



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12867/2016

THE IMMIGRATION ACTS

Heard at Field House
On 30 October 2017

Decision and Reasons Promulgated
On 10 November 2017

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

A O M A
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Alam, of Counsel, instructed by A2 Solicitors
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, born on [] 1980, successfully challenged the determination of First-tier Tribunal Judge Fox who on 19 January 2017 dismissed his appeal against the respondent's refusal of 9 November 2016 to grant him protection in the UK as an undocumented Kuwaiti Bidoon. Judge Fox's decision was set aside following a hearing before me at Field House on 24 August 2017. Full reasons are set out in my determination of 25 August 2017. Essentially, the

judge based his assessment on inaccurate facts and failed to make findings on core issues.

The Hearing

2. The appellant attended the hearing with two witnesses. I heard evidence from all three individuals in Arabic through an interpreter they all confirmed they understood.
3. The appellant gave evidence first. He confirmed he resided at an address in Stanmore and he adopted the contents of two statements dated 14 December 2016 and 24 October 2017.
4. The appellant was asked about his answers at interview about the nationality registration process. He stated that the authorities had come to the towns to register people (for the census). He stated that in 1996 his father had approached the panel for people without identity but had been told that because he had not been registered in the 1965 census, he could not now rectify that situation.
5. The appellant was taken to the family tree in the bundle of documents. He said that F was his mother, S was his maternal grandfather and Rk was the son of Rh. His witness, AS, was the son of Rk. That completed examination in chief.
6. In response to questions asked in cross-examination, the appellant said that he had sold goats to earn a living. He was not the owner of the animals but acted as a middle man. He had been doing this work since the age of 22-23. Prior to that he had done nothing. He used to live in Salaibiya. He had never been to school. He never had an identity card and never had access to medical treatment. His father also sold goats.
7. The appellant was asked about the 1965 census. He said that the officials had come to the towns to take details of people for the census but his father and other relatives had been living in the desert and the officials did not go there. He stated that none of his relatives had been registered.
8. The appellant confirmed that he had attended a demonstration in support of Bidoons on 2 October 2012. That was the only one he had attended. He had been told by a friend about it. He said "*all Bidoons*" participated. The demonstration was held in a place called Taema and people had demanded their rights. He had been carrying the Kuwaiti flag. It had been a peaceful demonstration but then the police attacked the demonstrators. Following the demonstration, he had been arrested from home. He was taken to the state security office in the south of Asura (referred to elsewhere as Surra but I place no weight on that variation). He was not charged.

9. The appellant was asked how he had been found at home if there was no record of him. He said that his friend, EA, had been arrested at the demonstration and had given them his details. He had been with his friend but when the police intervened, he had run away. He said the police had been in plain clothes and had mingled with the crowd. They had told him this when he was arrested.
10. The appellant stated that there had been a lot of press photographers at the demonstration.
11. The appellant said he had been tortured during his period of detention. His arms had been pulled up, his legs were tied and he was flogged on his back, his feet, his face and the back of his head. He had sustained injuries but had not been given any medical treatment. They brought him some papers to sign and he was then taken to Salaibiya police station and released. He thought that Asura was some 35-40 minutes' drive from Salaibiya. He did not know the contents of the papers as he could not read or write but he was forced to sign them. He was told that he had been charged with criminal damage of state property and insulting the Prince. When he protested his innocence, they agreed that he had not committed these offences but they told him they wanted him to be a spy and to provide them with information about other Bidoons who attended the demonstration. He agreed to co-operate because he wanted to be released although he then said that he did not know the people at the demonstration of whom there had been some 350-400. The appellant then went home but later that day he went to stay in a pasture for goats in Chebet. He stayed there 2-2 ½ years. There was a room there. He then went to Baghdad with a smuggler who had prepared papers for him to apply for a US visa. This was not granted; he did not know why. That completed cross examination. There was no re-examination.
12. After a lunch break, I then put some questions to the appellant for clarification. I asked how he was able to sign if he was illiterate. He said he made "*scratches with the pen*". He was asked why he had not made any mention in his oral evidence of his father's second attempt in 1998 to register with the authorities. He said he had only been asked about 1996. It was put to the appellant that he had just been asked when his father had tried to register and that it was his evidence that it had been in 1996. The appellant said he had not understood the question. I asked the appellant whether he had had any problems prior to his arrest. He asked "*what problems?*". I asked whether he had experienced any previous problems with the authorities. He said he had not. I asked whether he had ever previously been to the field where he had taken refuge. He replied in the negative. I asked why then he had gone there. He stated that the land belonged to his father's friend who had said it was safe and far away. The friend had taken him there. It was about 30-35 minutes' drive away. I asked

whether he had had any contact with anyone whilst hiding in the field. The appellant said he had not. I asked how he had contacted the smuggler. He said his father's friend had arranged everything. I asked how he had found out about the arrangements. He replied that the friend had told him about it ten days earlier. He used to visit the field regularly to trade in goats and they used to see each other every time. He said he had no contact with anyone except this man. He brought him food every seven days. He was not a Bidoon. He was a Kuwaiti.

