



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

Appeal Number: PA/03509/2015

**THE IMMIGRATION ACTS**

**Heard at Manchester**

**Determination  
Promulgated**

**On 10 July 2017**

**On 11 July 2017**

**Before**

**UPPER TRIBUNAL JUDGE PLIMMER**

**Between**

**AK  
ANONYMITY DIRECTION MADE**

Appellant

**and**

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

Respondent

**Representation:**

For the appellant: Mr Adebayo, A2 Solicitors

For the respondent: Mr McVeety, Senior Home Office Presenting Officer

**DECISION**

*Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.*

1. I have anonymised the appellant's name because this decision refers to his asylum claim.

### *Summary of asylum claim*

2. The appellant is a citizen of Kuwait. He claims that if returned to Kuwait he faces a real risk of persecution because he is an undocumented Bidoon. NM (documented/undocumented Bidoon: risk) Kuwait CG [2013] UKUT 00356 makes it clear that if accepted to be an undocumented Bidoon the appellant is at risk of persecution in Kuwait.

### *Procedural history*

3. In a decision dated 6 September 2016 First-tier Tribunal Judge VA Cox comprehensively rejected the credibility of the appellant's claims and dismissed his appeal. The First-tier Tribunal heard evidence from two witnesses I shall refer to as W1 and W2.
4. Upper Tribunal Judge McWilliam granted permission to appeal observing it to be arguable that having found W1 to be credible, the First-tier Tribunal did not give attach weight to W1's evidence that the appellant is an undocumented Bidoon.
5. The respondent submitted a rule 24 notice dated 21 February 2017 in which she submitted that the findings of fact were open to the First-tier Tribunal and the grounds of appeal merely disagree with these.

### *Hearing*

6. Mr Adebayo invited me to find that having found W1 to be credible, the First-tier Tribunal was obliged to give clear reasons for rejecting his evidence that the appellant is an undocumented Bidoon. Mr McVeety acknowledged that the decision gives rise to concerns but when read as a whole the First-tier Tribunal adequately reasoned findings, open to it.
7. After hearing submissions from both parties, I reserved my decision which I now provide with reasons.

### *Error of law discussion*

8. The First-tier Tribunal accepted the evidence of W1 to be credible at [43]. The First-tier Tribunal then explicitly accepted W1's evidence that the appellant:
  - (i) was selling vegetables, including tomatoes for a number of years, they met up regularly for tea and coffee over a number of years and were well known to one another [44];
  - (ii) attended a demonstration with him which was dispersed by

the authorities with water cannon [50].

9. The First-tier Tribunal did not accept the appellant is an undocumented Bidoon [50 and 51]. The First-tier Tribunal has failed to give any reasons whatsoever for rejecting W1's evidence that the appellant is an undocumented Bidoon, when it was accepted that they were well known to each other over a number of years. W1's evidence that he was an undocumented Bidoon and knew the appellant to also be an undocumented Bidoon was significant independent and apparently credible evidence in support of the determinative issue in the appeal.
10. As Mr McVeety acknowledged it was possible for the First-tier Tribunal to make adverse findings regarding the appellant's credibility, yet accept that like W1, he is an undocumented Bidoon. When making its findings of fact regarding the credibility and consistency of the appellant's claim to be an undocumented Bidoon, the First-tier Tribunal failed to give adequate reasons for apparently rejecting W1's evidence in this regard and also failed to consider the evidence in the context of the country background evidence as set out in NM and updated in the appellant's bundle. Indeed, NM is not referred to at all albeit it has been said that the "*current country guidance*" was considered at [20]. That it is necessary in a case such as this to make specific findings on a claim to be unregistered in Kuwait, even where there are other adverse credibility findings, is demonstrated by inter alia, the headnote and [116] of NM.

### *Conclusion*

11. The First-tier Tribunal's findings are vitiated by material errors of law and need to be remade entirely. Both representatives agreed that in the event I found there to be an error of law, the decision should be remade completely. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to remit to the First-tier Tribunal.

### *Decision*

12. The decision of the First-tier Tribunal involved the making of a material error of law. Its decision cannot stand and is set aside.
13. The appeal shall be remade by the First-tier Tribunal de novo.

Signed:  
 Ms M. Plimmer  
 Judge of the Upper Tribunal

Date:  
10 July 2017