



**Upper Tier Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/08480/2019

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On 5 October 2020**

**Decision & Reasons Promulgated
On 15 October 2020**

Before

Upper Tribunal Judge Pickup

Between

**MA
[Anonymity Direction Made]**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr M Abdullah, Hazelhurst Solicitors

For the respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269), I make an anonymity direction. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant(s).

1. The appellant claims to be an undocumented Bidoon, with date of birth in Kuwait given as 6.7.86. This is her appeal against the decision of First-tier Tribunal Judge Malik promulgated 16.10.19, dismissing her appeal against the decision of the Secretary of State, dated 20.8.19, to refuse her application for international protection made on 20.5.19.

2. Permission to appeal to the Upper Tribunal was refused by the First-tier Tribunal on 16.12.19. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Sheridan granted permission on 12.1.20. In granting permission, the judge considered it arguable that the First-tier Tribunal Judge erred by treating as damaging to the appellant's credibility points which, arguably, could not be so considered as damaging. However, Judge Sheridan warned that the arguable errors identified may not be material to the judge's appropriate application of Devaseelan (Second Appeals - ECHR - Extra-territorial Effect) Sri Lanka [2002] UKAIT 00702.
3. The error of law appeal was heard at Manchester CJC before Upper Tribunal Judge O'Callaghan on 17.3.20. In the decision promulgated on 7.4.20, Judge O'Callaghan concluded that the decision of the First-tier Tribunal involved the making of an error of law and set the decision aside to be remade at a resumed hearing in the Upper Tribunal on the sole issue "*whether the appellant possesses a well-founded fear of persecution on the ground that she is an undocumented Bidoon able to rely upon the country guidance decision of NM (documented/undocumented Bidoon: risk) Kuwait CG [2013] UKUT 00356 (IAC).*"
4. The appellant claimed that as an undocumented Bidoon she never attended school, is in consequence illiterate, and has never possessed a birth certificate or Kuwaiti identity documents. Her husband, HSNA, with whom she has three children, is a failed asylum seeker in the UK, whose appeal was dismissed in April 2019, the judge finding him to be a wholly untruthful witness. At the First-tier Tribunal appeal hearing, the appellant's brother MAHA gave evidence in support. He had been recognised by the respondent as an undocumented Bidoon.
5. Judge O'Callaghan noted at [11] of his decision that the respondent's representative conceded that the judge's reasoning between [42] and [44] of the decision of the First-tier Tribunal, which found both the appellant and her brother not credible, was unsustainable, the Upper Tribunal Judge agreeing that the reasoning materially erred in law.
6. However, the respondent resisted the first ground of appeal, which raised concerns with the approach the judge took to the appellant's asylum claim which had been based on her husband's and brother's alleged political activities in Kuwait, and as to the weight placed on evidence given by the appellant that was contradictory to that given by her husband during the course of his appeal hearing. At [14] of his decision, Judge O'Callaghan found no error of law in this regard, finding that the First-tier Tribunal Judge was entitled to commence her consideration in the light of the guidance in Devaseelan and to rely on contradictions between his account given at his appeal and her account in her appeal.
7. At [15] of his decision, whilst deciding that the decision of the First-tier Tribunal had to be set aside, Judge O'Callaghan concluded that certain findings from the First-tier Tribunal decision were to be preserved. The

findings rejecting the appellant's husband's purported history of persecution as the motivation for the appellant to leave Kuwait must stand. Judge O'Callaghan also found no error in the judge's reliance on contradictions between the appellant and her husband. However, whether or not she is an undocumented Bidoon and possesses a well-founded fear of persecution for that reason remains to be resolved. In that consideration, Judge O'Callaghan accepted that *"particular care should be given to an assessment of MAHA's credibility as he has been recognised as a refugee by the respondent and an adverse credibility finding may impact upon his ability to secure settled status. I accept that fairness requires that he be permitted to give oral evidence before the judge undertaking the resumed hearing."* In the circumstances, at [17] of the decision Judge O'Callaghan agreed that the scope of the resumed hearing *"could properly be limited to consideration as to the credibility and weight to be given to the evidence of MAHMA, in conjunction with the appellant's evidence, in establishing as to whether the appellant is an undocumented Bidoon who can rely upon the country guidance decision of NM."*