13. I asked what had happened to EA following his arrest. The appellant said he had heard from his father's friend that he had either been sentenced to death or to life imprisonment. He had found out from the appellant's family because they lived in the same neighbourhood as EA's family.
14. I asked when the appellant had been arrested. He replied it had been on 21 October. The demonstration had been on 2 October. I asked how he was able to recall dates if he was illiterate. He said his family told him "*on this date you disappeared*". He then changed this to his father's friend had told him the dates of his arrest and of the demonstration. The friend was called AM.
15. The appellant said that he had hidden at home between the date of the demonstration and the date of his arrest because he was scared but he knew from his father that EA had been arrested. EA had not been released. That was why he knew EA had been sentenced to life in prison or to death.
16. I asked whether there were any reports of the demonstration in the press. The appellant said he did not care about newspapers and he was illiterate.
17. I asked what rights had been demanded at the demonstration. The appellant stated that Bidoons did not have nationality or ID. They were badly treated. They did not go to school and had no passports. I asked in what way he had been badly treated before the demonstration. He replied he could not get health care and did not have a house. He said: "*We just eat*". He said Bidoons could not buy houses. There were other Bidoons in his neighbourhood. It was a primarily Bidoon area and he had family, cousins and neighbours whom he knew. Some of the people in the area had gone to the demonstration which had been 10-15 minutes by car from his house. He and many others had gathered together and then they all travelled together to Taama for the demonstration. EA went with him.
18. The appellant said he had one older brother, two younger brothers and two younger sisters. None of them attended the demonstration. Two of his brothers worked; they washed cars. His sisters were unmarried.

19. The appellant said that the journey to Baghdad had taken 8-9 hours by car. He had stayed there 46 days. When I commented that he had a good memory for dates and times, he said he was young and he understood.
20. The appellant said he had never been to Asura before. He did not know the state security office was there until AM told him about his release. AM owned goats which he traded. I asked whether the appellant worked for him. He said that both he and his father did. Neither party had any questions arising and that completed the appellant's oral evidence.
21. I then heard evidence from AS. He gave the same residential address as the appellant. He confirmed the contents of his two witness statements. He named his parents. He produced evidence of identification in the form of his driving licence. He was now a British national. He was then tendered for cross-examination.
22. AS confirmed he entered the UK on 6 February 2007 by air from Kuwait. He used a forged passport provided by an agent to travel. After his arrival, the agent took it from him. He confirmed he went through immigration control using the passport. He said he successfully claimed asylum. That completed cross examination. There was no re-examination.
23. In reply to my questions, the witness said that he had attended secondary school in Kuwait. He had been six and attended for eight years. He worked selling goats. He made his asylum claim on arrival. The agent took his passport away on the flight.
24. I asked how he had met up with the appellant in the UK. He stated that the appellant had called him in November 2016. He then went to Newcastle and brought the appellant back with him. They had been living together ever since. He was related to the appellant through his mother's side. Both he and the appellant lived in Salaibiya, about 10 minutes' walk apart. He knew the appellant's family; parents, three brothers and two sisters. The appellant had told him about the demonstration. He had told him that he had attended with a friend. That was all. I asked whether he knew why the appellant had come here. The witness replied that it was because he was a Bidoon and was wanted by the authorities for having attended the demonstration. I asked whether the appellant had told him about any problems he had had with the authorities. The witness replied that all Bidoons had problems. They could not work, receive health care or education. Neither party had any questions arising.

