



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/11723/2016

THE IMMIGRATION ACTS

Heard at Glasgow  
On 26 February 2018

Decision & Reasons Promulgated  
On 23 March 2018

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

[S J]

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Katani, Solicitor

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

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge S Gillespie, promulgated on 7 June 2017, dismissing his appeal against the decision of the respondent made on 12 October 2016 refusing his asylum and protection claim.
2. The applicant's case is that he is a stateless, undocumented Bidoon from Kuwait and that he faces persecution on that account. It is also his case that he was imprisoned for a period of six months following his participation in a demonstration on 18

February 2014 and that during that time he was tortured and subjected to other ill-treatment.

3. It is also the appellant's case that his two older brothers have been granted refugee status in the United Kingdom on the basis that they too are undocumented Bidoon.
4. The respondent did not accept that the appellant is a Bidoon, or that he attended the demonstration in February 2014, or that he was arrested and subjected to ill-treatment. She did not accept either that he had left Kuwait as claimed, drawing inferences adverse to his credibility from his failure to claim asylum en route. In addition, the respondent did not accept that he was related to his brothers.
5. The judge heard evidence from the appellant and his two older brothers. He concluded:-
  - (i) the appellant was related to his brothers as claimed on the basis of the DNA test [46];
  - (ii) the appellant had not shown that registering in the 1965 census was a precondition to registering with the ECIR between 1996 and 2000 given that the law of 2000 permitted naturalisation to those who had participated in the 1965 census and that it was unclear why the father had gone to register but had not received a security card;
  - (iii) that the evidence produced by the appellant indicated that of those arrested at the 18 February 2014 demonstration, all but the three leaders were released yet he was imprisoned until July 2014 and he could not provide a satisfactory answer to that [63] and had been unable to explain why they were torturing him to find out who was leading the demonstrations when the leaders had themselves been detained, concluding [64] that the appellant had not been detained which cast doubt in light of the overall credibility despite the medical report of Dr Crawford [65];
  - (iv) that it was unlikely that the appellant had been able to pass through the airport in the manner described [69] and that further inferences could be drawn from his failure to claim asylum en route to the United Kingdom.
6. On that basis the judge concluded that the appellant is not an undocumented Bidoon at risk of persecution and he had failed to provide that he is without the green card.
7. The appellant sought permission to appeal on three grounds:-
  - (i) that there was no basis on which the judge could, having accepted the appellant's brothers' asylum claims, come to a contrary conclusion in respect of the appellant;
  - (ii) that the judge had acted unfairly in putting questions to him as though the information was correct as at 21 March 2014 when the article had been updated (as the copy showed) on 6 March 2015, the judge erring also in concluding that the detainees had been held for only a couple of weeks, information not in the article relied upon;

(iii) that the judge failed to make any proper findings with respect to Dr Crawford's report as to the injury to the appellant's leg.

8. On 7 December 2017 Upper Tribunal Judge Grubb granted permission to appeal stating:-

"It is arguable that the judge failed to grapple with the evidence that the appellant's two brothers had previously been granted asylum, it is said, on the basis that they were undocumented Bidoons. It is not immediately apparent, if this is the case, what evidence there could be that could suggest that the appellant was not likewise undocumented. I grant permission on this ground."

9. Permission was in fact granted on all grounds.

10. It is necessary first to have regard to the position regarding the Bidoon in Kuwait and how their situation arose. This is set out in some detail in the COI bulletin provided by the Home Office and also in NM (documented/undocumented Bidoon: risk) Kuwait CG [2013] UKUT 356(IAC) at [20] to [26]. In summary, Kuwaiti citizenship was limited initially to those who had settled in Kuwait and retained residence there since 1920 and Arabs resident there for at least fifteen years could be naturalised. However, when the nationality law was enacted in 1959 many of those living in outlying areas did not do so. In NM it is noted at [22]:

"At the time when the nationality law was enacted in 1959 the authorities sought to register all residents within Kuwait and identify those eligible for nationality. It appears, however, that many of those living in outlying areas, primarily of Bedouin origin, either did not learn about this or neglected to register their claims. Some were illiterate and persons who kept no written records faced especial difficulties in proving that they met the legal requirements of the new law. Others were simply uninterested in the new concept of nationality, failing to foresee the rights and benefits that would accrue to citizens in later decades as Kuwait's wealth increased (it has been described as the fifth richest country in the world) and government service has expanded."

11. As is noted in NM, the situation for the unregistered became increasingly difficult and particularly after the Iraqi invasion of Kuwait in 1990. As noted in the COI report at [6.1] a committee was set up to count all those declaring to be illegal residents, opened files on them, which was followed by a decree followed by a further committee set up in 2010, the object of which was to resolve the status of illegal residents (which includes Bidoon). It appears also at [6.1.4] that Bidoon status is regularised with some 2,969 people being registered. It appears however to be inconsistent interestingly [6.1.8] nobody had benefitted from a law permitting the naturalisation of "foreigners. Also of note is what is stated at [6.1.9]:

"The US State Department noted:

The naturalization process for bidoon is not transparent and decisions appeared arbitrary. Despite calls during 2015 by MPs and various authorities to naturalize 2,000 to 4,000 bidoon per year, as of year's end, the government naturalized only those who were children of soldiers killed fighting for the country; the exact number was unavailable but was estimated at fewer than 100.

