IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005206
First-tier Tribunal No:
PA/50316/2023
IA/00326/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 23rd September 2024

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

NA
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Jebb, BL, instructed by Nelson-Singleton Solicitors
For the Respondent: Ms S Rushforth, Senior Home Office Presenting Officer

Heard at Royal Courts of Justice (Belfast) on 4 September 2024

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. The appellant appeals with permission against the decision of First-tier Tribunal Judge Gillespie, promulgated on 30 October 2023 dismissing the appellant's appeal against the decision of the Secretary of State made on 3 January 2023 to refuse his asylum and protection claim.

2. The appellant's case is that he was born in 1954. His case is that he is an undocumented Bidoon from Kuwait and, as such, is at risk of persecution on return to Kuwait. The Secretary of State accepted that he is from Kuwait but did not accept that he was undocumented noting inconsistencies in his claim to having attended two demonstrations in Kuwait with regards to the date of the first, absence of any medical evidence to support his claim that his leg had been seriously injured by bullets fired at the demonstration and inconsistencies as to the account of the second demonstration.

3. The judge heard evidence from the appellant and had before him a bundle of material prepared by the respondent and by the appellant. Having directed himself as to the issues in question [14] and to the relevant country guidance case – NM (documented/undocumented Bidoon: risk) Kuwait CG [2013] UKUT 356 [16] the judge went on to consider the appellant's account of what had happened [18] onwards. The judge noted that, with respect of the demonstrations in late February 2014 none of the articles cited in the Home Office CPIN made reference to live rounds being fired and thus his claim to have been hit by a live round of gun fire was not supported by the background evidence noting also [25] that no expert medical evidence had been provided to confirm the appellant's account of the treatment he had received in respect of his injuries. He did not accept that the medical evidence provided was such as to provide an effective acceptance by his doctors as to how the injury was caused, observing also that no specialist had taken a detailed history of his injury and treatment from him or offered an opinion of what is claimed [26]. Although he gave limited weight to the GP records [27] he considered following TK (Burundi) v SSHD [2009] EWCA Civ 40 that the lack of corroborating evidence must affect the assessment of the appellant's credibility.

4. The judge did not accept the expert report from Mr Mohammed Albasdr Alenezi, founder and director of the Kuwaiti Bidoons Movement, much of the evidence being "ipsa dixit".

5. The appellant sought permission to appeal on the grounds that the judge had erred:-

   (i) by misapplying of TK (Burundi) to the medical evidence and failing to consider the notes from the orthopaedic surgeon contained within the GP records; in speculating as to whether the external fixator device fitted to the appellant would stand up to rough treatment; and, faileing to have regard to the medical evidence about the suffering from PTSD;

(ii) by failing properly to consider the evidence relating to whether the appellant is an undocumented Bidoon, misunderstanding the role of the expert;

(iii) in failing to give the appellant an opportunity to address the observation at [28] that no satisfactory explanation be given as to how an undocumented Bidoon could have funded sophisticated surgical treatment he claimed to have received if his injuries were not sustained by gunshots.

6. On 7 December 2023 First-tier Tribunal Judge G Clarke, granted permission on all grounds.

The Hearing

7. I heard submissions from both representatives. Mr Jebb submitted that the judge had failed properly to deal with the medical evidence given that it was uncontroversial from the letters from the orthopaedic surgeon that the appellant had extensive work done to his leg as a result of an injury. Further, the judge had failed to engage with the evidence of PTSD described as probable in the medical evidence. Further, the criticisms made of the expert evidence were not properly put to be answered.

8. Ms Rushworth submitted that the grounds were little more than a disagreement with adequately reasoned findings of fact and then properly understood the judge had not speculated, being open to him to consider that the appellant's account of attending a demonstration with an external fixator were open to him. Further, she submitted the issue of PTSD had not been raised either in the skeleton argument nor was there anything in the account that this had been put to the judge. She submitted that adequate reasons had been given for disregarding the expert evidence and in respect of ground 3, it was a clear point that, given the evidence that it was difficult for undocumented Bidoons to get any medical treatment, an explanation had to be given, if it were not for gunshot wounds and him being in detention, that the appellant was able to have extensive constructive surgery conducted on him.

The Law

9. In assessing the grounds of appeal, I bear in mind that Ullah v SSHD [2024] EWCA Civ 201 at [26]. I also bear in mind what was held in Volpi v Volpi [2022] EWCA Civ 464 at [2] and in HA (Iraq [2022] UKSC 22 at [72], and that the decision must be read sensibly and holistically. Justice requires that the reasons enable it to be apparent to the parties why one has won and the other has lost: English v Emery Reimbold & Strick Ltd [2002] EWCA Civ 605, [2002] 1 WLR 2409 at [16]. When reading the decision, I am entitled to assume that the reader is familiar with the issues involved and arguments advanced. Reasons for judgment will always be capable of having been better expressed and an appeal court should not

subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.

