



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/05448/2019

**THE IMMIGRATION ACTS**

Heard at: Manchester Civil Justice Centre  
On: 8<sup>th</sup> November 2019

Decision & Reasons Promulgated  
On: 20<sup>th</sup> November 2019

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

AM  
(anonymity direction made)

Appellant

And

Secretary of State for the Home Department

Respondent

**For the Appellant:** Ms Patel, Counsel instructed by Lex Solicitors  
**For the Respondent:** Mr McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is of disputed nationality and identity. He appeals with permission the decision of the First-tier Tribunal (Judge Alis) to dismiss his protection appeal.
2. The matter in issue before the First-tier Tribunal was whether the Appellant is an undocumented Kuwaiti Bidoon. If he could demonstrate that it was

reasonably likely that he was, his appeal would be allowed: NM (documented/undocumented Bidoon: risk) Kuwait CG [2013] UKUT 356 (IAC).

3. The First-tier Tribunal found that this burden had not been discharged, even to the lower standard. In so finding the Tribunal placed considerable weight on a linguistic analysis report which concluded that the Arabic spoken by the Appellant was of a variety commonly found in Iraq. In light of that report, and other discrepancies in the Appellant's evidence, Judge Alis agreed with the Respondent's submission, that the Appellant was in fact an Iraqi.
4. The Appellant now appeals on the ground that in reaching that finding the First-tier Tribunal materially erred in that it overlooked a key part of the linguist's report, which stated that this particular form of 'Mesopotamian' Arabic is also spoken in parts of Kuwait. In granting permission Upper Tribunal Judge Sheridan considered it arguable that this was a material error of law, having regard to the lower standard of proof.
5. Ms Patel's second ground was that in reaching its decision the Tribunal erred in overlooking the evidence of two important witnesses, one of whom had attended and given live evidence. These two witnesses averred that they had known the Appellant in Kuwait, and that to their knowledge he is Bidoon. Both men had been recognised as refugees. Ms Patel submits that it is a clear error of public law to ignore material evidence given by witnesses: she relies on AK (Failure to assess witnesses' evidence) Turkey [2004] UKIAT 00230.

### Discussion and Findings

6. I deal with the second ground first. In respect of the witnesses the Tribunal has recorded that Mr El A attended the hearing and gave evidence [at §37 and 53]. The submissions of the respective representatives in relation to his evidence are recorded [at §42 and 47]. Its conclusions are then set out [at §66(x)]:

“Mr El A's evidence, and the letter of support from Mr Al M, supported his claim he came from Kuwait and was an undocumented Bidoon but their evidence has to be considered alongside the other evidence and inconsistencies”

7. I draw three conclusions from that. First, it simply cannot be said that the evidence of Mr El A was overlooked. Second, the passage that I have set out betrays no misdirection or legal error: the Judge was indeed required to examine Mr El A's evidence in the round alongside all of the other evidence. Third, that for those reasons this is not an AK case and the ground is no more than a disagreement with the Judge's findings. As to the second witness, who was unable to attend the hearing because he was on holiday at the time, the Judge finds [at his §66(ix)] that the gentleman's statement about how he knew

the Appellant was inconsistent with the Appellant's own evidence. In those circumstances the Tribunal was plainly entitled to place little weight upon it.

8. Ms Patel points out that it was the evidence of these witnesses which satisfied the Secretary of State that the Appellant's further representations constituted a 'fresh claim' under paragraph 353. In those circumstances, she submits, their evidence could have attracted more scrutiny than it actually received. That may well be true. No investigation is for instance made into how Mr El A knew the Appellant to be an *undocumented* Bidoon simply from the fact that his father used to watch him play football. As the country guidance makes clear, many of those in the community designated as "Bidoon" - meaning 'without' as in 'without documents' - are now in fact documented. It may have been helpful had it been explored why Mr El A believed the Appellant to fall outwith that group. Having had regard to the Tribunal's overall approach, however, I cannot be satisfied that it was an error of law for the evidence to be dealt with in the brief manner that it is. The Tribunal in effect acknowledges that it was evidence which supported the Appellant, but finds it outweighed by the remaining material before it. There is no error of law in that.
9. The expert report on the Appellant's spoken Arabic is not an easy read. Whilst it serves as confirmation that linguistics is a serious science, it is not a straightforward document for the layperson to decipher. For instance, the writer notes that phonological dialectal features noted are consistent with Kuwaiti Arabic, as are syntactic dialectal features. It is also found, however, that noted morphological dialectal features are partly *inconsistent* with Kuwaiti Arabic (my emphasis). This leads the analyst to the overall conclusion "the language analysis somewhat suggests that the results obtained more likely than not are inconsistent with the linguistic community as stated in the hypothesis [*that the Appellant speaks Kuwaiti Arabic*]". Conversely the alternative hypothesis, that the Appellant belongs to an Arabic linguistic community found in Iraq, is resolved as found as follows: "the language analysis somewhat suggests that the results obtained more likely than not are consistent with the linguistic community as stated in the hypothesis". Obviously the Respondent asked the First-tier Tribunal to weigh this in the balance as indicating, more likely than not, that the Appellant is Iraqi. This the First-tier Tribunal duly did [at its §62].
10. The Tribunal then notes that the Appellant had adduced no evidence to rebut the conclusions of the linguistic report. This was despite a report having been commissioned from a Professor Newman at an earlier stage in proceedings: for reasons unknown neither the Appellant nor his representatives had considered it appropriate to disclose Professor Newman's conclusions.
11. Having made those observations, the Tribunal weighs in the balance other findings, including that the Appellant failed to disclose, at the earliest possible opportunity, that he had previously been in possession of an Iraqi passport; he had given inconsistent evidence about his own level of education; documents

adduced to corroborate his claim in fact undermined it by raising inconsistencies in the evidence; he had been inconsistent about whether he was Sunni or Shi'a; the evidence of at least one of the witnesses was inconsistent with the Appellant's own. Having taken all of those matters into consideration, the Tribunal dismissed the appeal.

12. The Appellant in effect now argues that all of that reasoning should be set aside because the linguistic report acknowledges that Mesopotamian dialects can "also be found in certain areas of Kuwait". The effect of this submission is that had the Tribunal had regard to that factor, it would have automatically reduced the significance of the linguistic report, and the decision could have been other than it is.
13. I am not satisfied that this ground is made out. The linguistic report was, it is true, not conclusive either way. The analyst quite properly assesses two alternative hypotheses but it is unable to come to a firm view for the simple reason that it is obviously not a binary question. Arabic is spoken across at least 25 different countries and there will obviously be differences in dialect, syntax and grammar across each. Sometimes there will be similarities. In this case one of those similarities was in the use of the 'Mesopotamian dialect' which is prevalently spoken in Iraq, but is also found in south-eastern Turkey, north-eastern Syria, in the Iranian province of Khuzestan and, the grounds emphasise, in parts of Kuwait [at C25 Respondent's bundle]. At its highest, then, the report took the case no further. The Appellant's spoken Arabic is prevalently found in Iraq, but also in parts of Kuwait. In those circumstances it cannot rationally be relied upon to demonstrate that the Tribunal fell into material error in failing to record this particular passage. It is perfectly clear from the remainder of the reasoning that the marked difficulties with the Appellant's evidence overall outweighed the only evidence in his favour, that being the testimony of the witnesses.

### **Decision**

14. The decision of the First-tier Tribunal contains no material error of law and it is upheld.
15. The order for anonymity made by the First-tier Tribunal has not been discharged or varied.

Upper Tribunal Judge Bruce  
12<sup>th</sup> November 2019