



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

Appeal Number: PA/02718/2017

**THE IMMIGRATION ACTS**

**Heard at Liverpool  
On 4 December 2017**

**Decision Promulgated  
On 11 December 2017**

**Before**

**Deputy Upper Tribunal Judge Pickup**

**Between**

**Ryad Khayon Al Tamimi  
[No anonymity direction made]**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the appellant: Mr A Adebayo, instructed by A2 Solicitors

For the respondent: Mr A McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Lawrence promulgated 9.5.17, dismissing his appeal against the decision of the Secretary of State, dated 11.3.17, to refuse his protection claim.
2. The Judge heard the appeal on 18.4.17.
3. First-tier Tribunal Judge Bird granted permission to appeal on 14.9.17.
4. Thus the matter came before me on 4.12.17 as an appeal in the Upper

Tribunal.

*Error of Law*

5. In the first instance, I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that it should be set aside.
6. In essence, the grounds assert that the judge failed to properly consider the evidence placed before the Tribunal, applied too high a standard of proof, and failed to apply anxious scrutiny. It is further alleged that the judge failed to give proper weight to the appellant's concession that he had gone to the USA on a false Iraqi passport.
7. In granting permission to appeal, Judge Bird considered it arguable that:
  - (a) The judge failed to properly consider the evidence of the appellant's siblings, whose evidence as to their ethnicity and nationality had not been challenged by the respondent. At [11] the judge referred to the previous appeal dismissal in 2013, but gave no reason why the evidence of the witnesses was to be disregarded. Judge Bird considered the Judge's findings were arbitrary and without adequate reasoning;
  - (b) The comment by the judge at [12] about the appellant travelling to the USA ignored the appellant's evidence and were speculative in relation to the appellant's siblings.
8. The Rule 24 response, dated 28.9.17, submits that it is clear from [3] the judge had regard to the evidence submitted by the appellant and did not need to refer to all of it. The judge found the appellant not truthful and the evidence does not establish that either the appellant or his siblings are telling the truth.
9. The first ground of appeal has no merit. It was common ground at the appeal that if the appellant is an undocumented Bidoon, he is entitled to refugee status. In the circumstances, arguments about the application of NM (documentation/undocumented Bidoon: risk) Kuwait CG [2013] UKUT 003656 are otiose.
10. In a previous asylum application made in 2013 the appellant claimed to be an undocumented Bidoon. This was comprehensively dismissed in the decision of First-tier Tribunal Judge Shimmin promulgated in November 2013, which found that he had travelled to the USA on an Iraqi passport and was there fingerprinted. Despite the appellant's absolute denial that this person was him, the evidence was overwhelming. Judge Shimmin concluded that the appellant was in fact an Iraqi national. In his asylum interview, the appellant denied that he had ever been to the USA.
11. The grounds and Mr Adebayo's submissions make a fair point as to the assessment of the previous asylum appeal. The judge has misunderstood

at [11] that at the time of that appeal, only one of the appellant's siblings, Aziz, had been accepted as an undocumented Kuwaiti Bidoon. Although he application had been refused by the Secretary of State, his appeal was allowed by Judge Agnew in 2011. The other two siblings only entered the UK after the 2013 appeal hearing, in 2015. The judge mistakenly assumed that Judge Shimmin had considered the evidence of all three siblings claiming to be undocumented Bidoon. However, it is not clear that there is any materiality in this point. Just as the fact that one the appellant's siblings had been found by a previous decision of the First-tier Tribunal to be an undocumented Bidoon was not binding on Judge Shimmin, the fact that two or more have subsequently been accepted to be undocumented Bidoon was not binding on the respondent or Judge Lawrence in the consideration of this appellant's case. An independent assessment of the evidence had to be made on the evidence before the Tribunal, taken as a whole. I note that Judge Shimmin's decision was upheld by the Upper Tribunal.

