



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/00980/2020
[PA/50889/2020]**

THE IMMIGRATION ACTS

**Heard at Field House
On 12th January 2022**

**Decision & Reasons Promulgated
On 16th March 2022**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MR MOHAMMAD NOMAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Eaton, instructed by IP Solicitors

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of the First-tier Tribunal Judge Bart-Stewart (the judge) dated 23rd April 2021 dismissing the appellant's appeal against the Secretary of State's refusal on 22nd July 2020 of the appellant's asylum and humanitarian protection and human rights claim.
2. The appellant arrived in the United Kingdom on in 2011 with a visa valid until 11th March 2013 and obtained visa extensions until, on 10th December 2014, his leave was curtailed for a third time. A subsequent application

for leave to remain on human rights grounds was refused and he claimed asylum on 13th April 2016. That was refused on 12th October 2016 and his appeal against the decision dismissed. He was appeal rights exhausted on 17th March 2017.

3. The appellant claimed to have been a member of the Pakistan Muslim League and feared the Pakistan Tehreek-I-Insaf (PTI). He asserts that a First Information Report of murder was lodged against him and he believed that on his return to Pakistan he would be arrested. He claimed his brother was attacked on 8th January 2020 and had severe injuries and his niece was raped. As a result of those assaults the appellant's father and brother lodged FIRs which in turn resulted in, the appellant claims, the father being attacked at his nephew's school and the principal of the school lodging an FIR against the appellant's father. It is stated that the appellant was convicted of murder in his absence on 9th October 2018.

Ground of permission to appeal

4. The one ground of appeal was that the judge fell into error by a failure to consider whether it was incumbent upon the respondent to verify the documents relied on by the appellant as required in the recent case of **QC (verification of documents; Mibanga duty) China** [2021] UKUT 00033.
5. The grounds set out that the judge did not consider the need for verification of documents in any way. The appellant had relied on the judgment dated 9th October 2018 of a Pakistan judgment from Additional Sessions Judge Arif Mahmood Khan, which announced a decision in relation to the murder of Mohammed Raffie in 2014. The appellant was stated to have had a vital role and sentenced in absentia under Section 337F-III for two years' imprisonment and a fine and to fourteen years and for fourteen years and a fine under Section 302/109 PPC. This judgment was central to the appellant's claim that he faced persecution in Pakistan, yet the judge only made reference to the previous determination of First-tier Tribunal Judge Bonavero promulgated on 7th October 2019 stating that because of **Devaseelan [2002]** UKIAT 702 the findings of Judge Bonavero stood. There was, however, little consideration of the documents by Judge Bonavero in the previous determination other than consideration in relation to the appellant's credibility, which, as recent authority states, was not the be all and the end all. The Pakistan judgment in particular as well as the FIRs were very much central to the appellant's case and easily verifiable by the respondent and the judge should have, at the very least, considered the requirement for the respondent to do so. The judge had placed excessive emphasis on the appellant's credibility whereas the judge's task was to consider all the evidence in the round.
6. It was contended that the judge in his failure to consider the issue had materially erred in law.

7. At the hearing Mr Eaton submitted that it was noted in the grant of permission that the question of the verification was put to the judge and the judge did not deal with that question. He submitted that the documents were central to consideration of the appeal and the central document was the court document whereupon the appellant was convicted in absentia. I clarified with Mr Eaton that the documents in the appeal before the First-tier Tribunal Judge Bart-Stewart were four FIRs and a document from the Minister of Punjab Lahore. Mr Eaton identified that paragraph 25 of the judge's decision referred to Judge Bonaverò's decision, who in turn noted how critical the question of the appellant's conviction for conspiracy to murder would be in the case, particularly as he faced a fourteen year prison sentence. It was submitted that Judge Bonaverò had simply applied **Tanveer Ahmed (documents unreliable and forged) Pakistan * [2002] UKIAT 00439** but this was prior to **QC** and the consideration of verification.
8. Judge Bonaverò had stated that the appellant had a fail-safe defence because he was in the UK when it was said to have occurred and the prosecution was politically motivated. Mr Eaton submitted that **QC** requested that things were now looked at differently. It was beholden on the judge to consider whether the respondent was obliged to verify documentation. The judge failed to address this issue the FIRs provided by the appellant were verifiable.
9. Mr Eaton acknowledged that there were no court documents and no letter from a solicitor before Judge Bart-Stewart and the FIRs were submitted as part of the fresh claim.
10. Mr Whitwell submitted that it was necessary to consider whether **Singh v Belgium** Application no. 33210/11 had been relied on in advance prior to the hearing. He submitted that the reference to **Singh v Belgium** at paragraph 37 of the skeleton argument was not clear and it was not raised as a live issue before the Tribunal. The decision does not record any of the submissions. Evidentially it was difficult to say this was indeed a live issue. Moreover it was important to note that **Singh v Belgium** related to a UNHCR document and here there was a question of verification of the FIRs and there were further overall credibility issues. The authority **QC** confirmed that the requirement to verify documentation should be used exceptionally and rarely and depended on how easily such documents could be authenticated. If it was so easy to authenticate, the question was why the appellant could not have sought further documentation himself.
11. Mr Eaton responded that the documents in question to be verified did not have to be determinative of the appeal although they had to be significant. He acknowledged that in **PJ [2014] EWCA Civ 1011** the issue related to court documents from Sri Lanka and there were no court documents in this instance and he accepted that the Secretary of State was not necessarily under an obligation to apply **QC** to FIRs.

