



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/02532/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Columbus House,
Newport
On 8 May 2017**

**Decision & Reasons
Promulgated
On 6 June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE L MURRAY

Between

D A S E E
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Appiah, Counsel

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Kuwait. His application for asylum was refused by the Respondent on 3 March 2016. The Respondent accepted that he was from Kuwait but not that he was an undocumented Bidoon. The Appellant appealed against that decision under section 82 (1) of the Nationality, Immigration and Asylum Act 2002 (NIAA). His appeal was dismissed on all grounds by First-tier Tribunal Judge Page in a decision promulgated on 30 September 2016. The Appellant sought permission to appeal against that decision and permission was granted on renewal on all grounds by Upper Tribunal Judge Plimmer.

2. The Appellant argues in the grounds of appeal that the First-tier Tribunal failed to give adequate consideration to the evidence regarding whether the Appellant was an undocumented Bidoon. In the first ground it is asserted that the First-tier Tribunal erred in failing to have regard to witness evidence that the Appellant was an undocumented Bidoon; made flawed credibility findings on the evidence before him in relation to the literacy of the witnesses; misinterpreted the evidence in the expert's report's as to the Appellant's knowledge of where he lived in Kuwait; erred in his assessment of the evidence in relation to the difficulties faced by Bidoons in registering and approached the Appellant's claim to be Bidoon in a manner inconsistent with the guidance in **NM (documented/undocumented Bidoon: risk) Kuwait** CG [2013] UKUT 00356 (IAC). The second ground asserts that the First-tier Tribunal failed to consider or attach any weight to the evidence from the Harrow Kuwaiti Community Association which went to the heart of the Appellant's claim to be an undocumented Bidoon.
3. The Respondent relies on a Rule 24 Response which states that the First-tier Tribunal noted that the Appellant's expert did not say that he was an undocumented Bidoon, further his witnesses did not say he was an undocumented Bidoon and that the First-tier Tribunal Judge made findings that were open to him on the evidence.

The Hearing

4. At the hearing Mr Appiah expanded on his grounds of appeal. He argued that the First-tier Tribunal's finding at paragraph 18 that neither of the Appellant's two witnesses said that the Appellant was undocumented could not stand in view of their pro-forma witness statements at pages 41 and 42 appended to the letter from the Kuwait Community Association in which they confirmed that the Appellant was an undocumented Bidoon. Mr Diwnycz confirmed that the Appellant's witnesses were not cross-examined on whether they knew him to be an undocumented Bidoon. Mr Appiah took me through the evidence referred to in the grounds. Mr Diwnycz relied on the Respondent's Rule 24 response and had nothing further to add.

Discussion

5. The First-tier Tribunal Judge's found, at paragraph 18 of the decision that the Appellant's evidence that he was an undocumented Bidoon came from the Appellant himself. He found that neither of his witnesses said that he was undocumented. He records that what they said in their witness statements was that they knew he was a Bidoon from Kuwait who belonged to the same community as they did. He then comments that neither of them were in a position to give cogent evidence that he was undocumented.
6. The Appellant's witnesses provided statements at pages 5 and 9 of his bundle. In those witness statements they state that they know him as a Bidoon from Kuwait from their community. Neither states in those witness statements that the Appellant is undocumented. However, the Appellant also relied on a letter from the Kuwaiti Community Association at page 38 of his bundle. The letter states that they had witness statements from two members of the Bidoon community who confirmed that the Appellant was

an undocumented Bidoon. The witness statement at page 41 of the bundle purports to have been made by the witness who appeared at the hearing and whose statement is at page 9 of the Appellant's bundle. Although the statement at page 41 is a pro forma, the witness does confirm that the Appellant is an un-documented Bidoon from Kuwait.

7. The First-tier Tribunal did not refer to this evidence in the decision. It is clear from the reasoning in the determination that a core reason for rejecting the Appellant's case was that the claim that he was undocumented was not supported by his witnesses. This finding was made without taking the evidence from the Kuwaiti Community Association and the attached witness statement into account and therefore failed to take into account a material matter. It cannot be said that the Tribunal would have reached the same conclusion had this evidence been taken into account and I find therefore that the error was material. No findings are preserved.

Notice of decision

The First-tier Tribunal's decision to dismiss the Appellant's appeal on asylum grounds involved the making of a material error of law.

I set the decision aside and the appeal will be determined *de novo* having regard to paragraph 7.2 of the Senior President's Practice Statements due to the nature and extent of fact finding required by a Judge other than Judge Page.

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

Date 1 June 2017

Deputy Upper Tribunal Judge L J Murray