



Tribunal but that decision was reduced by the Court of Session. Following that, on 6 December 2019 the Vice President of the Upper Tribunal granted permission to appeal. For the reasons set out in my decision of 3 February 2020 (a copy of which is attached), the decision of Judge Green was set aside. Directions were given for the appeal to be remade in the Upper Tribunal on the basis that none of the findings of fact made had been preserved.

2. Owing to the subsequent COVID pandemic it was not possible to convene the hearing effectively until 16 December. That was primarily due to the need to hold a face-to-face hearing given the number of witnesses.

### **The Appellant's Case**

3. The appellant maintains that he is a stateless Bidoon, born in Kuwait in 1982. He has a brother and two sisters and he is himself married. They have four children, the eldest of whom was born in 2007.
4. As a Bidoon he was not entitled to education, spending most of the time with the family and was able to earn some money doing menial work such as washing cars for money. He went regularly to gatherings known as "Diwaniya", where people would discuss current affairs, what was going on in the community and the difficulties they faced as Bidoons.
5. The appellant took part in a demonstration in Kuwait on 18 February 2014. Although it was peaceful, the authorities broke it up using water cannons, rubber bullets and tear gas and the appellant was taken to a vehicle and beaten up. He was taken into detention, beaten and interrogated. He was eventually released after signing a confession to having worked against the government and was required to sign regularly. He was also supposed to pass information to the authorities.
6. The appellant discussed this with his paternal uncle and they agreed that it was no longer safe for him to be in Kuwait and arrangements were made for him to travel first to stay at a farm and, with his uncle's assistance, and in light of continuing interest in him shown by the police attending the family home arrangements were made for him to be smuggled out of the United Kingdom by an agent. He flew first to Turkey and then to Greece via sea. He eventually travelled via Germany to Calais and then to the United Kingdom where he claimed asylum.
7. The appellant still maintains contact with his family via WhatsApp, which he uses to contact a friend in the neighbourhood who takes the phone to his family.

### **The Respondent's Case**

8. The Secretary of State did not accept the appellant's account to be a Bidoon given his lack of knowledge of Bidoon history and did not accept that he had attended a demonstration as claimed as his account of what

had happened and being arrested as a result was contrary to the evidence the Secretary of State had obtained.

9. The Secretary of State further took inferences adverse to the appellant pursuant to Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 from his failure to claim asylum in France where he had stayed for six months.

### **Issues**

10. It is not in dispute that the appellant is from Kuwait and it is accepted by the respondent that if the appellant is an undocumented Bidoon then he has a well-founded fear of persecution and for that reason is entitled to be recognised as a refugee.

### **The Hearing**

11. I heard evidence from the appellant and three additional witnesses he had called. I also had before me a consolidated bundle containing the previous inventories of productions and objective evidence. I also heard submissions from both representatives.
12. This was a hybrid hearing in that although the appellant, one of the witnesses, both representatives and I were present in court, two of the witnesses joined via Teams.
13. Although there were a number of difficulties in connecting with two of the witnesses, these were resolved by Miss McKeeve assisting the witnesses to download the correct app, to log in properly and, with the assistance of the court interpreter, facilitate the witnesses in giving their evidence. It is fair to say that without her invaluable assistance, and perseverance, the hearing would not have been able to take place and as Mr Diwnycz said, and I concur, the appeal would not have been able to take place without her assistance for which we are most grateful.

### **The Evidence**

14. The appellant adopted his witness statement, adding that he knew the first witness, Fahad Jabar ("Mr Jabar", as they were from the same area in Kuwait and that they had sometime been present at the same Diwaniya. He said he met the second witness, Abdul Hakim Mayed Khalaf ("Mr Khalaf") when they used to wash cars and that he knew Mr Hussain Ali Enad Sarhan ("Mr Sarhan") as he was the maternal cousin, that is the son of his mother's brother.
15. In cross-examination, the appellant said that he had been in touch with members of his family since his witness statement, the last occasion being twenty to 22 days ago via WhatsApp. He said that this was by way of audio call to a friend who took the phone to his family. He said sometimes he switched on the video though this not always possible.

