IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006616
First-tier Tribunal Nos: PA/54464/2021
IA/13530/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 30 October 2023

Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

SSA
(ANONYMITY ORDER IN FORCE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Saeed, Solicitor from Aman Solicitors
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 2 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal by an asylum seeker against a decision of the First-tier Tribunal dismissing his appeal against a decision of the Secretary of State refusing him protection.

2. Permission to appeal was granted by the First-tier Tribunal and although the judge granting permission was clearly unimpressed with some of the grounds the judge effectively gave

permission on all grounds. However, the main reason for giving permission is set out below and we incorporate it here because we find it sets the scene aptly. The judge said:

> "However, it is arguable that the Judge has made inadequate findings with insufficient reasons. It is arguably not clear from the decision whether the Judge made a finding that the Appellant was a Bidoon at all, let alone an undocumented one. It is also arguably unclear whether the Judge determined the question of fact as to whether the family were registered in the 1965 census. As the grounds state, this would likely have been determinative of the appeal".

3. We turn now to what the First-tier Tribunal actually decided before we consider the criticisms of the decision.

4. The judge began by noting that it was accepted that the appellant is a national of Kuwait who was born in April 1991 and that he claimed asylum in the United Kingdom on 30 March 2020 saying that he had arrived from Paris in a lorry the same day. Having considered answers given at a screening interview and an asylum interview and representations made the respondent did not accept that the appellant had a well-founded fear of persecution for a Convention reason in Kuwait and so did not qualify for asylum.

5. The judge noted, correctly, that he was asked to consider an asylum claim, a humanitarian protection claim and an Article 8 claim.

6. It was the appellant's case that he had attended a demonstration in Kuwait and had been arrested and mistreated but it was the kingpin in his argument that he was an undocumented Bidoon and therefore risked ill-treatment and discrimination. It is long recognised that undocumented Bidoons who are Kuwaiti nationals invariably need international protection.

7. The respondent did not accept that the appellant had taken part in a demonstration and did not accept that the appellant was indeed a Kuwaiti Bidoon.

8. The judge reviewed the evidence.

9. It was the appellant's case that he had no documentation because he had not been able to register as a Bidoon.

10. The appellant talked about his journey to the United Kingdom from Kuwait. He said that he took a flight from Kuwait to Denmark with an agent who had a passport for him and he described the passport. It was the appellant's case that although the passport had been in his possession at some stage in the journey he had not looked at it. The judge did not find that plausible.

11. The judge explained at paragraph 27 of the Decision and Reasons that the appellant would have needed his passport to check-in at the international flight desk and indeed would need a visa to enter Denmark. The judge decided that documentation would have been needed to obtain a visa.

12. The judge asked the appellant the first destination on his flight to Denmark from Kuwait. This was said to be another Arab country which answer the judge found to be "implausibly vague". The judge said there would have been a departure board and a boarding card and

inflight announcements and could not accept that the appellant really did not know where he was going. Rather, the judge decided, the appellant was deliberately concealing information.

13. It was the appellant's case that he had flown from Qatar to Denmark. The judge inferred that he had flown from Kuwait to Qatar.

14. The judge decided that the appellant would have needed a passport and visa to enter Denmark.

15. The appellant claimed to have travelled from Denmark to Sweden by train and the judge decided that the appellant would have needed a Schengen visa and that he would have been liable to arrest if he had embarked upon the journey without valid papers.

16. It was the appellant's case that he had an untroubled journey.

17. It was the appellant's case that he went from Sweden to Denmark. The same considerations applied as indeed they did when, according to the appellant, he went from Denmark to Germany by train. It is the appellant's case that all this was done without any inspection of papers, something that the judge "thought" was unlikely.

18. It was the appellant's case that he had claimed asylum in Sweden but he had no documentation to support the allegation that a claim was made or, as he said, refused.

19. The judge approved the Secretary of State's reliance on Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 because the appellant had failed to claim asylum in Denmark, Germany or France. The judge noted that the appellant had not given in his statement or oral evidence any details about his asylum claim in Sweden or the reasons for it being refused.

20. The judge found that the "sequence of events and the claims made undermined the Appellant's credibility".

21. Paragraph 38 of the Decision and Reasons might be particularly important because the judge found there that the appellant denied in cross-examination *ever* being fingerprinted and then said he had been fingerprinted in Sweden.

22. At paragraph 39 the judge noted that in the interview notes there was reference to the appellant being fingerprinted in Germany although he had not said that in his interview. The judge asked him to clarify and the appellant said that he had not been fingerprinted in Germany but according to the judge "had not given a straight answer to [the Presenting Officer's] question".

