



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/02129/2013

THE IMMIGRATION ACTS

Heard at Glasgow
on 13 August 2013

Determination promulgated

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

MOHAMMED AYDI AL KAHTANI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr C McGinley, of Gray & Co., Solicitors
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

- 1) The appellant gives his date of birth as 5 September 1988. He sought asylum in the UK on 25 January 2013, claiming to be an undocumented Bidoon from Kuwait.
- 2) The respondent rejected that claim for reasons explained in a letter dated 22 February 2013.
- 3) First-tier Tribunal Judge Scobbie dismissed the appellant's appeal for reasons explained in his determination dated 13 April 2013.

4) These are the appellant's grounds of appeal to the Upper Tribunal:

1 The Judge states ... in paragraph 38 of the determination that: *"The appellant's position is that he is Bidoon from Kuwait. Although his answers are not in every respect clear at one particular point it does seem that he claims to be an undocumented Bidoon. In this connection, he may well in accordance with the decided case law be at real risk of persecution on return to Kuwait if he is indeed a Kuwaiti Bidoon."* ... it is an error of law for the Judge to expect an undocumented Bidoon to provide additional proof. The Judge noted that the appellant claimed in his interviews and in his witness statement (see paragraph 40 of the determination) that he and his father were "undocumented Bidoons". The Immigration Judge states at paragraph 44 of the determination that: *"The appellant may be unfortunate in his circumstances in terms of obtaining information but the fact remains that the onus is on him and I do not consider that he has met this onus."* ... the Judge has failed to provide adequate reasons for such a finding and reference is made to Wordie Property Co Lt v Secretary of State for Scotland 1984 SLT 345 at 348: *"The decision must, in short, leave the informed reader and the Court in no real and substantial doubt as to what the reasons for it were and what were the material considerations that were taken into account in reaching it."*

2 Given that the Judge acknowledged at paragraph 44 of the determination that the onus is not to a terribly high standard, then ... the Judge has erred in terms of the "caselaw", to find that the appellant is not a Kuwait Bidoon. Reference is made to ... HE (Bidoon - statelessness - risk of persecution) Kuwait CG [2006] UKAIT 00051, which was lodged with the appellant's Skeleton Legal Argument. At paragraph 35 of HE, the Tribunal found ... that - *"It would appear therefore, that the appellant, like other undocumented Bidoons, is in a position where he would not be able to produce proper ID and would therefore, always be at risk of charges of the kind that we accept had been brought against him being repeated. That is an aspect of the risk to undocumented Bidoon generally. We therefore, conclude on the general issue that undocumented Bidoons will face such a level of discrimination in a range of ways in their lives in Kuwait and continue to be the victims of persecution."* ... the Judge has materially erred in law in dismissing this appeal by failing to find that the appellant is a Kuwaiti Bidoon and by failing to provide adequate reasons for the decision ...

5) Mr McGinley referred at the outset to MM (Documented/undocumented Bidoon: Risk) Kuwait CG [2013] UKUT 00356 (IAC), amending and updating HE, although not in any respect which bears on this particular case.

6) Mr McGinley said that at paragraph 44 of his determination the judge based his decision on the onus being on the appellant and on the deficiency of proof. He submitted that it was illogical to expect an undocumented Bidoon to produce documentary evidence, and that in effect was what the judge had required. Mr McGinley relied on the observations in the grant of permission that it was arguable that the judge failed to point out what evidence was missing and failed to take into account the appellant's explanation that he left Kuwait aged 3 and his father had been unwilling to talk to him about the situation there. Mr McGinley submitted that this amounted to inadequacy of reasons. He referred also to the observation in the grant of permission that the judge made no findings on whether the appellant was likely to be an Egyptian national, as the respondent thought. He accepted that it was perhaps not incumbent on the judge to resolve that issue.