16. Asked about how he knew Mr Khalaf and why he had said in his witness statement that they used to meet in the mosque with no mention of washing cars, he said that where they did so was next to the mosque and it was part of the thing they did. He said he thought they did not mention that they worked together as they had met most of the time in the mosque to pray as well. He said that they were not good friends but they used to meet in that place and attended Friday prayer. But they washed cars together every day. He agreed that if Mr Khalaf had wanted to meet him all he would need to do was go along to the mosque and he would be nearby. He said they used to go and wash cars at school parking places, shopping centres and by the mosque. He said that he had bumped into Mr Khalaf in Glasgow city centre by chance. That was a while ago, he could not remember and then he went to live in Manchester.
17. The appellant said that it was he who had told Mr Khalaf that he had taken part in the protests, that he had done so some time before he had moved to Manchester.
18. The appellant said that he met Mr Jabar at a Diwaniya and it was only after they spoke about the demonstration that they realised that he had been there too. He said that they had realised this when they had had a conversation after they had met, by coincidence, in Glasgow city centre there where Arabs gather next to a coffee shop. They thought this was in October or November 2016.
19. The appellant was asked about a witness, Mr Al Hussain Al Saheli, who had given evidence at a previous hearing but was not in attendance at this hearing. He said that they used to meet at the Diwaniya but could not recall exactly how often. He said that he had come across him when he was visiting friends in Glasgow and by chance met in the place in central Glasgow where Arabs gather.
20. It was put to him that he had said that he had found out the appellant was living in the UK when he (the appellant) phoned him. He said that that was correct and he had forgotten that that was how it had happened.
21. Asked about Mr Sarhan, he said that Mr Sarhan knew his situation through the uncle and he had left Kuwait in 2013 or 2014. He confirmed that they had not been close although they were cousins. He did not recall exactly where their house was in relation to his family's house in Kuwait. He said that he had met him not long after arriving in the UK but did not keep in contact much and he explained to his uncle his situation here and his uncle told him. He says his uncle was in contact with his family at home and he found out from them that Mr Sarhan was here. He said that he had got Mr Sarhan's number from the family and he contacted him. It was put to him that the witness had said his father (the appellant's uncle) asked him to contact the appellant to find out if there was anything he could do to help. And the number was passed on. He said that was correct but that he had got the number via the uncle.

22. In re-examination, asked about what Mr Sarhan had said in his witness statement at paragraph 4, he said that was the first time that he had tried to contact him.
23. Mr Jabar adopted his witness statement and was cross-examined. He said he had been surprised when he met the appellant as he had not seen him for a while and the first question was why he had come here. He said the appellant had told him he was wanted and his life was at risk as he had participated in the protest, was chased and wanted by the security forces. He said that he had asked him about the date of the demonstration and that he discovered that it was the same one he had been on. He said that he had first met him in Glasgow in 2016 during the cold period, probably October but he was not sure. He said he knew him well in Kuwait but they did not visit each other's families. They only met at a Diwaniya, some five to six times a month, which he accepted continued for a period of about four years. He said that they are more acquaintances from meetings rather than family friends. He said he did not have contact details for him before or after he left Kuwait.
24. In response to my questions about the Diwaniya, he had said that there would be about eight to eleven people there and he would talk to several people. He said that some of the people there were registered Bidoons. He also said, in response to Mr Diwnycz's question, that the appellant used to wash cars for a living.
25. I then heard evidence from Mr Khalaf, who gave evidence via Teams. He adopted his witness statement and was cross-examined. He said that they used to meet in the mosque and they worked with each other at doing car-washing. He said that he had not attended the protest on 18 February 2014 but thought that the appellant had done so as he had mentioned it before. In response to my questions he said he could not remember when he had been told that.
26. I then heard evidence from Mr Sarhan, who also gave evidence via Teams. He adopted his witness statement, adding that he had last seen the appellant in Kuwait when he was about 8 or 9, so approximately 1992 and 1993. He said they only usually met at special occasions or events. Asked how he had got in contact with him in the UK, he said that his father had called him and said that the appellant was here. He also heard from members of the Kuwaiti Bidoon community that he was here but that was after his father had called him to call the appellant. He said his father called him a few months ago.
27. It was put to him that in his witness statement prepared on 13 October 2021 in which at [4] he had said that his father had told him about the appellant's situation and asked him to make contact, he said he thought this was in September.
28. Mr Sarhan said that his paternal cousin had said he had attended the demonstration but that the appellant had not told him details about it. He

confirmed that he had told him that he had been at the demonstration. He said that it was his father and his brother who had told him their relatives, friends and neighbours had been at the demonstration. He said his father had not gone as he is an old man and that his father had stopped his brother from going as he was afraid for his safety. He said that no-one he knew was at the demonstration or could confirm that the appellant was at the demonstration.

