



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/10908/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 11 May 2018

Decision & Reasons Promulgated  
On 25 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE APPELYARD

Between

H A S  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr A Masood, Legal Representative.

For the Respondent: Ms Fizikiala, Home Office Presenting Officer.

**DECISION AND REASONS**

1. The Appellant's nationality is that of Kuwaiti Bidoon. He made application for international protection which was refused by the Respondent. He appealed and following a hearing before Judge of the First-tier Tribunal McLaren, and in a decision promulgated on 29 November 2017, his appeal was dismissed. The Judge found that the Appellant was not a credible witness in relation to key facts of his claim including participation in a human rights demonstration, detention, injury from

beatings, contact with relatives in the United Kingdom and that he is an undocumented Bidoon.

2. The Appellant sought permission to appeal which was initially refused but a renewed application was granted by Judge of the First-tier Tribunal Chamberlain on 22 March 2018. Her reasons for so granting were : -

- “1. The Appellant applied in time for permission to appeal against the decision of First-tier Tribunal Judge McLaren promulgated on 29 November 2017. The grounds are the same as those put before and considered by the First-tier Tribunal.

2. I have carefully considered the grounds and the decision. The Judge was entitled to find that the Appellant’s failure to mention until cross-examination that his family had been harassed by the authorities damaged his credibility. Her findings are not unreasonable given the significance of such a claim. There is no error of law in her consideration of the Appellant’s injuries, and she found that again he elaborated on his account in cross-examination. However, in relation to whether or not the Appellant is an undocumented Bidoun (sic), it is arguable that insufficient reasons are given for rejecting this part of his claim, despite the credibility findings in relation to his claim to have been involved in the demonstration and imprisoned. While the Judge gave reasons for not giving weight to the expert report, and assessed it with reference to the Country Guidance, it is arguable that she has failed to give sufficient reasons for her finding at [53], especially given that the Respondent found much of his evidence consistent with external sources.

3. This ground is arguable and merits the grant of permission to appeal. That said, I do not restrict the grant of permission”.

3. Thus, the appeal came before me today.
4. Mr Masood relied upon the grounds seeking permission to appeal. Additionally, he had lodged with the Upper Tribunal an application under Rule 15(2A) to adduce new evidence. At the outset of the hearing it was accepted by him that that such application did not fall for consideration immediately as my initial task was to ascertain whether the Judge had materially erred in his decision as detailed in his grounds. The grounds include firstly making adverse finding on credibility about something that had not been mentioned in either the Appellant’s interview or witness statement, secondly and in the alternative by not rejecting this defect in the Appellant’s case and allowing his appeal based on other evidence, thirdly it being unreasonable to expect medical evidence some three years after the claimed incident by the Appellant, fourthly that the Judge speculated about what information could be obtained from the Appellant’s family, and fifthly in erring by making adverse findings because witnesses did not attend to support his family claim and finally failing to attach weight to an expert report.
5. Ms Fizikiala urged me accept that there was within this decision no material error whatsoever. The Judge was entitled to come to conclusions in relation to the Appellant’s credibility consequent upon a failure by him to make mention of

material facts within his claim until cross-examination. The Judge was entitled to conclude that parts of the Appellant's evidence was vague and no weight should be attached to any argument in relation to the lateness that the Appellant claims to have been able to consider the Respondent's refusal letter. It was open to the Judge to accept the submissions of the Home Office Presenting Officer. The Judge was entitled to conclude that the Appellant had not been detained as claimed or that other elements of his claim had not been made out. The Judge applied the correct burden and standard of proof and has appropriately dealt with the expert evidence.

6. I find that the Appellant's grounds are no more than a disagreement with findings that were open to be made on the totality of the evidence considered by the Judge. Not only has the Judge applied the correct burden and standard of proof throughout but where adverse findings have been made the Judge has also looked at the Appellant's position in the alternative. The Judge was entitled to make adverse credibility findings. The issue of credibility has been dealt with applying a structured approach and contains no perversity. Albeit that witness statements have been provided today from the Appellant's family they were not before the Judge and she cannot therefore be criticised for not taking them into account. The Judge took account of the Appellant's claimed illiteracy. She likewise considered the expert evidence that was before her from Dr. Alan George which gave details of the treatment of the Bidoon and how this arose. However, she was entitled to also find that the content of this report was not sufficiently strong cogent evidence for her to conclude that the Country Guidance case was incorrect. She also took account of paragraph 339L of the Immigration Rules and found that pivotal to the Appellant's claim was that he was liable to persecution by the State authorities following his imprisonment and they had threatened his family if he did not cooperate. She was entitled to take account of the fact that it was not until cross-examination that he stated that his family had any contact from the authorities or suffered any harassment. The Appellant was represented throughout and it was of course also open to the Judge to take account of the absence of key elements of the Appellant's claim from his professionally prepared witness statement. The Judge was entitled to find that the Appellant could access opportunities to obtain knowledge of the consequences of being involved in political demonstrations irrespective of his illiteracy. Likewise, it was open to her to conclude that the Appellant was vague in relation to the relatives he had in the United Kingdom. He was aware of the Respondent's position that it was stated he was not an undocumented Bidoon and it was open to him to provide evidence to the Tribunal from witnesses. That he failed to do. Overall the Judge found the Appellant not credible and it was further open to her, consequently, to conclude that the Appellant was not an undocumented Bidoon. This was not a conclusion made in isolation but in the context of the overall credibility findings as a whole.

## **Decision**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision but order that it shall stand.

**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 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.

Signed

Date 24 May 2018.

Deputy Upper Tribunal Judge Appleyard