



IAC-FH-CK-V1

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

Appeal Number: AA/00460/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 27 November 2015**

**Decision & Reasons Promulgated
On 15 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**N A-F
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Adebayo of Counsel instructed by A2 Solicitors

For the Respondent: Mr Walker, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge N G Bennett promulgated on 2 June 2015 dismissing the Appellant's appeal against a decision of the Respondent dated 21 November 2014 refusing leave to enter the United Kingdom following a refusal of an application for asylum.
2. The Appellant was born on 2 April 1975. She arrived in the United Kingdom on 5 September 2013 and applied for asylum on arrival claiming

to be an undocumented Bidoon from Kuwait. Her application was refused for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 21 November 2014. The Appellant appealed to the IAC. Her appeal was dismissed by First-tier Tribunal Judge Bennett for reasons set out in his decision.

3. The Appellant sought permission to appeal which was initially refused by First-tier Tribunal Judge Reid on 3 July 2015, but subsequently granted on renewed application by Upper Tribunal Judge Goldstein on 21 August 2015. Permission to appeal was granted in particular on the basis that the First-tier Tribunal Judge had given no indication that he had taken account of relevant country guidance or that he had considered such guidance in the context of the facts as found.
4. It was this point, which was identified at paragraph 5 of the Appellant's grounds in support of the application for permission to appeal, that Mr Adebayo today amplified as his first submission before me. In particular my attention was directed to the country guidance case of **NM (documented or undocumented Bidoon: risk) Kuwait CG [2013] UKUT 00356 (IAC)** and specifically to paragraph 3 of the head note which reads: *"The evidence concerning the undocumented Bidoon does show them to face a real risk of persecution or breach of their protected human rights."* Mr Adebayo did not seek to identify any other aspect of this or any other country guidance case that it was suggested that the Judge had not taken into account.
5. In considering this submission I take as a starting point the RFRL of the Respondent which at paragraph 19 makes reference to other country guidance cases predating the decision in **NM** but of similar substance, and then at paragraph 20 observes: *"It is accepted that undocumented stateless Bidoons are at risk of persecution in Kuwait."*
6. The principle relied upon in the Appellant's submissions on this point - that undocumented Bidoon are at risk of persecution in Kuwait - was a matter of common ground on the basis of the RFRL. So far as the First-tier Tribunal Judge is concerned, I note that the Judge summarises the RFRL at paragraph 4 and identifies halfway through that paragraph that the Secretary of State *"accepted that undocumented stateless Bidoons were at real risk of persecution in Kuwait."* I also note that the Judge summarised the basis of the Appellant's claim at paragraph 3 in these terms: *"The Appellant claimed political asylum on the basis that she was an undocumented Bidoon from Kuwait who had been arrested and detained twice by the Kuwaiti authorities."*
7. The Judge in due course rejected the Appellant's account of having been arrested and detained but nonetheless went on at paragraph 34 to say: *"It does not follow from this that there is no reasonable likelihood that she is an undocumented Bidoon"*, and then went on over the course of that paragraph and the following paragraphs to address the issue of whether or not the Appellant was an undocumented Bidoon notwithstanding the

rejection of her claimed personal history and the events that she said had befallen her whilst in Kuwait.

