



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

Appeal Number: PA/03827/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 17th January 2018**

**Decision & Reasons
Promulgated
On 22nd February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

**THAMIR [A]
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Gajjar, Counsel instructed by A2, Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant claims to be an undocumented Bidoon from Kuwait. He claimed asylum and that was refused by the Secretary of State for reasons given and a subsequent appeal before First-tier Tribunal Judge Lawrence dismissed in a decision promulgated on 13th June 2017.

2. The appeal was dismissed because the Appellant was found not to be a credible witness and indeed it was said that the core elements of the Appellant's case were built on lies and was fabricated for the sole purpose of securing asylum here.
3. Grounds of application were lodged. In particular it was said that the judge had misdirected himself at paragraphs 12 and 13 of the decision by misconstruing the Appellant's evidence that his mother lived in the desert and had given birth with the help of a local midwife. He had never said in his evidence that his mother left the desert to come to the city to give birth and the judge had concluded that the Appellant was an inconsistent witness when he was not. The facts of the case generally had been misconstrued and it was necessary for another judge to hear the matter afresh.
4. Furthermore it was said the judge had misdirected himself at paragraphs 13 and 14 when he concluded that the Appellant's mother was a documented Bidoon. The reason given was because she had access to medical treatment but the Appellant's evidence was that his mother had her children at home with the help of a local midwife within the Bidoon community and not a trained nurse. Furthermore children in Kuwait derive nationality through their fathers only. It was the evidence of the Appellant that his father did not register during the 1965 census and the Bidoon committee did not register him between 1996 to 2000. Accordingly whether or not whether the Appellant's mother was a registered Bidoon was irrelevant as women cannot pass their immigration status with nationality to their children. The judge failed to appreciate this and this also amounted to a material error in law.
5. It was also said that the judge had misdirected himself at paragraphs 16 and 17 of the decision when he concluded that the Appellant and his witness Mr [J] did not know each other in Kuwait. The judge had arrived at this conclusion simply because the witness said he did not hear about or attend the Appellant's wedding. The witness in his oral evidence had clarified that Bidoons are very poor and do not invite anyone to their wedding because they cannot afford to do so.
6. A Rule 24 notice was lodged in straightforward terms saying that the judge had directed himself appropriately, permission to appeal having been granted by Upper Tribunal Judge Bruce who reminded the Appellant's representatives of their duty to the court that the Tribunal would expect any contentious claims in respect of the Appellant's testimony to be supported by evidence i.e. a contemporaneous note of the hearing. Permission was granted on all grounds.
7. Before me Mr Gajjar relied on his grounds. In terms of what the Appellant had actually said I was referred to page 4 of 9 of his notes of the hearing when the Appellant had said that his mother lived all her life in the desert. When she moved to the city she heard that the doctors were male. She was comfortable with the midwife. However this had been misconstrued

by the judge to say that the Appellant's mother had moved to the city "to deliver" her child. The judge noted that the only reason she would go to town to deliver is that she had access to medical care and went on to say that she did have access to medical care and therefore she must be a citizen of Kuwait or at least have registered during the 1965 census.

8. However this was not what the Appellant had actually said. The judge had misconstrued the evidence. The other grounds had been made out. In particular the witness was someone who had been granted refugee status here and the judge appeared to have ignored that. It was not reasonable for the judge to conclude that simply because the witness had not been invited to the wedding or did not know anything about it that his evidence must be false.
9. I was asked to set the decision aside and remit the case to the First-tier Tribunal.
10. For the Home Office Ms Everett said that the points taken were certainly concerning and the judge's reasoning was slender but arguably not perverse.

Conclusions

11. I consider that the points taken on the Appellant's behalf are well made. The particular point taken about his mother going to deliver her child in town was not exactly what the Appellant said and the interpretation put on it by the judge is arguably unfair to the Appellant. She did have access to medical care in the sense that there was a midwife but the point goes no further than that.
12. The judge makes those findings in paragraph 13 and in the very next paragraph states that the Appellant has not demonstrated he is an undocumented Bidoon – unfortunately before going on to consider the significant evidence of Mr [J]. The judge does note that Mr [J] has been accepted as an undocumented Bidoon from Kuwait but pays no more attention to that and rejects the evidence that he knew the Appellant in Kuwait because he was not invited or was aware of the Appellant's wedding. In my view that is a finding that goes too far and takes little account of the fact that Mr [J]'s account of being an undocumented Bidoon was accepted as genuine by the Secretary of State – and dismissive of the explanation offered by Mr [J] who explains why he was not invited to the wedding the judge concluding that he would have known about it. At the very least further reasoning was required before the important evidence of an accepted undocumented Bidoon was summarily rejected. There is also the point that the judge appears to have been wrong to have concluded that because the mother was a registered Bidoon so must be the Appellant – for reasons set out in the grounds.
13. For these reasons I consider that the decision is not safe. It therefore must be set aside. I have concluded that because further fact finding is

necessary the matter should be remitted to the First-tier Tribunal to be heard by a judge other than Judge Lawrence.

14. The decision of the First-tier Tribunal is therefore set aside in its entirety. No findings of the First-tier Tribunal are to stand. Under Section 12(2)(b)(i) of the 2007 Act and Practice Statement 7.2 the nature and extent of the judicial fact-finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal.

Notice of Decision

15. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
16. I set aside the decision.
17. I remit the appeal to the First-tier Tribunal.

No anonymity order is required or made.

Signed *JG Macdonald*

Date 16th February 2018

Deputy Upper Tribunal Judge J G Macdonald