The Central Agency had more than 100,000 bidoon citizenship requests under review at the end of 2014. In August 2015 the government decided to consider bidoon citizenship applications individually along with other naturalization cases.

According to bidoon activists and government officials, many bidoon were unable to provide documentation proving sufficient ties to the country or to present evidence of their original nationality. The government maintained, however, that the vast majority of bidoon concealed their true nationalities and were not actually stateless. According to the government, 7,243 bidoon adjusted their legal status between 2011 and August 2015, claiming Saudi, Iraqi, Syrian, Iranian, Jordanian, and other nationalities. In November 2015, the government stated that 34,000 bidoon are qualified for consideration for citizenship but that only 8,000 would be eligible due to their security status."

12. As is noted both in NM and the COI at [6.3] Bidoons who have registered with the executive committee between 1996 and 2000 were issued with security cards, this being extended to some 106,000 people. Further "review cards" are issued from 2000 onwards but they are time limited as can be seen from Annex C to the COI at paragraphs 18 to 20:

"18. A particular problem exists for Bidoon who have fallen through the cracks and do not even qualify for Bidoon status and access to the facilities above (even if on occasion this may be theoretical). They are colloquially known as 'Bidoon Bidoon'. This occurs when the authorities say that an individual claiming to be Bidoon has proof of another nationality. A cause for this can be when an individual has previously bought a forged passport for a second nationality in order to travel (something which anecdotally had previously been marketed to Bidoon individuals, allegedly with government connivance), which they have then been unable to renew, or if an individual has (according to the government) admitted in writing to having a second nationality at some time in the past. The numbers of individuals in this bracket is unknown, but their circumstances are certainly the worst.

19. Such individuals are not able to claim formal status as Bidoon, and although all Bidoon are termed illegal residents by the Kuwaiti authorities, their status in Kuwait is as an illegal third country national. This means that they could be subject to arbitrary arrest and detention; illegal third country nationals are normally visa overstayers, who are periodically deported - Bidoon falling in this category are unable to access government services for fear of being detained, and are dependent on familial networks, charity, and work in the informal sector. The process of formally become a documented Bidoon is not set, there is no judicial recourse or form of appeal - doing so will doubtlessly depend on personal circumstances, contacts and the details of the case and is unlikely to be easy.

20. The Bidoon issue continues to perpetuate itself, as children of Bidoon fathers retain their Bidoon status. This is true even for those with Kuwaiti mothers, as Kuwaiti nationality is entirely patrilineal (this also applies to

Kuwaitis married to expatriates). There have been rumours in the press that this law may change soon, but as yet a formal change to existing legislation has not been proposed.”

13. It is also notable from this letter at [28] that the widespread view within Kuwait is that the value of obtaining Kuwait citizenship (both psychological and particularly financial) is such that any Bidoon for whom the prospect of securing Kuwaiti nationality is likely would be very unlikely to forgo this by attempting to seek asylum elsewhere.
14. It is entirely unclear from the judge’s decision what view he took of the appellant’s brothers’ evidence. He clearly accepted that they are undocumented Bidoon. He does not, however, appear to have appreciated that the conclusion which was accepted by the respondent, and recognised them as refugees, has implications for the apparent status of the appellant and his brothers’ father. As is evident from the material set out above the status of being Bidoon is passed down through the generations. And as far as Mr Mullen submitted it was for the appellant to make out his case, equally it was for the judge to make reasoned findings.
15. Whilst it may have been open to the judge to make adverse credibility findings against the appellant, he makes no findings about the evidence of the appellant’s brothers which was important in the context of this case. It is to be borne in mind, indeed it was accepted by the Secretary of State after the country guidance decision had been handed down, that the brothers were refugees on the basis that they were undocumented Bidoons. There is no indication that they left Kuwait prior to the ending of the registration scheme in 2000 and the natural inference is that their father was also an undocumented Bidoon. Accordingly, I am satisfied that the judge made a material error of law on this issue and that it needs to be remade.
16. Both representatives were content for me to remake the decision on this point without the need for any further submissions and I do so.
17. I consider that it is established that the appellant’s brothers are undocumented Bidoons. I am satisfied that it flows from this and their evidence, which I accept, that their father was in the same position. Whilst I accept that the appellant lacks credibility for the reasons given by the judge equally, there appears to be no reason why if he had any prospect of obtaining Kuwaiti citizenship that he would have left the country.
18. Having considered carefully the background material I find nothing to suggest that those whose fathers are undocumented bidoon could somehow acquire documented bidoon status nor given that his older brothers were unable to do so is there any likelihood that that occurred in the case of the appellant, and contrary to their evidence that he had not acquired documented status. I am satisfied that the appellant has shown that he is an undocumented Bidoon and the appeal should be allowed on that basis. It follows from the finding that he is at risk of persecution that

his removal to Kuwait would be in breach of his rights under article 3 of the Human Rights Convention.

Notice of decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I remake the decision by allowing the appeal on asylum and human rights grounds.
3. No anonymity direction is made.

Signed

Date 22 March 2018

A handwritten signature in black ink, appearing to read 'Jeremy Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul