



IAC-AH-SAR-V1

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

Appeal Number: PA/03535/2016

THE IMMIGRATION ACTS

**Heard at Liverpool
On 21 April 2017**

**Decision & Reasons Promulgated
On 11 May 2017**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MR E E
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Wilkins, Counsel instructed by Lei Dat & Baig Solicitors

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

DECISION ON ERROR OF LAW

1. The appellant challenges the decision of First-tier Tribunal (FtT) Judge C M Bell dismissing his appeal against the decision made by the respondent to refuse to grant him asylum. The basis of the appellant's claim was that he was an undocumented Bidoon from Kuwait who had come to the attention of the authorities as a result of attendance at a demonstration held in support of Bidoon in Kuwait.

2. It is unnecessary for me to set out the grounds of appeal in any detail as both parties were in agreement with me that the FtT Judge fell into material error in his treatment of the witness evidence. The appellant called several witnesses including a Mr [MA]. This gentleman had been granted leave to remain as a refugee in the UK after his appeal had been allowed by Judge Taylor on 25 August 2016. Judge Taylor's findings included acceptance that [MA] was an undocumented Bidoon from Kuwait. [MA] signed a witness statement and also gave evidence before Judge Taylor. The essence of his evidence was:
 - (1) that he was friends with the appellant and had worked with him when they were both employed in stables in Iran; and
 - (2) that in February 2014 he had attended the same demonstration as the appellant.

At paragraphs 38 and 41 the judge said the following about [MA]:

"38. I have a copy of the appeal determination by Judge Taylor dated 31.8.16 which was allowed in his favour. I note that the judge accepted that the appellant was an undocumented Bidoon. This appears to have been largely because his brother had already been granted refugee status as an undocumented Bidoon. The tribunal judge accepted that the appellant was an undocumented Bidoon and accepted that the core of his account was true. However it is not clear from the determination that all aspects of his account were accepted. The tribunal judge did not make a clear finding that the appellant had attended demonstrations as claimed.

...

41. The appellant made no mention of either of these two individuals in his asylum interview or his witness statement dated 7.9.16. However he now states that he met them both on separate occasions, completely by chance, in March and April/May 2016 which was just after the appellant had been refused asylum. He does not claim to have them met through the Bidoon community but by chance at a shopping centre and at a bus station. I find it most unlikely that the appellant could by chance have bumped into two unconnected people who happen to have attended the same fairly small demonstration that he says he attended on 18 February 2014 in Kuwait. Furthermore it is unclear why either witness would be in a position to confirm that the appellant was an undocumented Bidoon. He does not claim to have known Mr [A] well when in Kuwait and he had not met Mr [E] before apparently meeting him at the demonstration".

2. There are two main difficulties with the judge's treatment of this evidence. First of all, the judge does not appear to have treated the findings of fact made by Judge Taylor about [MA] regarding his status as an undocumented Bidoon as a starting-point; the judge appears to have focused only on what Judge Taylor found (or rather did not find) about [MA]'s attendance at the 2014 demonstration. Whether or not, as the judge found, the meeting between the appellant and [MA] in this country was too much of a coincidence, that did not in itself explain why [MA]'s

evidence about knowing the appellant through employment together stood to be rejected. Second, in the absence of any reasons for not accepting [MA]'s evidence that he knew the appellant to be an undocumented Bidoon, it was quite insufficient as a reason for discounting his evidence to state that the appellant did not appear to know [MA] well. If [MA] and the appellant had in fact worked together, it was reasonable to suppose they would each know about their status in terms of documentation or lack of it.

3. In my judgment, the judge's treatment of [MA]'s evidence amounted to a material error of law.
4. I have not addressed the judge's treatment of the evidence of the other witnesses but I do note that the grounds challenging the judge's treatment of their evidence appear to have at least arguable merit. In any event, the judge's error in relation to [MA]'s evidence suffices in my view to necessitate that I set aside the decision and remit it to the First-tier Tribunal to be heard de novo. It goes without saying that the judge who deals with the remitted appeal will need to take the findings of fact made by Judge Taylor as a starting-point. That, of course, does not necessarily mean that the judge must treat them as a finishing point.
5. For the above reasons:

The FtT judge materially erred in law and his decision is set aside.

The case is remitted to the First-tier Tribunal.

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: 8 May 2017



Dr H H Storey
Judge of the Upper Tribunal