**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: PA/08721/2018

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 18th December 2018** | **On 22nd January 2019** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**M A Y**
**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Mr R Claire (Counsel)
For the Respondent: Mr S Kandola (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Easterman, promulgated on 16th October 2018 following a hearing at Hatton Cross on 9th August 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## The Appellant

2. The Appellant is a male, a citizen of Kuwait (alleged), and was born on 8th January 1985. He appealed against the decision of the Respondent Secretary of State dated 2nd July 2018, refusing is claim for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395.

## The Essence of the Appellant's Claim

3. The essence of the Appellant's claim is that he is an undocumented Bidoon from Kuwait, such that were he to be returned back to Kuwait, he would be subjected to a risk of ill-treatment and persecution, contrary to the United Kingdom's international obligations, and the European Convention of Human Rights.

## The Judge's Determination

4. In an extensive and well compiled determination, the judge considered the evidence before him, drawing attention to the country guidance case of **NM [2004] UKIAT 00256** (see paragraph 14 of the determination), before going on to consider at considerable length, the Appellant's case and arguments (see paragraphs 16 to 55). The judge observed that the Appellant claimed to be an undocumented Bidoon but that "he knows little about the history of Bidoons other than they have never had documentation and have no rights in Kuwait" (paragraph 16). The judge also observed that the Appellant claimed to have attended a demonstration only once and said that he was very scared and under a lot of pressure being an undocumented Bidoon (paragraph 19). The judge also heard evidence from witnesses on the Appellant's behalf (see paragraph 30 and paragraph 35). Consideration was then given by the judge to the identity documents that the Appellant had used when visiting the Embassy in Jordan before coming to the UK. The Appellant had said that he had none.

5. He was then asked how he had come to be granted a visa with no documents and he said

> "He had no documents, and it was put to him that the documents were needed for a visa, and again he said he had none, no birth certificate, no marriage certificate and he could not remember what documents his wife may have used. He said he would not have been able to pick up his visa from Kuwait. He was asked what document he had used to come to the United Kingdom, whether it was a passport or a travel document, it was almost impossible to get a clear answer, but eventually he said it was a paper like a passport, issued by the Embassy, which I indicated sounded like a travel document" (see paragraph 40).

6. The judge heard from a third witness as well (see paragraph 46), before going on to hear submissions on behalf of the parties (paragraph 50 and paragraphs 69 to 79).

7. In his conclusions, the judge was troubled by the evidence about the Appellant's brother and how he came to the UK, as a result of his wife coming to this country, and successfully claiming asylum. The judge observed that,

> "No credible explanation was given to me about how it was possible for an undocumented Kuwaiti Bidoon, to travel to Jordan, and then present himself to the British Embassy there, in order to be able to pursue his application for a spousal visa" (paragraph 88).

8. The argument that it was for the Home Office to produce evidence to deal with these matters was not something the judge was happy with (paragraph 89). He also observed that it was very difficult to accept an argument in which the Appellant constantly reiterated his illiteracy, his lack of knowledge, and an occasion when he was beaten up for working (paragraph 91).

9. Eventually, the judge observed that the matter of "great concern" was "the Appellant's difficulty in dealing with answering a number of questions. The reason he gave at one point was that it reminded him of the treatment he had from the Kuwaiti authorities, when they were questioning him, which brought back the memories of torture. While of course corroboration is not any sort of requirement, and it will be quite wrong to expect a person necessarily to be able to corroborate their account with external evidence, this Appellant has been remarkably unspecific about the treatment he received by the Kuwaiti authorities, other than saying that he was questioned, bad things were said to him, and that he was beaten" (paragraph 97).

10. The judge went on to dismiss the appeal.

## Grounds of Application

11. The grounds of application state that the Appellant is an undocumented Bidoon. His witnesses at the hearing were his brother, his sister-in-law, and others, some related to the Appellant, but others not. The grounds state that the judge made a material error of law in finding against the Appellant on a matter, the interview shows was disclosed but not challenged in the refusal letter, of the Appellant's travel via Jordan. The judge was also wrong to be so critical of the Appellant's claim that he was able to convince the Embassy of his status as a spouse of an undocumented refugee without himself having documents.

12. On 8th November 2018 permission to appeal was granted on this basis. It was stated that given that the Respondent Secretary of State did not challenge these matters, the Appellant was not able to address them, not realising that they were in issue, and the judge arguably made material speculative findings against the Appellant on these issues.

## Submissions

13. At the hearing before me on 18th December 2018, Mr Claire, appearing on behalf of the Appellant, had two fundamental submissions.

14. First, that, where it was the case that the judge had, in coming to his conclusions, made it quite clear that corroboration was not a requirement with regard to the acceptability or external evidence, (paragraph 97 – see above), nevertheless, in this case the judge had then gone on to do exactly this. This was clear from what the judge said (at paragraph 98) following on from his initial statement, when he was dealing with the Appellant's physical scars and psychological scars, when the judge observed that

> "There is nothing to support his claim to mistreatment, although one would have thought, if he had the sort of mental health issues that were being suggested, someone might have taken him to see either a doctor, or a psychiatrist, or referred him to one of the well-known organisations who assist those in positions such as the Appellant" (see paragraph 98).

