error by treating this case as if it was an asylum appeal, as was argued before us. It is plain that what it did was to test the provenance of these documents against other factors in reaching the conclusion that they failed to meet the requirements of the rules.
10. So far as the relationship between the sponsor and the appellant is concerned, having found that the appellant had failed to demonstrate that he fell within Rule 320(3), it was not necessary for the tribunal to consider the relationship between the appellant and the sponsor. But we consider, contrary to the submissions made, that the tribunal took into account all the relevant evidence available which is adequately summarised at paragraph 21.2, but considered, having viewed the matter in the round, that because of the findings in relation to the marriage contract and the lack of evidence regarding communication, the factors prayed in aid in support of the relationship did not tip the balance in the appellant's favour.
11. It is set out at paragraph 18.3 what the evidence of communication between the parties was and it is pointed out that there was no evidence regarding those communications prior to the application date or of a shared life together in Kuwait.
12. Having made that finding, and having found that there was no proof of marriage, the tribunal was justified in concluding that there was no evidence of family life. No evidence of private life was provided in any event.

13. In the circumstances we consider that the First-tier Tribunal did not err in law and we will accordingly refuse this appeal. The decision of the First-tier Tribunal to dismiss the appeal is maintained.

Notice of Decision

The appeal is 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 their 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

Lord Burns
Sitting as a Judge of the Upper Tribunal