



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

Appeal Number: PA/10799/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 8th May 2017**

**Decision & Reasons Promulgated
On 24th May 2017**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MR K H A-S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Alam instructed by A2 Solicitors

For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals against a decision of First-tier Tribunal Judge R J N B Morris dismissing the appellant's appeal against the decision of the Secretary of State dated 21st September 2016 to refuse him asylum, humanitarian protection and protection under the ECHR. The grounds assert that the judge made findings which were contrary to the evidence and/or attached undue weight to matters which were peripheral. The

judge failed to apply the low standard of proof and the most anxious scrutiny and simply adopted the adverse points made in the reasons for refusal letter.

2. It was submitted that the judge failed to consider the objective evidence in the appellant's bundle which demonstrated that the Bidoon Committee did not register all Bidoons.
3. The judge further misdirected herself at paragraph 25 by not giving any weight to the evidence of the appellant's supporting witnesses despite the consistency of their account. The judge drew conclusions which were based on evidence of the witness that the judge had already concluded was unreliable.
4. Further, the judge misconstrued the appellant's answer to AIR27 and 28 and erred at 29 when she concluded that there was no record of 18 February 2014 protest.
5. At the hearing before me Mr Alam submitted that specifically the judge erred in her assessment and conclusion that the appellant would be a documented Bidoon and failed to appreciate the evidence before her. I was referred to the case law, specifically page 76 of the appellant's bundle, and **NM (documented or undocumented Bidoon: risk) Kuwait CG [2013] UKUT 00356** which identified the distinction between those who are documented and those who are undocumented Bidoon and the relevant crucial document from possession of which a range of benefits depends is a security card rather than the "civil identification document".
6. At paragraph 47, Mr Alam submitted, the judge erred in concluding that the appellant would be a documented Bidoon, failed to appreciate it was possible and not to be documented as a Bidoon. I was referred to **NM** at paragraph 47.
7. At paragraph 88 of **NM** the Tribunal distinguished between those who had civil identification documents from which benefits flowed and those who were not able to renew their security cards or people who had never obtained security cards. Registration was identified at paragraph 91 as being the 'gateway' to relevant and potentially significant documents.
8. What is clear from **NM** is that there are three categories of Bidoon as identified at paragraphs 82 and 87 of **NM**. The judge proceeded on the basis at 23 that the appellant was not an undocumented Bidoon and merely because of her findings on poor credibility to conclude that there was a possibility that his family were duly registered in 1965. Albeit that there was an Executive Committee for Illegal Residents established in 1993 to regularise Bidoon status, as indicated at paragraph 47 of **NM**, it was estimated that no more than 20% of Bidoon were able to fulfil the restrictive conditions laid down by the law in 2000 and indeed from 1986

onwards the government began to restrict access by the Bidoon to passports granting them only to individuals with official permission.

9. At [37], of the decision, it is correct to say that it was not a pre-requisite for being registered with these bodies that a person or his or her family had already registered with the 1965 census but the case law presents a mixed picture of the ability of Bidoon to be able to register.
10. Further, at paragraph 24(iii) there appeared to be a contradiction in the judge's findings on the one point that the appellant had some knowledge of issues relating to undocumented Bidoons and further contrasted with a statement that the appellant's ignorance of material aspects of Bidoons' circumstances after independence undermined his claim.
11. The approach to the witnesses at paragraph 25 appears to be based on a previous rejection of the appellant's credibility whereby the judge states at 25(i):

"Given my findings generally regarding the appellant's credibility and that of Mr [K] and Mr [A] I find the claim that he had two such fortuitous meetings in crowded areas of London cast some doubt as to the reliability of this part of their evidence".
12. It is also clear that the appellant is attributed with giving contradictory causes as to his detention at paragraph 28(i) because of a misunderstanding of the interview record. It is quite clear that his responses to questions 27 and 28 of his asylum interview did not accurately reflect the answers to the questions. This too contributed to the assessment of the appellant's credibility.
13. Further, at paragraph 29 the judge states "there is no reference to a protest in February 2014". That is factually incorrect and indeed there is evidence in the papers which refers to a protest in February 2014. This was not addressed by the judge.
14. The judge does comment that there were three opportunities in the appellant's screening interview where he could have mentioned his alleged participation in the demonstration and subsequent arrest and did not do so.
15. The judge states that the appellant had not given a satisfactory explanation (I note there is a letter dated April 2014 from the appellant's solicitors referring to his detention and prior to the asylum interview), for the two answers in relation to his reasons for not referring to the detention in his screening interview, -that he was afraid of the government and that he was tired, but the reasoning does not necessarily take into account the fear and suspicion of the government in Kuwait.
16. I took into account Mr Kotas' submissions, not least that the appellant's credibility was damaged and the reference to the lack of mention of

detention in the screening interview, but criticisms of the judge's findings are such that they may have affected the materiality of the decision.

17. The judge at 31 also appears to consider that someone who claims to be under-privileged, stateless and undocumented and who has only ever worked in menial jobs would be unable to instruct an agent and this too was contested as being illogical.
18. I find that there are evident factual errors and inadequate reasoning within the determination emanating in material errors of law and the decision should be set aside and remitted to the First-tier Tribunal for re-determination.
19. As the decision was predicated largely on the credibility I preserve none of the findings. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

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

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

Signed
2017

Date Signed 15th May

Upper Tribunal Judge Rimington