Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/09146/2014

THE IMMIGRATION ACTS

Heard at: Columbus House, Newport	**Decision promulgated**
On 23 June 2015	**On 2 July 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SH

(anonymity direction made)

Respondent

Representation

For the Appellant: Mr I Richards, Home Office Presenting Officer
For the Respondent: Mr B Hoshi, Counsel instructed by Migrant Legal Project

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the determination of First-tier Tribunal Judge Suffield-Thompson in which she allowed the appeal of SH, a citizen of Iran, against the Secretary of State's decision to refuse asylum. I shall refer to SH as the Applicant, although he was the Appellant in the proceedings below.

2. The Applicant arrived in the United Kingdom on 1 November 2013 and claimed asylum the same day. His application was refused on 16 October 2014. The Applicant exercised his right of appeal to the First-tier Tribunal. This is the appeal which came before Judge Suffield-Thompson on 3 March

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2015 and was allowed. The Secretary of State applied for permission to appeal to the Upper Tribunal. The application was granted by First-tier Tribunal Judge Grant-Hutchinson on 27 March 2015 in the following terms

> "It is arguable that the Judge (a) failed to provide adequate reasons on material matters in relation to the circumstances surrounding the Appellant's father's death which is the event leading to the alleged interest in the appellant by PJAK, his subsequent activities with PJAK, the issue of the claimed arrest warrant and how members of the PJAK identified the Appellant in the first place and (b) misdirecting himself in not considering the arrest warrant in the round in the terms of Tanveer Ahmed by shifting the burden of proof to the Respondent that she has not proved the arrest warrant is a forgery."

3. At the hearing before me Mr Richards appeared to represent the Secretary of State and Mr Hoshi represented the Applicant. A rule 24 response was submitted on behalf of the Applicant dated 10 April 2015 opposing the appeal.

Background

4. The history of this appeal is detailed above. The facts, not challenged, are that the Applicant was born in Iran on 1 February 1981 in the Kurdish district of Baneh. He arrived in the United Kingdom on 1 November 2013 and claimed asylum following his arrest for entering the United Kingdom clandestinely. In refusing the Applicant's claim the Secretary of State did not accept that the Applicant had told the truth about his reasons for leaving Iran.

5. At the First-tier Tribunal hearing the Judge accepted the credibility of the Applicant's account (see paragraphs 31 to 33). In doing so the Judge accepted that the Applicant had been associated with the separatist militant group PJAK, that an arrest warrant had been issued against him and that he left Iran illegally fearing arrest, detention and ill-treatment on account of his perceived political views.

Submissions

6. On behalf the Secretary of State Mr Richards said that a number of matters had not really been dealt with by the First-tier Tribunal Judge. The Secretary of State's case is set out at paragraph 15. At 15(c) the Applicant's failure to claim at the earliest opportunity is recorded but the Judge does not go on to deal with this in her analysis or engage with matters in dispute identified in the refusal letter. So far as Tanveer Ahmed v SSHD [2002] UKIAT 00439 is concerned the Judge deals with this, in respect of the arrest warrant, at paragraph 30 of the decision. Mr Richards quoted paragraph 30 and said that the way the Judge makes her assessment is totally contrary to Tanveer Ahmed which holds that the document in question should be considered after looking at all the evidence in the round. In this case the Judge starts her consideration with the disputed document. Paragraph 34 and 36 of Tanveer Ahmed show that there is no obligation on the Home Office to authenticate a document. The

Judge's approach is entirely against the approach advocated in Tanveer Ahmed and here the Judge falls into a clear and material error of law. She looks at the document, says there is no evidence that it is false and therefore accepts it as genuine before going on to look at the rest of the evidence. Finally at paragraph 33 of her determination the Judge in saying that she has nothing before her to doubt the events described by the Applicant shows a clear implication that the burden of proof is upon the Secretary of State to adduce evidence to disprove the Applicant's account.

7. For the Applicant Mr Hoshi said that it was perhaps trite to start by saying that the Secretary of State knows why she has lost this appeal. The reasons are clear, it was because the Judge accepted the Applicant's account. So far as Tanveer Ahmed is concerned Mr Hoshi said that he could see why this ground was pleaded, on the face of it paragraph 30 of the decision is a gross misapplication of Tanveer Ahmed. However if one refers to paragraph 38.3 of Tanveer Ahmed it can be seen that the Judge applied the authority correctly on the basis that the Respondent had made an allegation of forgery. This is confirmed by the record of the Respondent's submissions at paragraph 17. Where a specific allegation is made the Judge was entitled to find that the Respondent must adduce evidence to support that allegation. Mr Hoshi said that the Judge then goes on to apply the principles of paragraphs 38.1 and 38.2 of Tanveer Ahmed. She assesses the Appellant's account in the round and she believes his account. The Judge examines the background information.

8. Mr Hoshi said that paragraph 33 does not, as Mr Richards suggested, shift the burden of proof to the Secretary of State. By saying that there is 'nothing before me to doubt that the events took place' the Judge means that she has no reason to doubt that the events took place. Mr Hoshi accepted that the determination as a whole was thin on reasons but there is no requirement to give elaborate reasons. The material matter was credibility and paragraphs 31 and 32 are sufficient in this respect.

