



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

Appeal Number: PA/01174/2017

THE IMMIGRATION ACTS

**Heard at Manchester
On 18th December 2017**

**Decision & Reasons
Promulgated
On 21st December 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**ASO JABBAR AZIZ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Wood of the Immigration Advice Service
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Morris of the First-tier Tribunal (the FTT) promulgated on 14th March 2017. The Appellant is an Iraqi citizen of Kurdish ethnicity born on 5th June 1990. He arrived in the UK illegally on 2nd August 2016 and claimed asylum.

2. He feared persecution in Iraq on the basis that he had consensual sex with another man.
3. His asylum and human rights claim was refused on 20th January 2017 and his appeal was heard and dismissed by the FTT following a hearing on 7th March 2017.
4. The FTT found at paragraph 38;

“38. For the above reasons, the Appellant has failed to satisfy me, even to the lower standard, that any aspect of his account in these respects is true:”

The Appellant’s account of having sex with another man was rejected in its entirety, and the FTT found that an arrest warrant produced by the Appellant did not support his case.

5. The Appellant applied for permission to appeal to the Upper Tribunal. In summary it was contended that the FTT had erred in considering the arrest warrant. It was contended that the FTT had not followed the guidance in Tanveer Ahmed (Documents unreliable and forged) Pakistan [2002] UKIAT 00439.
6. It was contended that at paragraphs 36 and 37 the FTT had demonstrated consideration of the arrest warrant had been compartmentalised, and the evidence had not been considered in the round. The FTT had considered the arrest warrant, having already reached its definitive adverse assessment of the Appellant’s credibility.
7. It was contended the FTT had failed to refer to the background country evidence when assessing the arrest warrant. That background evidence indicated that if an accused person did not attend at a police station an arrest warrant would be issued, and the Appellant’s account was consistent with that, in that he had not attended the police station.
8. It was contended that the FTT had considered the authenticity of the arrest warrant, finding at paragraph 37 that the arrest warrant was not genuine. The FTT should have considered whether the document could be relied upon, as indicated in Tanveer Ahmed. If a document is found to be false, this must be proved by the Respondent and the Respondent had not submitted any evidence to prove the warrant was false.
9. It was contended that findings of implausibility contained at paragraph 34 of the decision were unsafe, and the FTT had failed to apply the guidance in HK v SSHD [2006] EWCA Civ 1037. In that decision the Court of Appeal had urged judicial decision makers not to reject accounts solely on the basis of implausibility.
10. Permission to appeal was initially refused but a renewed application was granted by Upper Tribunal Judge Canavan and I set out below, in part, the grant of permission;

“2. No specific challenge is made to the judge’s findings relating to the plausibility and consistency of the Appellant’s account of events. However, it is at least arguable that the judge may have erred in his assessment of the arrest warrant. Arguably, the judge failed to consider what weight could be placed on the warrant in light of the background evidence relating to the procedures for issuing such documents in the KAR. It is also arguable that the judge may have erred in rejecting the authenticity of the document on the sole ground that he had already found the account incredible rather than assessing the warrant as part of an overall assessment of the Appellant’s credibility [37]. Given the numerous reasons for doubting the credibility of the Appellant’s account any potential error might be found to be immaterial, but at this stage the grounds are sufficiently arguable to justify further consideration at a hearing.”

11. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. In summary it was contended that the FTT directed itself appropriately, and it did not err in considering the principles in Tanveer Ahmed. It was noted that the FTT referred to reliability at paragraph 36, then found at paragraph 37 that the warrant was not genuine, the Respondent submitted that the FTT had used genuine and reliable interchangeably, and made a finding that the warrant was not reliable, having considered the evidence in the round.
12. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the FTT had erred in law such that the decision should be set aside.