Analysis

12. The context of this appeal was that the appellant had two previous asylum claims dismissed. His first appeal was dismissed by First-tier Tribunal Judge Kelly in a decision promulgated on 14th December 2016 and a second decision which made adverse credibility findings against the appellant on 7th October 2019. Judge Bonavero at paragraphs 21 to 23 noted Judge Kelly's decision was his starting point, that the appellant had previously been found to have fabricated his asylum claim, that he was not wanted by the Pakistan authorities as a result of a murder which took place in 2014 and, having considered the documents presented to him, stated that the appellant had failed to satisfy him that the documents not only were authentic but could not be relied upon as identified in the excerpts from Judge Bonavero's decision set out.
13. **MJ (Singh v Belgium : Tanveer Ahmed unaffected) Afghanistan** [2013] UKUT 253 (IAC) held

'The conclusions of the European Court of Human Rights in Singh v Belgium (Application No. 33210/2011) neither justify nor require any departure from the guidance set out in Tanveer Ahmed [2002] Imm AR 318 (starred). The Tribunal in Tanveer Ahmed envisaged the existence of particular cases where it may be appropriate for enquiries to be made. On its facts Singh can properly be regarded as such a particular case. The documentation in that case was clearly of a nature where verification would be easy, and the documentation came from an unimpeachable source'.

14. The headnote of **QC** states as follows:

"Verification of documents

- (1) *The decision of the Immigration Appeal Tribunal in Tanveer Ahmed [2002] UKIAT 00439 remains good law as regards the correct approach to documents adduced in immigration appeals. The overarching question for the judicial fact-finder will be whether the document in question can be regarded as reliable. An obligation on the respondent to take steps to verify the authenticity of the document relied on by an appellant will arise only exceptionally (in the sense of rarely). This will be where the document is central to the claim; can easily be authenticated; and where (as in Singh v Belgium (Application No. 33210/11)), authentication is unlikely to leave any 'live' issue as to the reliability of its contents. It is for the tribunal to decide, in all the circumstances of the case, whether the obligation arises. If the respondent does not fulfil the obligation, the respondent cannot challenge the authenticity of the document in the proceedings; but that does not necessarily mean the respondent cannot question the reliability of what the document says. In all cases, it remains the task of the judicial fact-finder to assess the document's relevance to the claim in the light of, and by reference to, the rest of the evidence."*

15. It is clear that the appellant had his appeal dismissed by the First-tier Tribunal as recently as 7th October 2019 by First-tier Tribunal Bonavero and in relation to the documentation in the following terms:

“24. I find the appellant’s claim to be inherently implausible. The appellant’s case is that he was informed by his family that he had been convicted of conspiracy to murder. This is, on any view, a very serious matter. Yet appellant has an absolute and simple defence to the charges brought against him: he was in the UK at the time of the murder. In those circumstances, one would expect strenuous activity on the part of the appellant to demonstrate his innocence. Instead, the appellant’s evidence is that he has spoken to a lawyer on a single occasion. As for documentary evidence of contact between the appellant and Pakistani lawyers, I have a single letter, dated 16 July 2019, which makes no reference whatsoever to any steps the appellant might take to demonstrate his innocence.