10. In assessing the judge's approach to the medical evidence, the judge has properly and reasonably focussed on evidence as to how the injuries to the appellant were caused, that being central to his case. The judge appears implicitly to have accepted that the appellant's leg had been injured but contrary to what the judge wrote with regard to interpreting GP's notes, these included several letters from orthopaedic surgeons which make it clear on even a cursory reading that examinations, x-rays and other investigations confirmed the appellant's account of having had a serious injury to his leg which resulted in reconstructive surgery involving the insertion of metal plates and screws. The injury was such as to leave one leg some 3 centimetres shorter than the other which caused him difficulties in walking.

11. It is correct that the letters from surgeons do not state whether the claimed injury is consistent with a gunshot injury or otherwise. There may be a number of reasons for that. There is no indication that it was something that the specialist was asked to comment upon and it is unclear why it the precise cause of the injury som eyreas ago would be relevant to the circumstances in which the appellant had been referred to get assistance with his leg. It may of course be that, given the injury is said to have taken place in 2014 and there was extensive reconstructive surgery, that any injuries clearly diagnostic or characteristic of a bullet wound may well no longer be present. The fact that the doctor makes no comment otherwise as to whether it was caused by a gunshot wound is not a matter necessarily capable of attaching much weight.

12. As the judge himself accepted, he was speculating as to whether an external fixator device would be able to stay in place for almost three years and stand up to rough treatment in prison. But that was not a permissible speculation, nor is there any proper indication that this issue was raised during the hearing.

13. This speculation then led the judge on to consider the need for a specialist to comment on the plausibility of the claim [26] and he then purported to apply TK (Burundi) [27]. The ratio in TK (Burundi**)** is that if evidence exists and may be obtained then the failure to do so may affect the assessment of credibility. It does not follow that negative inferences can be drawn in circumstances where an appellant would need to create evidence, in this case an expert report. Nor is it sufficiently evident what the judge was looking for at this point – was it evidence in the form of a medical report to confirm whether the injuries or scars that exist are consistent with a bullet injury; or, was it to confirm or comments on whether an external fixator device would have been in place for three years and then as to whether it would have been fragile or not. The judge then builds on this stating that medical evidence in the form of an expert report is easily obtained and then building on the lack of evidence as to

how the injuries were incurred draws further inferences adverse to the appellant's credibility. This was the core of the r findings as to the appellant's credibility.

14. That said, it was open to the judge, to observe that the appellant would need to explain how, if he is not entitled to medical treatment, as appears to be the case from the undocumented Bidoon as set out in the CPIN as to how he was able to have it. But it may of course have been because he was in detention and the authorities thought it appropriate for such treatment to be given as the judge appears to appreciate.

15. With regards to the second ground, whilst it was open to the judge to note a lack of particulars [30] nor does he explain whether he thought that the appellant was one of those who demonstrated or served a prison sentence. But, there appears to be no basis for the observation by the judge that this would not be a difficult thing to do if the expert had contacts in the Bidoon community and there is merit in the submission that describing the evidence as "ipsa dixit" is misplaced. The point here is of course that what the expert was doing was interviewing the appellant to determine whether he had such knowledge as would be consistent with somebody being an undocumented Bidoon as opposed to something else given the knowledge and that the assessment was made as that he is on the basis of the knowledge he disclosed, where he had lived and how he had lived and so on. Further, it was not for the expert to explore how the experience of the appellant's family is relevant nor does it appear that the expert was asked to comment or explore the family's living conditions including that of the appellant's wife and children.

16. I do not, however, consider that there is any merit in the submission that the judge failed to have regard to "probable PTSD". There is insufficient material before me to show that this was raised as an issue either in the skeleton argument or the grounds of appeal, nor in any submissions made to the judge. Accordingly, he cannot be faulted for failing to take that into account.

17. Nonetheless, for the reasons set out above I consider that the decision of the First-tier Tribunal did involve the making of an error of law and I set it aside. Given that the findings relate to credibility, and the unsustainability of those findings, I consider that it is appropriate to remit this case to the First-tier Tribunal for a fresh decision on all issues.

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 remit the appeal to the First-tier Tribunal for it to make a fresh decision on all issues to be decided by a judge other than Judge Gillespie. For the avoidance of doubt none of the findings of fact are preserved.

Signed Date: 18 September 2024

Jeremy K H Rintoul
Judge of the Upper Tribunal