25. The third witness, AA, then gave evidence. He lived on Edgware Road. He confirmed the contents of his statement. He said that they had discussed their difficult lives in Kuwait; lives with no access to health care, work or education.
26. In cross examination, AA said he had travelled here through Austria and France. He used to live in Salaibiya and had known the appellant there. They lived 5-6 minutes' walk away. He knew the appellant's family and had been to his house. The appellant was married and lived with his wife, parents and siblings. AA was about 34 years old when he left Kuwait. He had not been to school. He had no documents. That completed cross examination. There was no re-examination.
27. In response to my questions, the witness said the appellant had three brothers and two sisters. His wife still lived in Kuwait. He had met up with the appellant last year when he saw him by chance on Edgware Road. The appellant had told him he had been on a demonstration and had been arrested and imprisoned. The witness sold vegetables in Kuwait. He said if Bidoons required medication, they went to a pharmacy or tried natural herbs. He last saw the appellant in Kuwait in 2012. When he visited his family after that, they were afraid and said he was not around. The witness said he had been working at the time of the demonstration and was afraid to go. He did not know anyone who went. He had not known the other witness in Kuwait. Neither party had any questions arising and that completed the oral evidence.
28. I then heard submissions from the parties. Mr Tarlow relied on the refusal letter. He submitted that the appellant had given contradictory evidence about the US visa application. His evidence about the demonstration lacked detail. It was not possible that the authorities would have found him at home if he was unregistered. It was not credible that he had lived in a field for two years without seeing anyone. He left using a forged passport. He would not have been able to do so had he been wanted.
29. Mr Alam submitted that following country guidance, if it were found that the appellant was an undocumented Bidoon then he was entitled to asylum. The burden was low and the respondent had raised minor points. He was consistent about his lack of education. Both witnesses knew him in Kuwait. It was possible to obtain false documents in Iraq. There was nothing which required the appeal to be dismissed. He should be given the benefit of the doubt. The document from the Bidoon Committee confirmed his claim.
30. At the conclusion of the hearing I reserved my determination which I now give.

Findings and Conclusions

31. Before making any findings, I have regard to the lower standard of proof on the appellant to make out his case and I have given careful consideration to all the appellant's evidence before me, the evidence of his witnesses and the submissions made. I have tried my utmost to give careful consideration to all the country material submitted for the appellant but it has to be said that the quality of the photocopying of various reports and news articles leaves much to be desired and that the highlighting of certain sections make already faint print largely illegible. Representatives should take care when preparing bundles of documentary evidence. These are not of acceptable quality.
32. The appeal proceeds on asylum/article 3 grounds only, there having been no challenge to the findings of the First-tier Tribunal Judge on article 8.
33. I have regard to BA (Bidoon - statelessness - risk of persecution) Kuwait CG [2004] UKIAT 00256, HE (Bidoon, Statelessness, Risk of persecution) [2006] UKAIT 00051 and NM (documented/undocumented Bidoon: risk) Kuwait CG [2013] 356.
34. The claim can be divided into two limbs; the first is that the appellant is an undocumented Bidoon and the second is that he was imprisoned by the authorities, released upon his agreement to act as a spy and is actively wanted because he fled his home in breach of his agreement to co-operate.
35. I find there are significant issues regarding the credibility of the second limb of the claim and as a result I do not accept that the appellant was arrested, detained, tortured, that he had to hide for 2 - 2 ½ years or that he had to flee Kuwait for that reason. Nor do I accept that the authorities have been actively seeking him out, raiding the family home and ill-treating his family. I set out my reasons for these conclusions below in no order of priority.
36. For someone who claims to be illiterate, the appellant is remarkably adept at recalling and reciting dates, distances, periods of time and has been consistent in the manner of his signature which he described as "*scratches of a pen*". My experience of illiterate appellants is that dates, numbers and time means nothing to them; certainly not dates and times from several years ago. His ability to recall these details without hesitation suggests to me that he has learnt a story to recite. Further, it does not support an account of no education. In any event, his claim that Bidoons cannot attend school is undermined by the evidence of his own witness whose evidence was that he, a Bidoon, had attended secondary school for eight years.

37. The appellant's account of the demonstration he attended on 2 October 2012 is unsatisfactory. His answers at interview suggest he went along only because a friend persuaded him to go. In his first witness statement, he paints a completely different picture of someone outraged by the lack of rights held by Bidoons and willing to risk his own safety in making his protest known.
38. Although the appellant stated in oral evidence that he was identified by the authorities because his details were given to them by EA, his arrested friend, he stated in his witness statement that he did not know how he was identified and speculated on possibilities.
39. When his witness, AS, was asked about what problems the appellant had experienced in Kuwait that had led to his departure, he made no reference at all to the appellant's imprisonment and torture and referred only to general difficulties faced by Bidoons of a lack of access to employment, education and health care. Given that the appellant and his witness say they are related and that they have been living together for a year, I do not accept that the witness would be ignorant of such significant matters if they had indeed occurred.
40. The appellant stated in evidence that he did not know any of the people who had attended the demonstration. He later contradicted himself when he claimed he had gather together with many others and they had all gone together to Taama. He was also inconsistent when he claimed that all Bidoons had attended the event but later said that only a few people from his area had gone. Given his apparent ignorance of other attendees, it is not credible that the authorities would consider him a useful source of information.
41. Despite the appellant's claim that there was a high press presence at the demonstration, I was not referred to any news articles to confirm the event. I am able, only just, to make out references to demonstrations in 2011, January, May, July, 15 and 20 October, November and December 2012 in the Amnesty International and Human Rights Watch reports, but can see no reference to a demonstration on 2 October 2012.
42. The appellant gave inconsistent evidence of the fate of his friend, EA. At the hearing, he said that he had been told by AM that EA had either been sentenced to life imprisonment or to death. This was based on an assumption because he had not been released. In his witness statement, the appellant stated that he had heard that EA had been executed.
43. At the hearing, the appellant described the ill-treatment he had suffered in detention. He made no reference to being subjected to electric shocks on his

body and genitalia (as was stated at interview). I cannot accept that he would have forgotten such horrific treatment had it occurred.