25. Even taking into account the considerable caution with which findings of plausibility must be approached when related to an unfamiliar cultural context, and even giving the appellant the benefit of the doubt, I cannot accept that the appellant would have behaved in this way had he genuinely been convicted of conspiracy to murder while having a cast-iron defence. This is not a trivial matter. The appellant faces fourteen years in prison. His claimed behaviour is so implausible that, to the lower standard of proof, I reject his claim.”

16. Judge Bart-Stewart noted Judge Bonavero’s decision and at paragraph 23 specifically referred to **Devaseelan** and noted that if the appellant relied on facts that were not materially different from those put before a previous Adjudicator and relied on what is in essence the same evidence the second Adjudicator should regard the issues as settled rather than allowing the matter to be relitigated.
17. The appellant claimed that there was new evidence in the form of the FIRs and the Minister of Punjab’s statement (which I note was truncated in the bundle before the First-tier Tribunal and Upper Tribunal and had the date missing).
18. At paragraph 25 the judge also noted that the documentation considered by the previous judge included a purported Pakistan court decision and various documents that emanated from Pakistani police and judiciary and an expert report. It is important to note that those First-tier Tribunal decisions were not successfully challenged and critically, the court documents were not before Judge Bart-Stewart.
19. Judge Bart-Stewart had this to say at paragraphs 26 and 27:

“26. Judge Bonavero found the appellant’s claim to be inherently implausible. He attached some weight to the expert report but noted the evidence that document fraud is endemic in Pakistan. He noted inconsistencies in the appellant’s evidence and in applying the principles in Tanveer Ahmed concluded the appellant had not demonstrated that any of the documents said to emanate from Pakistan on which he sought to rely are in fact reliable.

27. The appellants account of being accused and convicted of an offence that occurred 3 years after he left Pakistan, when he is able to submit credible evidence that he was in the UK has been twice rejected by the Tribunal. He gives no explanation for why lawyers would not have been able to represent him in the proceedings and submit that evidence to the court and failing this, why no steps have been taken to overturn the conviction in the intervening years as pointed out by Judge Bonavero. It is also simply not credible that there is no evidence of anything being done that might help his cousin now languishing prison.”

20. It is clear that Judge Bonavero, as identified by the judge, did not simply reject the documentation but also observed, cogently that no steps had been taken or explanation given by the appellant as to why there had been no attempt to overturn the said conviction. In that context the documentation was found unreliable.
21. The judge went on at paragraphs 28-30 to identify the FIRs that the appellant maintained showed his family continued to be targeted and the judge considered those documents but found them not credible for a variety of cogent reasons, not least that the FIR dated 21st September 2019 did not indicate that it was filed against the appellant’s father as stated or that the appellant’s father was targeted. In relation to the second FIR and the rape, the respondent had noted that according to the Pakistan penal code, the offence listed on the document 379 P.P.C. is an offence of theft not rape as stated in the document. The respondent set out a copy of the code to establish that Section 376 sets out the punishment for rape. The FIR of the appellant’s brother dated 8th January 2020 was criticised by the judge as filed in the presence of the police but making no mention of any political differences or being involved in a false conviction of the appellant. In those circumstances the FIRs were not considered reliable. I have noted that the document said to be ‘Before the Chief Minister of Punjabi Lahore’ was not even complete but the judge identified the internal inconsistencies within that document at paragraph 32. The medical documentation for the brother *predated* the attack on the brother which was cited in the FIR.
22. The skeleton argument said to raise the issue of the verification of documents states as follows at paragraph 37: “According the case law namely **Singh vs Belgium**, European Court of Human Rights declared

that the rejection of asylum seekers' documents without verifying their authenticity breached their human rights."

