



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

Appeal Number: PA/03292/2019

THE IMMIGRATION ACTS

At Field House
On 15 June 2022

Decision & Reasons Promulgated
On 30 June 2022

Before

UPPER TRIBUNAL JUDGE BLUM

Between

**YT
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION TO REMIT TO THE FIRST-TIER TRIBUNAL (IAC)

1. The appellant maintains that he is an undocumented Bidoon from Kuwait. He claims to have arrived in the UK on 8 November 2010 using a passport provided by an agent and made an asylum claim the following day. He claimed to fear persecution if removed to Kuwait as an undocumented Bidoon and because he was the subject of an arrest warrant issued because of his distribution leaflets in support of the rights of undocumented Bidoons. In his asylum interview the appellant claimed to have been born and always lived in Kuwait.
2. His application was refused on 26 November 2010. An appeal against this decision was dismissed by Judge of the First-tier Tribunal Saffer on 16 February 2011. Judge Saffer did not find the appellant was an undocumented Bidoon.

3. On 5 November 2013 the appellant was convicted of theft from a person and sexual assault and received a total sentence of 48 months imprisonment (including a sentence of 42 months in respect of the sexual offence).
4. A fresh claim made by the appellant was refused on 10 November 2014 and an appeal against this fresh claim was dismissed by Judge of the First-tier Tribunal Kelly on 31 July 2015. Judge Kelly found that the appellant was not an undocumented Bidoon.
5. On 5 April 2017 Judge of the First-tier Tribunal Holmes allowed the protection appeal of **AT**, a person who is now accepted to be the appellant's half-brother (they share the same father). **AT**'s protection claim was based on his status as an undocumented Bidoon from Kuwait. No reference was made to the appellant in **AT**'s appeal.
6. On 24 May 2017 Judge Homes allowed the protection appeal of **MT**, a person who is now accepted to also be the appellant's half-brother (as with **AT**, they share the same father). **MT**'s protection claim was also based on his status as an undocumented Bidoon from Kuwait. Once again, no reference was made to the appellant in **MT**'s appeal. **MT** and **AT** were subsequently granted refugee leave.
7. The respondent now believes that the appellant is an Iraqi. On 14 July 2017 the appellant was interviewed and asked whether he was born in Iraq and was an Iraqi citizen. An Iraqi nationality number was apparently put to him. He denied being Iraqi. Later in 2017 the appellant was interviewed by the Iraqi authorities. On 20 April 2018 the respondent wrote to the appellant stating that the Home Office had "completed extensive checks with regard to your nationality and using your fingerprints located evidence confirming your true nationality in the form of a copy of your Iraqi passport and ID card." The letter indicated that, following the appellant's earlier interview with Iraqi officials, the Home Office submitted further evidence to the Iraqi officials in the form of a copy of the appellant's alleged Iraqi passport and ID card. The letter indicated that on 4 January 2018 the Iraqi officials confirmed that the appellant was a national of Iraq.
8. On 11 October 2018 the respondent refused a protection and human rights claim made by the appellant in earlier representations. In her decision the respondent issued a certificate pursuant to section 72 of the Nationality, Immigration and Asylum Act 2002 on the basis that the appellant constituted a danger to the community of the UK. The respondent relied on copies of an Iraqi ID card, certificate of nationality and Iraqi passport that were said to relate to the appellant and to support her view that the appellant was a national of Iraq. The respondent noted in particular that the names of the appellant's parents were essentially the same as those contained in the Iraqi ID documents. The respondent also noted that the appellant was unable to explain why he had two Iraqi telephone numbers on his mobile

phone one of which was contained under a reference “my parents”. The respondent also relied on a confirmation by the Iraqi officials on 4 January 2018 that the appellant was a national of Iraq. The respondent then considered whether the appellant held a well-founded fear if returned to Iraq but concluded that he did not. The respondent rejected the appellant’s claim that his deportation would breach Article 3 ECHR on the basis of the appellant’s medical condition (the respondent accepted that the appellant had been diagnosed with PTSD and had been prescribed the antipsychotic drug Olanzapine). The appellant appealed the respondent’s decision to the First-tier Tribunal.

