



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/22209/2016**

Appeal Number:

HU/22213/2016

HU/22215/2016

HU/22217/2016

HU/22222/2016

HU/22223/2016

HU/22227/2016

THE IMMIGRATION ACTS

Heard at Stoke

**Decision & Reasons
Promulgated**

On 6 December 2017

On 12 December 2017

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**NF
NG
AG
ASG
GG
ASAG
FG**

(ANONYMITY DIRECTION MADE)

Appellants

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Naz, Counsel instructed on behalf of the Appellants
For the Respondent: Mr Bates, Senior Presenting Officer

DECISION AND REASONS

1. The Appellants appeals with permission against the decision of the First-tier Tribunal (Designated Judge Woodcraft) who, in a determination promulgated on 26th July 2016 dismissed the first Appellant' appeal against the decision to refuse entry clearance as the spouse of her Sponsor and husband and the appeals of the minor children (who are the remaining 6 appellants) for family reunion. The decisions that were made by the Entry Clearance Officer on the 31st August 2016.

Direction Regarding Anonymity - Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

2. Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity as the claim concerns minor children. No report of these proceedings shall directly or indirectly identify them. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.
3. The background is set out in the determination. The main appellant together with her six children had applied for entry clearance to join her husband in the United Kingdom. Those applications are made on 20 July 2016. On 31 August 2016 the Entry Clearance Officer refused their respective applications under paragraph 320 (3) and on Article 8 grounds.
4. The refusals in respect of all the appellants are in the same terms. It was noted that the applicants were currently in Greece and as evidence of their identity and status had submitted a photo copy of a Greek document which detailed the lodging of an application in Greece and contained their photographs, names and date of birth. However it was also noted that none of the appellants had submitted any further evidence of their identity or nationality in support of the application. It was stated that it was not known what documents were provided to the Greek authorities in order to demonstrate their identity. If no original identity documents are available the onus is on the applicant to provide a reasonable alternative or to provide an explanation for the absence. There had been no explanation as

to why any of the applicants had not been able to provide original identity documents. Thus it was refused under paragraph 320(3) of the Immigration Rules. As to Article 8, the Entry Clearance Officer considered whether the circumstances constituted “exceptional circumstances” to warrant the grant of entry clearance outside of the rules, but decided that they did not.

5. The appellants filed notices of appeal stating that the appellants were not able to provide identity documentation as they were undocumented Bidoons who have no access to identity documents and made reference to reliance on the Greek issued identity document that had been presented. The grounds also made reference to the DNA evidence which confirmed the family relationships to the sponsor.
6. The appeal came before the First-tier Tribunal (Judge Woodcraft) on the 3rd April 2017. The respondent was not represented at that hearing. In a decision promulgated on the 6th April 2017, the judge dismissed the appeals both under the Immigration Rules and Article 8.
7. Permission to appeal that decision was granted by Designated Judge Murray on the 26th October 2017. The grant of permission states as follows:

“the grounds of application state that there is a misdirection by the judge when he finds that the appellants are not undocumented Bidoons as he has come to this decision based on speculation and although he made reference to the case of MN he did not note that in that case the appellant had been working illegally. They state that the judge was wrong when he found the sponsor not to be an undocumented Bidoon at paragraph 26 as the respondent has accepted that he is an undocumented Bidoon and the relationship of the family to the sponsor is not in dispute. They state that the judge failed to grapple with whether the appellants are part of the sponsor’s pre-flight family and it is difficult to follow paragraph 29 of the decision. They state that the judge should not have used such a strict application of paragraph 320 (three) the rules as he failed to find that undocumented dudes have no documents (BA and others, SA and NA (Kuwait).

Why is there no evidence the sponsor was granted refugee status on the basis that he is an undocumented Bidoon? The judge found the sponsor not be credible but the respondent has found him credible enough to be granted refugee status. Undocumented Bidoons do work in Kuwait although they may do so illegally. They do not have documents to produce to the authorities. The appellants have been granted international protection cards by Greece so the Greek authorities must have been satisfied with their account. The sponsor is a refugee and the appellants have no documents which would be the case if they are undocumented Bidoons. This should have been taken into account by the judge when considering paragraph 320 (3). The appellants of the family members of the sponsor who was a refugee.

There are arguable errors of law in the judge's decision."

