Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/00717/2014

THE IMMIGRATION ACTS

Heard at Birmingham	**Determination Promulgated**
On 6 June 2014	**On 24 June 2014**
Prepared 6 June 2014	.....

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR SAEED AKHTAR BHATTI

Respondent

Representation:

For the Appellant: Mr Smart, Senior Presenting Officer
For the Respondent: Mr Murphy, Counsel

DETERMINATION AND REASONS

1. In this determination I shall refer to the Appellant as the Secretary of State and to the Respondent as the claimant. The Secretary of State made a decision to remove under Section 10 of the Immigration and Asylum Act 1999, on 17 January 2014, an asylum/human rights claim having failed and a form IS151A having been served on 28 May 2012. The claimant's, a

national of Pakistan, dob 1 December 1956, appeal against that decision came before First-tier Tribunal Judge A J Parker who, on 13 March 2014, allowed the appeal on asylum grounds and in respect of Article 3 of the ECHR and dismissed the appeal with reference to humanitarian protection grounds.

2. Permission to appeal was granted to the Secretary of State by Designated Judge of the First-tier Tribunal Mr Manuell on 31 March 2014.

3. At the hearing before me Mr Smart submitted, by reference to the grounds seeking permission, that quite simply the judge had approached the assessment of the evidence and indeed particularly the documentary evidence on the wrong basis. For it was submitted that, although in the determination the judge set out the burden and standard of proof, the judge was diverted into error in the way he assessed the evidence.

4. The judge had noted that there was a significant amount of corroborative evidence and at paragraph 18 of the determination stated

> "It is an unusual case because we have a great deal of corroboration. I am aware of the principles in Tanveer and Ahmed [sic] and I am also aware that the evidential burden is on the Respondent (Secretary of State) to prove that the document is false. They have not proved any document before me is false."

Even though the Secretary of State made no such allegations.

5. The judge also said at paragraph 21, having referred to some First Information Reports verified by a Pakistani advocate, Mr Imran

> "It is not argued before me that the threat does not exist to the appellant but that simply he is not telling the truth. It is suggested that the appeal should be dismissed because of the alleged

> inconsistencies in his story. It does not satisfactorily deal with the abundance of documents which is before me."

6. The fact someone is not telling the truth does not necessarily mean that there is or is not a threat was a slightly confused way to address the matter. Be that as it may, the judge accepted the originals of the FIR and the arrest warrant were held by the courts and had not been shown to be inconsistent. He went on to conclude that the documents were not in themselves fraudulent. As the judge said at paragraph 25

> "… There is however other evidence which supports the Appellant's story and we are not relying on any one document. To merely say the documents are fabricated without supporting evidence is insufficient. The Tanveer Ahmed principle does not apply as I have found him to be a credible witness. It suggests that the reason for coming to this country is because of his poor health. This case has not been made out sufficiently to damage his credibility. The medical records have been accessed and show he was being treated in Pakistan from the problems known at the time."

7. At paragraph 26 the Judge's confusing approach to the reliability of documents is further compounded when the judge says

> "… I would find the Appellant is telling the truth. I believe that very importance evidence which is not successfully challenged by the Respondent is Mr Imran advocates letter with supporting credentials. The Sponsor (sic) has had time to check the validity of this document and it has not been successfully challenged and in my view convincingly proves the Appellant is subject to further Information Report and to arrest warrants. He will be considered an absconded person with police records …"

8. The fact of the matter is that there was not raised in the reasons for refusal, or indeed at the hearing by the Secretary of State's representative, any argument that the documentation provided was false or forgeries. Rather what was said did not involve the necessity of the Secretary of State proving documents were false. It was a completely irrelevant issue.

9. However the question is whether or not the issue of the fabrication of documents nevertheless featured in why the claim succeeded I find it is plain that the judge did take into account the issue of the fabrication of evidence and concluded that, because it had not been proved or sufficiently disputed, or as he referred to it successfully challenged, the appeal succeeded. It seems to me that the outcome could be the same but the reasoning is very unclear as to what part, if anything, in the judge's conclusions the issue of the validity of the documents and their reliability had played a part. As I have cited above, the judge plainly said that the Tanveer Ahmed principle did not apply because he had found the Appellant a credible witness. It is apparent that the judge, although saying that he is applying the principles from Tanveer Ahmed, was not apparently doing so with reference to what was actually said. In paragraph 37 of Tanveer Ahmed in the summary of the principles set out, Mr Moulden, Senior Immigration Judge, said as follows

> "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."

10. In this case the judge, whilst expressing he himself in paragraphs 13 and 14, to have considered the evidence in the appropriate way, seems to then reject consideration of the reliability of the Appellant's documentation by reference to the absence of a challenge to its being false, or possibly thinking that by the Secretary of State's reasons for refusal those were matters which were not in issue.

11. The Appellant, as much as a Respondent, in appeals, is entitled to sufficient and adequate reasoning. I find this is a case where, most unfortunately, although I do not seek to second guess what might be the outcome of remaking the decision, the reasons are confused and the reasonable reader will have difficulty in discerning how the reliability of the documents was assessed in the round as was said to have been the case. Rather, by digressing repeatedly into the issue of fabrication of documents or their falsity, even though not actually alleged, it seems to me that the judge has not provided an adequately reasoned decision to meet the requirements identified in cases such as R (Iran) [2005] EWCA Civ 982 and E and R [2004] QB 1044 CA and the many cases that have followed since, dealing with the adequacy of reasons.

12. Accordingly, I find this is a case somewhat reluctantly where it is necessary to set aside the original Tribunal's decision which cannot stand. The appeal is allowed to the extent it is to be remade in the First-tier Tribunal.

DIRECTIONS

(1) Hearing – two hours.

(2) Urdu interpreter required.

(3) Any additional statements or documents to be submitted not later than seven working days before the further hearing and served on the other party and the Tribunal.

(4) When relisting this case, do not put it before First-tier Tribunal Judge A J Parker.

(5) Please list for hearing in the First-tier Tribunal at Sheldon Court, Birmingham.

(6) No findings of fact to stand.

Signed Date 22 June 2014

Deputy Upper Tribunal Judge Davey