



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/07220/2019

THE IMMIGRATION ACTS

At Manchester Civil Justice Centre  
On 6<sup>th</sup> March 2020

Decision & Reasons Promulgated  
On 18<sup>th</sup> March 2020

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

The Secretary of State for the Home Department

Appellant

And

SA

(anonymity order made)

Respondent

For the Appellant: Mr Tan, Senior Home Office Presenting Officer

For the Respondent: Mr Adebayo, A2 Solicitors

DECISION AND REASONS

1. The Respondent claims to be a Kuwaiti Bidoon born in 1982. On the 26<sup>th</sup> November 2019 the First-tier Tribunal (Judge Bannerman) allowed his appeal on protection grounds. The Secretary of State now has permission to appeal against that decision.
2. The only matter in issue before the First-tier Tribunal was whether the Respondent is as claimed, an undocumented Kuwaiti Bidoon. If he is, then applying the country guidance in NM (documented/undocumented Bidoon: risk) Kuwait CG [2013] UKUT 00356(IAC) and BA and Others (Bidoon-Statelessness- Risk of Persecution)

Kuwait CG [2004] UKIAT 256 he has a well-founded fear of persecution in Kuwait and his appeal fell to be allowed on protection grounds.

3. The First-tier Tribunal found much of the Respondent's evidence to be lacking in credibility. It rejected his account in several key respects but it was nevertheless satisfied that he was an undocumented Bidoon as claimed. At paragraph 57 it sets out its reasons: it was satisfied that he is a Kuwaiti Bidoon because his brother has been recognised to be a Kuwaiti Bidoon.
4. The Secretary of State takes issue with that reasoning as follows:
  - i) It is not clear why the First-tier Tribunal even accepted that the witness and Respondent were related
  - ii) The brother's evidence had not been tested
  - iii) The Judge failed to make overall credibility findings on the account;
  - iv) It was an error of law to treat the brother's status as determinative of the Respondent's.
5. It became evident at the hearing before me that the grounds of appeal had been drafted without the benefit of the file. Had the drafter had the file she would no doubt have seen that there was DNA evidence produced establishing that the two men were brothers. It is not mentioned in the determination simply because it was no longer in issue between the parties. She would also have seen that the Respondent had given the Secretary of State some 7 weeks' notice of the identity of the witness, and that the PO on the day confirmed that in that time he had been able to check his Home Office records, thus establishing that he was as claimed, an undocumented Kuwaiti Bidoon with refugee status.
6. Despite these immediate setbacks to his case Mr Tan pursued the appeal. He pointed to a number of criticisms of the Respondent's credibility which are left unmentioned in the determination. I accept that the Tribunal has not dealt with each and every point made in the refusal letter but I do not consider that omission to be in any way material. It is tolerably clear that the Tribunal rejected the account given by the Respondent, whom it describes as unimpressive and not telling the truth. Another page of negative credibility findings would not have added much to those adverse findings overall. The point was that the Respondent was a liar, but he was an undocumented Kuwaiti Bidoon liar, and for the purpose of this appeal, that was all that mattered.
7. This leads me to the central matter in issue. Was it open to the Judge to allow the appeal, as he makes clear, *solely* on the basis that the Respondent's brother was an undocumented Kuwaiti Bidoon?
8. The Judge himself makes reference to the decision in AC (Witness with refugee status - Effect) Somalia [2005] UKAIT 00124, the headnote of which reads:
 

"This decision deals with the proper approach to the evidence of a witness who, it is alleged on similar facts to those put forward by the appellant, has been

granted refugee status. The fact of the grant is capable of carrying weight but the grant is not to be equated with an Immigration Judge's determination following a hearing. An Immigration Judge's decision is likely to be fully reasoned and made after the evidence in support has been tested. In contrast a grant of status by the Secretary of State is often an administrative decision based only on the papers."

9. The context in which the Tribunal gave that guidance was this. A Somali asylum seeker called a witness whom he claimed to be his aunt. That lady had been granted refugee status on the basis that she was a member of a minority clan, the *Reer Hamar*. AC submitted that if his aunt was *Reer Hamar*, he was too. The First-tier Tribunal dismissed the appeal, finding that the aunt was a "singularly untruthful and evasive witness". AC appealed on the grounds that this was irrational given that the Secretary of State had already accepted her claimed ethnicity. The Tribunal held that logic to be fallacious. Unlike the determination of an earlier Tribunal, the conclusions of an individual immigration officer did not carry a *Devaseelan* weight of properly reasoned findings following a contested hearing. As such the First-tier Tribunal had not been bound to accept as fact the basis upon which the Secretary of State had granted the aunt refugee status. It had made its own evaluation of her evidence, and it had been entitled so to do.
10. As can be seen from that summary, two points arise. First, the Tribunal is not obliged to accept the factual basis upon which a grant of refugee status has been made to a witness before it. Second, a grant of refugee status is nevertheless capable of attracting weight, albeit not such as to be equated with *Devaseelan* findings made by another judge.
11. Neither of those points assist the Secretary of State here. The Respondent's brother gave evidence before the First-tier Tribunal. Unlike the aunt in AC, his evidence, open to testing by the Presenting Officer, was accepted by the Judge. The Presenting Officer had (contra AB (witness corroboration in asylum appeals) Somalia [2004] UKIAT 00125) an opportunity to confirm the witness' claims about his identity and claim. As the headnote in AC makes clear, the Judge was therefore entitled to place some weight on the evidence of that witness. The standard of proof was relatively low. All the Judge needed to do was be satisfied that it was reasonably likely that the Respondent was an undocumented Kuwaiti Bidoon. Here was a witness, a full brother by blood, whose credibility was not in doubt and who was recognised as an undocumented Kuwaiti Bidoon. The First-tier Tribunal had before it the Home Office Country Information and Guidance note [paragraph 58 of the decision refers] which confirmed that status follows the father. It was perfectly reasonable to infer from this that the two brothers were likely to share the same status, both inherited from their father. Mr Adebayo points out that this was precisely same logic employed by the Upper Tribunal in NM at its paragraph 116 where it places significant weight on that fact that that appellant's brother was also an undocumented Bidoon. I find no error of law is made out.

### **Anonymity Order**

12. This appeal concerns a claim for protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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 his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

### **Decision**

13. The decision of the First-tier Tribunal is upheld and the appeal is dismissed.
14. There is an order for anonymity.



Upper Tribunal Judge Bruce  
6<sup>th</sup> March 2020