



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

Appeal Number: PA/03483/2016

THE IMMIGRATION ACTS

**Heard at Birmingham Employment Decision & Reasons
Centre Promulgated
On 30 May 2017 On 14 June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

**RM
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms H Nag, Fountains Solicitors
For the Respondent: Ms H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision and reasons statement of FtT Judge Butler that was issued on 19 October 2016. Judge Butler decided the appellant was not a refugee from Kuwait or otherwise in need of international protection.
2. The First-tier Tribunal made an anonymity direction and it is appropriate to continue it in the Upper Tribunal. The full details of my order are set out at the end of this document.

3. After hearing the competing arguments, I decided the grounds of appeal were made out and the decision and reasons statement of Judge Butler is infected by legal error. I also decided that I could remake the decision, which I did, allowing the appeal against the refusal of the protection claim. Thus, I find the appellant is a refugee from Kuwait because he is an undocumented Bidoon. I announced my decision at the end of the hearing but reserved my full reasons, which I now give.
4. Central to my decision is the finding of Judge Butler at [57] that he attached no weight to the DNA test report because the different names used in that report from the identity given by the appellant. Although on the face of the report this difference would appear material, Judge Butler failed to have regard to the other evidence that establishes that the subject of the DNA test and the appellant are one and the same. I am satisfied this was explained to Judge Butler and it is repeated in the grounds of application for permission to appeal to the Upper Tribunal. I do not need to rehearse the arguments here.
5. Because his status is established by means other than his own testimony, it is immaterial as to whether the appellant is wholly credible. In any event, the truthfulness or otherwise of his accounts should be assessed in the context of all the evidence and the fact the relationship is proven is highly significant. I must bear in mind also that Judge Butler did not find the appellant to be devoid of credibility. At [59], for example, he found the appellant is from Kuwait.
6. Ms Aboni acknowledged that were I to find the appellant to be the same person who was the subject of the DNA test, then it would be difficult for the SSHD to maintain her refusal. I know this is not a concession but it is indicative of the relative importance of the relationship between the appellant and his uncle being proven.
7. Because I accept that it is reasonably likely that the appellant and the person tested are one and the same, I must accept that the appellant is the nephew of a person who has been granted refugee status by the SSHD as an undocumented Bidoon from Kuwait. The fact that relationship is established to the lower standard of proof means it is reasonably likely the appellant also has that status. This is because he is from the same family group.
8. Given the background country information and the country guideline cases of the Upper Tribunal, because it is reasonably likely the appellant is an undocumented Bidoon from Kuwait, he must be a refugee.
9. It is for these reasons I remake the decision and allow the appeal.

Decision

The decision and reasons statement of FtT Judge Butler contains an error on a point of law and is set aside.

I remake the decision and allow the appeal against the refusal of a protection claim dated 23 March 2016 because I find the appellant is a refugee.

Order regarding anonymity

I make the following order. I prohibit the parties or any other person from disclosing or publishing any matter likely to lead members of the public to identify the appellant. The appellant can be referred to as "RM".

Signed

Date

12 June 2017

Judge McCarthy
Deputy Judge of the Upper Tribunal