



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

Appeal Number: PA/02779/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 4th December 2018**

**Decision & Reasons
Promulgated
On 10 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

**MR M.K.A.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Saeed, Solicitor

For the Respondent: Mr Kotas, Senior Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction was made by the First-tier Tribunal. As a protection claim, it is appropriate to continue that direction.

DECISION AND REASONS

1. In a decision promulgated on 23rd April 2018, First-tier Tribunal Judge Onoufriou dismissed the Appellant's appeal against the Respondent's refusal of his protection and human rights claims.
2. The Appellant sought and was granted permission to appeal on the grounds that it was arguable that the First-tier Tribunal Judge had erred in his credibility assessment by applying the wrong standard of proof; had failed to fully consider the background material in this context; and had erred in his assessment of and reference to evidence relating to undocumented Bidoons.
3. There was no Rule 24 response served by the Respondent.

Background

4. The Appellant's case is that he is an undocumented Bidoon from Kuwait, born on 24th June 1996. He claims to have left Kuwait in October 2015 by air and travelled either to an unknown country or, as later claimed, to Turkey. He travelled on a false passport. He says that he arrived in France where he remained for some months before entering the UK clandestinely on 25th May 2016. He claimed asylum the following day. The Respondent refused the Appellant's claim on 9th February 2018.
5. The Appellant's claim to asylum is that he fears that if returned to Kuwait he would be imprisoned, and assaulted and beaten by the authorities there. He claims that his family were not registered in the 1965 census because they were in the desert at that time and despite various attempts to register in both 1996 and 2000, registration was refused because the family had not been included in the 1965 census. He claims he was arrested for attending a demonstration and was kept in detention for 20 to 22 days. He was interrogated and ill-treated and was only released after he agreed to give information to the authorities about Bidoon activists.
6. Following his release, his father arranged for him to stay with a close Kuwaiti friend working in the friend's stables. He remained there for about a year and a half. The authorities then come looking for him and arrested his brother when they could not find him. His brother was detained for five to six days. Following this, his father's friend arranged for a smuggler to bring him to the UK.
7. The Respondent did not accept the credibility of the Appellant's claim; it was accepted that he is a Kuwaiti citizen but it was not accepted that he was a Bidoon, nor an undocumented one. The First-tier Tribunal Judge found that he agreed the Appellant was from Kuwait, as accepted by the SSHD, but also found that the Appellant had not established that he was an undocumented Bidoon. He dismissed the appeal.

Onward Appeal

8. The Appellant appealed to the Upper Tribunal. Although there are four grounds seeking permission, in the main they take issue with the FtTJ's credibility findings. The FtTJ acknowledged during the course of the hearing that the sole issue before him centred on whether the Appellant was an undocumented Bidoon and that credibility lay at the heart of the claim.
9. Permission to appeal was granted by FtTJ Hollingworth as follows:
 - “1. Under the heading of “Findings of Fact and Credibility” the Judge in referring to elements advanced in the case in relation to the question of credibility has referred at paragraph 36(4) to the aspect of the claim mentioned there not being impossible although the percentage chance must be fairly low for the reason advanced. Given this reference it is unclear as to the standard being applied by the Judge. The Judge has referred to the extent of plausibility. It is arguable that a fuller consideration of the background material was required in this context. At paragraph 38 of the decision the Judge has referred to balancing the Judge's findings regarding the Appellant's credibility and the plausibility of his account “within the objective evidence”. It is arguable that further analysis was required to be demonstrated in this context given the significance of the Judge's findings in relation to plausibility.”

Thus the matter comes before me to determine whether the decision of the First-tier Tribunal discloses such error of law that it must be set aside and remade.

Error of Law Hearing

10. Before me Mr Saeed appeared on behalf of the Appellant and Mr Kotas for the Respondent. Mr Saeed's submissions followed the lines of the grounds seeking permission. In summary he said that the FtTJ's findings on credibility are flawed. The FtTJ has apparently applied an incorrect standard of proof [36.4], and has incorrectly formed the view that inconsistencies within the Appellant's account, which were described by the judge as peripheral, when looked at cumulatively went against the Appellant's credibility. In support of this point he referred me to paragraph 28 of **HK and SSHD [2006] EWCA Civ 1037**.
11. He continued his submissions saying that the judge's finding at [36.8], failed to take account of the Appellant's explanation for the delay in his departure from Kuwait. The judge had therefore made unsustainable findings where he expressed disbelief concerning the manner of the Appellant's departure from Kuwait International Airport. Additionally, the judge failed to consider documentary evidence put forward showing that

undocumented Bidoons are forced to work illegally and may therefore receive assistance from charitable Kuwaiti citizens.

12. Finally the finding at 36.12 is contrary to the evidence and is in error for failing to properly follow **NM Kuwait CG [2013] UKUT 00356 (IAC)** and **HE Kuwait CG [2006] UKAIT 00051**.
13. Mr Kotas in response submitted that there was no force in the first point made by Mr Saeed. He referred to [29] wherein the judge properly set out and reminded himself of the appropriate burden and standard of proof. He submitted that the judge had also referred to **NM** as the starting point in this case and clearly identified that the core issue (and therefore the starting point) in this appeal was an examination of whether the Appellant had established he was a Bidoon, rather than a Kuwaiti citizen. The judge had gone on to say that if he were satisfied that the Appellant was a Bidoon then the further issue before him was whether he was an undocumented Bidoon. Mr Kotas said that this is what the appeal turned on and consequently, as the judge acknowledged, the Appellant's credibility lay at the heart of this.
14. He further submitted that the reference made to **HK** [28] did not take the Appellant's case any further; rather it supported the judge's decision. The guidance given in **HK** [28] said:

"The ingredients of the story, and the story as a whole, have to be considered against the available country evidence and reliable expert evidence, and other familiar factors, such as consistency with what the Appellant has said before and with other factual evidence (where there is any)."
15. Mr Kotas continued that so far as the judge's finding at [36:11] concerning the airport security, this factor again turned on whether the Appellant's credibility was accepted. The same consideration applied to the claim that he had been arrested following the attendance at the demonstration. The judge had referred to the CIG report when considering these matters and he was entitled to do so. The judge had assessed and evaluated overall credibility with reference to the CIG report and made sustainable findings. The criticisms made of the decision amounted to no more than a series of disagreements and the appeal should therefore be dismissed.
16. At the end of submissions I reserved my decision which I now give with reasons.

Consideration

17. I deal first of all with the criticism made that the judge appears to have misapplied the correct standard of proof and thus his credibility assessment, which relies upon an accumulation of "peripheral" matters, is flawed.

18. It is correct that the judge uses the terms possibility and plausibility, but I find I am satisfied that on a full reading of the decision, the judge kept the correct standard of proof in mind. He sets out fully the standard and burden of proof required in cases such as this one [29]. The difficulty for this Appellant is that in common with many claims of this nature, his claim turns on the credibility of his own testimony. The judge acknowledges this in [35].
19. This point was reinforced by Mr Kotas in his submissions. In [36] the judge sets out numerous examples of inconsistencies found in the Appellant's account. The judge found that these inconsistencies when looked at in the round led him to conclude that the core of the Appellant's story did not add up. The judge was reinforced in this view when he looked at these inconsistencies in the context of the CIG Report.
20. The CIG Report outlined that following the demonstration in February 2014, those arrests that were made were of the organisers and main activists. The Appellant by his own account was a mere participant. He had gone along with two friends whom he had met and who encouraged him to attend. The judge was therefore entitled to make a finding that as the Appellant was not an organiser or activist. Consequently he was entitled to disbelieve the Appellant's account that he had been detained for 20 to 22 days, beaten and tortured and released only on condition that he provide information about Bidoon activists. This was claimed as the central driver to the Appellant leaving Kuwait.
21. That being so, the judge was entitled to disbelieve the remainder of the Appellant's testimony, which was that he remained in Kuwait for a further year and a half and had left because the authorities had then come looking for him.
22. I am satisfied that a proper reading of the decision showed that the judge has properly considered the nature of the claim as presented by the Appellant, the focus of which is very much upon what the Appellant has to say. It is apparent from a reading of the decision as a whole that an impermissible standard of proof has not been adopted. It follows that there is nothing to show that the findings made by the judge are not ones which were open to him to make.
23. Two further matters of concern were raised by Mr Saeed. He criticises the judge's findings concerning the likelihood of the Appellant evading the airport security system on departure. I find that nothing turns on this criticism. It is a finding made which is entirely consistent with the CIG Report that security at Kuwait Airport is tight. The Appellant's account of his exit from Kuwait has to be looked at in the context of his whole story as to why he left. In addition there were at least two accounts given by the Appellant himself of which country he flew into. He firstly claimed he flew to an unknown country but later changed his story to say that he flew to Turkey.

24. The final point of concern raised by Mr Saeed is set out in Ground 4. Mr Saeed describes this ground as his strongest point. His argument as I follow it rests on the asserted failure of the judge to have regard to the evidence submitted on the Appellant's behalf concerning the position of Bidoons who had not registered in the 1965 census. The Appellant's case is that his grandfather and his father failed to register in the 1965 census and thereafter were unable to register in 1996 and 2000, on account of not being part of the 1965 census. The FtTJ was referred to **NM** and to background documentation, in particular a document entitled "Immigration and Refugee Board of Canada, 'Kuwait: Whether Bedoun residents who were included in the 1965 census are able to obtain citizenship', 20 February 2012". The judge it is said has failed to grapple with the Appellant's evidence which was consistent in saying that because his father and grandfather failed to register in the 1965 census they were thereafter unable to register in 1996 and 2000. However I find that paragraph 36.12 has to be read in conjunction with [37] and with [32], where the judge fully sets out paragraph 33 of **NM**.
25. The judge's remarks in 36.12 it seems to me, are reflective of item 4 in the head note of **NM** which states:
- "It must be assumed that Bidoon who did not register in 1996 and 2000, and hence did not obtain security cards, are as a consequence undocumented Bidoon, though this must be seen in the context of the evidence that most Bidoon carry security cards."
26. At [37] the judge referred to and took into account the Appellant's responses in interview, his own statement and the Respondent's case and concluded that it was highly unlikely that the Appellant's father would be able to secure stable employment and rent a property over a large number of years without a security card. In the context of the Appellant's overall credibility this is a finding which was open to the judge.
27. Accordingly drawing all these factors together I find that the correct standard of proof was applied and that the FtTJ's findings on the Appellant's credibility are ones which were open to him to make on the evidence as a whole. The grounds amount to no more than a disagreement with the findings made by the judge. The grounds therefore disclose no material error requiring the decision to be set aside. The decision therefore stands and this appeal is accordingly dismissed.

Notice of Decision

Appeal dismissed.

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 or any member of his family. 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
2018

C E Roberts

Date

21 December

Deputy Upper Tribunal Judge Roberts