



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13452/2016

THE IMMIGRATION ACTS

Heard at Bradford
On 12 June 2018

Decision & Reasons Promulgated
On 31 July 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A A

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mrs Pettersen, a Senior Home Office Presenting Officer
For the Respondent: Ms Naz, Fountain Solicitors

DECISION AND REASONS

1. I shall refer to the appellant as the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant, A A, born in 1996 and claims to be an undocumented Kuwaiti Bidoon. His application for asylum was refused by a decision made on 18 November 2016. He appealed to the First-tier Tribunal (Judge Moran) which, in a decision promulgated on 21 August 2017, allowed the appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal.
2. Judge Moran found that the appellant would face persecution upon return to Kuwait. The judge found that the appellant's brother (J) came to the United

Kingdom in 2009 and had been granted asylum. The judge also noted that the Secretary of State had accepted that the appellant's brother J was an undocumented Bidoon. The judge found that the appellant's father had been involved in demonstrations from 2011 and had been detained following a demonstration in 2014. The family had not seen the father since that date. He found also that the appellant had attended a demonstration in Kuwait in April 2016. That demonstration had been broken up by the authorities but the appellant had been detained and taken to a police station where he was mistreated. Thereafter, the appellant had fled to the United Kingdom.

3. The Secretary of State seeks to challenge Judge Moran's decision on the basis that he gave inappropriate weight to the fact that the brother J had been granted asylum in the United Kingdom apparently on the basis that he is an undocumented Bidoon. Both the First-tier Tribunal and the Secretary of State rely upon the country guidance of *NM (documented/undocumented Bidoon; risk) Kuwait CG* [2013] UKUT 00356 (IAC). The headnote of *NM* reads as follows:

"(1) The distinction made in previous country guidance in respect of Kuwaiti Bidoon, between those who are documented and those who are undocumented, is maintained, but the relevant crucial document, from possession of which a range of benefits depends, is the security card, rather than the "civil identification documents" referred to in the previous country guidance in *HE* [2006] UKAIT 00051. To that extent the guidance in *HE* is amended.

(2) The evidence relating to the documented Bidoon does not show them to be at real risk of persecution or breach of their protected human rights.

(3) The evidence concerning the undocumented Bidoon does show them to face a real risk of persecution or breach of their protected human rights.

(4) It must be assumed that Bidoon who did not register between 1996 and 2000, and hence did not obtain security cards, are as a consequence undocumented Bidoon, though this must be seen in the context of the evidence that most Bidoon carry security cards."

4. At [14], Judge Moran had referred to J's asylum interview in which he confirmed that his father had a "green card". Judge Moran considered that fact to be irrelevant because "possession of a green card does not make a Bidoon documented as the crucial card is the security card." *NM* at [121 - 123] had found that there were three categories of Bidoons; those who are citizens; those who had security cards and those who were undocumented. At [83], the Upper Tribunal in *NM* found that:

"The second category consists of Bidoon who hold security cards (also known as "green cards"). These are people who registered, presumably with the Bidoon committee, between 1996 and 2000. It is said in the HRW report that most Bidoon carry security cards. The document is not proof of ID, and does not make it clear on its face to what the holder is entitled. However, it can be seen from the evidence that Bidoon who hold security cards are theoretically issued travel documents in the form of "temporary passports", though in practice this is only for the purpose of travel for education, medical treatment or religious pilgrimage and typically remain valid only for the trip cited in the individual's application. In addition, according to the HRW report, many Bidoon children attend private

schools which provide Arabic language instruction and serve primarily Bidoon students, and though there are annual fees ranging between the equivalent of US \$860 to \$1,550 per child, and parents pay extra for textbooks and uniforms, in 2004 the government established a charitable fund to pay the educational expenses of children in need which pays primary and second school fees for many Bidoon students as well as expatriate children who wish to attend Arabic language schools. Those schools are inferior to government schools, and the fund does not meet the needs of all children, and several families interviewed stated that they received funding for some but not all of their children. Only Bidoon students with Kuwaiti citizen mothers may enrol in universities. This broadly accords with the evidence of Mr Shiblak as recorded at paragraphs 97 and 98 above. In general we found his evidence, both written and oral, to be helpful.”