7) Mr McGinley pointed to the appellant's account of leaving Kuwait in the 1990's. That was consistent with the background evidence, referred to in the Country Guidance, that 100,000 Bidoon left at that time. The appellant's claims to have lived thereafter in Palestine, Egypt and Greece were consistent with the history of the Bidoon and with recent events in Europe (the impoverishment of Greece). The appellant's explanation

of his background, lack of education and movements was consistent with his lack of documentation and his claim to have lived without means of identity or legal status throughout his life. When the judge said that the onus had not been discharged he had effectively been looking for documents which the appellant was in no position to provide, as was made clear by his witness statement and evidence in the First-tier Tribunal. The judge's error was essentially in looking for something that could not logically exist. The appellant had done all that he could be expected to do, and a decision should be substituted in his favour.

- 8) Mr Mullen submitted that it could not properly be inferred from the determination that the judge thought that the appellant should have produced documentary evidence to back up his claim. At paragraphs 38-44 and in particular at 40 the judge explained why he did not find the appellant's evidence probative. The judge founded on the appellant's total lack of knowledge of the background of the Bidoon and even of his own family. The judge noted that the appellant had lived with his father until 2004, when he was aged 16. His interview and witness statement showed that he knew very little about the Bidoon or their situation in Kuwait. The judge was entitled to think that the appellant should have had greater knowledge derived from living with his father who was also said to be an undocumented Bidoon. The explanation that his father and he were uneducated was no excuse for a lack of knowledge, as people gain experience of life whether educated or not. The judge noted a discrepancy between screening and asylum interview as to how the appellant's sister and mother died, for which he was unable to give a satisfactory explanation. The judge found that not to be a major factor with regard to the core of the claim but he was entitled to find as he did on the appellant having said different things at different times. The judge noted failure to claim asylum in Italy and France as adverse to credibility. The judge acknowledged background information that the appellant's surname was found mainly in Kuwait, but was entitled to consider that not nearly enough. The appellant's claim was one of a nature easily fabricated, and when it lacked any real detail or conviction a judge was entitled to reject it. The account of the appellant's geographical movements and his surname was consistent with many other persons moving around on an informal and unlawful basis, and no strong indication that he was a Bidoon. The appellant said at Q/A 49 and 50 of his interview that he knew nothing about his family, but having left Kuwait at the age of 3 and living with his father for the next 16 years, there was a justifiable inference that some family information would have been communicated from father to son. The judge's reasons although relatively brief were adequate. He had not applied too high a burden of proof nor could it properly be read into his determination that he expected documentary evidence which the appellant was in no position to provide.
- 9) Mr McGinley in response submitted that at his interview the appellant said the expression Bidoon means people who have nothing. The expression Bidoon means "without", much the same thing. The interview had to be read in context. Before reverting to the matter in the passage referred to by Mr Mullen, the appellant had already given the interviewer such information as he had about his family, although that was admittedly little. The low standard of proof applicable in asylum cases

existed because of the inherent difficulty of establishing claims of that nature. This case was a good example of why an appellant should not be expected to prove his case to any higher standard, and why he should be found to have done so by his uncorroborated oral evidence.

- 10) I reserved my determination.
- 11) The appellant's case has been pressed as strongly as it could be both in the First-tier Tribunal and in the Upper Tribunal; but essentially, this appeal is a further insistence rather than identification of legal error by the First-tier Tribunal. The determination does not disclose that the judge thought that the appellant should have been able to produce some evidence of a documentary nature. Such a claim as this may be difficult to support by evidence from sources other than the appellant, but that does not mean that every such claim must be taken at face value.
- 12) The judge was entitled to find the evidence to fall short of probation. The reasons which he gave, as set out in the determination, and as pointed to by the Presenting Officer, are adequate in my view as a matter of law to explain to the appellant why he has not succeeded.
- 13) The appellant's appeal to the Upper Tribunal is dismissed. The determination of the First-tier Tribunal, dismissing his appeal, shall stand.
- 14) No anonymity order has been requested or made.



14 August 2013
Judge of the Upper Tribunal