



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

Appeal Number: PA/07854/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 14 January 2019**

**Decision & Reasons
Promulgated
On 6 February 2019**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**DA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Bassiri-Desfouli, Counsel instructed by A2 Solicitors
For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant who is from Kuwait has permission to challenge the decision of Judge Parkes of the First-tier Tribunal sent on 30 July 2018 dismissing his appeal against the decision made by the respondent on 15 June 2018 refusing his protection claim.
2. The essence of the grounds is that the judge took an incorrect approach to the evidence of the witness, Mr Hamed, who is a recognised refugee in the UK and also failed to make proper findings.

3. At the outset the representatives said they had conferred and were in agreement in thinking that the judge had materially erred in law. Based on my own pre-reading of the file, I was not initially prepared to agree, but having sought submissions and clarifications from both of them, I am persuaded that the decision is vitiated by legal error.
4. There are two main difficulties with the judge's decision. First of all I agree with the parties that the judge's treatment of the witness' evidence was defective. At paragraphs 21-22 the judge wrote:

“21. I appreciate that Mr Hamed has been granted asylum but I do not have the full details of his circumstances, the basis on which he was granted and whether that was following a hearing or by the Home Office. In any event his evidence did not add much to the Appellant's case. He could not give evidence relating to the Appellant's claimed problems with the security forces in Kuwait only confirming the Appellant's working as a street vendor, knowing the Appellant's employer vaguely and that the Appellant was upset over his mother's health.

22. It is a strange coincidence that both the Appellant and Mr Hamed were employed by individuals who were prepared to take the risk of association with undocumented Bidoon and then they were housed by their respective employers in safe locations and that the employers also arranged and paid for their departure for the UK.”

5. I consider that this assessment went wrong in saying that the witness's evidence did not have potential weight because it “did not add much.” This witness's' evidence included an unambiguous claim that he knew the appellant to be an undocumented Bidoon. If this witness was accepted as credible this was potentially material evidence (albeit hearsay). Second, the judge's view that “(i)f the appellant was undocumented it is not clear how the security forces would be able to identify or locate him” is at odds with the background country evidence which indicates that within Kuwait the authorities have often targeted undocumented Bidoon and subjected them to a number of adverse measures, including detention. It is not suggested in the background country evidence that the undocumented status of such persons has made them untraceable or that all those detained are detained on a purely haphazard or random basis.
6. Whilst therefore I find some of the points raised by both representatives to miss the mark, I am persuaded that the above two deficiencies together constitute a material error of law. Unfortunately, since there is no agreement between the parties as to the facts - including whether the appellant is in fact an undocumented Bidoon - I see no alternative to a remittal back to the First-tier Tribunal for a de novo hearing.

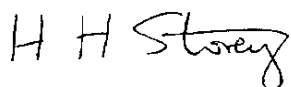
7. For the above reasons I conclude that the First-tier Tribunal judge materially erred in law and that his decision is to be remitted to the First-tier Tribunal to be heard de novo (not before Judge Parkes).

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.

Signed

Date: 2 January 2019

A handwritten signature in black ink that reads "H H Storey". The signature is written in a cursive style with a large, looped 'S' at the end.

Dr H H Storey
Judge of the Upper Tribunal