



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/00057/2015

THE IMMIGRATION ACTS

Heard at Bradford
On 3 April 2018

Decision & Reasons Promulgated
On 22 May 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

M A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Atebayo, instructed by A2 Solicitors

For the Respondent: Mrs Pettersen, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, MA, is a former resident of Kuwait. By a decision promulgated on 22 July 2016, I found that the First-tier Tribunal had erred in law such that its decision fell to be set aside. My reasons for reaching that conclusion were as follows:

1. The appellant, MA, is a former resident of Kuwait. The Secretary of State agrees that he is, as he claims, a Bidoon. He appealed against a decision of the Secretary of State dated 7 December 2014 to remove him from the United Kingdom having rejected his asylum claim. The First-tier Tribunal (Judge Cope), in a decision promulgated on 8 May 2015, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. At the appeal hearing on 13 January 2016, Mr Diwnycz, for the Secretary of State, told me that, whilst he was not authorised to concede the appeal, he acknowledged that the First-tier Tribunal had erred in law such that its determination fell to be set aside. I shall, therefore, be brief. In an otherwise very clear and reasoned decision, Judge Cope has erred in the comments he has made at [47] regarding the appellant's claimed education in Kuwait. The appellant claimed that he had received some education in Kuwait notwithstanding that he also claims to be an undocumented Bidoon, and therefore from a community generally deprived of civil rights within Kuwait, including the right to education. As the judge noted [46] this was an element of the appellant's claim which had not been accepted by the respondent. The appellant claimed that he had attended at school for only a few months when he was about 8 or 9 years old in or about 1996 and that "the only reason he had received any education was that it was before the election and therefore the government was under pressure to agree to undocumented Bidoons attending school." Judge Cope cast doubt upon that claim at [49] noting that there was "nothing before me by way of background evidence to show that either there was an election in Kuwait in 1995 or 1996 or that undocumented Bidoon had any access to education then."

3. The background material before Judge Cope included evidence regarding the general Parliamentary election which had taken place in Kuwait on 23 October 1996. This material also indicated that the position of Bidoons had improved around the time of the election for the reasons given by the appellant in his own evidence. Further, it had been in 1996 that the Executive Committee for Illegal Residents' Affairs (the ECIR) had been established to record all those who claimed to be illegal residents (Bidoon) of Kuwait. Undocumented Bidoons registered with the ECIR before the end of 1996 had been given temporary residents' rights.

4. It is certainly the case that Judge Cope was given a number of other reasons for not believing the appellant's evidence and many of those reasons have no connection with the appellant's claim to have been educated. However, the fact remains that the judge's findings regarding the appellant's claim to have been educated constitute an inaccurate assessment of the evidence. The findings clearly played a part (possibly a significant part) in leading the judge overall to reject the reliability of the appellant's Counsel. In the circumstances, the decision of the First-tier Tribunal is set aside. Consequently, the Upper Tribunal will re-make the decision following a resumed hearing. Although I have considered preserving some of Judge Cope's findings, I consider that it would be more appropriate for all the findings of fact to be set aside and for the Upper Tribunal to make new findings. The parties should, therefore, prepare for resumed hearing on that basis.

Notice of Decision

The decision of the First-tier Tribunal which was promulgated on 8 May 2015 is set aside. None of the findings of fact shall stand. The appeal should be re-made by the Upper Tribunal following a resumed hearing in Bradford on a date to be fixed.

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 their 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.

