



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03300/2019

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 21 August 2019

Decision & Reasons Promulgated
On 10 September 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR M A F A E
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms H Naz, Solicitor, A2 Solicitors

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Kuwait born on 1 July 1982. He arrived in the United Kingdom on 2 January 2019, claiming asylum the following day on the basis that he is an undocumented Bidoon who had attended demonstrations in Kuwait following which he had been arrested and detained and subsequently fled from Kuwait, fearing he would be arrested and killed if he returned. This application was refused by the Secretary of State, in a decision dated 21 March 2019.
2. The Appellant appealed against this decision and his appeal came before Judge of the First-tier Tribunal Lloyd-Smith for hearing in Manchester on 14 May 2019. In a Decision and Reasons promulgated on 20 May 2019, the judge dismissed the appeal

on all grounds, finding that the Appellant had not established that he is an undocumented Bidoon and that he would not be at risk of persecution or treatment in breach of his human rights if he were to be returned.

3. Permission to appeal was sought, in time, on the basis of the following grounds:
 - (1) there was procedural unfairness in that the judge appears to have made an after the event observation that the Appellant's claim to have attended a demonstration on 18 February 2014 was the same day but there was a difference of three years to the date his witness is said to have attended a demonstration in his appeal, the witness having attended on 18 February 2011; that it was clear that this was not put to the Appellant or his witness to allow them the opportunity to respond and that the background evidence shows that there were protests by Kuwaiti Bidoons in both February 2011 and February 2014.
 - (2) the judge made irrational findings, in particular in relation to the Appellant's attendance at demonstrations;
 - (3) the judge failed to have regard to material evidence when assessing the credibility of the Appellant's arrest, in particular the Home Office CPIN, which provides at [5.5.3] evidence in relation to the protests in 2014, and fourthly,
 - (4) that the judge failed to give sufficient reasons for her findings.
4. Permission to appeal was granted by First-tier Tribunal Judge L Murray in a decision dated 20 June 2019 on the basis that:

"It is arguable that the adverse finding at 14(b) of the decision is flawed in relation to the February demonstrations as this was a matter in respect of which the Appellant was not on notice and one which could be countered by objective evidence. Whilst the other grounds are less arguable I do not refuse permission in light of Safi and Others (permission to appeal decisions) [2018] UKUT 00388 (IAC)."

Hearing

5. At the hearing before the Upper Tribunal, Mr Bates expressly accepted in relation to the first ground, i.e. procedural fairness and the manner in which the judge had dealt with the issue of the dates of the demonstrations, that this had not been raised by the Presenting Officer as a matter for cross-examination and that he accepted he was in difficulties defending the judge's decision in this respect.
6. Mr Bates also expressly accepted that he was in some difficulties in relation to ground 2 and the assertion that there were irrational findings, one of those being the judge's reliance on the fact that the Appellant was illiterate, which he found was inconsistent with the fact that he was also made to sign an undertaking. Mr Bates accepted that the judge had not gone far enough in terms of providing reasons as to why this did not mean that the Appellant could not have had the statement read to him or explained.

7. Ms Naz sought also to rely on her challenge to the judge's finding at [17](b). This was in relation to the finding concerning the Appellant's accommodation in the UK and his relatives. However, in light of Mr Bates' express acceptance that there were errors in the judge's decision and that those errors were material to a proper assessment of the Appellant's credibility, it was agreed that the decision be set aside in its entirety and listed for a *de novo* hearing before a different Judge of the First-tier Tribunal.

Decision

8. I find and agree with the express concession by Mr Bates for the Respondent that there are material errors in the decision of First-tier Tribunal Judge Lloyd-Smith. I set that decision aside and remit the appeal for a hearing *de novo* before the First-tier Tribunal sitting in Manchester. I make the following directions:
- (i) The appeal should be listed for two hours;
 - (ii) An Arabic (Gulf) interpreter should be booked for the hearing;
 - (iii) Any further documentation upon which the parties wish to rely should be served on the First tier Tribunal and the other party five working days before the hearing.

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 *Rebecca Chapman*

Date 9 September 2019

Deputy Upper Tribunal Judge Chapman