Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03730/2020

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 18 January 2022	**On 09 February 2022**

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AS
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Ms Aboni, Senior Home Office Presenting Officer
For the Respondent: Mr Farooq

DECISION AND REASONS

1. I shall refer to the appellant as the 'respondent' and the respondent as the 'appellant', as they appeared respectively before the First-tier Tribunal. The appellant was born in 1994 and claims to be an undocumented Bidoon from Kuwait. His claim for international protection was refused by the respondent by a decision dated 9 June 2020. The appellant appealed to the First-tier Tribunal, which in a decision promulgated on 17 April 2021, allowed the appeal. the Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The judge accepted that the appellant had attended a number of demonstrations in Kuwait and was either an undocumented Bidoon or 'at the very least that he believes that he is.' I am well aware that I should hesitate before interfering with the findings of fact of the First-tier Tribunal judge who has heard oral evidence and whose task it was to make a robust assessment of the evidence. However, for the reasons I give below, I find that the judge has erred in law.

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3. First, the judge accepted that the appellant’s various iterations of past events in Kuwait contain a number of inconsistencies. However, the judge found that he should excuse those inconsistencies because the appellant is ‘illiterate, untrained, and uneducated.’ [15(c)]. I accept that those characteristics of the appellant may explain his failure to give consistent evidence regarding the date of the Kuwaiti census (he stated variously that this had occurred in 1961, 1996 and 1965); being illiterate and uneducated, the exact date of the census may not have been important to him. Likewise, the fact that the appellant may have spoken of attending ‘demonstrations’ but also ‘protests’, believing both to be the same kind of event, may justify the judge’s rejection of the respondent’s claim that the appellant had not been consistent in this part of his evidence. However, a lack of education and illiteracy do not explain why the appellant said at different points in his claim that he had been forced to report to the police for 4 months after the first demonstration but also for only 1-2 months. Moreover, the appellant had [15(k)] given ‘vague’ answers when asked about his reasons for leaving Kuwait after the second demonstration and whether the police had been present at that demonstration (in his asylum interview, he claimed that they had not been but contradicted that claim in oral evidence). Those are matters which do not concern the appellant’s ability to read and write but his appellant’s memory and there was no evidence to indicate that his memory is in any way impaired. I do not say that the judge could not have found the appellant’s evidence credible but I find that the reasons given for accepting evidence ‘littered with inconsistencies’ [15(j)] are insufficient.

4. Secondly, at [15(l)], the judge found that this was ‘one of those rare cases where … watching the appellant with care … I am driven to find that he is telling the truth, even though he made so many mistakes in his evidence.’ Assessing the credibility of a witness in immigration proceedings by his/her demeanour is notoriously problematic. The jurisprudence has, for many years, cautioned against attempting to attach any significant weight to the body language and manner of a witness who is from a different culture from that of the judge and who may be giving evidence through an interpreter. For example, in *KB & AH (credibility-structured approach) Pakistan* [2017] UKUT 491 (IAC), the Upper Tribunal observed:

> “50. We alluded earlier to the possible relevance of demeanour in assessment of credibility and stated our own view that it would rarely if ever be of importance in asylum appeals. Illustrative perhaps of why, it was our own reaction to the first appellant's evidence that throughout he seemed uncomfortable and not always able to give answers to the specific question being asked of him (a number of questions had to be repeated for that reason). However, viewing the evidence as a whole, we bore in mind that we were receiving his evidence through an interpreter and that these features of his oral testimony were as likely to be personality traits not connected to matters going to credence. Hence we decided to attach little negative weight to such shortcomings.”

In the instant appeal, the judge says no more that that he watched the appellant 'with care' and that, having done so, he believed his evidence. Drawing any conclusions as to credibility from the appellant's demeanour was unwise but the judge does not even say what it was about his observation of the appellant that drove him to believe his account 'even though he made so many mistakes.'

5. Thirdly, I find that the judge erred in his analysis of the witness 'the man who claims to be [the appellant's] maternal uncle' [15(g)]. The respondent disputed that this man is the appellant's uncle. The judge found that this witness could return to Kuwait because he has a British passport and that this fact suggested that he was an undocumented Bidoon. That seems to me to be a *non sequitur*. The judge also noted that the witness had 'gone to some trouble' to provide a statement and a picture of a woman he claimed is the appellant's mother. On the basis of those observations, the judge accepted the relationship between the appellant and the witness 'despite the absence of DNA evidence.' In my opinion, the reasons given by the judge are inadequate. That the appellant agreed that the picture was of his mother is, with respect, hardly surprising whilst going 'to some trouble' to sign a statement prepared by solicitors and briefly attending court do little, if anything, to establish the probity of witness. Again, I do not suggest that the judge could not have accepted the evidence of the witness. Rather, the reasons he gives for having done so are so weak as be insufficient. Finally, I do not understand what the judge intends to mean when he writes that he accepted the submission of the appellant's representative 'that [the evidence of the witness] is helpful evidence in respect of the standard of proof'. It is important that the parties (in particular, the losing party) should be able to understand the judge's reasoning. I find that is not always the case with this decision.

6. I find that the judge has failed to explain why he found that the appellant had given a true and accurate account notwithstanding his vague and inconsistent evidence and the lack of clear evidence (DNA or otherwise) to show that the witness was related to him as claimed. The errors are such that the decision of the First-tier Tribunal cannot stand. Accordingly, I set aside the decision. The appeal is returned to the First-tier Tribunal for a hearing *de novo* (none of the findings of fact of the First-tier Tribunal shall stand).

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo.*

LISTING DIRECTIONS; return to First-tier Tribunal; not Judge Herwald; first available date; 2 hours; Arabic (Kuwait) interpreter; face to face at Manchester.

Signed Date 18 January 2022

Upper Tribunal Judge Lane

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.