2. At the resumed hearing at Bradford on 3 April 2018, Mr Atebayo appeared for the appellant. Mrs Pettersen, a Senior Home Office Presenting Officer, appeared for the respondent. The standard of proof is whether there is a reasonable likelihood that the appellant will be at a real risk of ill-treatment or persecution should he be returned to Kuwait. The burden of proof is on the appellant. I have considered all the documentary evidence; if I do not refer to a specific item of documentary evidence, this does not mean that I have not considered it holistically with the remainder of the evidence before reaching any findings of fact. I have also considered holistically the oral evidence given by the appellant himself at the resumed hearing and also that of his witness, Mr A.
3. The appellant claims to be an undocumented Bidoon, a long-term resident of Kuwait who has been unable to obtain citizenship. The appellant claimed that his father and mother were also Bidoon. The appellant claims to have been educated for only two months at school. He claims to have attended many demonstrations in Kuwait regarding his discriminatory Bidoon status. In 2013, he claims that he was arrested by the police, put in a police car and told him that he would only be released if he asked his friends to attend a demonstration so that they might be arrested. The appellant agreed to do this but he did not contact his friends. Instead, he sought to evade the police. On 7 October 2013, the appellant attended demonstration with about 100-150 others in Al Sulibya. The appellant was arrested and taken into detention. He went on hunger strike and was then transferred to a prison where he was held for a further 20 days. He claims to have been beaten and ill-treated whilst in detention. He appeared before a judge but was not sentenced. A friend of the appellant's father (AM) who was a Kuwaiti citizen arranged for the appellant to be released. AM gave the appellant money and arranged to take him out of Kuwait to travel to the United Kingdom. He arrived in the United Kingdom on 17 February 2014 when he claimed asylum. When his asylum claim was refused and a decision made to remove him on 17 December 2014, he appealed to the First-tier Tribunal. The First-tier Tribunal's decision having been set aside, the Upper Tribunal will now remake the decision.
4. There have been problems in this appeal with the interpreters provided by HMCTS. At the hearing on 3 April 2018, a Mr Abdalla attended as interpreter in Arabic (Middle Eastern). On the last occasion before the Upper Tribunal, the appellant complained that Mr Abdalla had been unable to understand him. That hearing had been adjourned in consequence. However, before the Upper Tribunal on 3 April 2018, the appellant explained that he would use English and would only use the interpreter for assistance if necessary. I was very careful to ensure that the appellant should only proceed with Mr Abdalla as interpreter if he was entirely happy to do so. He told me on more than one occasion that he was happy to proceed, notwithstanding the fact that he had rejected Mr Abdalla previously. I was entirely satisfied that the appellant was able to communicate his oral evidence coherently either in English or, when it proved necessary, with Mr Abdalla's assistance. I record also that the appellant's representative expressed no objection to Mr Abdalla acting as interpreter.

5. The appellant adopted his two witness statements as his evidence-in-chief. He was cross-examined by Mrs Pettersen. I heard evidence also from Mr A who claimed to have known the appellant through his father in Kuwait. Mr A is a refugee and lives in Manchester. Mr A said he had not attended demonstrations in his own village in Kuwait; the demonstrations took place about 30 kilometres from his village.
6. After I had heard the evidence of both witnesses and considered the oral submissions of both representatives, I reserved my determination.
7. The Secretary of State in the decision letter accepts that the appellant is a national of Kuwait. The Secretary of State does not accept that the appellant is an undocumented Bidoon as claimed. The Secretary of State [19] had considered a letter from Infinity Stateless Association confirming the appellant is an undocumented Bidoon. Considering the letter in the context of all the evidence (*Ahmed* [2002] UKIAT 00439) the Secretary of State considered that the document deserved to have little weight attached to it. It had not been possible to verify the document or any particulars regarding the head of the organisation.
8. The Secretary of State also recorded [20] that the appellant had been fingerprinted for proposed visits to the United States of America on two occasions, on 13 October and again on 20 November 2008. The appellant has a Kuwaiti passport bearing the appellant's own name and his correct date of birth. The appellant was asked at his asylum interview about his use of this passport. The Secretary of State drew attention to the fact (Country Information Report Kuwait April 2012) that travel documents were not routinely issued to Bidoons. The appellant explained that he had attended an office in Bayan on two occasions in order to obtain a visa but he had been told that he was too young for one to be granted to him (see Question 177).
9. As regards the appellant's arrest at the demonstration of 2013, the Secretary of State [24-25] considered that the appellant's account was plausible. However, considering the evidence in the round, the Secretary of State had rejected the appellant's claim. Regarding the demonstration on 7 October 2013, the Secretary of State accepted there existed objective evidence that the demonstration had taken place [26]. However, photographs provided by the appellant allegedly taken at the demonstration carried little weight. Moreover, the appellant's claim to have been released after the intervention of his father's friend AM was not credible. It was not credible that the appellant would be detained for 20 days and treated harshly but then released.
10. I shall deal first with the oral evidence of the witness, Mr A. His evidence was consistent with that given by the appellant; both men claimed that they had met at a "men's meeting" and through the agency of the appellant's father. Beyond that, Mr A's evidence added little to the appellant's case. His evidence casts very little light upon the core details of the appellant's own claim, in particular his detention. Details regarding the friendship of the two men in Kuwait went no further than simply saying where they had first met and through whose agency. I have given weight to AM's evidence but I find that it cannot be described as compelling support of the appellant's account.

