



IAC-AH-CO-V1

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

Appeal Number: AA/07207/2014

THE IMMIGRATION ACTS

**Heard at Columbus House, Decision & Reasons Promulgated
Newport**
On: 29th October 2015 **On: 3rd November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

N M D

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Irwin Richards, Home Office Presenting Officer

For the Respondent: Mr Andrew Joseph, Albany Solicitors

DECISION AND REASONS
EX TEMPORE JUDGMENT

Unless and until a Tribunal or court directs otherwise, the Appellant continues to be 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.

1. Although the Secretary of State is the Appellant for the purposes of the application before me I refer to the parties as they were in the first tier for convenience.
2. The Respondent appeals the decision of the First-tier Tribunal Judge O'Rourke promulgated on 15th January 2015 in which the judge allowed the Appellant's appeal against a refusal of his claim for international protection. The Appellant had argued that he was an undocumented Bidoon and it was common between the parties that if he established that to the low standard of real risk his claim would succeed.
3. The grounds upon which permission has been granted in the appeal before me deals in essence with two parts of the judge's findings of fact.
4. The first is whether or not the judge has adequately reasoned why he accepted the evidence of the Appellant's witness whom it was asserted was his relative and able to provide information as to his status in Kuwait. The judge found that he could be confident in that witness evidence. I note the basis of the contest on credibility is accurately set out in the judge's decision at paragraph 14 headed "submissions". The first point taken is that the Appellant did not provide full details of the relatives when he was interviewed, the second that he did not provide DNA evidence, the third that witnesses with similar surnames in fact spelt their names differently. Further in respect of the witnesses who did not attend the hearing it was argued that their statements should carry little weight.
5. I find no merit the ground. The judge had the benefit of seeing and hearing the witness give his evidence and it is quite clear that the judge has dealt with the relevant points that were raised in the submission, in particular at 17(a)(3), where the judge explained he found nothing adverse in the failure of the Appellant to be cautious in interview in providing full details of his relatives already in the United Kingdom.
6. In terms of the generally expressed concern that the Appellant had not provided DNA evidence, the absence of such evidence is not determinative of the point. The Respondent could of course have sought it, as, certainly in terms of the witness who attended before the court, the detail of that person was available to the Respondent at an early stage. In those circumstances it is not surprising that the judge did not find that the absence of DNA evidence was a significant factor. Whilst it might have been better for him to have specifically said so no error arises. It is not incumbent upon a judge to deal with every contention, particularly where on its face it is not a strong point. Similar considerations apply in the submission made that the spelling of the witnesses with similar surnames are different from those used by the Appellant in respect of his own name.
7. Mr Richards made the point before me that the fact that the judge generally found the Appellant credible did not excuse the judge from having to give proper reasons in respect of the assessment of credibility of the witness. I find that this is not a case where the judge has found an

Appellant generally credible and then used that as a basis to assess the credibility of a witness. The judge clearly noted that the witness he heard had been cross-examined, and reading the decision in the round it is clear that his performance did not undermine his credibility.

8. The second part of the challenge asserts inadequate dealing with the inconsistent evidence of the Appellant:
 - (i) in respect of his date of arrest. The Appellant's evidence was consistent in saying that that he had been arrested on the second demonstration which he had attended, but he gave different dates for the date of it. His evidence to the judge was that he made a mistake when he gave the date initially. The Record of Proceedings reveals that the Appellant said that the second demonstration, i.e. the one which had led to his arrest, had lasted over a number of days. The judge in finding that the Appellant's confusion about dates may have arisen from the evidence that the demonstration had run over several days is therefore not a matter of speculation by the judge that the demonstration may have run over days, but rooted in the evidence that he heard. The standard of proof is the lower standard of proof and in those circumstances the judge's acceptance of the explanation was open to him on his overall assessment of the evidence.
 - (ii) in respect of the discrepant evidence as to whether or not the Appellant lived in the desert or in the city: the Appellant's evidence to the judge was that he lived in the city which was on the edge of the desert. The judge does not specifically deal with the issue in terms of the reconciliation of that evidence with the evidence in his asylum interview that he lived in the desert. I am satisfied that the failure to do so does not amount to a material error. There is no evidence that the explanation offered, and by inference, in terms of the assessment of the credibility of the Appellant, accepted by the judge, is in fact erroneous, and, in the overall context of the case, there was sufficient positive evidence that it was not a matter upon which significant issues of credibility hinged.
9. The finding that the Appellant is an undocumented Bidoon is made on the evidence, is in the round, and is adequately reasoned.
10. The decision allowing the appeal reveals no error of law and stands.

Signed

Date

Deputy Upper Tribunal Judge Davidge