



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/02153/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at IAC Manchester
On 3 May 2016**

**Decision Promulgated
On 16 May 2016**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JABER HAMAD MOHSIN HAMOUD AL-ANZI

Respondent

Representation:

For the Appellant: Ms C Johnstone, Senior Home Office Presenting Officer
For the Respondent: Mr A Duncan, instructed by Christian Gottfried & Co
Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department (“SSHD”) against a decision of First-tier Tribunal Judge Simpson allowing Mr Al-Anzi’s appeal against the respondent’s decision to refuse him leave to enter the UK following the refusal of his asylum claim.
2. For the purposes of this decision, I shall refer to the Secretary of State as the respondent and Mr Al-Anzi as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.
3. The appellant is considered by the respondent to be a national of Kuwait born on 12 January 1974 and whose name is Jabar Hamad Mohsin. He claims to

be a Kuwaiti Bidoon born on 3 February 1974 named Jaber Hamad Mohsin Hamoud Al-Anzi. He claims to have arrived in the UK on 12 or 13 May 2013. He claimed asylum on 13 May 2013. His claim was refused on 27 January 2015 and he was refused leave to enter the same day. He appealed against that decision and his appeal was heard in the First-tier Tribunal on 21 September 2015 and allowed in a decision promulgated on 21 October 2015. The respondent has been granted permission to appeal to the Upper Tribunal against that decision.

4. The basis of the appellant's claim is that he is an undocumented Bidoon and is accordingly at risk in Kuwait. He claims to have been arrested in Kuwait in 18 February 2011 after attending a demonstration with his two brothers Mashal and Fahad. Mashal and Fahad left Kuwait afterwards and came to the UK where they were granted asylum, but he remained in Kuwait, fleeing in May 2013 after attending another demonstration in February 2013 and following the arrest of one of his friends.

5. The respondent, in refusing the appellant's claim, noted that biometric evidence identified him as having applied in Baghdad for a non-immigrant visa to the USA, in April 2013, in the identity of Jaber Hamed Mohsin, using a national passport of Kuwait. The respondent noted further that the appellant had, during his asylum interview, denied having ever held a Kuwaiti passport and denied having been in Baghdad or having applied for a US visa and had maintained his claim to be a Bidoon who had been smuggled out of Kuwait and brought to the UK by an agent. The respondent considered that the appellant would not have had access to a Kuwaiti national passport if he was an undocumented Kuwaiti Bidoon. The respondent noted that the appellant had failed to provide any evidence to show that he was the brother of the two undocumented Bidoon refugees to whom he had referred. The respondent accepted that the appellant was a Kuwaiti national and that if it was accepted that he was an undocumented Bidoon he would be at risk on return to Kuwait. However the respondent did not accept that he was an undocumented Bidoon and did not accept that he was at risk on return to Kuwait.

6. The appellant's appeal was heard in the First-tier Tribunal on 21 September 2015. He submitted DNA evidence confirming his relationship to his two brothers and a statement in which he admitted having applied for a visa in the American Embassy in Baghdad and explaining that he had lied about that as the agent had threatened to harm his family if he gave any information about having been in Baghdad. The judge heard from the appellant and his brother Mashal. On the basis of a Sprakab linguistic report in the respondent's appeal bundle, the judge accepted that the appellant was born and raised in Kuwait. She also accepted that he was a Bidoon and, given that his two brothers had been granted refugee status in the UK as undocumented Bidoons, accepted that he was an undocumented Bidoon. She found that he would therefore be at risk on return to Kuwait and she allowed the appeal on asylum and human rights grounds.

7. Permission to appeal to the Upper Tribunal was sought by the respondent on the grounds that the judge had failed to explain why she accepted that the

appellant was a Bidoon, and an undocumented Bidoon, and had failed to resolve the conflict between his evidence to that effect and the factual evidence that he had used a Kuwaiti passport to try and obtain a US visa. It was asserted further that the judge had failed to give adequate reasons why the appellant's brothers' apparent lack of registration should mean that the appellant was an undocumented Bidoon.

8. Permission to appeal was granted to the respondent on 6 November 2015.

9. I heard submissions from both parties at the hearing and have decided that the judge's decision is materially flawed and cannot stand.

10. Contrary to the assertions made by Mr Duncan I do not accept that the judge had all relevant matters in mind and made clear findings in her decision. On the contrary, her findings as to the appellant's status as a Bidoon, and an undocumented Bidoon, are not supported by full and proper reasons and were made without addressing the conflicting evidence relied upon by the respondent in refusing his claim.

11. In refusing the appellant's claim, the respondent relied upon the significant matter that the appellant, having claimed at his interview to have never held any Kuwaiti documents and to have never had a Kuwaiti passport, had been identified by biometric evidence as having applied for a US visa in Baghdad with a Kuwaiti national passport. Furthermore, that had taken place at a time when he had claimed to have been in hiding in his employer's home in Kuwait following his attendance at a demonstration. In addition, when confronted with that evidence at his interview, the appellant denied having been in Baghdad and having applied for a US visa and maintained his account of having remained in Kuwait until his departure for the UK. Clearly several issues arose out of that conflicting evidence: the conflict between the appellant's possession of a Kuwaiti national passport and his claim to be a Bidoon; the conflict between the appellant's account of having been in hiding in Kuwait after attending a demonstration with the evidence that he was in fact in Baghdad at the time; and the fact that he had maintained his lie by denying any knowledge of the matters put to him when confronted by the respondent's evidence.

12. However the judge did not address all of these matters. The only reference she made to the conflicting evidence was at [30], where she found that the appellant's admission of having lied to the immigration officer undermined his credibility, but then went on to state that he had least given an explanation and apology. At no point did she actually engage with the conflicting evidence or make a finding that she accepted his explanation for being in possession of a Kuwaiti passport or for lying about his account, or, if she did, give reasons as to why she accepted it. The findings that she made at [31] in relation to the linguistic report indicate that she misunderstood the significance of the appellant's visa application in Baghdad, considering it to be relevant to the question of whether he was of Kuwaiti or Iraqi nationality and descent, whereas the respondent had never disputed that the appellant was from Kuwait. She did not engage with the most relevant point, which was the significance of the

appellant being in possession of a Kuwaiti national passport when claiming to be a Bidoon, a matter raised by the respondent at [14] of the refusal letter as being contradictory. Her conclusion at [31], that the appellant was a Bidoon, was therefore unsupported by any, or any proper, reasoning.

13. Likewise, in accepting that the appellant was an undocumented Bidoon because of his brothers' accepted status, the judge failed to explain why his brothers' lack of registration meant that he was also an undocumented Bidoon. In addition the judge did not make any findings in regard to the appellant's experiences in Kuwait and as to whether or not she accepted his account of having attended two demonstrations, having been arrested following the first detention and having fled Kuwait after the second detention. At [34] she found that his claim to have been involved with a demonstration was consistent with the background information, but her findings went no further than that.

14. Accordingly I agree with the respondent that the judge failed to make adequate findings on material matters and failed to provide adequate reasons for the findings that she did make. The respondent's grounds have been made out. The judge's decision contains material errors of law and simply cannot stand. None of the findings can be preserved and the appeal clearly needs to be determined afresh on all grounds. Accordingly the appeal will be remitted to the First-tier Tribunal to be heard de novo.

DECISION

15. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The Secretary of State's appeal is allowed. The decision is set aside. The appeal is remitted to the First-tier Tribunal, to be dealt with afresh, pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Simpson.

Signed
Date

Upper Tribunal Judge Kebede