## **Submissions**

29. Mr Diwnycz accepted that the appellant is from Kuwait. He submitted that, relying on paragraphs 17 to 19 of the refusal letter, that there was a vagueness, lack of detail and that none of the witness statements could put him at the demonstration even though some of them had won their appeals. At best it was his hearsay or third party hearsay and the cousin was unable to add much either. He was not, however, able to take paragraph 18 any further. Miss McKeeve submitted that the core issue was whether the appellant was an undocumented Bidoon, if so, he is entitled to refugee status irrespective of whether he had also attended the demonstration. She submitted that any inconsistencies in his account, none of which were alleged in submissions, did not go to the core of his claim and that the appellant had candidly accepted he had made errors when he appeared to contradict himself it should be borne in mind that it was now four years on from the first appeal. She submitted that the appellant had been under the control of an agent and this was a reason why any inferences taken pursuant to Section 8 of the 2004 Act were not fatal to his credibility.
30. Miss McKeeve submitted that Mr Jabar was credible and had been found to be credible on appeal. She submitted that the respondent's charge against the appellant that his knowledge of Bidoon history was limited was dealt with adequately at paragraphs 54 and 55 of his statement. And that there was a logical problem in that surely a documented Bidoon would know more and not less of the history. She submitted that there was adequate evidence from three witnesses who knew him in Kuwait that he was an undocumented Bidoon. There is also the evidence from the Kuwaiti Community Association (pages 17 to 30) which supported him being from that community.
31. Miss McKeeve submitted that the evidence relied upon by the Home Office to suggest that there was an inconsistency in the appellant's account of what had happened at the demonstration was incorrect given that there was evidence in the same article relied upon that there had been a cycle of protests and arrests. She submitted there was little to cause concern regarding the honesty of the appellant and the witnesses had explained that the information regarding the demonstration had been disclosed when they met. That was a factor to which weight could be attached.

## **The Law**

32. It is for the appellant to demonstrate that he has a well-founded fear of persecution on return to Kuwait; or, that he is entitled to humanitarian protection. The burden is on the appellant but to the lower standard and established by case law.
33. In assessing this case I have taken into account the background evidence regarding the Bidoon as supplied to me. I have taken into account the Country Policy and Information Note on Kuwait: Bidoons from April 2021 and that it is accepted in that at [2.4.10] that the country situation has not significantly changed since the promulgation of NM (documented/undocumented Bidoon: risk) Kuwait CG [2013] UKUT 356. I have assessed what the appellant says about his background in terms of his father being a shepherd, not being entitled to education and as a result being illiterate, and it is consistent with the background information. Given that it is accepted that the appellant is from Kuwait, it is not plausible that he is a Kuwaiti citizen. As set out in the article entitled “The Perks of being Kuwaiti” in the appellant’s bundle, Kuwaiti citizens get given gifts on marriage, a monthly food supply, generous allowances for children and help to find a job. They are paid money on top of what is paid by the salary, get free healthcare. It is somewhat implausible that somebody would give that up in order to claim asylum in the United Kingdom, travelling overland and thus in reality the issue here is whether the appellant is a documented or undocumented Bidoon.
34. With regard to the demonstration on 18 February 2014, it is notable from the article in the “Kuwait Times” of 20 February 2014 that the protest had continued after the first day, that the leader, Abdul Hakeem Al-Fadhil had been arrested and that the security forces had used tear gas and percussion grenades to disperse protesters. This was against the abduction of the activist Abdullah Atallah.
35. In addition, the most recent CPIN report in the timeline at 3.3 states with regard to February/March 2014 that “dozens of people arrested with many injured”, citing a Thomson Reuters report of 26 February 2014 which in turn referred to fifteen protesters being held on suspicion of participation in illegal protests and inciting riots. It says also that many Bidoon leaders have been arrested or put under pressure to cease their activities.
36. It is notable also, although not directly relevant to the facts of this case, that arrests continued as late as 2019 (7.1.4). In that context the article from Al-Akhbar cited by the respondent as demonstrating no attacks of police on 18 February 2014 (and that thus the appellant’s credibility was undermined, is of little probative value.
37. I bear in mind that the events that he has been asked to describe took place over seven years ago. Similarly, the first occasions in which he met several of the witnesses were five years ago and he had not seen his cousin, Mr Sarhan, for a number of years.

