



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

Appeal Number: PA/03861/2019

THE IMMIGRATION ACTS

**Heard at Cardiff Civil Justice Centre
On 30 January 2020**

**Decision & Reasons
Promulgated
On 14 February 2020**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**MJ
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L King, instructed by Fountain Solicitors
For the Respondent: Ms S Rushforth, Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.

The appellant is a citizen of Iran who was born on 9 September 1982.

The appellant first arrived in the United Kingdom on 9 September 1997 and claimed asylum. That claim was refused on 4 April 2001 and, having lodged an appeal on 24 August 2001, the appeal was abandoned on 5 April 2002.

The appellant subsequently applied for indefinite leave to remain on 19 January 2006 but this was refused on 21 February 2006. Thereafter, the appellant left the UK on 10 June 2008 and returned to Iran.

On 16 November 2016, the appellant, albeit in a different name, claimed asylum on return to the UK. That basis of his claim was that he had converted to Christianity and was at risk on return.

On 9 September 2019, the Secretary of State refused the appellants' claims for asylum, humanitarian protection and under the European Convention of Human Rights.

The appellant appealed to the First-tier Tribunal. In a decision sent on 1 October 2019, Judge G Wilson dismissed the appellant's appeal on all grounds. In particular, he rejected the appellant's claim based upon his conversion to Christianity. The judge rejected the appellant's account that the Iranian authorities had raided his home and seized a computer containing material, in particular blogs relating to his Christian religion. The judge did not accept the appellant's evidence, based upon a court document, that he had been prosecuted in his absence by a court in Iran and sentenced to eight years' imprisonment plus 120 lashes.

The appellant sought permission to appeal to the Upper Tribunal on a number of grounds including that the judge had erred in law in his assessment of the document relied upon by the appellant.

On 14 November 2019 the First-tier Tribunal (Judge Froom) granted the appellant permission to appeal.

At the hearing before me, Ms King, who represented the appellant, relied upon the grounds and her skeleton argument. During the course of her submissions, in which she challenged the judge's reasons for rejecting the reliability of the court document it became clear that the judge had made a fundamental mistake in respect of that document. Ms Rushforth, who represented the Secretary of State, conceded that the error was a material error of law which undermined the judge's adverse credibility finding and, as a result, his decision could not stand. She acknowledged that the judge's decision should be set aside and the appeal remitted to the First-tier Tribunal for a fresh hearing.

I agree. In paras 29 – 31, the judge dealt with what he describes as a "court document" relied upon by the appellant (see para 29). In para 30, he states that:

"I accept that the *arrest warrant* is consistent with the objective evidence in that it does not refer to criminal charges for being an apostate but rather the charges in relation to national security." (my emphasis)

Then, in para 30 he states:

“In addition, whilst the *warrant* is detailed setting out the charges against the Appellant, there is no mention of the blog or information held on the Appellant’s computed (*sic*) which he intended to submit to the United Nations.” (my emphasis)

The difficulty with this reasoning is that the document relied upon by the appellant was not an arrest warrant. The document is at page 45 of the appellant’s bundle and its translation is provided in a letter from the appellant’s representatives dated 20 May 2019. It is not an arrest warrant. It provides a record of the appellant’s conviction and sentence.

After careful consideration of all the documents in the respective files, neither representative nor I were able to find any other document upon which the appellant placed reliance. The only document is the court document which records the verdict in respect of the appellant’s conviction for an offence against national security. There is no doubt that the judge was referring to this document in para 30 of his determination when he considered the reliability of his “arrest warrant”. As is clear from para 31, he took into account what he considered to be typographical errors in the document which plainly refers to the words at the beginning of the court document when reference is made to “evidences and documentations”.

Despite, therefore, the judge’s reference to the document being an “arrest warrant” and at times referring to “court documents” in the plural, the only legal document is this one. In the light of that, the judge’s assessment of it is fundamentally flawed when he took into account the objective evidence concerning its consistency with the background evidence. As an arrest warrant, there was supporting evidence for that in the *CPIN*, Iran: Christians and Christian converts”, March 2018, in particular at para 5.3.12. But, in assessing that “the warrant” was unreliable because it did not set out the detail of the appellant’s charges, it is wholly unclear upon what basis the judge took the view, in effect, that the absence of the detail, as he saw it, was inconsistent with the document being reliable. Certainly, as regards an arrest warrant, para 5.3.10 of the *CPIN* says that an arrest warrant would contain, inter alia, “basic details”. Not setting out the detail of his offence might be inconsistent with the background evidence as to what would be contained in an arrest warrant. But, even if it were an arrest warrant, there might be difficulties in the judge’s reasoning, e.g. the reference to the appellant’s offence being a crime against national security which is consistent with the background evidence. But, as I have already said, it is not an arrest warrant and there is no basis given in the judgment for reaching the conclusion that, as a court document setting out the verdict of the court in Iran, it was implausibly lacking in detail.

Ms Rushforth indicated that the issue of the reliability of the document had only arisen at the hearing as the document had not previously been provided to the Secretary of State. As I have already indicated, she accepted that the judge’s confusion over the nature of the document was such that he had materially erred in law in assessing its reliability. That document was central to

the appellant's account and that he was at risk on return to Iran. Ms Rushforth accepted that if the judge's assessment of the document was flawed so was his overall adverse credibility finding.

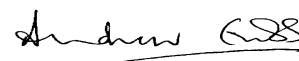
I agree with Ms Rushforth's concession that the judge's assessment of the court document, confusingly treating it as an arrest warrant - which it was not - fundamentally flawed his reasoning in respect of its reliability and therefore its support of a central part of the appellant's account to demonstrate that he would be at risk on return to Iran as a Christian convert. I am satisfied that the judge materially erred in law in reaching his adverse credibility finding and his decision to dismiss the appeal cannot, therefore, stand.

Decision

For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of a material error of law. That decision is set aside.

Both representatives agree that the proper disposal of the appeal is to remit it to the First-tier Tribunal for a fresh hearing. I agree. Having regard to the nature and extent of fact-finding required, and to para 7.2 of the Senior President's Practice Statement, the appeal is remitted to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge G Wilson.

Signed



A Grubb
Judge of the Upper Tribunal

13 February 2020