Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07405/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
Oral determination given following hearing	
On 16 January 2018	**On 28 February 2018**

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

MOHAMMED [A]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Gajjar, Counsel instructed by A2 Solicitors
For the Respondent: Ms A Brocklesby-Weller, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant claims to be a stateless Bidoon, whose date of birth in uncertain. The man whom he claims to be his father was granted refugee status on the basis that he was an undocumented Bidoon and this appellant originally claimed that he was

entitled to family reunion with his father. That application was refused on 9 December 2012. He applied again and his appeal against a subsequent refusal was dismissed in September 2014. The First-tier Tribunal made a number of adverse credibility findings in the course of that decision in particular that the witnesses had attempted to mislead the Tribunal regarding the appellant's true age. A finding of fact was made which was maintained by the Upper Tribunal that the appellant was in fact an adult (that is at least four years older than he claimed to be) and had been an adult at all material times. Subsequently the appellant (or so he claims) left Jordan in July 2016, eventually arriving in the UK where he claimed asylum as an undocumented stateless Bidoon.

2. His current appeal was heard before First-tier Tribunal Judge Fox sitting at Hatton Cross on 4 September 2017 but in a decision and reasons promulgated on 18 October 2017 Judge Fox dismissed the appeal.

3. It is not in dispute that if the appellant is indeed an undocumented Bidoon as he claims he would be entitled to protection and his appeal in those circumstances should have been allowed. However Judge Fox decided for the reasons that he gave that the appellant was not an undocumented stateless Bidoon. Challenge has been brought to that decision on a number of grounds of which two in particular stand out. The first is that the judge found at paragraph 65 that the DNA evidence presented in support of his appeal (which purported to show that he was the son of a man who had been given refugee status on the basis that he was an undocumented Bidoon) could not be relied upon. It is accepted on behalf of the respondent that that finding is not sustainable, but Ms Brocklesby-Weller submitted nonetheless that this error was not material because the judge went on to state that "I proceed on the basis of the evidence at its highest".

4. On behalf of the appellant, Mr Gajjar refers to what was said at paragraph 76 of the decision which he says shows that the judge did have this factor among others in mind when dismissing the appeal, because he states as follows:-

> "76. For the reasons stated above the appellant relied upon documents to support an entry clearance application. The evidence relating to their existence is vague, evasive and inconsistent."

5. The judge then went on to say that:-

> "The appellant cannot be relied upon to provide a reliable account of his circumstances and his subjective claim to be undocumented for the purpose of an asylum claim is self-serving and of limited probative value" (relying on the country guidance decision of *NM (documented/undocumented Bidoon: risk) Kuwait CG* [2013] UKUT 00356).

6. The other ground which stands out is contained at paragraph 7 of the grounds and relates to the judge's finding made at paragraph 61 of his decision. It is stated in the grounds as follows:-

"7. The judge misdirected himself at paragraph 61 when he stated that the Applicant has provided new evidence about his education and made adverse credibility [findings] as a result. It is contended as follows

1) During the Applicant's asylum interview, the Respondent asked

Question – AIR question 13 – 'What school did you go'

Answer: 'I haven't, not been to school'.

2) During cross examination, the Applicant was asked

Question – 'Did you ever go to a Madrassa'

Answer: 'Yes, they teach us Quran just by hearing'

3) We state accordingly that there is no inconsistency at all in the Applicant's answers as he was never asked at his asylum interview if he ever received any form of education in a school or Mosque. He was asked the name of the school he went to and he answered correctly that he never went to school.

4) It is contended that the Judge's adverse credibility finding on the alleged new evidence is wholly misplaced and unsustainable."

7. On behalf of the respondent before me, Ms Brocklesby-Weller did not seek to justify this part of the judge's reasoning, which was as follows:-

> "61. However this new evidence of limited education is inconsistent with the appellant's earlier claims that he had no education; second statement paragraph 25. When the available evidence is considered in the round it is reasonable that the appellant is selective in the information he is willing to disclose. This does not assist his credibility."

8. Having considered the evidence which had been before the First-tier Tribunal, Ms Brocklesby-Weller accepted that on this point at any rate the matters set out by the judge did not in fact support his finding of inconsistency in the appellant's evidence.

9. Although this decision might be finely balanced, it is very important when making adverse credibility findings to ensure that bad points are not taken. The judge clearly took account of factors which did not in fact support the findings which he made, and I cannot find that the error that he made at paragraph 61 is not material. It follows that the overall adverse credibility finding cannot stand. I do have in mind when reaching this decision also that the judge does appear to rely at least in part upon his finding with regard to the DNA evidence which Ms Brocklesby-Weller also accepts is a finding that cannot be maintained on proper consideration of the evidence.

10. It follows that this decision will have to be set aside and re-made and in these circumstances it is appropriate to remit this appeal back to the First-tier Tribunal for re-hearing in front of any judge other than First-tier Tribunal Judge Fox and I will so order.

Decision

I set aside the decision of First-tier Tribunal Judge Fox as containing a material error of law and remit the appeal to the First-tier Tribunal, sitting at Hatton Cross, to be heard by any judge other than First-tier Tribunal Judge Fox.

No anonymity direction is made.

Signed:

Upper Tribunal Judge Craig Dated: 25 February 2018