The Upper Tribunal Hearing

13. Mr Wood in making oral submissions relied upon the grounds contained in the application for permission to appeal. He pointed out that the Respondent had not made any allegation of forgery regarding the arrest warrant, and therefore the FTT had erred in finding that the warrant was not genuine. There was no evidence to support such a finding.
14. Mr Wood submitted that the FTT had not correctly applied the guidance in Tanveer Ahmed. Mr Wood accepted that it was open for the FTT to make findings of inconsistency in relation to the Appellant’s evidence at paragraph 34(iii) but the plausibility findings at paragraph 34(i) and (ii) were flawed as the FTT had not properly considered and analysed the arrest warrant. The FTT had not considered objective evidence in relation to the issue of arrest warrants in Iraq.
15. Mr Diwnycz submitted that there was no material error of law, and relied upon the rule 24 response. It was submitted that the FTT had considered the evidence in the round, and reached a finding that the arrest warrant was unreliable, and this finding was open to the FTT to make on the evidence.
16. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

17. There has been, by both parties, reference to Tanveer Ahmed and the principles in that decision are contained in paragraph 38 and are set out below;
 - “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. “
18. I find the FTT carried out a comprehensive examination of the evidence. At paragraph 28 it is confirmed that all evidence has been taken into account even if not specifically mentioned. At paragraph 29 the FTT recognises that the appeal largely turns upon the credibility of the Appellant, and correctly applies the approach in HK v SSHD. The FTT confirms the Appellant’s claim is to be considered against the background evidence.
19. At paragraph 30 the FTT correctly sets out the burden and standard of proof.
20. At paragraph 34 the FTT sets out in detail an analysis of the Appellant’s account, together with reasons for the findings made.
21. At paragraph 36 the FTT refers to Tanveer Ahmed and makes specific reference to assessing the reliability of documentary evidence. The FTT notes that in assessing reliability there is no shifting of the burden of proof to the Respondent. It is common ground that if there is an allegation of forgery the burden of proof is on the person making the allegation. In this case there was no allegation of forgery made by the Respondent in the reasons for refusal letter.
22. Having referred to reliability at paragraph 36, the FTT in paragraph 37 states, “I do not accept that the arrest warrant is genuine.”
23. The reference to genuine has led the Appellant to contend that the FTT found the arrest warrant to be a forgery, which was not alleged by the Respondent, and as the burden of proof is on the Respondent, the FTT erred in law.
24. My view is that the FTT erred in paragraph 37 in referring to genuine. However I do not find this error to be material. It is in my view clear that

the FTT was considering reliability. Reading paragraphs 36 and 37 together, my view is that the FTT was aware of the principles in Tanveer Ahmed, and applied them in assessing the reliability of the arrest warrant.

25. It is arguable, as pointed out by the judge granting permission, that the FTT judge might have compartmentalised his findings, by making a finding the Appellant was not credible having assessed only the Appellant's evidence, and then going on having found the Appellant to be incredible, to consider the arrest warrant.
26. Although this is arguable, I do not find it to be the case. My view is that the FTT was aware of the guidance in Tanveer Ahmed to consider the evidence as a whole, and makes specific reference at paragraph 36 to the fact that "I am required to consider the evidence on any particular aspect as a whole and that there is no shifting of the burden of proof to the Respondent."
27. There has been no challenge to the detailed findings made by the FTT to the inconsistencies in the Appellant's account contained at paragraph 34(iii)(a)-(h). I do not find the FTT erred in considering the credibility of the Appellant's account and I find no error in paragraph 34(i) and (ii) which contain the FTT credibility findings.
28. I do not find that the FTT erred materially in considering the arrest warrant. I am satisfied that the FTT was aware of the objective evidence, adopted the correct approach by referring to HK v SSHD, and properly applied the guidance in Tanveer Ahmed, by considering the evidence in the round. The error in referring to genuine rather than reliable in paragraph 37 is not material, and I am satisfied that the FTT was in fact considering the reliability of the arrest warrant and considered the evidence in the round.
29. I therefore conclude the grounds, although skilfully argued, do not disclose a material error of law.

Notice of Decision

The decision of the FTT does not disclose a material error of law. The decision is not set aside and the appeal is dismissed.

The FTT made no anonymity order. There was no request made to the Upper Tribunal for anonymity, and I see no need to make an anonymity order.

Signed

Date 19th December 2017

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

No fee has been paid or is payable. The appeal is dismissed. There is no fee award.

Signed

Date 19th December 2017

Deputy Upper Tribunal Judge M A Hall