



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: AA/06381/2014
AA/06069/2014

THE IMMIGRATION ACTS

Heard at Field House, London
On 10 February 2015

Decision and Reasons Promulgated
On 19 March 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

NAAF
JAAF
(ANONYMITY ORDER CONTINUED)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A Mahmood, Aman Solicitors

For the Respondent: Mr P Nath, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The first appellant was born on 15 September 1998 and the second appellant, her brother, was born on 15 January 2003. They are therefore both minors. They appealed to the First-tier Tribunal against the decisions of the Secretary of State of 8 August 2014 to refuse their applications for asylum. The Secretary of State granted each appellant limited leave to remain until they reach 17 ½ years old. First-tier Tribunal

Judge AA Wilson dismissed the appeals against the refusal of asylum and the appellants now appeal with permission to this Tribunal.

2. The appellants claim to be undocumented Bidoon from Kuwait. Whilst the respondent accepted that they are from Kuwait she did not accept that they are undocumented Bidoon. The First-tier Tribunal Judge dismissed the appeals and the grounds of appeal to the Upper Tribunal contend that the Judge failed to consider the guidance given by the Tribunal in relation to Kuwait in the cases of BA [2004] UKIAT 00256, HE [2006] UKAIT 00051 and NM (documented/undocumented Bidoon: risk) Kuwait CG [2013] UKUT 00356 (IAC). It is further contended that the Judge failed to give adequate reasons for his findings that the appellants are not undocumented Bidoon and that his findings on this issue are unclear.

Error of Law

3. At the outset of the determination the Judge correctly identified the issue to be determined in the appeal. At paragraph 1 he said; *"The issue is whether or not [the appellants] are children of an undocumented Bidoon and thus themselves undocumented."* The submissions made to the Judge by the presenting officer did not refer to the country guidance and were to the effect that the appellants would not be at risk if they are undocumented Bidoon. The Judge went on to find that the discrimination faced by undocumented Bidoon is 'pervasive' but 'not life threatening' [17] and that the appellants would face difficulties in relation to education but that the account of their journey to the UK was not consistent with economic deprivation such that there could be no prospect of private education. The Judge concluded that he was not satisfied that *"either Appellant was sent to the UK as they were at risk because they were undocumented Bidoon, their parents are alive and well and contactable in Kuwait"* [18].
4. In reaching his conclusions the Judge failed to answer the question he posed at paragraph 1. Mr Nath accepted that the Judge could have been clearer in his findings on this issue but submitted that the Judge found at paragraph 18 that the appellants are not undocumented Bidoon. Mr Mahmood on the other hand submitted that the Judge did find that the appellants are undocumented Bidoon but found that they are not at risk and that this conclusion is inconsistent with the country guidance.
5. The fact that the representatives were able to make these contrary submissions demonstrates that the basic findings are not clear. The First-tier Tribunal Judge failed to clearly state whether he accepted that the appellants are the children of an undocumented Bidoon and thus themselves undocumented. Had he made that finding clearly then he could have applied the relevant country guidance. If the Judge did accept that the appellants are undocumented Bidoon then he failed to apply the country guidance.
6. The head note in NM summarises the Tribunals conclusions and therefore the country guidance in relation to Kuwaiti Bidoon as follows;

“(1) The distinction made in previous country guidance in respect of Kuwaiti Bidoon, between those who are documented and those who are undocumented,

is maintained, but the relevant crucial document, from possession of which a range of benefits depends, is the security card, rather than the "civil identification documents" referred to in the previous country guidance in HE [2006] UKAIT 00051. To that extent the guidance in HE is amended.

(2) The evidence relating to the documented Bidoon does not show them to be at real risk of persecution or breach of their protected human rights.

(3) The evidence concerning the undocumented Bidoon does show them to face a real risk of persecution or breach of their protected human rights.

(4) It must be assumed that Bidoon who did not register between 1996 and 2000, and hence did not obtain security cards, are as a consequence undocumented Bidoon, though this must be seen in the context of the evidence that most Bidoon carry security cards."

7. In light of the lack of a clear finding and the failure to apply the country guidance I am satisfied that the First-tier Tribunal Judge made a material error of law and that the decision should be set aside. As the Judge made no findings of fact relevant to the determination of the relevant issue I must set aside his findings and conclusions.

Remaking the decision

8. In considering how to approach the remaking of the decision I bore in mind that the appellants are minors and have already had an oral hearing. The parties agreed that it was therefore appropriate for me to remake the decision based on the documentary evidence before me including the record of the oral evidence before the First-tier Tribunal as recorded at paragraphs 3 to 11 of the determination.
9. Mr Nath relied on the Reasons for Refusal letters dated 8 August 2014. He relied on the issues identified in the Reasons for Refusal letters in relation to the credibility of the account of the appellants' father's arrest. He accepted that if the appellants are found to be undocumented Bidoon they are entitled to asylum in accordance with the country guidance in NM.
10. Mr Mahmood submitted that the appellants' father had been issued with a green card in 1996 and that the evidence from the appellant's relative, who submitted a witness statement and gave oral evidence to the First-tier Tribunal, was that the appellants' father was issued with a green card in March 2000 for 6 months but that it was not renewed. He submitted that this is the key evidence because it is clear from paragraphs 33 and 83 of NM that those who are unable to renew green cards are undocumented Bidoon. He submitted that this evidence was unchallenged. He therefore submitted that the appellants would qualify as the children of an undocumented Bidoon. He submitted that the birth certificates show that the appellants are non-Kuwaiti Bidoon.
11. I have considered all of the evidence before me. The first appellant said in her screening interview that she is a Kuwaiti Bidoon. She repeated this claim in her asylum interview and also said that she does not have any documentation and that her father had been issued with a temporary identification document which is not

recognised (Q33-65). She also said that her father works illegally buying and selling sheep and that he was arrested at a demonstration and detained for 10 -14 days before being released and that his was 2 months prior to the appellants' departure from Kuwait. She said that she has been in contact with her parents since coming to the UK.

