Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/06876/2016**

THE IMMIGRATION ACTS

Heard at Glasgow **Decision and Reasons Promulgated**
On 23 April 2018 **On 27 April 2018**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

REBAR JASEM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C McGinley, of Gray & Co, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Iraq born on 1 February 1991. He sought asylum in the UK on 7 January 2016.

2. The respondent refused his claim for reasons explained in her letter dated 23 June 2016.

3. First-tier Tribunal Judge Bradshaw dismissed the appellant's appeal for reasons explained in his decision promulgated on 19 January 2017.

4. The appellant's two grounds of appeal are stated in his application for permission to appeal dated 30 January 2017, as follows (lightly edited):

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1. … at paragraph 50 the decision notes that the respondent accepts that the appellant is a supporter of the KDP as claimed. In fact, the appellant had provided a number of documents and translations at the commencement of the substantive asylum interview, including ID documents and membership cards, all contained in annex E of the Home Office's bundle. The respondent accepted these documents and evidence as reliable and accepted in the refusal decision (paragraph 27) that the appellant is Iraqi, Kurdish and a member of the KDP. The appellant's credibility was enhanced by providing said documents, the reliability of which was accepted by the respondent. The appellant produced further documentary evidence for the appeal in a second inventory of productions, referred to in the decision at paragraph 95. The judge stated at paragraph 99, "I am of the view that the first two documents have been fabricated behalf of the appellant to bolster his chances in his claim for asylum and they are not genuine documents". The judge has materially erred in making such a finding and has failed to provide adequate reasons. It is irrational and erroneous in law to find the documents "are not genuine" and then to state in the next paragraph, paragraph 100:

"I have no knowledge of what an official Kirkuk Province police document would look like nor what a Supreme Court – Federal Court of Appeal Kirkuk document would look like ".

This is an erroneous assessment in law of such important and vital documents … There was no expert or other evidence … to support such a conclusion … The finding is based entirely on speculation, which is also erroneous in law. At paragraph 100 the judge speculates that his examination of the said to original letters would indicate that they could have been "easily computer generated". This is an inadequate reason, not based on any evidence that was lodged and has simply employed speculation… The judge accepted at paragraph 101 that the letter from the appellant's father "may well be genuine". In all the circumstances, the judge has failed to provide adequate reasons for finding that the 2 documents were not genuine, particularly standing the acceptance of all the other documents of annex E of the Home Office bundle and has failed to explain why they are not reliable in terms of *Tanveer Ahmed* …

2. … at paragraph 104 the judge finds that it is not unreasonable or unduly harsh for the appellant to be returned to the IKR … This is erroneous in law… with reference to the immediately preceding ground of appeal the judge has materially erred in his assessment of and the evidential weight to be given to the 2 documents … From Kirkuk Province Police and Supreme Court of Appeal Kirkuk … these documents will result in the appellant being at real risk of persecution in the IKR … and the judge has materially erred in finding that it would not be unreasonable or unduly harsh for the appellant to be returned to the IKR …

5. When the case first came before the UT, the respondent was given the opportunity to investigate whether the same name appears on the document at page E9 of the respondent's FtT bundle (a party card) and on the document at item 2 of the appellant's second inventory of documents (an arrest warrant); and (if so minded) whether the police complaint (item 1 of that inventory) and the arrest warrant are genuine documents. The outcome of those enquiries plays no part in this decision. Further translation of the documents disclosed no significant differences. The respondent has no information by which to verify the police complaint and arrest warrant.

6. Mr McGinley's submissions were along the lines of the grounds. He argued that production of documents which were accepted by the respondent supported the reliability of the two later documents and that the judge gave no good reason for rejecting them. The judge had gone wrong in terms of *Tanveer Ahmed* by looking for evidence of forgery and purporting to make such a finding when it could not be supported. He accepted that ground 2 was conditional on ground 1, but said that ground showed such error of law as to require a remit to the FtT for a fresh hearing.

7. Mr Matthews submitted that acceptance of the first set of documents did not enhance the reliability of further documents. It was commonplace to find some evidence reliable, and other evidence unreliable. The judge had correctly applied the *Tanveer Ahmed* approach, deciding on the documents in context and giving multiple reasons, in which no errors were alleged, for finding that the appellant failed to establish his case on all the evidence.

