



Upper Tribunal

(Immigration and Asylum Chamber) Appeal Number: PA/09822/2016

THE IMMIGRATION ACT

Heard at Civil Justice Centre
Manchester
On 15th April 2019

Decision & Reasons Promulgated
On 13 June 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**Mr Talal Fahd Shimmari
(NO ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Greer, Counsel, instructed by Adams solicitors

For the Respondent: Mr Bates, Senior Home Officer Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Pickup promulgated on the 8th January 2019 whereby the judge dismissed the appellant's appeal against the decision of the respondent to refuse the appellant's claims based on asylum, humanitarian protection or relief otherwise on the grounds of Article 2 and 3 of the ECHR. Article 8 of the ECHR.
2. I have considered whether or not it is appropriate to make an anonymity direction. Having considered all the circumstances I do not consider it necessary to do so.
3. Leave to appeal to the Upper Tribunal was granted by Upper Tier Tribunal judge Grubb on 21st February 2019. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.
4. The material part of the grant of leave provides:-

3 The Grounds challenge various aspects of the judge's reasoning and assessment of the evidence in reaching his adverse credibility finding. All the grounds are arguable. In particular, it is arguable that the judge failed properly to have regard to the background evidence consistent with the appellant's claim to be involved in a demonstration in 2011; wrongly failed to take into account that the solicitors letter stated that the screening interview missed a page and failed to appreciate that the appellant had not been asked about the Bidoon Committee at interview.
5. Thus the appeal appeared before me to determine whether there was an error of law in the decision of Judge Pickup.
6. I note that there had been a previous full hearing on the 6th June 2017 and decision in respect of this appeal, a decision by Judge M Davies dated 9th June 2017. That decision had been set aside by the Upper Tribunal with the matter to be heard afresh in the First-tier Tribunal. The appeal had been remitted for a fresh hearing and was heard by Judge Pickup.

Factual background

7. The appellant, date of birth 16 July 1989, claims to be an undocumented Bidoon from Kuwait. The appellant has claimed that his parents were living in the desert during the 1965 census and therefore never registered. When the appellant's father tried to register later he was turned away. As his parents were unregistered the appellant claims that he was also unregistered. The appellant therefore claims that he not being registered Bidoon is an undocumented Bidoon emanating from Kuwait.

- 8.** Further the appellant claims that on 18 February 2014 he was involved in protest demonstration seeking to promote Bidoon rights. He was arrested and taken to a police station. Whilst he was released after a week, the Kuwaiti authorities were seeking information from him about others involved in seeking to promote Bidoon rights and the appellant was required to report back to the authorities. The appellant did not report back but hid in an area called Al Jahra in the stables. He remained in hiding for 18 months.
- 9.** The appellant has given an alternative version in which he claims that his fear was of ISIS; that he was protesting against ISIS; and as a result was detained for 15 days.
- 10.** He then left Kuwait on 1 September 2016. The appellant left Kuwait by plane travelling on a passport provided by an agent. Again the appellant has given various accounts as to where he travelled to, how long he was there and how ultimately she entered the United Kingdom. [For example the appellant has spent periods of time in France but did not claim asylum there.]

Grounds of appeal

- 11.** Whilst the leave makes reference to a demonstration in 2011, it is not the appellant's case that he was involved in a demonstration in 2011. Mr Greer on behalf of the appellant accepted that it was not part of the appellant's claim that he had been involved in demonstrations in 2011.
- 12.** The appellant's claim is based upon the appellant attending at a demonstration, which took place on the 18th or 19th February 2014. An issue which the judge had to determine was whether or not the appellant did participate in that demonstration in February 2014 and what happened to the appellant as a result.
- 13.** Mr Greer made submissions raising specifically a number of areas of challenge.
- 14.** With regard to the appellant's involvement in demonstrations in February 2014 Mr Greer asserted the decision in part was irrational and unreasonable and failed to take account of the background evidence dealing with the 2014 demonstrations as set out in paragraph 4 of the grounds. It is claimed that the judge had found on the basis of the background evidence that the claim that the appellant had attended demonstrations in 2014 was not credible.
- 15.** The background articles considered by the judge [pages 20 of the main bundle and page 18 of the supplementary bundle] relating to the demonstrations, it is suggested, were dismissed as propaganda pieces issued by Bedoonrights groups and as such were not reliable.

It was submitted that the articles were reliable and supported the appellant's account.

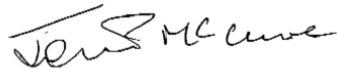
- 16.** Also in the papers are further reports. They were attached to the back of the record of proceedings of Judge Davies. The reports are headed "*BEDOONRIGHTS Defending the rights of the stateless in Kuwait*" and were titled "*10 days of Protests, 9 Activists in Jail*" and "*Interior Ministry Threatens to Target Protesters Families*" and "*Bedoon Activists Kidnapped After His Speech*".
- 17.** The 3 reports refer specifically to the demonstrations starting on 19 February 2014. The reports are dated between 23 February 2014 and early March 2014. They indicate that water cannon and tear gas and such were used upon the demonstrators in the demonstration on 19 February 2014.
- 18.** I note in paragraph 37 of Judge Pickup's decision that there are references to looseleaf reports allegedly handed in on 9 June 2017. Those reports would have been handed in at the time of the hearing before Judge Davies and attached by him to the back of the Record of Proceedings.
- 19.** Judge Pickup appears not to have considered those reports. In paragraph 37 he indicates that he cannot find them in the file. As stated they were attached to the back of the record of proceedings of Judge Davies.
- 20.** Mr Greer sought to make the point that the CPIN report of July 2016 relied on by the respondent itself relies upon the same sources as the background articles submitted by the appellant. It is submitted that the appellant's account is consistent with the news articles and the judge should not have dismissed the reports from Bedoonrights as merely propaganda. In effect it was being claimed that the news articles supported the appellant's claims as to what was happening at the demonstrations.
- 21.** The CPIN report appears at page 3 appellant's bundle. There when dealing with the riots it indicates that in 2014 February and March the rioters were dispersed and some were arrested. The police authority used teargas, smoke bombs, water: physical violence. Whilst that is clearly drawing upon a document emanating from Bedoonrights, it does provide some degree of support to the appellant's account. CPIN does rely upon the reports.
- 22.** The judge in saying that the loose-leaf reports were not in the papers before him, clearly had not considered the three reports identified. As the judge has failed to consider all of the evidence submitted and as he has made findings of fact adverse to the appellant without fully considering evidence material to the issues under consideration, there is clearly an error of law in the decision of Judge Pickup.

- 23.** The appellant's involvement and participation in the demonstration was central to the credibility of the appellant's account overall. In the circumstances the findings with regard to credibility cannot stand as account has not been taken of all the evidence. The only course is for this matter to be remitted back to the First-tier for hearing afresh.
- 24.** In light of the matters set out I do not consider it necessary to deal with the remaining grounds.

Decision

- 25.** There is a material error of law in the decision.
- 26.** The appeal is remitted back to the First-tier Tribunal for hearing afresh.

Signed



Deputy Upper Tribunal Judge McClure
June 2019

Date 11th