



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: PA/02346/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 14 October 2019**

**Decision & Reasons Promulgated
On 18 October 2019**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**MF
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E. Stuart-King of Counsel

For the Respondent: Ms A. Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal promulgated on the 25th July 2019, in which the Appellant's appeal against the decision to refuse his protection and human rights claim dated 26th February 2019 was dismissed.
2. Permission to appeal was granted on a number of grounds all of which were relevant to the credibility findings made by the FtTJ and

were set out in the grant of permission by First-tier Tribunal Judge Murray on the 27 August 2019.

3. At the oral hearing, after hearing submissions on behalf of the Appellant, Ms Everett appropriately conceded that there was a material error of law as set out in the grounds when read with the grant of permission. I find the Respondent's concession to be appropriately made, and in the circumstances, I give only summary reasons for finding that the decision of the First-tier Tribunal involved the making of a material error of law such that it is necessary to set aside the decision.
4. The appellant is a citizen of Kuwait of Bidoon ethnicity. It is the appellant's case that he is from a family who are undocumented Bidoons; his father worked in farming and his mother was a housewife. As a result of the family position, he was not able to access formal education. The appellant's father had attempted to register the family but as their history was not recorded in the 1965 census, he was unable to do so. It was claimed that whilst in Kuwait he took part in a demonstration calling for more rights for Bidoon people and was later arrested by the police and detained having been accused of distributing leaflets which were anti-government. He denied involvement but was beaten and ill-treated and compelled to sign a document before being released. He remained at the home of a family friend until November 2014 during which time his house was raided by the Kuwaiti authorities. He travelled through a number of countries before arriving in the UK on 27 August 2018. He claimed asylum the following day.
5. In a decision made on 26 February 2019, his protection and human rights claim was refused by the respondent. In that decision letter, whilst it was accepted that he was a national of Kuwait, it was not accepted that he was an undocumented Bidoon nor was it accepted that he had given a credible account that he had been arrested and detained. Having applied the country guidance decision of NM (documented/undocumented Bidoon; risk) Kuwait CG [2013] UKUT 00356(IAC) which stated that undocumented Bidoons are at a real risk of persecution, on the basis of the rejection of his factual claim, the respondent dismissed his protection claim.
6. The appeal came before the FtT on 4 July 2019. The FtTJ heard oral evidence from the appellant and in the decision promulgated on 25 July 2019 the FtTJ made reference to the oral evidence given by the appellant in her analysis and findings of fact set out at paragraphs 31 – 49. At paragraph 34, the FtTJ set out that there were many issues in the appeal which cast “grave doubts on the appellant's credibility” and then set out what those issues were.
7. The grounds drafted by counsel who represented the appellant before the FtT set out for three issues in which it was said that the

FtTJ had erred in law. Ms Everett on behalf of the respondent is in agreement with those grounds and that the credibility assessment made was flawed.

8. The first issue relates to the nature of the appellant's father's relationship with his friend, the family's financial circumstances and the issue of his arrest following the demonstration.
9. Dealing with the first point, the FtTJ at [36] made reference to the appellant's oral evidence in relation to the relationship between his father and his friend in Kuwait. The judge took as an adverse credibility point that the appellant had not said before that the friend was his father's employer. It was expressly stated at [40] that his evidence had demonstrably changed.
10. As Ms Stuart-King submits, it was incorrect to say that the appellant's evidence had changed in the way set out above. Both advocates agree that by reference to the appellant's witness statement and also the substantive interview that took place that the appellant had made a number of references to the appellant's father, whilst a farmer, was working with his friend and that the farm belonged to the friend of his father. The supplementary witness statement also made reference to his father working for someone else and that he did not own his own farm. It is therefore agreed by the advocates that contrary to the decision, the appellant had been consistent in that respect of his evidence and that it was incorrect to say that he had not.
11. A similar error relates to the financial circumstances referred to at paragraph 36 in the light of the material set out in the appellant witness statement and in the interview and question 162.
12. In the grounds at paragraph 16, Counsel has set out her note to support the grounds on which it is said that there was a mistake made as to the nature of the relationship between the appellant and his father's Kuwaiti friend. Whilst it was referred to in the decision as being a "father figure" the note makes reference to the appellant referring to him as being "like one of the family".
13. At [40] the FtTJ reaches a conclusion concerning the family's circumstances. Ms Everett on behalf of the respondent stated that she could not follow the reasoning set out at paragraph 40 or find evidence to support that conclusion.
14. Similarly at [44] the FtTJ states that the appellant claimed to have been arrested five months after the demonstration. However in his witness statement at paragraph 11 he makes reference to being arrested "after 2 to 3 months" which was consistent with his answers in interview at question 128 (page 43 of the bundle) in which he stated in answer to the question "how long was it that you were in

contact with the authorities after this?" He stated, "probably after three months, I was arrested approximately three months after I fled." Whilst that error of fact by itself would not justify the setting aside of the decision, it is a factual error which needs to be seen in the round and in the light of the other errors identified.

15. The last error relates to the assessment of the expert report. The appellant relied upon an expert report set out in the bundle at pages 94-112. The report set out background information relating to the government's position on Bidoon people, their history and current challenges faced. The instructions received from the solicitors to prepare the report were set out at paragraph 29 and at paragraph 30, specific questions were then answered by the expert which included issues relating to the appellant's factual account and whether it was supported by any material. For example, the expert made reference to the demonstrations for Bidoon rights and the plausibility of the appellant's arrest in the light of the country materials relating to that. The FtTJ addressed the report at paragraph 48 in short terms and on the basis that the report did not take the appellant's case any further on the basis that the expert assumed that the appellant was an undocumented Bidoon. However, the FtTJ had already reached the conclusion that the appellant's evidence was not credible before reaching any assessment of the expert report. As in the case of any expert evidence it is required to be considered in the round when reaching findings of fact on credibility. The grounds at paragraphs 25 - 29 set out issues that were referred to in the report which were not considered in the assessment of credibility.
16. For those reasons, I find a material error of law such that the decision of the First-tier Tribunal must be set aside, and the hearing remitted for de novo consideration of the appeal.
17. I therefore set aside the decision of the judge in its entirety. I have taken into account paragraph 7.2 of the practice statements for the Immigration and Asylum Cis of the First-tier Tribunal and the Upper Tribunal which recognises that it may not be possible for the Upper Tribunal shall proceed to remake the decision when it is satisfied that (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunities that party's case to be put to and considered by the First-tier Tribunal; or (b) the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be remade is such that, having regard to the overriding objective 2, it is appropriate to remit the case of the First-tier Tribunal.
18. Having exercised my discretion and by considering the practice statement, the case falls under (b) given that the court will now be required to assess the case afresh and make findings of fact on all the evidence. I am satisfied that the appropriate course is to remit the case to the First-tier Tribunal for a fresh hearing.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal; no findings of fact are preserved.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 14/10/2019

Upper Tribunal Judge Reeds