



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

Appeal Number: PA/05029/2016

THE IMMIGRATION ACTS

Heard at Birmingham

Decision & Reasons

On 28 September 2017

**Promulgated
On 03 October 2017**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**KHALID DOAIH ALENZI
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Brooks, instructed by Aman Solicitors

For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Khalid Doaih Alenzi, was born on 2 August 1991 and is a male citizen of Kuwait. The appellant entered the United Kingdom in November 2015 and claimed asylum. By a decision dated 22 April 2016, the respondent refused the appellant asylum. The appellant appealed to the First-tier Tribunal (Judge Alis) which, in a decision promulgated on 29 March 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Before the First-tier Tribunal, the parties and the judge were agreed [20] that, if the judge found the appellant was an undocumented Bidoon then he should win his protection appeal. The judge heard an account of past events from the appellant which are also described in his written evidence. The account includes a claim that the appellant was arrested on two occasions in January and in February 2014 respectively. The appellant claimed that he had been detained for 30 days following his arrest at the demonstration and earlier than that in January 2014, had been detained for seven days following “a fight”. At [63], the judge wrote:

“Whilst [the appellant] explained why he had no paperwork or a security card I have to consider that claim against the adverse findings I have made. His explanation for not having registered must also be considered likewise.”

3. The judge considered the appellant had provided “no credible explanation” for having exited Kuwait on a false passport and through an international airport. It is clear from [63] that the judge had regard to the adverse credibility findings which he had made in concluding that the appellant had failed to prove that he was an undocumented Bidoon.
4. I have considered the judge’s credibility findings carefully. The judge refers at [45] to the appellant’s “initial disclosure” or screening interview. He records that “the appellant made no reference [in his screening interview] to his detention at the demonstration or the fact that he had been in hiding for eighteen months. He only mentioned a seven day detention. This detention is not the same as that which followed the demonstration”. The parties are agreed that the judge has made an error. At 5.3 of the screening interview, the judge does not refer to the seven day detention but states that, “I was arrested in a demonstration. I was in prison for one month”. The judge notes that, in his substantive asylum interview, [89] the appellant referred to both detentions. At [47], the judge wrote, “whilst it is important not to place too much weight on the initial contact interview I am entitled to have regard to that interview where there is a significant omission”. It is agreed, however, that there was no such omission or, if there had been an omission, it was that the appellant had failed to refer to the shorter seven day detention in the screening interview rather than the 30 day detention which the judge believed he had omitted to refer to.
5. The question for the Upper Tribunal is whether the judge’s error of fact materially affects the legal integrity of the decision. I fully acknowledge that the judge has made other “adverse credibility” findings against the appellant which arise from matters not connected with the screening interview. However, as Mr Brooks pointed out, the judge refers on several occasions to the need to take account of all the evidence in reaching his findings on credibility. At [53], the judge refers again to what he considered the appellant’s failure to “mention [the longer detention] in his initial contact interview or the corrective email provided by his solicitor ...” The judge considered that what he considered an omission in the appellant’s evidence when set against the background material

“undermines his claim that he was present at the demonstration or arrested”. As far as the judge relied upon an omission which the appellant did not make, then it is clear that the judge’s analysis at this point of the decision is flawed. Again, at [60], the judge considered the evidence given by a witness in support of the appellant’s appeal. He identified discrepancies between the witness’s evidence and that of the appellant. He wrote, “whilst these discrepancies on their own may be not undermine [the appellant’s] claim to have been arrested/detained they must be looked at alongside other inconsistencies or omissions”. It seems certain that the judge is referring here to the problems which he believed he had identified in the screening interview.

6. I find that the factual error has fed into the judge’s analysis more generally. Whilst the judge has identified other seemingly unconnected reasons for not believing the appellant, his repeated references to the perceived ‘discrepancy’ indicates that it figured significantly in his assessment of the evidence. In consequence, there are no credibility findings which stand apart from and are not tainted by the judge’s error of fact. In the circumstances, I set aside the decision. There will need to be a completely new fact-finding exercise which I consider is better undertaken by the First-tier Tribunal to which this appeal is now returned.

Notice of Decision

7. The decision of the First-tier Tribunal which was promulgated on 29 March 2017 is set aside. None of the findings of fact shall stand. The appeal is remitted to the First-tier Tribunal (not Judge Alis) for that Tribunal to remake the decision.
8. No anonymity direction is made.

Signed

Date 29 September 2017

Upper Tribunal Judge Clive Lane