8. At the outset of the hearing before me, I confirmed the restricted ambit of this appeal with both legal representatives.
9. No new materials were supplied or relied on by either party; the bundles are as they were before the First-tier Tribunal in October 2019. In addition to the bundles prepared for the First-tier Tribunal hearing, under cover of an email dated 4.10.19, shortly before the First-tier Tribunal appeal hearing, the respondent adduced further evidence, including: Annex E, Laissez Passers from Greece; MAHMA's screening and substantive asylum interviews; MAHMA's appeal decision, appearing as Annex D; and the respondent's bundle in his appeal (PA/01058/2019). The respondent also relies on AC (Witness with refugee status - Effect) Somalia [2005] UKAIT 00124.
10. At the hearing before me, the appellant and her brother MAHMA both gave oral evidence with the assistance of an interpreter. I then heard submission from Mr Tan and Mr Abdullah. A full note of the oral evidence and submissions was taken by me and it is not necessary to recite that evidence or those submissions in this decision. Where appropriate, I have supported my findings with that evidence, either a direct quotation or as a summary of points made.
11. Before reaching any findings, I have carefully considered all of the evidence, documentary and oral, in the round in the context of the whole, together with the submissions of the two representatives. I have made particular allowance for the fact that the appellant and her brother gave evidence through an interpreter, which can cause difficulties of understanding. I have also borne in mind that both the appellant and her brother state that they are uneducated and illiterate.
12. In relation to the evidence of the appellant's brother, I take full account of the fact that he has been granted refugee status by the respondent. Mr

Abdullah urged me to give this considerable weight. However, the respondent relies on AC (Witness with refugee status -effect) Somalia [2015] UKAIT 00124, which pointed out that the decision to grant refugee status is quite a different decision from one taken by a judge, which is a reasoned decision after hearing evidence in an adversarial investigation where that evidence has been tested. Whilst some weight is to be given and it must be considered as part of the overall evidence, such a decision is not to be treated with the same deference as a reasoned decision following a contested hearing. I take the fact of the grant of refugee status into account to the limited extent I am able but also bear in mind that his evidence has now been tested in the hearing before me.

13. I also have to bear in mind the decision and findings of the First-tier Tribunal in April 2019, rejecting the asylum claim of the appellant's husband, where he was found to be a "totally untruthful witness" and the judge was not satisfied that he was an undocumented Bidoon as he and the appellant claimed. In rejecting his account as not credible, the First-tier Tribunal questioned how a person without any visible means of support was able to support a wife and three children, and then arrange for himself and them to leave Kuwait, a relevant question to the present enquiry, the answer to which has not been satisfactorily explained. The judge considering the husband's appeal concluded that these facts demonstrated that he was not a destitute Bidoon. The judge concluded that, far from being a genuine asylum seeker, the husband was an economic migrant seeking a better life. The judge found it reasonably likely that he left Kuwait legally using the passport to which he was entitled, which fact was inconsistent with his being a stateless and unregistered Bidoon.
14. All of this is, of course, relevant to the appellant's own claim. As Mr Tan submitted, not only has her account of her husband's political activity also been entirely rejected, but that finding by the First-tier Tribunal Judge in this appellant's appeal, together with the rejection of the husband's account by a different judge, inevitably tends to seriously undermine the appellant's overall or general credibility. She had claimed that she saw her husband being arrested twice in Kuwait, that her father-in-law was also questioned, and that the authorities were searching for her husband. None of this account has been accepted as truthful. Similarly, her claim that her brother was arrested in a demonstration has been rejected. On this appellant's account, both her husband and her brother had a remarkably similar experience, having attended the same demonstration in 2014. Both had been detained in February and released in March, and both spent exactly the same amount of time in Kuwait before leaving in September 2015. The judge at the First-tier Tribunal disbelieved that this almost identical factual matrix was a mere coincidence. I also find the remarkably similarity between the two claims incredible. It is also remarkable that neither the husband nor the brother made any mention of the other in their various asylum interviews, which the judge found not credible and that finding has also been preserved. I also find it not credible that when the appellant was questioned, she made no reference to her brother

having been arrested. I found her explanation, because she was told to only answer the questions asked of her and not to mention her brother, entirely incredible.

