



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005534

First-tier Tribunal No: PA/55721/2022
IA/00388/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 21st May 2024

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

J F
(anonymity order in place)

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mr K Forrest, instructed by Latta & Co, Solicitors
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

Heard at Edinburgh on 9 May 2024

DECISION AND REASONS

1. FtT Judge Buchanan dismissed the appellant's appeal by a decision dated 20 November 2023. FtT Lodato granted permission to appeal to the UT on 23 December 2023.
2. The appellant's challenge is incorporated into his further skeleton argument filed for this hearing.
3. The argument runs as follows: ...

Issues: the grounds of appeal attached to the permission application are first that the FTT erred by leaving out of account evidence he should have taken into account ("*the first ground of appeal*"); and second that the FTT erred in concluding that the absence of reports about his medical condition went against him ("*the second ground of appeal*"). Both grounds are adopted. In addition:

First Ground of Appeal:

3.1 The main issue before the FTT was whether the appellant was an undocumented Kuwaiti Bidoon. There were several sources of evidence that the appellant relied on to establish this, one of which was that he said that he had attended a demonstration in support of the rights of such people, and that he had done so following the suicide of his cousin.

3.2 The FTT has erred in leaving his evidence about this out of account. It was just as relevant to his alleged nationality as, for example, his knowledge (or lack of it) of the Kuwaiti flag, colour of the post boxes in that country or what its currency looked like (*paragraph 4 of the FTT decision*).

3.3 The FTT's error is plain on an ordinary reading of its decision: it begins (*paragraph 4*) by acknowledging the reasons why the respondent did not accept that he was an undocumented Bidoon, assesses the evidence (*paragraphs 11-54*) then reaches conclusions (*paragraph 55 – end*) based on the appellant's conduct. In effect it has started from the premise that the appellant did not persuade the respondent about his nationality, and assessed this by considering his subsequent conduct. It has erred in its approach. What it should have done is consider all the evidence to the lower standard in protection claims: it has effectively presumed the appellant's assertion of nationality is not correct, and considered whether the evidence might displace that.

3.4 In his Rule 24 Note, the respondent states (*paragraphs 3-7*) that it was not necessary for the FTT to consider the appellant's attendance at a demonstration and the circumstances in which this demonstration took place. Reference is made to point 3.1 above – that his attendance (and the circumstances in which he attended) were just as much evidence of his nationality claim as other matters.

Second Ground of Appeal:

4.1 The FTT has erred in stating that it can accord little weight to the appellant's evidence about what happened to him in detention (*paragraphs 27-29*).

4.2 Of course the weight that can be attached to pieces of evidence is a matter for the fact finding judge, but the FTT's conclusion is based on unwarranted speculation//assumption that the appellant would have required and sought medical attention.

4.3 Only if that assumption was justified, could the FTT have concluded that in failing to adduce evidence that – in the circumstances – it was reasonable to expect the appellant to obtain it was open to it to accord only limited weight about what happened to him in detention.

Conclusion: the appeal should be allowed. The case should be remitted to the FTT to complete the fact finding exercise by considering evidence about the first ground of appeal.

4. The SSHD's rule 24 response says: ...

3. The FTTJ's primary finding at paragraph 63 is that the Appellant is not a Kuwaiti Bidoon. It is notable that this finding has not been challenged in the grounds.

4. It is obvious therefore that any other factors, such as the alleged attendance by the Appellant at a demonstration in Kuwait are clearly of limited to no importance after the FTTJ made this finding.

5. Permission has been granted on the basis that the FTTJ failed to make any findings on the credibility of the Appellant's attendance at a demonstration in Kuwait.

6. Contrary to the permission grant this evidently was not a matter of real importance once it had been found that he was not a Kuwaiti Bidoon.
7. If the Appellant was not an undocumented Bidoon from Kuwait but was in fact an Iraqi National then he self-evidently would not have been attending a demonstration in Kuwait for Bidoon rights.
5. Mr Forrest in his submissions stressed ground 1. He accepted that ground 2 was unlikely to succeed on its own. He observed that the rule 24 reply seemed to reflect that the decision did not take all the evidence in the round. He asked for a remit to the FtT.
6. Mr Mullen acknowledged that, contrary to the rule 24 response, the grounds are in essence a challenge to the finding that the appellant is not an undocumented Bidoon from Kuwait. He accepted that the Judge had not gone so far as to make a positive finding that the appellant is an Iraqi national. However, he submitted that the grounds glossed over the essential reasoning underpinning the finding that the appellant's account of how he came to be fingerprinted and to have two passports made no sense, and had not shown that he is an undocumented Bidoon from Kuwait; and it was of no significance whether he ever attended a demonstration.
7. I reserved my decision.
8. The first ground of appeal, read along with the rule 24 response, suggests that there might be something in the allegation of leaving an aspect of the evidence out of account; but that does not survive a full reading of the decision.
9. A fundamental difficulty for the appellant was that he had applied in Iraq in 2018, using an Iraqi passport, for a visa to visit the USA. He also had another passport, which he said he used to leave Kuwait in 2020. He said both were irregularly obtained. The Judge acknowledged the possibility of documentation being obtained by fraud, but found the appellant's explanations to make no sense, giving numerous detailed reasons at [11 - 26]. No error is alleged, or apparent, in those reasons.
10. The Judge also founded at [30 - 34] on significant self-contradictions in the appellant's accounts of alleged events in Kuwait; explained at [35 - 42] why an expert report was of limited weight; and explained at [43 - 54] why evidence of friends and associates was also of limited weight. Again, no errors are shown. His overall negative conclusion is reached at [55 - 63] in terms of the relative weight of the various aspects of the evidence.
11. In that setting, the absence of specific discussion of alleged attendance at a demonstration (ground 1) is of no significance.
12. Ground 1 also fails to show an error of deciding on an outcome, then looking only to see if there is anything to displace it.

13. On absence of medical evidence (ground 2) the Judge at [27 – 29] notes that there is no requirement of corroboration, but considers that an account of no need for medical attention is at odds with the account of torture, and with not seeking medical assistance in the UK. I do not find that to amount to “unwarranted speculation”, but to be well within reason.
14. The appellant’s case has been pressed as far as it could be, both in the FtT and in the UT, but the grounds, once placed in context, are only selective disagreement with a clearly explained resolution of all the evidence. They disclose no error on a point of law.
15. The appeal to the UT is dismissed. The decision of the FtT stands.

Hugh Macleman

Judge of the Upper Tribunal
Immigration and Asylum Chamber
13 May 2024