15. Accordingly submitted Mr Claire, the judge's eventual conclusion that he could not accept that the Appellant had been mistreated as he claims, and that he was an undocumented Bidoon, was wrongly decided (paragraph 103), because it appears to have been a conclusion that was based on the lack of corroboration in relation to matters that the judge referred to (at paragraphs 97 to 98).

16. Second, the judge's observation that, that Appellant was able to appear at the Embassy in Jordan and satisfy them, that they were the spouse of a settled refugee, was also wrongly decided. One only had to look at the Judge's comments:

> "While the Appellant's representative argued that it was for the Home Office to produce evidence to deal with that if they were unhappy with it, the reality is that the Appellant's representatives did not put their papers before the Tribunal until a day before the hearing, having lodged the appeal in 2016. I find it very hard to accept that somebody without any formal identification document, would be able to appear at the Embassy in Jordan and satisfy them, that they were the spouse of a settled refugee" (paragraph 89).

17. However, the comment in this regard, submitted Mr. Claire, was a reference to the Appellant's brother, and how he had also come to the United Kingdom, and succeeded in lodging an asylum claim (see paragraph 88).

18. Mr Claire submitted that there were two principal difficulties with such an observation. First, it was irrational for the judge to look at the date of which the bundle was served on the Tribunal as being relevant to assess the date when the Secretary of State ought to have produced their own evidence to rebut the Appellant's account. This is so because the Secretary of State would have been aware what the Appellant's transit route to the United Kingdom on the asylum interviews, or at the very least

ought to have been aware of the same. The second reason is that the judge reached speculative findings that the Appellant would not have been able to convince the Embassy of his status as the spouse of an undocumented refugee, and had done so without any corroborative evidence, and given this finding made in relation to the brother, the Appellant had been deprived of the opportunity of properly having the Tribunal address his own circumstances, in which he was similarly situated.

19. For his part, Mr Kandola submitted that a relevant question before the Tribunal Judge below was how the Appellant had managed to obtain a visa to come from the British Embassy in Jordan to the United Kingdom. In that regard, the judge was entitled to look at the kindred circumstances of the Appellant's brother who had similarly done the same. The judge had given proper reasons for why this was not credible (see paragraph 40), when the judge observed how despite repeated questioning of the Appellant to provide clarification, the judge frustratingly came to the conclusion that "it was almost impossible to get a clear answer" (paragraph 40).

20. Second, in relation to corroboration, it was simply not the case that the judge had made his decision on the basis that there was a lack of corroboration from medical authorities and others in relation to the Appellant's claimed ill-treatment. The judge, in fact, had stated (paragraphs 97 to 98) that corroboration "is not any sort of requirement, and it would be quite wrong to expect a person necessarily to give a corroborative account with external evidence".

21. However, this does not mean to say that the judge was not entitled, when considering the Appellant's claim that he had suffered physical and psychological scars, to draw attention to the lack of evidence of any sort in relation to these mental health issues from "either a doctor, or a psychiatrist, or well-known organisations who assist those in positions such as the Appellant" (paragraph 98).

## No Error of Law

22. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. In what is a detailed and thorough determination (running into 105 paragraphs), the judge exhaustively embarks upon a consideration of the Appellant's claim, going through the various witnesses who attended on his behalf, attempting painstakingly to ascertain the manner in which the Appellant claims to have come from Jordan to the United Kingdom.

23. Despite the fact, that this evidence was not credible (see paragraph 88), and despite it being the case that even in relation to the Appellant's claims of torture the judge found that "this Appellant has been remarkably unspecific" (paragraph 97), the judge made an independent finding that the evidence as put before him, was simply not credible.

24. The Appellant did not have evidence that persuaded the judge that he had been subjected to ill-treatment. The Appellant also did not have evidence that persuaded the judge that he had been simply able to go to a British Embassy in Jordon, like his father, and persuade them without any documentation, that he was a Bidoon, and then be able to come to the United Kingdom.

25. It is not the case at all that the judge, having directed himself appropriately on the issue of corroboration of the requirement (paragraph 97) then went on to seek such corroboration. What the judge was stating (at paragraph 98) was that "there is nothing to support his claimed mistreatment", and that in this regard one would have thought that "the sort of mental health issues that were being suggested" was such that these "might have taken him to see either a doctor, or a psychiatrist, or referred him to one of the well-known organisations" (paragraph 98). That was a conclusion that the judge was entitled to come to. It did not amount to an attempt to seek corroboration. There is no error of law.

**Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of an error. The decision shall stand.

This appeal is dismissed.

An anonymity direction is made.

**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

Deputy Upper Tribunal Judge Juss 10th January 2019