15. Given that the core claim of this appellant and her husband was the same, I have to take the findings as to the husband's claim as my starting point in considering whether she is an undocumented Bidoon, whilst bearing in mind that each case must be considered on its own merits. I also have to bear in mind that where there are contradictions it is possible that one and not the other has been untruthful, or that both are in their individual accounts untruthful. The fact remains, however, that the findings in the husband's case have a clear bearing on this appellant's claim to be an undocumented Bidoon, as given that has been found by the Tribunal not to be a stateless Bidoon, it is rather difficult to see how his wife could be. However, I have not approached the evidence in this case through that prism but rather have considered it as one of several other factors to be taken into account in the overall assessment of the evidence. It is to be noted that the husband did not attend the appeal hearing in the Upper Tribunal before me and, therefore, I could make no independent assessment of his credibility.
16. However, the oral evidence taken before me highlighted some significant contradictions between the appellant's evidence and other various accounts on the one hand and her brother's claim and oral evidence on the other.
17. I have serious concerns as to the appellant's credibility when considering her inconsistent account of dates and her assertion that they do not celebrate birthdays. She claims to be uneducated and illiterate and yet she was able to provide the Greek authorities with apparently precise dates of birth of her children, claiming first in evidence that she recalled the month she had given birth and, when challenged as to how she recalled the date of the month, claiming that she also recalled the precise day of the month. The judge at the First-tier Tribunal was troubled by the fact that both the appellant and her brother were able to recall their own dates of birth and yet had never had or seen a birth certificate. Whilst Judge O'Callaghan considered it plausible that parents would inform their children of their dates of birth and the judge's concern strayed into conjecture, this issue has to be seen in the context of the appellant's account as a whole, which includes that her parents were also uneducated and that birthdays do not have any particular significance for the appellant her family and are not celebrated.
18. The appellant was at times precise in dates provided but at other times inconsistent or vague. For example, she stated in evidence that her daughter was born at the end of 2014 in hospital but has not produced any documentary evidence in confirmation, stating in evidence that this was because she used a false name in hospital, and that the cost of this was paid for by a friend of her mother. The date of birth she gave in evidence is different to that she gave to the Greek authorities, stating that

the child was born on 1.1.14, not the end of 2014 as stated in her oral evidence. Her husband stated in interview that none of their children were born in hospital. Asked in oral evidence to explain the discrepancy, she said she was not in contact with her husband at the time of her daughter's birth and did not get back in contact with him until 2016. She wasn't sure if she had told him that their youngest child had been born in hospital. I found the entire account to lack any credibility.

19. In his evidence, the appellant's brother was challenged as to why he had stated in interview that before he left Kuwait he lived in his parents' home with his siblings, including the appellant. Challenged on this, he said this was not correct and that before he left his sister had married and was living with her husband, not at her parents' home. He could not recall when she had married and claimed he thought he was asked how many siblings he had. It is clear from the question and answer that he was asked who he lived with at the address he last lived at in Kuwait. I found the explanation for the contradiction not credible and indicative of a willingness on the brother's part to say what suited him rather than being truthful.
20. The brother's loose association with the truth got him into further difficulties in his oral evidence trying to justify his statement that he was not sure if the appellant had ever had medical treatment in Kuwait but thought her daughter was born in hospital but at a time when he had left Kuwait. However, in the screening interview he said he left Kuwait on 5.1.16. It was pointed out that the child was born in 2014, before he left Kuwait. Challenged on this, he flatly denied leaving Kuwait in January 2016, stating that it was on 23.9.15 when he left Kuwait. Asked how he knew, he said he was told the date and had remembered it, which I found incredible. When it was pointed out that on any version of the date of the child's birth he would still have been in Kuwait, he denied that, stating that he recalled being in France when he heard that she had given birth. He was relying on his alleged absence from Kuwait to justify previously stating that he was not in Kuwait when the child was born, as explanation for not being sure whether the child was born in hospital or not, and why he was unaware as to how her treatment was paid for. I found the witness was evasive and willing to change his account to try and extricate himself from difficulties he had put himself in as to dates. The appellant's own account was also contradictory to her interview account that her children were not born in a hospital but a house. However, I note that later in the same interview she said she was taken to hospital for an operation because she was bleeding and gave birth there. This was but one of a number of internal inconsistencies in the appellant's accounts.
21. There were other difficulties in the brother's evidence, being discrepant with the appellant's own evidence in several regards. For example, she stated that the family moved from the desert in the 1980s to Sulaibiyah before she was born and that this was because the person her father worked for as a farmer offered them a house in Sulaibiyah. Asked how they could afford this, she said they would maybe pay half and at other

times charities and the person her father used to work for helped out. The brother's explanation for the move from the desert to Sulaiibiyah was rather different, stating that it was because everyone was moving from the desert and they also moved in order to register as Bidoons. He made no mention of a house being offered by his father's employer or of any assistance from charity. When asked how the accommodation was paid for, he said they paid the monthly rent and could afford that because his father was working as a farmer, one of his brother's worked in a supermarket and this witness was also working. It was pointed out that he would have been a child at the time of the claimed relocation from the desert. To that he had no good answer other than to repeat that his father was working as a farmer. I found his evidence on this issue not believable and concluded that the account of relocating from the desert had been invented.