23. This was a skeleton argument presented to the Tribunal shortly before the hearing and had buried in the document at paragraph 37 a reference to **Singh v Belgium** in the terms set out above. Even if **MJ** is ignored, I am not persuaded that this squarely put in terms, in advance of the hearing, that the respondent should have verified the FIRs. If, as is stated in **QC**, it is for the Tribunal to decide, in all the circumstances of the case, whether the obligation arises, in my view, it is incumbent upon the appellant and his representatives to make a specific request to the Tribunal that the respondent should be required to fulfil that obligation. No such request was made. It is asserted that the judge failed to consider deciding whether the obligation should be undertaken but it does not appear that a request was specifically made at the hearing or that there was any application for an adjournment of the hearing in order to give the respondent time to undertake the verification of the authenticity of the documents.
24. Moreover, the decision on verification relates to FIRs. I am not persuaded that in relation to FIRs that there was any obligation on the judge to consider of her own motion, particularly against the facts as set out here, whether such documents should be verified. She clearly found the documentation unsatisfactory in its own terms for sound reasons. Mr Eaton appeared to accept at the hearing before me that it was not incumbent on the respondent to verify FIRs rather than court documents. Significantly, it was accepted, that the court documents were not before First-tier Tribunal Judge Bart-Stewart. Those documents may have been before the previous two judges but were not produced.
25. It is not open, as indicated in **Devaseelan**, to relitigate previously settled issues and, as Mr Whitwell stated and as flagged up by Judge Bonavero, and relied upon by the judge in this instance "one would expect strenuous activity on the part of the appellant to demonstrate his innocence". As made very plain in **QC**, the authenticity of the documentation did not necessarily guarantee its reliability. Judge Bart Stewart identified that Judge Bonavero had questioned the reliability of the documentation with which he was presented. One of the underlying propositions in **Tanveer Ahmed** is whether the document is one upon which reliance should be properly placed. The judge did not fail to understand the application of **Tanveer Ahmed** in the light of **QC**. She considered the further documentation critically and adopted an approach open to her. Secondly, there is no obligation on the Home Office routinely to make detailed enquiries about documents produced by individual claimants. **PJ (Sri Lanka)** related to not only an arrest warrant but also court documentation obtained and provided by two sets of foreign lawyers. As stated at paragraph 17 of **QC**, the facts of the case are important for a proper understanding and that relates both to **PJ (Sri Lanka)** and **Singh v Belgium**, which related to UNHCR emails and attestations.

26. As also held in **PJ**, simply because a relevant document is potentially capable of being verified does not mean that the UK national authorities have an obligation to take this step and that **Tanveer Ahmed**, too, identified the existence of particular cases where it may be appropriate for enquiries to be made. Simply because a relevant document was potentially capable of being verified did not mean that the Secretary of State had an obligation to take that step.
27. Specifically **PJ** at paragraph 32 stated that it is for the court to decide whether there was an obligation on her to undertake particular enquiries, and if the court concludes this requirement existed, it will resolve whether the Secretary of State sustainably discharged her obligation. However, in my view it is important that such a request is put in good time and in proper form to the First-tier Tribunal in order that a proper direction might be made.
28. As stated at paragraph 27 of **QC**, “it will, nevertheless, be for the judicial fact-finder to decide, in all the circumstances of the case, and by reference to the totality of the evidence, whether the document is ‘reliable’ as to both its provenance and contents.”
29. Even if the judge did not make a direction as to the verification of the documents, it is clear that the judge addressed the reliability of the documentation against the relevant context and gave legally sufficient reasons for finding that the documentation was indeed unreliable.
30. This is the appellant’s third appeal on matters which have been previously litigated and he at the hearing through his representative has emphasised the relevance of the documentation to the appeal. I am not persuaded that those documents or FIRs, bearing in mind the treatment given by the judge, did require verification or in the scheme of things they were central to the appeal, bearing in mind the court documents were missing. As stated at paragraph 36 of **QC**,

“even if the compiler of the FIR has not been suborned, it can readily be seen that the fact the accusation has been made is in no sense probative of the fact that the relevant authority believes the accusation, let alone of its veracity”.
31. FIRs are routinely submitted in asylum claims and although it was asserted that these FIRs were central to the claim there was no indication, as the judge recorded, as to how the appellant had obtained these documents, and no supporting letters from lawyers in Pakistan and it cannot be the case that they could easily be authenticated. Nor can it be stated that the authentication is unlikely to leave any “live” issue as to reliability of its contents. That is evident from the judge’s findings. FIRs proliferate in such cases and, bearing in mind the context and background, there was no obligation on the Secretary of State to authenticate these documents.

32. I am not persuaded in the context of this appeal that that was an error of law let alone a material error because the invitation to do so was not squarely put to the judge in a timely manner. Owing to the circumstances highlighted above, I do not consider that the judge had a responsibility of his own motion to consider whether the FIRs should have been verified. I am not persuaded that **QC** even applies for the reasons given above.
33. I find no error of law and the decision shall stand.

Notice of Decision

The First-tier Tribunal judge made no material error of law and his decision will stand.

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 his 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 Helen Rimington

Date 8th February 2022

Upper Tribunal Judge Rimington