



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08397/2019**

THE IMMIGRATION ACTS

**Heard at Bradford
On the 5 May 2022**

**Decision & Reasons Promulgated
On the 05 September 2022**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**HTA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Nadeem

For the Respondent: Ms Young, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a male born in 1976 who claims to be an undocumented Kuwaiti Bidoon.
2. By a decision promulgated on 3 March 2021, Upper Tribunal Judge Jackson set aside the decision of the First-tier Tribunal and directed a resumed hearing *de novo* in the Upper Tribunal following which that Tribunal shall remake the decision. Following a Transfer Order, the resumed hearing took place before me at Bradford on 5 May 2022. At the outset of the hearing, Mr Nadeem, who appeared for the appellant, told me that one of the appellant's witnesses, who the appellant had asked to attend to give oral

evidence, was unable to attend because of work commitments. However, the appellant was content to proceed in the absence of the witness. He did not apply for the hearing to be adjourned.

3. The burden of proof is on the appellant to satisfy me that there are substantial grounds for believing that he will be at real risk of persecution or treatment contrary to Articles 2 and 3 of the ECHR if he is returned to Kuwait.
4. I have the hard copy file of papers which had been before the First-tier Tribunal together with supplementary bundles of both parties which were sent to me by email. I have had regard to all the documents before making any findings of fact or reaching any settled view of the merits of the appeal. The weight attaching to the written evidence of witnesses is limited when that evidence has not been tested by cross examination.
5. The error of law decision of Upper Tribunal Judge Jackson sets out the basis of the appellant's claim and the respondent's reasons for refusing that claim at [1-6]. The appellant claims never to have possessed a green card in Kuwait. He claims to have attended demonstrations for Bidoon rights in January 2012 and February 2014. He claims to have escaped when the police became involved in the second demonstration and then travelled to Finland where he claimed asylum as an Iraqi national. The respondent accepts that Kuwait is the country of the appellant's habitual residence but does not accept that he is Kuwaiti citizen or a Bidoon or, if a Bidoon, that he is undocumented.
6. The appellant adopted his witness statement as his evidence in chief. He was cross examined by Ms Young. I also heard oral evidence from Ms Wassen Obeid Salman, who claims to be the appellant's sister in law; the appellant has stated that he married Ms Salman's sister in 2005. Ms Salman has been granted asylum in the United Kingdom as an undocumented Bidoon. Since 2019, she has been a British citizen. She also adopted her witness statement and was cross examined by Ms Young.
7. Ms Young asked the appellant why, if he was an undocumented Bidoon, he had been able to obtain a green card on two occasions. In his asylum interview [Q157], the appellant had said that he and his father held green cards and that 'we had managed to obtain it (*sic*) in 2000 with the help of Abdelaziz Saoud.' In cross examination, the application denied that he had ever made such a claim. He claimed that he had obtained the card in 2014 and not 2000. He said that he had not been helped by Mr Saoud. He claimed that his answer to the question had been inaccurately recorded. As regards Ms Salman, the appellant said that his wife, Ms Salman's sister, had helped him establish contact with her after he came to the United Kingdom.
8. The supplementary bundle filed by the Secretary of State contains several documents relating to the asylum claim of the witness, Ms Salman. Those documents include her screening interview from October 2010. Ms Salman

was asked by Ms Young about the answers she had given in that interview concerning her family. At 6.6, she had stated that she, in addition to her parents, she had two brothers who had been born in 1985 and 1990 respectively. She made no mention in the interview to any sister despite the question clearly stating that she should list all relatives (*'include details of all immediate family members and siblings'*). Ms Salman told the Tribunal that she had mentioned her sister and that the interviewer had failed to record her name. When asked for the date of birth of her sister, Ms Salman initially said that she did not know it and then said she had been born in 1986. Ms Young asked her if her sister was older or younger than her brothers. Ms Salman said that she was younger than both brothers. When it was pointed out by Ms Young that the sister, if born in 1986, would have been older than one of the brothers, she said that her sister was 'the second youngest' after herself.

9. Both parties agree that this appeal turns on the credibility of the evidence adduced by the appellant to prove that he is, as claimed, an undocumented Bidoon. I found neither the appellant nor his witness, Ms Salman, to be witnesses of truth. Both witnesses were unable to give evidence under cross examination which was consistent with that which each had given in earlier stages of their respective asylum claims and appeals. In particular, I do not find that the appellant and Ms Salman are related as claimed or at all. When confronted with her screening interview record in which she had, despite being asked a direct and unambiguous question about her siblings, wholly failed to refer to her sister, the appellant's wife, Ms Salman claimed that her answers had been recorded incorrectly. I do not accept that explanation. Had Ms Salman referred to her sister, I find that her answer would have been recorded accurately in the same way that her other answers manifestly were. I am left to conclude that Ms Salman is not telling the truth about her relationship to the appellant, who I find is fully aware that Ms Salman is not his sister in law or, indeed, related to him in any way.
10. The appellant's own evidence was similarly incredible. He was unable to give a rational explanation for having told the respondent's officer at his asylum interview that he had obtained his green card with the assistance of a Mr Abdelaziz Saoud when he now says that this was not the case. Like Ms Salman, the appellant was reduced to asserting, without any supporting evidence, that his answers had been mis-recorded. Frankly, it makes no sense at all that the interviewer would have recorded Saoud's name if the appellant had not given it.
11. I am aware that the Tribunal should distinguish between 'core' elements of the appellant's evidence and those parts of the evidence which may be of peripheral relevance only. In my opinion, the blatant inconsistencies in the evidence of both witnesses which I have detailed above go to the very heart of their credibility and to the core of the appellant's case, namely the appellant's past conduct in Kuwait and his claimed relationship with an undocumented Bidoon refugee in the United Kingdom. The inconsistencies in the evidence of both witnesses lead me to find that none of their

evidence is reliable. I am reminded that the burden of proof is on the appellant. I find that he has wholly failed to discharge that burden. He has failed to prove that he is an undocumented Bidoon and that, if returned to Kuwait (which the respondent accepts is his country of habitual residence) he will face any ill-treatment at the hands of the authorities there or others. Accordingly, I remake the decision dismissing the appeal on all grounds.

Notice of Decision

I have remade the decision. The appeal against the decision of the Secretary of State dated 20 August 2019 is dismissed.

Signed
Date 28 June 2022
Upper Tribunal Judge Lane

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008,
the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.