22. Similarly, the brother stated in evidence that his parents never received medical treatment. In evidence, the appellant was reminded that in her interview she said that her parents are diabetics and that they sometimes go to the medical centre. Asked in interview how they afforded this, she said they only go once or twice for emergency. However, in oral evidence she denied that they ever received medical treatment, asserting that when they went to the clinic they were asked for medical documents which they could not provide and, therefore, received no treatment. Whilst brother and sister might be considered to be consistent in oral evidence that no medical treatment was received, their oral evidence on this issue is clearly inconsistent with what the appellant had stated in interview.
23. After confirming that she remained in regular contact with her family in Kuwait, Mr Tan asked the appellant why she had not produced her marriage certificate which she said had been issued by the Sheikh at the ceremony. She first denied having any documents, which was the account she had given in interview, although her husband had stated that a paper was provided with their names and details of the witnesses. The judge at the First-tier Tribunal noted her interview account was that no marriage document of any kind had been provided found the appellant inconsistent with her husband's account. In evidence the appellant admitted that a document had been provided but then insisted that it was not an official certificate, only one issued by the mosque. Asked why nevertheless she had not asked for it or a copy to be sent to her, she said it was 'just a normal paper' they gave to her husband. Whilst I accept that corroboration is not required, the explanation for not producing the document was not credible and the inconsistency between accounts and with her husband's accounts also served to undermine her credibility.
24. As indicated above, I am also troubled by the account as to how her husband, brother, herself, and her three children were financed to come to the UK if, as claimed, the family is destitute and have always been as undocumented Bidoon. She denied that this had been financed by her family, who didn't pay anything, but stated that other people had helped, including a person referred to as 'Massif'. She stated in the screening

interview that she had been provided with a forged passport and that the whole trip was organised by her husband's boss and her father's friend. The whole account presented to the Tribunal was shrouded in vagueness lacking particularity, and it remains entirely unclear how this was financed, all of which tended to undermine the credibility of not only the entire account of how the escape from Kuwait was managed but the very claim to be undocumented Bidoons.

25. Other difficulties include the claim that none of the family was educated or received medical treatment when, as Mr Tan has pointed out from NM, that prior to 1993 all Bidoons received free healthcare and that prior to 1987 all Bidoons received free education at government schools. The appellant claims to have been born in 1986 so may not have had any schooling if an undocumented Bidoon, but she has older siblings, one of whom she claimed was 10-15 years older than her. In the circumstances, it is not credible for her to assert the older siblings had not received any education. No credible explanation has been provided to support the assertion that none of the children of her parents received any education. Neither is it credible that her parents were unable to obtain any medical treatment when this had been available to all Bidoons until 1993. As stated above, in interview she stated that her parents had received medical treatment for diabetes.
26. All of the above concerns, taken together in the context of the evidence as a whole, rather suggests that both the appellant and her brother have not been truthful with the Tribunal and have been at pains, trying rather too hard, to deny education and literacy in a concerted effort to maintain that they are from a family of deprived undocumented Bidoons, to the point that their evidence taken as a whole is not only implausible but in fact incredible. In assessing the evidence in the round, I am prepared to make allowances for one or two discrepancies or one or two implausible aspects, which individually would be insignificant and insufficient to reject the appellant's claim, but it is on consideration of the account taken together as a whole that I am driven to find it not credible even applying the lower standard of proof. The convoluted and inconsistent explanations undermine the credibility of the claim so significantly, that I cannot accept that either the appellant, or indeed her brother, is an undocumented Bidoon. I find that the likelihood is, as the judge found in relation to the appellant's husband, the appellant is no more than an economic migrant who has contrived to come to the UK seeking a better life. I find that she has been deliberately untruthful with the Tribunal, and not merely the account of an uneducated person, not only in relation to the previously rejected political involvement claim but also in relation to the claim to be an undocumented Bidoon. I have taken into account that her brother was accepted as such by the respondent but I have to make an independent assessment of the evidence, applying the lower standard of proof. I have reached the conclusion after careful consideration of the evidence taken as a whole that the claim to be an undocumented Bidoon is a fabrication, one which has fallen apart when critically examined.

27. The remainder of the claim falls away as part of the preserved findings of the First-tier Tribunal decision, including the dismissal of the human rights claim.

Decision

28. For the reasons set out above, I find that the appellant does not possess a well-founded fear of persecution or is at any real risk of serious harm on the ground that she is an undocumented Bidoon able to rely on the Country Guidance of NM.
29. I remake the decision in the appeal by dismissing it on all grounds.

Signed DMW Pickup

Upper Tribunal Judge Pickup

Dated 5 October 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
- 5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**
- 6. The date when the decision is "sent" is that appearing on the covering letter or covering email**