23. The judge also found it undermined the appellant's credibility that he claimed to be in contact with his family in Kuwait but had produced no supporting evidence from them.

24. The judge noted that a "Mr Ali" was called to support his case. Mr Ali had been granted asylum in the United Kingdom as an undocumented Bidoon when he came to the United Kingdom as a child. The judge did not find Mr Ali's evidence in the least helpful. Mr Ali claimed to have last seen the appellant in 2013 after which he disappeared and told Mr Ali that "he had been hiding".

25. It was part of the respondent's case set out in the refusal letter that there had been occasions when undocumented Bidoons in Kuwait can seek to obtain a review card or register their status. The appellant claimed to have tried to have done that on up to three occasions but said that the applications were not successful.

26. Again the appellant gave no supporting evidence that he had tried to register. The judge said at paragraph 46:

> "I noted that the Appellant claimed to have made a living in Kuwait selling fruit and vegetables. I assumed that this required him to have some contact with the authorities in terms of income tax and the like but I had no evidence of this".

27. The judge also noted there was no supporting evidence that the appellant had attended a demonstration and no medical evidence to support his claim to have been injured.

28. The judge noted the background evidence which suggested that only those who registered with the government in 1965 could apply for a further document and the appellant's claim that he could not satisfy that requirement because his family had not registered in 1965.

29. The judge accepted that there was a need for some "caution" when considering the evidence of the Kuwaiti government. However, Mr Ali had not seen the appellant for a number of years and knew nothing about attempts the appellant may have made to obtain documents. It was Mr Ali's evidence that his father knew the appellant's father but there was no statement from the appellant's father and Mr Ali's father was dead. However, Mr Ali had a mother and twelve siblings and some supporting evidence was expected, according to the judge.

30. The judge was clear that he did not believe the appellant and said that it followed that he did not accept his account that he was an undocumented Bidoon or that he was at risk because of something that happened at a demonstration.

31. The judge found that on these facts, the other claims on human rights and humanitarian protection grounds, really added nothing to the refugee protection claim and dismissed all the appeals.

32. We have looked rather carefully at the report from the Kuwaiti Community Association. We set out below its conclusions:

> "SSA has knowledge of the place that he claims to have lived in. Two witnesses from the Bidoon community here in the UK who know him and confirm that he is an undocumented Bidoon. The interview findings and witness statements support SSA's claim to be an undocumented Bidoon from Kuwait".

33. We have decided that this is a long way short of a ringing endorsement of his case. It is clear independent evidence that the Appellant had knowledge of the place from where he claims to have come but that is not in dispute.

34. It also confirms that there are witness statements, which taken with his interview, support his claim. We look at these with some care. The first is from Monther Mater Ali Al-Badr. This appears to be nothing more than an assertion that the person named is an undocumented Bidoon known to the person making the statement. No explanation is

tendered. Further, on the documents before us, there are two statements but both purport to come from the same person. We wonder if there has been a filing error.

35. There is a statement from Haider Motter Ali. He gives an address in North London and it is not the address of the one person identified as a supporter by the Community Association.

36. We consider with some care Mr Haider Ali's statement.

37. Mr Ali explains that he is a refugee because he is recognised as an undocumented Bidoon from Kuwait. He knew the appellant when they were boys together in Kuwait and he can "confirm" that the appellant is also an undocumented Bidoon because he has known the appellant for many years. He explained that members of the community get to know each other and talk to each other and the idea of his being undocumented came to his knowledge over time as their acquaintance developed. He said that his father and the appellant's father knew each other and indeed his father purchased things from the appellant's father's market stall. He said that it was "common" for undocumented Bidoons to do market trading work of the kind done by the appellant's family.

38. He then explained that he was undocumented because his parents were living in the desert when the 1965 census took place and did not register. He then explained that he knew the appellant did not go to school and had no right to medical treatment and that he worked on a market stall. The First-tier Tribunal Judge did not appear to have made any findings on Mr Ali's evidence beyond saying he "could be repeating what he was told" (para 51).

39. We have reflected on this. In a sense of course it is right that Mr Ali could have been repeating what he was told but it is a finding that does not engage with the statement. Mr Ali's evidence is that he has known the appellant for many years and their relationship developed in Kuwait. The appellant and his family did the things that undocumented Bidoons do, particularly engaged in casual labour such as market traders or car cleaners and did not show benefits of Kuwaiti citizenship such as attending school or having access to healthcare. We do not accept that these strands of evidence can be described fairly as "repeating what he had been told". Of course, Mr Ali may not have been a truthful witness but there have been no findings on his evidence or proper analysis to show any appreciation of what Mr Ali was actually saying. This a troubling omission.

