



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07536/2017

THE IMMIGRATION ACTS

Heard at Glasgow
on 28 June 2018

Decision & Reasons Promulgated
on 13 July 2018

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

M F N

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Katani & Co, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a decision by FtT Judge Boyd, promulgated on 30 November 2017. His three grounds are as attached to his application of 13 December 2017.
2. On the first ground, the respondent accepted in the rule 24 response and in submissions that it would have been better if the judge had made a finding on the evidence of the appellant's uncle that the appellant is an undocumented Bidoon.
3. As the respondent argues, the decision contains several reasons for rejecting the claim, not all of which are the subject of challenge, and a specific finding is not always required on every aspect of the evidence. The question is whether the omission is of such a degree as to undermine the decision as a whole.
4. Mr Winter relied upon the observations of the Court in *AR* [2017] CSIH 52 at [36]:

"... lack of any proper consideration and assessment of the evidence from the supporting witness ... One cannot simply dismiss this evidence, or in effect ignore it, because one has already decided that the claimant's account is false ... it provides direct support for something which is acknowledged to be difficult to prove."

5. He submitted further that although undocumented status is a different matter from proof of sexuality (the issue in *AR*) it is similar in its difficulty. He referred to the statement by the witness and pointed out that although his oral evidence is briefly noted at paragraph 27, and there is a finding at paragraph 33 that he is the appellant's uncle (as shown by a DNA report), nothing is said about his evidence that the appellant, like his uncle and the rest of the family, is an undocumented Bidoon.
6. Ground 2 is that the FtT's findings are not supported by country guidance case law, *NM* [2013] UKUT 00356. Mr Winter accepted that the point made in the ground was not that the FtT reached a decision which could not be reconciled with the binding passages of the guidance, but rather that evidence narrated in *NM* was consistent with the claim.
7. *NM* is an example of a case with broad similarities to this one, where an appellant's credibility was damaged by some discrepancies, but was found nevertheless to be an undocumented Bidoon, based partly on evidence from a brother who had been accepted as such. However, there is nothing in *NM* which prescribes that this case must have gone the other way.
8. As I indicated at the hearing, ground 3 is at best a makeweight. It is a generality to be borne in mind that release from detention is not conclusive that the authorities may have no ongoing interest in an appellant, but that shows no error of law in the finding at [45] - [46], based on the facts of this case.
9. Ground 1 shows error of law. The evidence from the appellant's uncle was important enough to require specific resolution. There is also some merit in ground 2. The judge did not consider whether the appellant might have exaggerated or invented parts of his claim, and yet be an undocumented Bidoon. The two grounds together show that the decision cannot safely stand.
10. The decision of the First-tier Tribunal is **set aside**. The nature of this case is such that it is appropriate under section 12 of the 2002 Act and Practice Statement 7.2 to **remit to the FtT** for an entirely fresh hearing. The member(s) of the FtT chosen to consider the case are not to include Judge Boyd.
11. The FtT made an anonymity direction. The matter was not addressed in the UT. Anonymity has been preserved herein.



28 June 2018
Upper Tribunal Judge Macleman