8. In all those circumstances it seems to me absolutely clear that the Judge had at the centre of his considerations the principle that the Appellant takes from the country guidance cases - that if the Appellant were able to establish that she was an undocumented Bidoon from Kuwait she would make good her claim for international surrogate protection. The fact that the Judge has omitted to make express reference to any of the country guidance cases does not for a moment detract from the very clear recognition and understanding that that was a potentially determinative issue in this appeal, and accordingly I find no error of law by reason of the mere omission in making reference to that principle of a particular case title.
9. The Appellant's grounds of appeal otherwise in the main part are peppered with such phrases as 'contrary to the evidence', 'undue weight', 'an erroneous view of the evidence', and in my judgment for the most part amount to a series of disagreements with the factual assessment of the First-tier Tribunal Judge and an attempt to reargue the merits of the case. Indeed I repeatedly invited Mr Adebayo to identify specific errors of law rather than mere disagreements of fact, to no good avail.
10. I do nonetheless accept that a factual error has been identified in the grounds of challenge. At paragraph 6 of the grounds of challenge the Appellant criticises the Judge's observations at paragraph 29 with regard to whether or not she had spoken to her family prior to her screening interview. The Judge says at paragraph 29: *"It is apparent that she had some discussion with her family in this country about what she would say when she got here because she said at her screening interview that her sister had told her not to give her details to the Immigration Officer."* It is clear, and indeed Mr Walker does not dispute, that in the screening interview the Appellant was referring in this context to the sister that was still in Kuwait, and therefore the Appellant was not referring to a conversation with family members in the United Kingdom.
11. However, in the full scheme of this case it seems to me that such a factual error is not material to the overall evaluation of the Appellant's credibility. There is very much in the analysis of credibility that is entirely independent of this narrow point, and which in my judgment carry sufficient weight to be determinative of the issue of credibility notwithstanding the specific factual error identified.
12. I pause to note in this context that although this is not specifically a matter addressed by the First-tier Tribunal Judge because of the mistake that he made, it does not follow that because the Appellant was referencing a conversation with her sister based in Kuwait she did not have some conversation with her family in the UK prior to arriving in the United Kingdom. In this context it is to be noted that her account and her father's account as to the contact they had had prior to the Appellant

arriving in the United Kingdom were seriously discrepant – see further below. Moreover the point remains that the Appellant had had some discussion prior to the screening interview as to how she might present herself. All of these matters, it seems to me, undermine the notion that the Judge’s factual error as to the identity of the person with whom the Appellant had discussed what she might say prior to the screening interview could in any way have been material.

13. Yet, further in this context it seems to me that the Judge identified serious discrepancies as between the Appellant’s retelling of events beyond the retelling of events in the screening interview: in other words, there were discrepancies in the account advanced subsequent to the screening interview irrespective of any discrepancies as between that account and the screening interview itself.
14. In this context I note that paragraph 7 of the grounds in support of the application for permission to appeal focuses in the main part on discrepancies as between the screening interview and the subsequent account. That does not, in my judgment, amount to a valid criticism of the Judge’s evaluation which as regards the Appellant’s conflicting accounts, is not solely rooted in the conflict between the screening interview and later statements. This is particularly evident at paragraph 30 of the Judge’s decision where he details the conflicts in the Appellant’s account with regard to her arrest. The discrepancies are as between her account at the substantive asylum interview and her account advanced thereafter by way of statement and in oral evidence at the appeal. It is unnecessary to set that paragraph out, but in my judgment it is clear that the Judge has had regard to these discrepancies, has considered the offered explanation for them, and has reached a conclusion open to him on the evidence that he did not accept the explanation and found the Appellant to lack credibility.
15. Moreover in this regard, as indicated above, there was a serious discrepancy between the evidence of the Appellant and her father, which the Judge identifies at paragraph 31 in these terms:

“There were conflicts between her evidence and her father’s evidence about whether she told her parents about her second arrest before she left Kuwait and whether he was involved in arranging her journey. She said in her first statement that she called her parents after she was released and told them what had happened to her. She also said that her father contacted his friends to find a way for her to leave Kuwait. Her father nevertheless said that he was not aware of anything and that they did not have a telephone because they lived in the desert. He also said that he did not know who arranged her journey here and that he learnt that she was here from an Immigration Officer. This leads me to question whether I was given a candid explanation about how and why she came here.”
16. In my judgment the matters set out at paragraphs 30 and 31 of the First-tier Tribunal Judge’s decision in themselves render the Appellant’s evidence unreliable and are damaging to the credibility of the Appellant and her father, and necessarily therefore her claim.