8. Thus the appeal came before the Upper Tribunal. After hearing from the advocates I informed the parties that I was satisfied that the judge had made a material error of law in his decision and that as a consequence the decision should be set aside and none of the findings of fact made should be preserved. My reasons for reaching that conclusion are set out below.
9. The sponsor appeared before the judge and gave oral evidence that he had left Kuwait on 13 July 2015 following persecution there and applied for asylum in the United Kingdom and was subsequently granted refugee status on 21 March 2016 by the UK authorities. He had been married in Kuwait (although they could not marry at an official marriage registry because they were undocumented Bidoons) and during their relationship six children were born. The DNA evidence that had been produced demonstrated that they were related as claimed. He confirmed that the family members were living together before he left his home country to enter the United Kingdom. It appears the family members left Kuwait and travelled to Greece and it was there that they had applied for entry clearance. It is also clear that they had been provided with some documentation by the Greek authorities. Since their arrival, the sponsor had travelled to see his family on three occasions (see paragraph 12).
10. The judge's findings are set out at paragraph 21 – 31. As to the issue concerning the inability of the applicants to submit documents of their identity and nationality, he did not consider that there had been any reasonable explanation. He considered the applicant's case that as undocumented Bidoons they could not provide such documentary evidence as they had no access to official documentation. However, it is plain from reading the findings of fact that he did not find the sponsors evidence to be "straightforward" (see paragraph 23) when considering how the family had travelled to Greece and in particular the funding of their travel. The judge made reference to the funding of the journey at paragraph 25 and reach the conclusion that if such funding had been raised it must follow that they had been working and could therefore not be undocumented Bidoons.
11. The judge recorded at [26] that there was a document from the Greek authorities (international protection) but that it was not fully translated. The judge also recorded at paragraph 26 that the sponsor claimed that he was an undocumented Bidoon but that he had not been very forthcoming about his claim and did not produce the full text of interview and thus it was difficult to see the basis upon which the Secretary of State had granted him refugee status. At paragraph 28 he reached the conclusion given the unreliability of the sponsor's evidence, he was not prepared to accept that he had established that he was an undocumented Bidoon.

12. Since the appeal was dismissed it as been confirmed by the respondent that the sponsor was granted refugee status as an undocumented Bidoon. As I understand it, this was a grant on the papers and not following a court hearing (see rule 24 response and submissions of Mr Bates).
13. Furthermore I was informed that the hearing that the appellant and her children were now resident in the United Kingdom having been transferred here from Greece with the assistance of the UK authorities. No documentation was produced but I understand from Miss Naz that this was under the Dublin III Regulations. The claim for asylum was now under consideration based on their relationship to the sponsor and his refugee status as an undocumented Bidoon. Mr Bates had no information concerning these recent events and the Tribunal only learnt of this when I enquired of Miss Naz as to how the appellant was now in the UK. I would have expected that one of the parties would have provided this information in advance.
14. However I am satisfied that the judge fell into material error in his decision and reaching the conclusion that the sponsor had not demonstrated that he was an undocumented Bidoon which affected the reasoning process in the rest of the determination. As set out, the judge was not assisted by the lack of a presenting officer who would have been able to inform the Tribunal as to the basis upon which the sponsor had indeed been granted refugee status. The judge recorded at [26] there had been no evidence as to the basis of his status and at [28] the judge was not prepared to accept that he had been granted status on the basis as claimed. This is a material error as it is a clear mistake of fact and I am satisfied that if the judge had been furnished with this evidence that he may have reached a different conclusion. It did not assist the Tribunal that there was no fully translated document from Greece.
15. In my view the mistake of fact wholly undermines any findings of fact made concerning the appellants, their journey and in any such funding and is so fundamental that the decision cannot stand.
16. The grounds and grant permission also identify other issues of relevance. In particular the applicant's solicitors provided material to the judge to consider including country information and the country guidance decision of NM and others (documented/undocumented Bidoon: risk) [2013] UKUT. The country material makes reference to the children's nationality being derived from their father. However as the judge did not accept that their father was an undocumented Bidoon, he attached no weight to that material.
17. A further issue related to the ability to work. The country guidance decision makes reference to only those with legal residency or civil status being able to hold employment (see paragraph 42) but also goes on to say

that private employers have grown in confidence in hiring stateless persons as employees despite their lack of legal status. This does not appear to have been taken into account either.

18. Consequently for the reasons I have given, I am satisfied that there is a material error of law in the decision of the first Tier Tribunal and that it should be set aside. None of the findings of fact are preserved and the matter shall be remitted for further hearing before the first Tier Tribunal on a date to be fixed.

Notice of Decision

The decision of the FTT involved the making of an error on a point of law; it is remitted to the First Tier Tribunal) to hear the appeal afresh.

An anonymity direction is made.

Signed 

Date: 7/12/2017

Upper Tribunal Judge Reeds