8. I reserved my decision.

9. In submissions parties referred, although generally rather than directly, to *Tanveer Ahmed.* The original case reference is [2002] UKIAT 00439 and it is reported at [2002] Imm AR 318 and [2002] INLR 345. The decision was made by a panel of the AIT comprising Collins J, President, Ockelton, Deputy President, and Moulden, Vice President. It has stood the test of time, having been often applied and approved by the Courts and by subsequent tribunals: see *MJ (Singh v Belgium: Tanveer Ahmed unaffected) Afghanistan* [2013] UKUT 253 (IAC).

10. *Tanveer Ahmed* includes the following:

> 32. It is for the individual claimant to show that a document is reliable in the same way as any other piece of evidence which he puts forward and on which he seeks to rely.
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> 33. It is sometimes argued before adjudicators or the tribunal that if the Home Office alleges that a document relied on by an individual claimant is a forgery and the Home Office fails to establish this on the balance of probabilities, or even to the higher criminal standard, then the individual claimant has established the validity and truth of the document and its contents. There is no legal justification for such an argument, which is manifestly incorrect, given that whether the document is a forgery is not the question at issue. The only question is whether the document is one upon which reliance should properly be placed.
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> 34. In almost all cases it would be an error to concentrate on whether a document is a forgery. In most cases where forgery is alleged it will be of no great importance whether this is or is not made out to the required higher civil standard. In all cases where there is a material document it should be assessed in the same way as any other piece of evidence. A document should not be viewed in isolation. The decision maker should look at the evidence as a whole or in the round (which is the same thing).
>
> 35. There is no obligation on the Home Office to make detailed enquiries about documents produced by individual claimants … a decision by the Home Office not to make enquiries, produce in-country evidence relating to particular document or scientific evidence should not give rise to any presumption in favour of an individual claimant or against the Home Office.
>
> …
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> 37. 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. There was force in the submissions by Mr Matthews on the extent of reasoning in the decision as a whole:

 Paragraph 58 – 59, appellant's inconsistency of number of photographs taken of him in the hospital;

 60 – 65, inconsistencies over whether he ever saw any of the photographs, and what was shown in them;

 72, and 82 – 83, no explanation how the photograph in the hospital taken, why it might be compromising, and how the appellant could know;

 75 – 76, no explanation why attempt at blackmail not reported to authorities;

 79 – 80, no explanation why a person who was not a close friend would accompany the appellant to the hospital;

 84, no sense in appellant agreeing to pay large amounts of blackmail without seeing photographs, or knowing they existed;

 92, inconsistency over when appellant last saw blackmailer;

 97 – 101, final conclusions reached in context and expressly after not before considering documents.

12. It was correct, and in the appellant's favour, for the judge to say he had no idea what official police and court documents from Kirkuk would look like. He did not purport to find anything in their appearance which showed them to be unreliable. There is nothing irrational, having said that, in going on to find the documents unreliable for other reasons.

13. Acceptance of documents produced at the interview stage did not create a presumption of reliability of other documents produced at the hearing stage.

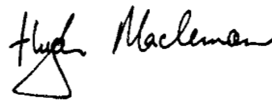
14. Mr McGinley submitted that the comment that the documents "could have been easily computer generated", was part of the reasoning for finding the documents fabricated, and so an error. However, both representatives agreed that the comment was true in itself, and would apply to very many documents under modern circumstances. The comment means no more than that the documents were not necessarily to be taken at face value, and is unexceptionable.

15. The judge did not take this to be one of those relatively rare cases where the respondent undertakes to prove forgery. Where he says that the appellant fabricated his account that means simply that he failed to prove it, not that the respondent positively established forgery.

16. It is clear in terms of *Tanveer Ahmed* principles 1 and 2 that the judge found the appellant failed to prove these were documents which could be relied upon, and he did so after looking at all the evidence in the round.

17. The decision of the First-tier Tribunal shall stand.

18. No anonymity direction has been requested or made.



25 April 2018
Upper Tribunal Judge Macleman