5. It is the Secretary of State’s case, following *NM*, that green cards are the same as security cards. That distinction was not recognised in 2009 (before *NM* was promulgated) which explains why J had been granted asylum. In consequence the judge placed too much weight on a decision which today would be otherwise.
6. There is no doubt that J’s grant of refugee status played a significant role in determining the outcome of A’s appeal. At [21], the judge accepted that the respondent was not “estopped” from arguing that J is not undocumented and should not have been granted asylum on the basis that he was undocumented. The issue had arisen regarding the grant of refugee status to J and whether this had been obtained fraudulently. J had been encountered travelling from Saudi Arabia in 2014 with his spouse while she was in possession of travel documents which were not genuine. The consideration of the revocation of J’s status appears to have been based upon his possible involvement in his spouse’s illegal entry to the United Kingdom with false documents. At [21], the judge wrote:

“The respondent did not consider this material [concerning J’s wife’s fraudulent activities] was sufficient to revoke [J’s] refugee status. In these circumstances I consider the only fair way to approach the issue of J’s status is to find as a fact that he was correctly granted asylum on the basis that he is an undocumented Bidoon. This is not conclusive evidence that A is also undocumented but it is strong support given that they have the same parents [a fact which is not disputed] and grew up in the same household.”
7. Again, at [23], the judge considered that “this [A A’s] account of his attendance at the demonstration and detention] and the fact that his brother is an undocumented Bidoon eclipse the points that the respondent says undermine [A A’s] account.”
8. I find the judge’s analysis problematic. First, I do not see the relevance of the proposed revocation of J’s status on account of his possible involvement in his wife’s fraudulent entry to the United Kingdom. That issue has no bearing on the current appellant’s application for asylum and the reasons why he has been refused. Secondly, whilst the judge was entitled to find that “the only fair way to approach the issue” is to assume that J had been correctly granted asylum, he should not have assumed that the Secretary of State remained convinced in 2014 that J should have been granted refugee status because he was an undocumented Bidoon. The fact

remains that we do not know why exactly J was granted refugee status. Moreover, it is entirely a matter for the Secretary of State whether she chose to to revoke J's immigration status in 2014; we cannot simply assume that, in 2014, the Secretary of State continued to believe that J was an undocumented Bidoon. Judge Moran has focused too closely upon the problems J faced in 2014 and has placed too much weight upon the fact that the Secretary of State did not seek to revoke his status. The fact remains that we do not know why the Secretary of State did not proceed with the revocation procedure. In the light of that ignorance, it was inappropriate for the judge to speculate as to the Secretary of State's reasoning.

9. The consequence of the judge's error is that he has placed too much weight upon the grant of J's refugee status. What he should have done was to have looked at the evidence presented by the appellant concerning Judge, including what was said in J's asylum interview regarding his father's possession of a green card. That evidence should have been examined in the light of *NM*; assumptions (and they were no more than that) as to why J had been granted status in the first place and why his status has not been revoked should have been disregarded.
10. There is no doubt in my mind that the judge has concluded that the appellant's account of past events in Kuwait is accurate because the appellant is the brother of an undocumented Bidoon. For the reasons I have stated above, this has distorted the judge's analysis and I find that his decision should be set aside. There will need to be a new fact-finding exercise; none of the findings of the First-tier Tribunal are preserved. That exercise is better conducted by the First-tier Tribunal to which this appeal is returned to remake the decision. The Tribunal will need to examine J's evidence in the light of the decision in *NM*. The next Tribunal need not consider whether or not J should have been granted refugee status or whether his status should have been revoked. The next Tribunal may find that the appellant is, as he claims, an undocumented Bidoon who has been detained and ill-treated in Kuwait in the past but, equally, it may conclude that his account of past events is not reliable and that, whatever the immigration status of J in the United Kingdom, the appellant is not an undocumented Bidoon.

Notice of Decision

11. The decision of the First-tier Tribunal, which was promulgated on 21 August 2017 is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (not Judge Moran) for that Tribunal to remake the decision.

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 20 July 2018

Upper Tribunal Judge Lane

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 20 JULY 2018

Upper Tribunal Judge Lane