12. Complaint is made that at [12] the judge suggested that "new evidence" had come to light to indicate that the siblings are likely to be Iraqi nationals and not undocumented Kuwaiti Bidoon, when there was no such new evidence. However, on a reading of the decision as a whole, in the context of the chronology, what the judge was referring to here was the new evidence post the 2011 decision in relation to the first sibling, i.e. the evidence before Judge Shimmin that this appellant had been to the USA on an Iraqi passport, which he had denied. The judge was not referring to new evidence post the decision of Judge Shimmin, but new evidence post the decision of the First-tier Tribunal in 2011, which had allowed the appeal of the appellant's sibling, Aziz. Nothing turns on the apparent mistake that it was only one brother that gave evidence in support of the appellant before Judge Shimmin, rather than all three. The point is the same; whether one or three brothers having been accepted as undocumented Bidoon cannot be binding on the First-tier Tribunal tasked with assessing the evidence in relation to this appellant.
13. In relation to this issue, it is claimed with reference to [10] of his witness statement the appellant did not deny that he had been in the USA and the judge was in error to suggest so. However, I do not accept that the appellant accepted that fact at all. All he said in his witness statement an acknowledgement that was what the judge found; he neither explicitly nor implicitly admit that he went to the USA on an Iraqi passport. It follows that Judge Lawrence was entitled to rely on his previous denial, which in reality has never changed, to make an adverse finding against the appellant when considering his claim to be an undocumented Bidoon. To this extent, the way in which the grounds are drafted is misleading.
14. The grounds, as amplified in Mr Adebayo's submissions to me, also complain that the judge overlooked material evidence and made no findings on the Kuwaiti Association letter of 10.9.13, and other documentation. However, all of this evidence had been before Judge Shimmin and Judge Lawrence was entitled, following the Devaseelan

principle to take the findings of the previous Tribunal on the same evidence and facts as the starting point. That included the fact on almost the same evidence, including that the appellant travelled to the USA as an Iraqi, Judge Shimmin found that the evidence outweighed the findings in relation to the brother, Aziz, and concluded that the appellant was an Iraqi and not an undocumented Bidoon. In reality, there was no fresh material evidence before Judge Lawrence, other than the fact that two more siblings had been admitted to the UK and accepted by the respondent as undocumented Kuwaiti Bidoon. Their assertions that they were undocumented Bidoon was taken into account, but in the light of the evidence considered as a whole Judge Lawrence suggested that they may also be Iraqi nationals and that the cases of the brothers may not have been scrutinised anxiously when they were granted asylum, and that the respondent might want to review their cases. Further, in the light of the evidence, taken as a whole, there was in reality nothing upon which Judge Lawrence could have found reason to depart from the findings of Judge Shimmin.

15. With respect to the complaint that Dr George's report had been ignored, this evidence does no more than conclude that the ration card looks genuine, but it is clear from [34] of the report, the expert has no way of knowing who that person is, and cannot say that it was the father of this appellant. The value of the evidence is therefore strictly limited and, in the light of the other evidence and findings, it cannot be said that any specific consideration of this evidence would or could have resulted in a different outcome to the appeal. In the circumstances, the failure to specifically deal with this evidence cannot be regarded as material to the outcome of the appeal and thus there can be no material error in any failure to do so. As the judge made clear at [3] that all the evidence relied on by the appellant had been taken into account, there was no requirement to address each and every part of it in the decision.
16. Finally, the complaint that the judge failed to address whether the appellant was at risk as an undocumented Bidoon is not material, as the judge found that the appellant is not an undocumented Bidoon, but in fact an Iraqi citizen, and went on to deal with risk on return to Iraq, applying the case law to the facts. I note that there is no appeal against that part of the decision.
17. In all the circumstances, I find that grounds fail to identify a material error of law in the decision of the First-tier Tribunal.

### *Conclusion & Decision*

18. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.



**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated**

*Anonymity*

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014.

Given the circumstances, I make no anonymity order.

*Fee Award*

*Note: this is not part of the determination.*

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable and thus there can be no fee award.



**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated**