9. Judge of the First-tier Tribunal Courtney dismissed the appellant’s appeal in a decision promulgated on 25 February 2020. Judge Courtney found that, although he may have been resident in Kuwait before coming to the UK, the appellant was an Iraqi national.
10. In an ‘error of law’ decision promulgated on 25 January 2021 the Upper Tribunal found that Judge Courtney’s decision contained material errors of law requiring it to be set aside. The Upper Tribunal retained jurisdiction to remake the decision and various directions were issued to progress the case, primarily relating to the documentation upon which the respondent based her belief that the appellant was Iraqi and in respect of an expert country report.
11. The decision was due to be remade at a hearing on 29 April 2022. This was converted into a Case Management Review Hearing (CMRH) as the Tribunal was informed that the respondent had revoked the protection status of the appellant’s two half-brothers, **AT** and **MT**, and that **AT** and **MT** had lodged appeals with the First-tier Tribunal (RP/50019/2020; RP/00026/2020) against the revocation decisions. The Tribunal was informed that the appeals of **AT** and **MT** had been stayed pending the outcome of the appellant’s appeal. Significantly, the Tribunal was informed that the basis for the revocation decisions was the same contested evidence relied on by the respondent in the appellant’s appeal. All three appeals therefore share the same core factual matrix.
12. Various directions were issued with a view to confirming that the appeals of **AT** and **MT** relied on exactly the same contested factual matrix as that of the appellant, and to obtain the views of the parties to the possibility of remitting the appellant appeal back to the First-tier Tribunal so that it could be linked with the appeals of his half-brothers.
13. At a further CMRH on 15 June 2022 Mr Walker, Presenting Officer, confirmed that the decisions to revoke **AT** and **MT’s** refugee status was based on the exactly the same documents relating to the appellant, and that the contested factual matrix was the same in all the appeals. As all three appeals (RP/50019/2020; RP/00026/2020; PA/03292/2019) concerned the same common issues, Ms Braganza QC

and Mr Walker both agreed that it was appropriate to remit this appeal to the First-tier Tribunal to be linked with the appeals of the appellant's half-brothers and to enable the tree appeals be heard and determined at the same time (pursuant to rule 4(3)(b) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014).

14. Under the Tribunals, Courts and Enforcement Act 2007 the Upper Tribunal can either remake a decision of the First-tier Tribunal that involved the making of an error on a point of law, or it can remit the case to the First-tier Tribunal with directions for its reconsideration (s.12(2)). Under Part 3, paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 18 June 2018 a case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
- (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

15. Although the Upper Tribunal initially decided to remake the decision itself, in light of the significant developments relating to the revocation decisions and appeals of the appellant's half-brothers, and given the need for consistency in decision-making and the benefits of having all contested matters in the appeals determined at the same time, and having regard to the overriding objective in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and its case management powers in rule 5, the Upper Tribunal considers it appropriate to remit the case back to the First-tier Tribunal to be linked with and heard together with RP/50019/2020 and RP/00026/2020.

Notice of Decision

The First-tier Tribunal's decision contains errors on points of law requiring it to be set aside (see the 'error of law' decision promulgated on 25 January 2021.

The case will be remitted back to the First-tier Tribunal to be linked with and heard together with RP/50019/2020; RP/00026/2020

Directions

- 1. Further to the directions already issued by the Upper Tribunal on 19 October 2021 and 29 April 2022 (sent on 10 May 2022), all the**

documents that were to be filed with the Upper Tribunal are to now be filed with the First-tier Tribunal.

- 2. There is to be a Case Management Review Hearing, to be listed for 2 hours, in which the legal representatives in the appeals RP/50019/2020, RP/00026/2020, and PA/03292/2019 must attend.**

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 D.Blum

Date: 16 June 2022

Upper Tribunal Judge Blum