40. Before us Mr Saeed relied on the grounds of appeal. The first ground complains that there was no finding on the appellant's claim that they had not registered in 1965, still less the impact of that omission because this was a matter of dispute between the parties. It is the appellant's case that in reality, if not in theory, people who did not register in the 1965 census could not later register as undocumented Bidoons. It is part of the first ground that the appellant should have succeeded because his witness Mr Ali succeeded. This point is more nuanced than first appears. Mr Ali gave evidence that he had known the appellant in Kuwait and their families had known each other as undocumented Bidoons and had suffered the indignities and difficulties that go with that. We suppose it is almost impossible for Mr Ali to actually know if the appellant's parents were documented or not but his evidence that they behaved as if they had not been registered, if credible, might have been highly persuasive and as far as we can has not been considered properly. It has the potential advantage of being independent evidence untainted by any omissions on the appellant's own part.

41. Ground 2 is, we find, a variation of the first ground and needs no further comment.

42. We are less impressed with ground 3. This complains of an alleged misreading of the evidence. The judge was concerned with the appellant's claim not to have looked at his passport but according to the grounds the appellant's actual evidence was that he was told not to open the passport. This version of events was not proved before us but we do not find the omission significant. What was clearly troubling the judge was the appellant's claim that he used the passport (it is very hard to see how he passed through immigration control without using it) but that he never looked inside it. That seems so unnatural that it was a point the judge was entitled to take.

43. However, there is a related point that the judge appears to have thought that the appellant had said that he had no passport when he travelled from Denmark to Sweden. It is said that that is not his evidence. Rather, the appellant said that and it was taken from him in Sweden. This cannot be established on the material before us. It is a troubling problem in the case.

44. There is more justification in the assertion that the judge found that the appellant gave no explanation in his statement or oral evidence for his claim being refused in Sweden. We do not have an independent record of the evidence but the Appellant did say in answer to asylum interview questions (e.g., 69 at page 396) that the authorities in Sweden kept asking for documents and evidence that he did not have and this explanation does not seem to have been considered.

45. There is a further complaint that at paragraph 39 the First-tier Tribunal Judge said that there is reference in the interview record of the appellant being fingerprinted in Germany but Mr Saeed said there was no such evidence. This caused a little frisson in the hearing before us because the contrary suggestion was based on the mistake that an interview record related to the appellant rather than his witness. There is some merit in this point that the judge erred.

46. There does seem merit in the point that Mr Ali was identified as a person who was a child when he came to the United Kingdom which has never been his case. The judge does say quite clearly at paragraph 42 that Mr Ali had been given asylum having arrived in the United Kingdom as a child. Mr Ali says in his statement that he was born in 1993 and came to the United Kingdom in 2018. He was then 25 years old. The judge had clearly erred.

47. Ground 4 criticises paragraph 46 of the Decision and Reasons where there is reference to the appellant's family working as market traders and therefore it was assumed having dealings with the authorities for the purpose of paying tax. Mr Saeed had gone to the trouble of producing evidence indicating that people in Kuwait do not pay tax, at least not income tax. Mr Terrell argued, with some justification, that ground 4 is misconceived because the point never really went anywhere. All the judge was doing was musing on the incongruity of a trader not having any dealings with the government and did himself say that there was no evidence before him. That is correct but does not necessarily assist because it leaves a reader wondering why the judge was referring at all to the point when he knew there was no evidence. It would have been better if it was not there.

48. Mr Terrell argued that there were perfectly proper reasons for disbelieving the appellant. He is right. Section 8 does operate. The judge was also entitled to comment adversely on the absence of supporting evidence although no doubt evidence from the appellant's family would have been criticised for being self-serving or something of the kind. Nevertheless, it is hard to think it would not have had some positive value. The criticisms of the Community Association evidence might not be particularly well explained in the Decision and Reasons but as we have indicated above it could only ever have been of very limited value.

49. However, what concerns us very much here is the treatment of Mr Ali's evidence. We do not know what the judge made of Mr Ali's evidence generally but, unlike the judge, we think his evidence, at least in written form, was capable of being very important.

50. The short point is this decision has not been made properly and the case needs to be re-determined. It is the essence of the case that it has been done inadequately and is not amenable to repair in the Upper Tribunal.

51. We set aside the decision of the First-tier Tribunal and we direct the case be heard again in the First-tier. To that extent the appeal is allowed.

Notice of Decision

52. The First-tier Tribunal erred. We set aside its decision and direct that the case be heard again in the First-tier Tribunal.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 October 2023