11. I accept that the appellant gave answers under cross-examination which were largely consistent with what he had said previously at interview. I was not impressed by the photographs which the appellant produced and I found that they should be given very little evidential weight. Generally, the photographs show the appellant himself apparently demonstrating but the photographs contain very little background context, for example the extent of the crowd in which he is demonstrating whilst there is no evidence at all in the photographs of the presence of police or security officers or, indeed, fellow demonstrators. The photographs could have been taken anywhere and by anyone and do not show, as the claimant claims, that he has taken part in a demonstration concerning his Bidoon status.
12. A difficulty in the appellant's case lies in the fact that there have been what are described "in the Secretary of State's decision letter (somewhat inelegantly) as "visa hits. These "hits" which have been discovered by the Secretary of State, provide independent evidence that the appellant had made two applications for visas to enter the USA. The appellant's reason for claiming that he had been refused visas on the two occasions in 2008 was that he was too young. However, in 2008, the appellant was 21 years old. The appellant has produced no evidence at all to show that he would have been likely to have been refused a US visa on account of his age in 2008. It would have been a simple matter for the appellant to have obtained evidence to show that, at 21 years old, the appellant was too young to enter the USA. I bear in mind also that the appellant has been compelled to answer these questions regarding his visa applications; he did not volunteer the evidence. His explanation is, in my opinion, not credible. The appellant's problems are compounded by the fact that the passport produced to the US officers contained the appellant's correct name and date of birth. Under cross-examination, the appellant explained that the false passport which he had obtained had borne his correct name and date of birth so that it would be "easier for him to remember". That may be one explanation but another is, of course, that the passport was genuine. I see from the background evidence which has been produced that an undocumented Bidoon cannot obtain a passport. A Bidoon may be issued with a document known as a travel document under Article 17 of the Kuwait Law Code. I see also that Kuwaiti citizens are issued full passports in which they are described as citizens. Significantly, the US authorities did not reject the appellant's application because he was not a Kuwaiti citizen. I find that the US officials did not reject the visa applications because of the appellant's youth.
13. The appellant presents as an undocumented Bidoon and has produced a witness who he claims can corroborate the appellant's status. The appellant has produced photographs which add very little indeed to his claim that he has participated in demonstrations. He claims to have attended a demonstration which the Secretary of State accepts did occur but he has no evidence other than his own which might prove that he did attend. However, regarding the "visa hits", which significantly do not form part of the appellant's own account, his evidence is unsatisfactory and incredible. Considering the evidence as a whole, I do not accept his explanation of the 'visa hits.' In particular, I do not accept that he was in possession of a false passport which happened to bear his correct name and date of birth. Weighing the evidence as a whole, I find the appellant is not a reliable witness. Had he been telling the truth, he would have been able to provide a credible explanation of the 'hits. Significantly, it is

only when the appellant had to deal with evidence which emerged from a source other than himself that his consistency and credibility as a witness foundered. With these observations in mind and taking both written and oral evidence together, I have concluded that the appellant is not an undocumented Bidoon as claimed. He has therefore failed to establish that he is entitled to international protection. His appeal is dismissed.

Notice of Decision

The appellant's appeal against the decision of the Secretary of State dated 7 December 2014 is dismissed on all grounds.

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Signed

Date 10 MAY 2018

Upper Tribunal Judge Lane

TO THE RESPONDENT

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 10 MAY 2018

Upper Tribunal Judge Lane