44. The appellant claimed he had sustained injuries following several months in prison being subjected to sustained torture and inhumane conditions yet on the very day of his release he was well enough to go off and hide in a field for over two years without seeking any treatment from a pharmacist or a herbalist/natural healer. He does not describe any scars on his body or any ongoing conditions as a result of that torture.
45. The appellant gave inconsistent evidence as to whether or not he was charged with any offence. Initially in oral evidence he said he had not been charged but later he said he was.
46. The appellant initially stated that he had no contact with anyone whilst in hiding. When further questions were put about he could have made arrangements with the agent or obtained food and water, he changed his account and said he had seen AM every week. At interview, he also claimed there was an Indian man working there.
47. Different descriptions are given of the appellant's place of hiding. At the hearing, he described it as a field where goats were put out to pasture. At interview, he maintained he hid in stables on a farm.
48. The appellant blatantly lied about his journey to Baghdad to apply twice for a US visa. Eventually, when faced with irrefutable evidence, he admitted he had made an application. It undermines his credibility that he lied about this in the first place.
49. For these reasons, I do not accept that the appellant's account of his experiences in Kuwait is truthful in so far as it relates to his attendance at a demonstration and his subsequent imprisonment. There had been ample opportunity for Mr Alam to seek to resolve these issues in re-examination but he did not make use of that opportunity.
50. That is not, however, the end of the matter. I must make a finding on whether the appellant is an undocumented Bidoon from Kuwait. That is a claim which I must assess notwithstanding the adverse credibility findings on other aspects of the evidence.

51. I am assisted in that by the persuasive evidence of the appellant's first witness and, to a lesser extent, the second. Both witnesses knew the appellant personally in Kuwait and indeed were from the same neighbourhood and knew his family. I have no reason to doubt that and their evidence was not challenged by Mr Tarlow in his submissions. Both gave spontaneous evidence about the appellant's family members, a matter which they were not questioned on at the previous hearing and, therefore, a matter on which they had no reason to believe they would be asked questions.
52. Both witnesses have been accepted as undocumented Bidoons by the respondent; the first (now a British citizen), without any need for an appeal and the second after a successful appeal hearing and a failed challenge by the respondent to the Upper Tribunal. The first witness is related to the appellant and having seen the family tree and having heard the evidence to explain it, I am satisfied that is the case. Their evidence and their own positions, ethnicity and backgrounds is strong evidence in the appellant's favour. Both witnesses gave straightforward evidence. Cross examination did not undo their evidence in any way and they were able to satisfactorily answer the questions that I put to them.
53. Mr Tarlow did not seek to argue that the appellant was not from Kuwait and was instead an Iraqi national as is sometimes argued by the respondent in these cases. I have seen documentary evidence that forged Iraqi passports are easily obtainable and so the fact that the appellant used one to travel to Europe does not detract from his claim to be from Kuwait.
54. The appellant's evidence about the 1965 census was consistent and I accept it was plausible that the officials did not bother with those living outside the towns in the desert areas. I accept that an unsuccessful attempt was made, at least in 1996 if not 1998, by the appellant's father, with or without the appellant, to register the family. I accept that as there was no record of prior registration, this was not achieved.
55. I am not impressed by the letter from the 'Kuwaiti Bedoons Movement'. It gives no details of how the author satisfied himself that the appellant was an undocumented Bidoon or what expertise he has to profess such an opinion.
56. Bearing in mind, however, the low standard of proof and the positive evidence from the two witnesses, both accepted as undocumented Bidoons themselves, and their unchallenged evidence as to their knowledge of the appellant in Salaibiya, I am satisfied that the appellant has established that he is an undocumented Bidoon.

57. Applying the country guidance set out in the above cases, specifically head note (3) of NM which states: "*the evidence concerning undocumented Bidoon does show them to face a real risk of persecution or breach of their protected human rights*", it follows that the appellant is entitled to refugee status. As an undocumented Bidoon, he would be at a real risk of serious harm on return to Kuwait. Article 3 is also engaged.
58. There was no challenge to the article 8 decision made by Judge Fox and that stands.
59. Decision
60. The appeal is allowed on asylum and article 3 grounds.
61. Anonymity
62. I continue the anonymity order made by the First-tier Tribunal.

Signed



Upper Tribunal Judge
Date: 9 November 2017