38. In assessing the appellant's evidence it is difficult to attach much weight to the Secretary of State's submission that whether or not the appellant is a Bidoon is undermined by his lack of knowledge of Bidoon history. It is unlikely that a documented Bidoon would necessarily know more of the history of the Bidoon and whilst it may be that somebody who is a Kuwaiti citizen would know little about them, it is unlikely, for the reasons given above, that the appellant is a Kuwaiti citizen.
39. There were in the oral evidence a number of discrepancies regarding when the appellant had met the witnesses and how. The appellant did candidly accept that he had been mistaken about how he had encountered Mr Jabar and no submissions were made adverse to the appellant arising from that. Indeed, no submissions as to the consistency or otherwise of the witnesses' evidence was made, no submissions were made that I should reach adverse credibility findings about them, merely that their evidence was for the great part in regards to the attendance at the demonstration, hearsay. There was no challenged to evidence of the witnesses that they are undocumented Bidoons, nor was it seriously challenged that they knew the appellant in Kuwait and that one particularly used to work with him from time to time. Mr Jabar met him on occasions at the Diwaniya and Mr Sarhan is his cousin. No challenge has been made that they would not know whether the appellant was undocumented or not.
40. That the appellant is an undocumented Bidoon is also confirmed by the letter from the Kuwaiti Community Association. No submission was made that I should not attach weight to that document and, given that it sets out the steps taken to verify the appellant's identity, I consider it is a document which is capable of bearing weight.
41. It is correct that none of the witnesses are able to say from their knowledge that the appellant had participated in the demonstration. They can, however, confirm that he told them that he had done so and it is notable that Mr Jabar was able to give some detail about how they had found out that they had both been on the demonstration. It appears from their description of that conversation, albeit five years ago, that the appellant volunteered the information.
42. In assessing the respondent's challenges at paragraphs 16 to 19 of the refusal letter, I have taken into account the appellant's explanations set out in paragraphs 55 to 57 of his witness statement. He was not challenged on these. I accept that the appellant's explanation that he was not literate and that what was discussed at the Diwaniya was not history lessons but speaking about life in general and that these are primarily social and not political gatherings. I accept also the explanation given at paragraph 57 for the apparent discrepancies identified in paragraph 18 about what the appellant had said in response to questions 93 and 94. It is of note that, asked to explain what the inconsistency was, Mr Diwnycz was unable to assist. I consider that, bearing in mind the amendments made by the appellant's solicitors, that there was in reality no inconsistency in his evidence.

43. I have considered carefully the application of Section 8 of the 2004 Act. I accept that the appellant did not claim asylum en route to the United Kingdom. I note the explanation that he was under the control of the agent. I find that that is a partial explanation and equally I accept that the appellant did not speak French and that he was to a significant extent under the control of the agent. I do not, however, consider that taking that into account that the appellant's credibility is materially undermined given the extent to which his account of being an undocumented Bidoon is confirmed by the witnesses and the other evidence.
44. Taking all of these factors into account and viewing the evidence as a whole, I find the appellant to be a credible witness and I find those who supported his claim to be credible witnesses. I find that he is an undocumented Bidoon and I accept his account of having been detained, ill-treated and later released on account of his political activities.
45. On that basis and on the basis of the country guidance and the concessions made by the Secretary of State I accept that the appellant has a well-founded fear persecution in Kuwait on the basis of his membership of a particular social group, that is undocumented Bidoon, and is entitled to be recognised as a refugee.
46. I am satisfied also that returning the appellant to Kuwait would be in breach of the United Kingdom's obligations pursuant to Article 3 of the Human Rights Convention.
47. As I have found that the appellant is entitled to be treated as a refugee, he cannot therefore be entitled to humanitarian protection and I formally dismiss his appeal on that ground.

### **Notice of Decision**

- (1) The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
- (2) I remake the appeal by allowing the appeal on asylum and human rights grounds.
- (3) I dismiss the appeal on humanitarian protection grounds.
- (4) The anonymity order in place is maintained.

### **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 his 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 13/01/2022

Jeremy K H Rintoul  
Upper Tribunal Judge Rintoul



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

Appeal Number: PA/11406/2016

**THE IMMIGRATION ACTS**

**Determined at George House, Edinburgh**

**Decision & Reasons  
Promulgated**

**On 17 January 2020**

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**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**S M E  
(ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

For the appellant: Ms McKeeve, Katani & Co Solicitors  
For the respondent: Mr A Govan, Senior Home Office Presenting Officer

**DECISION MADE PURSUANT TO RULES 34, 39 & 40 (3) OF THE  
TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

1. The appellant appeals with permission against the decision of First-tier Tribunal A M S Green promulgated on 26 September 2018. Although permission to appeal against that decision was refused by the Upper Tribunal, that decision was reduced by the Court of Session.

3. It was agreed by the parties that the grounds of appeal were made out. In summary, the judge made adverse findings as to the appellant's presence at a demonstration [23] which led him to further adverse findings [24], yet the judge failed to make any finding as to the reliability of the witnesses [26], one of whom had also attended the demonstration and had discussed it with the appellant in Kuwait before his departure [12.a]
4. In terms of remaking the decision, it is evident and both parties agree that the credibility findings are so flawed that none of the findings of fact are sustainable. Accordingly, I am satisfied that it would in all the circumstances be appropriate to set aside the decision in its entirety for it to be remade in the Upper Tribunal, given the history of this case.
5. Rule 40 (1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 provided that the Upper Tribunal may give a decision orally at a hearing which I did. Rule 40 (3) provides that the Upper Tribunal must provide written reasons for its decision with a decision notice unless the parties have consented to the Upper Tribunal not giving written reasons. I am satisfied that the parties have given such consent at the hearing.

### **Notice of Decision**

1. The decision of the First-tier Tribunal involved the making of an error of law and is set aside.
2. The appeal is to be remade in the Upper Tribunal. For the avoidance of doubt none of the findings made are preserved.

Signed

Date: 30 January 2020

Upper Tribunal Judge Rintoul