



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

Appeal Numbers: OA/07800/2014  
OA/07806/2014  
OA/07809/2014  
OA/07811/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 3 February 2016**

**Decision and Reasons  
Promulgated**

**On 17 February 2016**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA**

**Between**

**IMAM TURKI ALSHAMRY**

**H AF**

**M AF**

**A AF**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the appellant: Mr S Saeed, Counsel

For the respondent: Mr C Avery, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellants who claim to be stateless Bidoons from Kuwait appealed against the decisions of the respondent refusing to grant them entry clearances as a spouse and children of their sponsor who has been

granted humanitarian protection in the United Kingdom pursuant to paragraph 352 of the Immigration Rules. First-tier Tribunal Judge James dismissed all the appellants' appeals in a decision dated 7 August 2015.

2. Permission to appeal was granted by first-tier Tribunal Judge Pooler on 16 December 2015 who found that it is arguable that the Judge failed to give separate consideration and to make findings in relation to family reunion on the part of a child and to make proper findings in respect of those requirements. It is also arguable that the Judge erred in her assessment of the mother's appeal by reference to Article 8.
3. The First-tier Tribunal Judge at paragraph 12 of the determination sets out all the evidence provided by the appellant. This was their birth certificates issued by the Ministry of Health in Kuwait. The birth certificates confirmed that each of the appellants are non-Kuwait stateless Bidoons. The marriage certificate of the appellant and his wife confirming they married in 2003 and that their nationality is "non-Kuwaiti" and issued by the Imam of the mosque. UNCHR document confirming registration of the spouse and her three children 27 July 2014 (confirming their status position) and the respondents card issued by UNHCR for a further appointment on 2 July 2015, DNA results confirming the relationship of the sponsor and the children as their father and were also the children of the mother. The sponsor's asylum interview on 4 January 2012 in which he gave the details of his wife and children at his interview on and confirmed he was a Kuwait Bidoon. A detailed asylum interview of the sponsor sitting down his statelessness and that of his family, the threats and deprivations experienced due to their statelessness in Kuwait, and details of his marriage to the first appellant. Photographs of the sponsor and the first appellant wedding ceremony.
4. The Judge accepted that the DNA tests were undertaken by an credited scientific laboratory authorised by the respondent, Cellmark. The sponsor in his witness statement confirmed that his wife travelled from Kuwait to Syria after he obtained refugee status but due to civil war, she travelled to Jordan and their children as a refugee using the services of an agent. The Judge took judicial note of the Syrian humanitarian crisis.
5. The Judge stated, "taking the entirety of the evidence before me into account, except the documentary and oral evidence submitted in support of the fact the appellant's stateless Bidoons, I am satisfied that the appellants have provided credible documentary evidence of the nationalities and identities under paragraph 320 (3) and therefore the mandatory grant the refusal of entry clearance does not apply. Considering the positive finding that these appellants are stateless Bidoons the respondent should consider accepting the appellant's claims and documents under the discretionary power of paragraph 320 (10). The Judge also accepted the marriage certificate and the wedding photographs, which together with the birth of the children confirm that the

couple's relationship was ongoing up to the conception and birth of the youngest child in January 2010, when the sponsor then fled and claimed asylum in the United Kingdom in 2011.

6. The Judge however found that he cannot accept that documents which include conversations from "what's up" because they have not been translated. He found that in the absence of evidence of contact between the appellant and his wife, there is nothing to show that they are ongoing and subsisting relationship since the sponsor arrived in the United Kingdom and therefore the appeal fails under the Family Reunion Rules.
7. I find this to be a remarkable conclusion given the evidence before the First-tier Tribunal Judge. It is perverse for the Judge to dismiss an appeal where the appellant has provided all documents, including documents from UNHCR which state that the appellants are stateless Bidoons. The appellant's sponsor also gave the names of his wife and children at his asylum interview in 2012 as his pre-flight family. This was clearly the pre-flight family of the sponsor who has been granted humanitarian protection in the United Kingdom.
8. The Judge accepts that the relationship was subsisting until the conception of the last child in 2011 when the sponsor left the country. The Judge gave no reasons for why he thought that the relationship has ceased to subsist and upon what evidence he had a suspicion that the relationships no longer subsists. The very fact that the application has been made for the appellants to join their sponsor in the United Kingdom is indicative of a subsisting relationship.
9. The Judge failed to take into account the guidance given in the case of **Goudey (subsisting marriage - evidence) Sudan [2012] UKUT 00041 (IAC)** where Mr Justice Blake stated that the matrimonial relationship is to continue at the relevant time rather than just the formality of a marriage, but it does not require the production of particular evidence of mutual devotion before entry clearance can be granted. It also said that evidence of telephone cards is capable of becoming corroborative of the contention of the parties that they communicate by telephone, even if such. I cannot confirm the particular number the sponsor was calling in the country in question. It is not a requirement that the parties also ring or text each other. Where there are no countervailing factors generating suspicion as to the intention of the parties, such evidence may be sufficient to discharge the burden of proof on the claimant.
10. The Judge placed a great deal of reliance on untranslated "what's up" messages and even then, said that they do not prove that the appellants and the sponsor are in a continuing relationship. The Judge also did not give reasons for why he considered that the appellant's children are no longer in a relationship with their sponsor who is their father. He gave no

reasons for why he came to this conclusion given that the appellants provided credible documents to prove their case.

11. I therefore find that there has been an error of law in the assessment of this case as to whether the requirements of the Immigration Rules have been met. I therefore set aside the decision in its entirety, as it is infected by a material error of law.

### **Remaking the decision**

12. Everything is neutral in this case as there was no evidence of lies, poor immigration history of deception. I am satisfied that the evidence as a whole that the Immigration Rules have been complied with and that the appellant and her children are the pre-flight family of their sponsor who has been granted humanitarian protection in in this country. They have provided ample and cogent evidence to demonstrate this.
13. I therefore find that the appellants meet the requirements of 352 of the Immigration Rules and are entitled to entry clearance as the pre-flight family of their sponsor who has been granted humanitarian protection in the United Kingdom.

Signed by  
A Deputy Upper Tribunal Judge  
Mrs S Chana

Dated this 15<sup>th</sup> day of February

2016