17. As regards the discrepancies in the Appellant's father's evidence, paragraph 8 of the Appellant's grounds of appeal acknowledges that there was such conflict but seeks to offer an explanation by reference to evidence that the Appellant's father had suffered a stroke in December 2014 which affected his memory, and invites that the Tribunal admit such evidence into these proceedings at this stage. That is inappropriate. Those materials were not before the First-tier Tribunal and do not form any part of the evaluation of 'error of law'. Accordingly I find that ground 8 does not constitute an attempt to impugn the decision of the First-tier Tribunal by reference to error of law but is yet another attempt to reargue the facts of the case.
18. Over and above the adverse findings at paragraphs 30 and 31 - which are clear and entirely sustainable - it seems to me that for the main part the Judge was entitled to take the approach that he did at paragraph 32 with regard to the evidence in relation to the manner in which the Appellant's travel to the United Kingdom was funded. Notwithstanding, I do accept that the Judge may have misunderstood the Appellant's evidence with regard to avoiding sanctions from the police for failure to report by pretending that she was ill. The Judge appears to have approached this on the basis that the police would not be dissuaded from arresting the Appellant simply because of illness, whereas it seems to me that what the Appellant was in effect saying was that there was no need to arrest her for failing to report in circumstances where the reason for not reporting was illness. Be that as it may, given that the core of the Appellant's account has not been accepted, and in particular that it was not accepted that she was arrested at all, any error in this regard is ultimately immaterial.
19. In those circumstances, in my judgment the Judge's conclusion at paragraph 33 that he had not been given a candid account of the reasons for the Appellant coming to the United Kingdom was entirely open to him on the evidence, and it was thus appropriate that he rejected her account of events. Nevertheless, as I have identified, the Judge recognised that that was not the end of the case and that it might yet be that the Appellant was at risk solely for reason of being an undocumented Bidoon (even though it was not accepted that any particular incidents of detention or arrest had transpired).
20. The Judge went on to consider that aspect of risk at paragraphs 34 and 35. In this context one of the key aspects of the Appellant's case was the fact that her father had been granted refugee status on the basis of a claim to be an undocumented Bidoon.
21. It is clear that the Secretary of State was alive to this matter because it is expressly addressed at paragraphs 21 to 26 of the RFRL, and in that regard particular reference was made to the case of **AC (Witness with refugee status, Effect) Somalia [2005] UKAIT 00124**. It is clear that the First-tier Tribunal Judge also had reference to this case law. It is cited in the course of submissions at paragraph 22 of the Judge's decision. This is not a point that can be said to have been disregarded, nor is it a point

that was determinative of the appeal. The Judge took the grant of status to the Appellant's father into account alongside the totality of the evidence and to that extent his decision cannot be said in any way to have departed from the guidance offered by the case of **AC Somalia**.

22. Again, in my judgment, it was entirely open to the Judge to conclude for the reasons set out at paragraphs 34 and 35 - bearing in mind that he had already found the Appellant to be a witness that lacked credibility and that he had also observed that the Appellant's father had given an account discrepant with the Appellant's account - that he was not satisfied that the Appellant had the status in Kuwait that she had claimed. Having reached the conclusion that the Appellant had not demonstrated that she was an undocumented Bidoon the Judge was acting entirely in accordance with the country guidance case of **NM** in concluding that she had not therefore made out the claim for asylum on the basis that she had advanced it.
23. In all of those circumstances I find no material error and no error of law in the assessment of the First-tier Tribunal Judge and accordingly his decision stands and this appeal is dismissed.

Notice of Decision

24. The decision of the First-tier Tribunal contains no error of law and stands.
25. The appeal remains dismissed.

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 her or any member of her 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.

The above represents a corrected transcript of an ex tempore decision given at the conclusion of the hearing.

Signed

Date: 14 January 2016

Deputy Upper Tribunal Judge I A Lewis