12. The appellants submitted birth certificates and translations. The birth certificates refer to the appellants' father and mother as being 'Non Kuwaiti (Bidoon)'. The copy card (and translation) submitted in relation to the appellants' father states that it was issued by the Executive Committee for Illegal residents on 19 March 2000 and that it expired on 18 September 2000. It states that it confers no proof of identity. According to the Reasons for Refusal letter (paragraph 19-20 quoting from the Country of Origin Report 2012) such cards (referred to as green cards) are held only by Bidoon.
13. I have considered this documentary evidence along with the interview records and I am satisfied that the appellants parents are Bidoon and that the appellants are therefore ethnic Bidoon.
14. The appellants' case is that they are undocumented Bidoon. The witness who gave evidence in the First-tier Tribunal is the cousin of the appellants' mother. In her statement she said that she made enquiries of the appellants' father in relation to the green card and that she had been told that it was obtained after the appellants' father attended the Bidoon Committee in 1996 when he was issued with a card for one year. He then obtained the current card which was valid for 6 months. He said that he was not part of the 1965 census but that he and his father were born and raised in Kuwait. He tried to renew the card after its expiry in September 2000 but he was told that he was not eligible. I accept that this is not evidence directly from the appellants' father or from the appellants themselves. However I take account of the fact that the appellants are children and may not have been able to give this amount of detail about this issue and in these circumstances it is appropriate for me to attach weight to this evidence. In the Reasons for Refusal letter the respondent said that if the appellants' father had one of these cards, which was not available at the time of the respondent's decision then he is a documented Bidoon.
15. In NM the Tribunal considered the issue of the green cards and said;

“33. The Bidoon committee issues Bidoon who registered between 1996 and 2000, a cut-off date set by ministerial decree, with security cards, which are informally known as "green cards". The cards identify a holder with their name, address and birth date, but it is stated on them that the card does not serve as proof of identity and that it may be used only for specified purposes, though exactly what those purposes are remains unclear. We set out below situations where possession of such a card is significant. The cards have to be renewed either yearly or once every two years depending on the class of card. Some Bidoon report that they could renew their cards and those of their offspring simply by presenting their previous cards and documents proving their registration in the 1965 census or residence in Kuwait before that time. Other Bidoon said that they had to undergo interviews each time they wished to renew their cards.

...

35. It is said in the HRW report that the unregistered Bidoon, i.e. those who are not able to renew security cards, face even greater hardships. Some unregistered Bidoon told Human Rights Watch that in the past they had found ways to obtain passports from other countries, but at some point suspected or discovered that these passports were counterfeit. Those Bidoon who presented counterfeit passports in order to keep government jobs or receive birth or marriage certificates, and later discovered that they could not renew these passports, found that their files with the committee had been closed and they could not renew their committee-issued security cards. They therefore now remained illegal residents without even the limited protection of a security card. The same must apply to other unregistered Bidoon who have never obtained security cards in the first place.

...

87. The third category consists of the unregistered Bidoon, as they are described in the HRW report, i.e. those who are not able to renew their security cards or people who have never obtained security cards. This group of people are denied all the benefits that are available to those with security cards, as set out above. Thus they cannot obtain passports of any kind, they are not provided with any educational funding and they are denied access to government clinics and hospitals altogether. Thus they are not even able to purchase low-cost health insurance through the government-administered program. Their only recourse is to seeking medical services from expensive private hospitals, which is clearly extremely problematic given their limited ability to find work."

16. The account that the appellants' father was not permitted to renew his green card is therefore consistent with the background evidence and the findings in NM.
17. The Reasons for Refusal letter highlights some inconsistencies in the account given by the first appellant in her account in relation to her father's arrest and detention. I take into account the first appellant's age in considering this account. I consider the appellant's explanation in her witness statement that her father told her mother about his detention in her presence. Given her age, the circumstances in which she was made aware of her father's detention and in the context of my other findings above I am satisfied to the appropriate standard that the appellants' father was detained as claimed.
18. In light of all my findings above I follow the country guidance cases and I find that the appellants are the children of an undocumented Bidoon father and are therefore themselves undocumented Bidoon and they accordingly face a real risk of persecution or breach of their protected human rights.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of a material error on a point of law.

I set aside the decision of the First-tier Tribunal.

I remake the decision by allowing the appeals on asylum grounds. As a result the appellants do not require Humanitarian Protection and that ground of appeal is dismissed. The appellants' appeals on Human Rights grounds under Article 3 ECHR are also allowed.

Signed

Date: 18 March 2015

A Grimes
Deputy Judge of the Upper Tribunal

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed

Date: 18 March 2015

A Grimes
Deputy Judge of the Upper Tribunal