Decision - Error of law

9. The grounds of appeal to the Upper Tribunal are two-fold asserting firstly that the Judge failed to reconcile evidence and provide adequate reasons on material matters and secondly a material misdirection in law. In considering whether there is a material error I am driven to look at these assertions in reverse order. This is firstly because the asserted misdirection comes before the analysis of evidence and reasoning and secondly because the one error, if made out, infects the other. The very fact that I must deal with matters in this order because that is the way they are dealt with in the decision under appeal almost inevitably leads to the conclusion that this decision is unsafe and cannot stand.

10. The material misdirection asserted is the Judge's treatment of the authority of Tanveer Ahmed. Tanveer Ahmed is a well established authority and possibly the most frequently cited authority in asylum appeals. It is perhaps to be expected that the terms of such a well known

authority are rarely consulted it being assumed that merely citing the authority is sufficient to convey the principles involved. There are other examples of authorities that evoke a similar respect; Chiver [1997] INLR 212 IAT is perhaps one. The rarely quoted principles of Tanveer Ahmed are succinctly set out at paragraph 38

> "In summary the principles set out in this determination are:
>
> 1. In asylum and human rights cases it is for an individual claimant to show that a document on which he seeks to rely can be relied on.
>
> 2. The decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round.
>
> 3. Only very rarely will there be the need to make an allegation of forgery, or evidence strong enough to support it. The allegation should not be made without such evidence. Failure to establish the allegation on the balance of probabilities to the higher civil standard does not show that a document is reliable. The decision maker still needs to apply principles 1 and 2."

11. In this case the document in question is an arrest warrant and the issue of this arrest warrant is fundamental to the Applicant's claimed fear of persecution on a return to Iran. At paragraph 15(vii) of the decision in summarising the Secretary of State's case the Judge records

> "The Respondent does not accept that the arrest warrant is a genuine one and they rely on the case of Tanveer Ahmed … in regards to false documents".

At paragraph 17 in recording the Presenting Officer's submissions the Judge adds

> "The parts of his account that they do not believe are these … The arrest warrant is not a real one and he has forged it."

12. At paragraph 26 the Judge agrees with the representatives that the case stands and falls on the Applicant's credibility. The actual analysis of credibility starts at paragraph 30

> "The Respondent relies on the case of Tanveer Ahmed and states that the arrest warrant is false but has produced no evidence to support that contention. The Appellant has given evidence that his surname Hamha in Persian is Mohammedi. Again I have no evidence before me from the Respondent to prove that is this not so (sic). The Respondent has provided an excerpt from the Danish fact finding report 2013 that deals with obtaining forged documents in Iran and she has not provided for the Tribunal an expert report with any conclusion as to why I should be dubious about the legitimacy of the Appellant's arrest warrant."

The Judge then goes on in the following paragraphs to accept the Appellant's account.

13. In my judgement the Judge misdirects herself in two ways. Firstly I do not accept that there was an allegation of forgery by the Secretary of State. The refusal letter does not allege forgery; it follows the Secretary of State's normal practice in such matters in not accepting that the document is genuine. It can be seen from paragraph 15(vii), as quoted above, that the Judge has taken the Secretary of State's refusal to accept the document as genuine as an implicit allegation of forgery. It is not. This is a misdirection of fact.

14. Secondly and in any event the Judge has misdirected herself as to the principles set out in Tanveer Ahmed. It is for the Applicant to show that the document in question can be relied upon not for the Secretary of State to prove that it cannot. The decision maker should make that assessment after looking at all the evidence in the round. In this case the Judge has taken the Secretary of State's failure to produce evidence to show that the document is false as the reason for finding that the document is genuine. It is only after making this finding that the Judge goes on to consider the rest of the evidence. Even if the Secretary of State's representative had, in her submissions, diverted from the refusal letter and explicitly submitted that the document was false the principles of Tanveer Ahmed as quoted above still require the Judge to consider the evidence in the round before making a finding as to whether the document can be relied upon (Tanveer Ahmed paragraph 38.3).

15. Returning to the first asserted error the reasons why this is materially affected and infected by the second are apparent. Having firstly found, by default because the Secretary of State had not proved that it was not, the arrest warrant to be a document that could be relied upon the Judge then goes on to make her positive credibility findings in respect of the rest of the Applicant's account. Of course she was almost bound to do so. Having started with the consideration of an arrest warrant and the issue of that arrest warrant and the reasons behind its issue being the reason the Applicant claimed to have left the country and to fear persecution on return it was axiomatic that the rest of his account must be believed. There was no need for detailed analysis or reasoning because having found the arrest warrant was reliable the Applicant's case was made out.

16. My conclusion from all of the above is that the decision of the First-tier Tribunal contains an error of law material to the decision to allow the appeal. The appeal of the Secretary of State is therefore allowed.

Summary

17. The decision of the First-tier Tribunal involved the making of a material error of law. I allow the Secretary of State's appeal and set aside the decision of the First-tier Tribunal.

18. The nature of the error of law is such that none of the findings of the First-tier Tribunal can stand. In accordance with the President's direction this case is remitted to the First-tier Tribunal for a hearing *de novo*.

Signed: **Date:**

J F W Phillips
Deputy Judge of the Upper Tribunal