



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

Appeal Number: PA/06990/2016

THE IMMIGRATION ACTS

Heard at Bradford

On 1 June 2017

**Decision &
Promulgated
On 12 June 2017**

Reasons

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**ME
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Shaikh, instructed by Parker Rhodes Hickmotts,
Solicitors

For the Respondent: Ms Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

- 1.** The appellant, ME, was born in 1972 and is a male citizen of Iran. The appellant arrived in the United Kingdom and claimed asylum in January 2016. By a decision dated 17 June 2016, the respondent refused the

appellant's application. The appellant appealed to the First-tier Tribunal (Judge O'Hanlon) which, in a decision promulgated on 14 December 2016, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. I find that the decision of the First-tier Tribunal should be set aside. I find that the judge has erred in law. I have reached that conclusion for the following reasons. The appellant had produced in evidence a document purporting to be a summons for him to attend before the Iranian Revolutionary Guard which the appellant claimed had been issued to him two days after an incident on 5 December 2015 when, whilst attempting to distribute leaflets regarding the prevention of HIV/aids, the appellant had been assaulted by men whom he considered to be members of the Basij who had taken him to a police station. The appellant had been released without charge but had received the summons two days later and had decided not to attend interrogation but instead to seek asylum in the United Kingdom. At [42], Judge O'Hanlon wrote:

The appellant has stated that he is wanted by the Iranian authorities for distributing leaflets or being possession of a book that states that the Shia faith is made up for political power. The appellant has submitted a copy of a document translated on 7 March 2016 which is stated to be a summons against the appellant for him to attend the Iranian Revolutionary Guards on 28 October 2015. The document is produced at D1 of the respondent's bundle and is dated 27 October 2015 which is before the problems that the appellant states he experienced on 5 December 2015. In his witness statement the appellant states that the translation was incorrect and that he had provided the correct translation to his solicitor but the appellant does not state in his statement the nature of the incorrect translation and on the basis of the document before me it is dated 27 October 2015. I note that the document does not specify the nature of any allegations which may have been made against the appellant. In accordance with the case of *Tanveer Ahmed* [2002] UKIAT 00439 having considered this document generally, I do not find that significant weight could be placed upon it.

3. Judge O'Hanlon is correct to say that the translation of the document which appears in the papers does show 27 October 2015. I am, however, struggling to understand quite what the judge means in the passage which I have quoted above where he says, "*the appellant does not state in his statement the nature of the incorrect translation ...*" I assume he is referring to the reason why the document had been incorrectly translated. I take judicial notice of the fact that some inaccuracies do occur in translating dates from an Iranian calendar to the Gregorian calendar. The fact is that the appellant did, the parties agree as soon as he was aware, notify the respondent of the incorrect date on the translated warrant. More importantly, the judge fails to mention the fact that at the hearing before him the court interpreter was asked to examine a copy of the original Farsi document and to provide his own translation. Neither of the parties objected to his doing so. In court, the interpreter gave a date of 7 December 2015, that is two days after the alleged incident described by the appellant on 5 December 2015. I find that the judge should, at the

least, in his decision have referred to that translating of the document by the interpreter. To have doggedly kept to the date shown on the original translation into English and to make no reference to the interpreter's important involvement was, in my opinion, unfair to the appellant. Further, at [43], the judge reaches findings as to the credibility of the appellant's account but fails to deal with the explanations for apparent inconsistencies in his account which the appellant had given at his substantive asylum interview. The judge was, of course, not obliged to accept those explanations but he should have attempted to deal with the explanations, if only to reject them.

4. There is a further ground of appeal concerning the appellant's claimed conversion to Christianity. The judge noted at [48] that the appellant had given his evidence in Farsi and he therefore doubted that the appellant had been able to discuss theology with the witness David Lanstrom. This, in turn, cast doubt upon the appellant's claimed conversion. I accept that there may be some force in the appellant's assertion that, whilst he may require a formal interpreter to assist him at a court hearing, his English language skills were sufficient to discuss religion with a friend. The ground alone, however, would be insufficient to vitiate the decision.
5. Whether or not the warrant document is a genuine remains to be determined but I find that its lack of authenticity does not turn upon the incorrect translation of the date on the translation which appears in the Tribunal papers. The fact that the court interpreter examined the original Farsi document and translated the consistently with the appellant's account seems to me quite forceful evidence that the document should not be discounted, at least for the reasons given by Judge O'Hanlon. Further, I find it difficult to disentangle the weight given to this documentary evidence from the oral and other written evidence adduced by the appellant and, in consequence, I consider that the only prudent course of action is to set aside all the findings of fact, including the finding favourable to the appellant namely that the judge accepted he had been involved in the distribution of HIV/aids leaflets as he claimed. The next Tribunal will need to make new findings of fact *ab initio*. I stress that none of the observations which I make in this decision should condition the next fact-finding exercise save for my observation regarding the dating of the English translation of the warrant. However, I stress that even that finding does not prevent the next Tribunal concluding that the warrant document is not genuine or that its contents may not be relied upon. Likewise, there is nothing in this decision which in itself should lead the next Tribunal to conclude that the appellant is a genuine convert to Christianity.

Notice of Decision

6. The decision of the First-tier Tribunal which was promulgated on 14 December 2016 is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (not Judge O'Hanlon) for that Tribunal to remake the decision.

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 10 June 2017

Upper Tribunal Judge Clive Lane

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 10 June 2017

Upper Tribunal Judge Clive Lane