



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: PA/07520/2017

THE IMMIGRATION ACTS

Heard at Field House

On March 16, 2018

**Decision &
Promulgated**

On March 26, 2018

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR A H T
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Appiah, Counsel, instructed by Vince Court Chambers

For the Respondent: Mr Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I extend the anonymity order previously ordered in this appeal. Unless and until a Tribunal or court directs otherwise the appellants are granted anonymity no report of these proceedings shall directly or indirectly identify the appellant or any member of his family. This direction applies to amongst others, the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings.
2. The appellant is a Kuwaiti national. He claimed to have entered the United Kingdom using a fake passport on May 30, 2008. He claimed asylum but this was refused by the respondent on September 26, 2008. His appeal

against this decision was rejected by the Tribunal on November 14, 2008. An appeal to the High Court failed on January 26, 2009. He then lodged further submissions on March 13, 2009 but these were rejected without a right of appeal. On November 25, 2014 his representatives lodged further submissions but these were refused by the respondent on July 21, 2017.

3. The appellant lodged grounds of appeal on August 8, 2017 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. His appeal came before Judge of the First-tier Tribunal Povey (hereinafter called "the Judge") on September 6, 2017 and in a decision promulgated on September 19, 2017 the Judge refused the appeal on all grounds.
4. The appellant appealed this decision on October 3, 2017. Permission to appeal was refused by Designated Judge of the First-tier Tribunal Manuell on October 16, 2017 but when those grounds were renewed Upper Tribunal Judge Canavan granted permission on December 20, 2017. She found it arguable the Judge may have erred (a) by failing to consider the likelihood of the appellant being able to renew his identity card and (b) by failing to consider the evidence of the appellant's witnesses.
5. In a Rule 24 response dated January 18, 2017 the respondent opposed the permission arguing the Tribunal had properly directed itself and made findings open to it.
6. This matter came before me on the above date.

SUBMISSIONS ON ERROR IN LAW

7. Mr Appiah submitted there were two grounds of appeal.
8. With regard to the first ground he referred the Tribunal to paragraphs 41, 43 and 44 of the Judge's decision and the country report and submitted that the Judge had failed to consider this evidence when deciding the appellant would be able to renew his security card. If he had properly considered the evidence Mr Appiah submitted the Judge would have concluded that there would be difficulties renewing the security card.
9. The second ground of appeal concerned his failure to consider the appellant's brother's evidence. There had been an adjournment request made and based on the Judge's indication the appellant's representative was content to proceed. Mr Appiah submitted there was no evidence the Judge had considered the written evidence especially from the appellant's brother. Whilst his findings may have been open to him there was a procedural unfairness as the Judge failed to properly consider their evidence.
10. Mr Melvin relied on the Rule 24 response. He submitted that with regard to ground one the Judge had clearly considered the country report and neither NM (documented/undocumented Bidoon: risk) Kuwait CG [2013] UKUT 00356 (IAC) nor the country report suggested the Judge's findings were not open to him. There was nothing in the guidance that suggested a person who had previously held a "security card" would be unable to renew it.

11. With regard to the second ground the witnesses did not attend either this hearing or the appellant's previous hearing. The appellant was found to lack credibility and at paragraph 5 the Judge agreed to consider their evidence. The fact the appellant's brother's claim had been accepted did not mean this appellant's appeal should be accepted. The decision was open to the Judge.
12. Having heard these submissions I reserved my decision.

FINDINGS ON ERROR IN LAW

13. The original Judge's decision from 2008 formed part of the evidence considered both by the respondent and the Tribunal when the appellant renewed his application in 2014.
14. Two grounds have been raised by the appellant. The first ground centred on the Judge's approach to the availability of a replacement security document. At paragraphs 41 and 42 of the decision, the Judge identified that he considered the background evidence and the decision of NM.
15. It therefore follows that unless the Judge has misinterpreted the background evidence there can be no material error.
16. Mr Appiah referred me to paragraph 87 of NM. This paragraph confirms that if a person was unable to renew his/her security cards then that person may be at risk. Neither the Tribunal in NM nor the country guidance is authority for the argument that people will face a problem renewing their security cards.
17. Both representatives invited me to consider the Country Information and Guidance (July 2016). The fact the appellant had held a security card placed him in a different category to a Bidoon who had never held such a document. The appellant's claim was that he would have difficulties renewing his security card because of his previous political activity or incarceration. The Judge rejected his claims and it follows that his finding at paragraph 43 was open to him. In making that finding the Judge had considered the case of NM as well as the country information report.
18. The second ground touches on procedural unfairness. At paragraph 5 of the Judge's decision the Judge referred to an application for an adjournment to enable the appellant's brother to attend the hearing and for the brother's asylum paperwork to be adduced. The respondent's representative did not oppose the application.
19. After considering these submissions the Judge indicated that based on the DNA evidence the Judge was satisfied the appellant was a Bidoon and the primary issue was whether the appellant was undocumented. Based on that indication the appellant's representative withdrew his application for an adjournment and the case proceeded. In considering the case the Judge noted that he had witness statements from both the appellant's brother and a friend albeit neither attended to give evidence. In fact, the appellant's brother's situation had not even been placed before the original Judge in 2008.

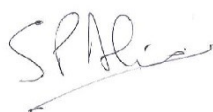
20. Mr Appiah argued the Judge did not consider the evidence but I note at paragraph 33 the Judge made clear the evidence relating to the appellant's brother must be considered as one part of the evidence pertaining to the appellant's account and his credibility.
21. Mr Appiah's submission that the Judge overlooked the evidence is not supported by the detail in the Judge's decision.
22. The Judge started from the position adopted by the previous Judge but he accepted the appellant was a Bidoon whereas the previous Judge had not. The Judge considered documents that had been submitted and his findings at paragraphs 37 and 38 do not appear to be challenged. At paragraph 39 the Judge identified inconsistencies between his evidence before the previous Tribunal and his evidence now. The Judge rejected the appellant's account and found him to be a witness lacking in credibility.
23. The fact the appellant's brother had previously been granted status was something the Judge was aware of but having heard the evidence presented to him he concluded the appellant had failed to demonstrate he was also an undocumented Bidoon.
24. Mr Appiah accepted in his submissions to me that the Judge's findings would be open to him if he had considered all the evidence. I am satisfied that he did consider the evidence of the appellant's brother. The Judge was not required to make individual findings but merely had to demonstrate that he had taken account of this evidence.
25. The Judge was clearly aware of the evidence as he highlighted the fact that this evidence had not been presented to the original Judge in 2008. The Judge's findings at paragraphs 31 and 33 of his decision were evidence he had considered the evidence and those findings were open to him.
26. I therefore find that there was no error of law in the Judge's approach to either issue.

DECISION

27. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
28. I uphold the previous decision.

Signed

Date 22/03/2018



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I do not make a fee award as I have dismissed the appeal.

Signed

Date 22/03/2018

A handwritten signature in black ink, appearing to read 'SPAL' with a flourish underneath.

Deputy Upper Tribunal Judge Alis