



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

Appeal Number: PA/10386/2016

THE IMMIGRATION ACTS

Heard at Manchester

On 10 July 2017

Determination

Promulgated

On 11 July 2017

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

NA

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. The appellant has two brothers, both of whom successfully claimed asylum in the UK as undocumented Bidoons.

Procedural history

3. In a decision dated 17 January 2017 First-tier Tribunal Judge Holt comprehensively rejected the credibility of the appellant's claims and dismissed his appeal. The First-tier Tribunal heard evidence from the appellant's brother [A] and accepted that they are related as claimed. The First-tier Tribunal however identified a number of concerns arising from the appellant's own evidence and found these to undermine his claims.
4. First-tier Tribunal Judge ES Martins granted permission to appeal observing that the wide-ranging grounds submitted on behalf of the appellant were arguable.
5. The respondent submitted a rule 24 notice dated 11 May 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. Upon reflection, Mr McVeety conceded that the First-tier Tribunal's approach to the asylum grant to the appellant's brother [A] and to his oral evidence generally contains errors of law, such that the decision needs to be remade completely.
7. 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 decided that this is an appropriate case to remit to the First-tier Tribunal. Both parties agreed with this approach.

Error of law discussion

8. I can state my reasons briefly given Mr McVeety's concession.
9. This is a case in which the First-tier Tribunal clearly identified the potential importance of the grant of asylum to [A]. The First-tier Tribunal stated at [21] that the "*starting point*" was that the "*DNA*

evidence was strongly supportive of the appellant's appeal" [21]. In addition, the *"implications of [A]'s successful asylum claim"* are acknowledged at [30]. However, the First-tier Tribunal failed to make any clear findings regarding [A]'s evidence concerning the appellant. The record of proceedings records [A] as having confirmed his witness statement when giving oral evidence before the First-tier Tribunal. This asserts: *"the reason I claimed asylum is because I was an undocumented Bidoon in Kuwait and did not have any rights and I feared persecution because of this"*. He also confirmed that he saw his brother daily in Kuwait as the wider family all lived together. He stated that the appellant did not know that he was in the UK until he found out in France and he was then able to track him down through the Manchester community. Since then they have remained in *"constant touch"*. The respondent's representative cross-examined [A]. Both representatives made submissions on the proper approach to [A]'s evidence. The respondent suggested that [A] might not be granted asylum if he made the same application on the same facts at the date of hearing. The appellant's representative submitted that the matters put in cross-examination to [A] did not support the submissions relied upon by the respondent.

10. The First-tier Tribunal was *"not satisfied by the wider evidence in the case"* [21] and gave reasons for this at [22-29]. As Mr McVeety conceded, the First-tier Tribunal has failed to make any findings regarding important evidence addressing the pivotal issue in the case: [A]'s evidence that he was granted asylum because he is an undocumented Bidoon (in line with NM) and his brother, the appellant, is also an undocumented Bidoon. The First-tier Tribunal has therefore failed to take into account relevant evidence when making findings on the determinative issue in the appeal. 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 his brother, he is an undocumented Bidoon. The First-tier Tribunal has declined to speculate as to why the respondent granted [A] refugee status at [21]. Whilst the First-tier Tribunal was correct not to speculate, it was still obliged to address the credibility of the evidence available to it: [A]'s evidence that he was granted asylum because he was an undocumented Bidoon. In response to my query, Mr McVeety was able to easily locate the file minute explaining the reasons why [A] was granted asylum. In summary, this indicates that the respondent was satisfied that [A] provided a consistent and credible account and it was accepted that he is an undocumented Bidoon. It is regrettable that this file minute was not disclosed to the First-tier Tribunal. Mr McVeety acknowledged that the 'asylum grant' letter was requested by the appellant's solicitors and provided, and there may have been a misunderstanding as to the availability of relevant evidence i.e. the file minute, in support of [A]'s evidence.

11. The failure to make findings regarding [A]’s evidence also infects the factual finding at [23]. The First-tier Tribunal has not made any findings regarding [A]’s evidence in support of when the appellant found out he was in the UK. The record of proceedings establishes that there was a factual dispute regarding the credibility of [A]’s evidence, yet no findings of fact have been made regarding this witness’s evidence. Although the First-tier Tribunal refers to “*unbelievable evidence*” at [24] this reference seems to be to the appellant’s claim that he did not know that [A] was in the UK, when [A] had told their mother who the appellant was living with.
12. The decision also contains an obvious error of law not clearly identified in the grounds of appeal. When making its findings of fact regarding the credibility and consistency of the appellant’s account to be an undocumented Bidoon, the First-tier Tribunal failed to consider his 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. As Mr McVeety observed there is no clear finding regarding the credibility of the appellant’s specific claim to be an undocumented Bidoon. He consistently maintained that he was unregistered and this was directly supported by [A]. That it is necessary in a case such as this to make specific findings on a claim to be unregistered, even where there are other adverse credibility findings, is demonstrated by, *inter alia*, the headnote and [116] of NM.

Decision

13. The decision of the First-tier Tribunal involved the making of a material error of law. Its decision cannot stand and is set aside.
14. 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