



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

Appeal Number: PA/00015/2021

THE IMMIGRATION ACTS

**At: Manchester Civil Justice Centre
On: 8th December 2021**

**Decision Promulgated
On 17th January 2022**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**MK
(anonymity direction made)**

Appellant

And

Secretary of State for the Home Department

Respondent

For the Appellant: Mr Wood, instructed by Immigration Advisory Service

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Lebanon born in 1981. He appeals with permission against the decision of the First-tier Tribunal (Judge O.R Williams) to dismiss his appeal.

Background and Findings of the First-tier Tribunal

2. The basis of the Appellant's claim is that he has a well-founded fear of persecution/serious harm in Lebanon from a criminally associated tribe/family known as the Al Jafaar. It is his case that in March 2019 he

was out for a jog in his neighbourhood when he heard shots being fired. A young girl was in the street with her grandfather and he grabbed her and made for safety. The Appellant lost consciousness during the incident and was injured. When he was released from hospital the next day he was told by members of his family that the intended targets of the shooting were members of the al Jafaar tribe, and that they believed him to have been somehow implicated in it, the rival al Sulh attackers having taken shelter behind the Appellant. Three days later three men turned up at the Appellant's house and insisted he accompany them to the police station. He was knocked unconscious during the journey and woke up in cave, tied up by his feet and hands. The Appellant was left guarded by a single man whom he managed to overcome by hitting him over the head with his bare hands until he was unconscious. He found a motorcycle at the scene which enabled him to escape. On the advice of his family members the Appellant decided to leave Lebanon.

3. The Respondent did not believe a word of this, and nor did Judge Williams, who dismissed the appeal. The question before me is whether, in reaching his negative credibility findings, Judge Williams made errors of law such that his decision cannot stand.
4. The alleged errors are:
 - i) Procedural unfairness. *In particular* it is submitted that Judge Williams acted unfairly when he drew negative inference from the absence of paperwork from the hospital to confirm the Appellant's admission on the day of the shooting. The absence of such documents was not a point advanced by the Respondent and the Appellant was thereby deprived of an opportunity to address it;
 - ii) Misdirecting himself or alternatively misapplying *Tanveer Ahmed**. *In particular* it is alleged that Judge Williams failed to make a finding about whether 3 police reports were reliable documents;
 - iii) Failing to take material evidence into account, namely the expert report of Dr Alan George, who confirmed the existence and nature of the al Jafaar tribe, and who considered the Appellant's account to be plausible.

Error of Law: Discussion and Findings

5. Procedural unfairness of the type alleged in ground (i) occurs where a party has no notice at all that a forensic challenge is being made to his evidence. For instance it would arise if the truth of an account was not challenged, but a judge proceeded to dismiss an appeal on the ground that the account was a fabrication. Here the Appellant can

have been in no doubt at all that his entire account was challenged. The basis of the refusal letter, and indeed the Secretary of State's position at the hearing, was that his claims were fiction designed to create a bogus asylum claim. In those circumstances it is for the Appellant to prove his account to be true. How he does that is a matter for him: it was open to him to submit any document he wanted to.

6. Here the specific issue is whether he could, or should, have submitted evidence from the hospital where he claims to have been treated after the ambush. Under the heading 'evidence which does not support credibility' Judge Williams had included the *absence* of such evidence. As Judge Williams himself notes, drawing adverse inference from the absence of evidence in an asylum case is inherently problematic: see ST (corroboration: Kasolo) Ethiopia [2004] UKIAT 00119. Judge Williams goes on to note, however, that such inference may be legitimately drawn where there is no obvious reason why the evidence was not produced: see TK (Burundi) v Secretary of State for the Home Department [2009] EWCA Civ 40. Here the Appellant still has relatives in Lebanon, the hospital is presumably contactable by telephone or email, and he had apparently managed to get the relevant police reports. In those circumstances it was striking that there was nothing from the hospital. The import of the grounds being framed in terms of procedural fairness is that the Appellant was under the impression that he did not need to get anything from the hospital because his admission and treatment were unchallenged: on no reasonable reading of the refusal letter could that have been inferred. I therefore do not find ground (i) to be made out.
7. Ground (ii) is that the Tribunal erred in its approach to three police reports produced by the Appellant. The reports are written in Arabic and translations are provided in the Appellant's bundle. The first is dated 11th March 2019 and reads as if it is a record of a visit by the Appellant's mother to the police station to report his disappearance. The second is dated 15th May 2019 and appears to be an internal note relating to the arrest of a suspect. The final report is dated 10th July 2019 and concerns an alleged arson attack on the Appellant's mother's home. The Tribunal states at its paragraph 17 that it has considered these documents "in the round as per Tanveer Ahmed (Pakistan) (2002) UKAIT 00439". At paragraph 23 the decision reads:

"I find, notwithstanding considering the documents submitted in the round as per Tanveer Ahmed ("*my mother reported my kidnapping to the police, after I went missing. She sent me the enclosed police report. I ask the Tribunal to review it and use it as evidence*")- documents submitted at AB15-20 which state that there was an investigation and an arrest of a suspect who admitted posing as an internal affairs officer in order to kidnap the appellant) that the

appellant's claim to have been kidnapped and to have escaped, even when applying the lower standard of proof, is simply not believable. I reach that conclusion for the following reasons...."

8. Mr Wood asserts, with some justification, that neither paragraph 17 nor 23 represent a consideration of the documents themselves. She prays in aid TA (Documents unreliable and forged) Pakistan* [2002] UKIAT 00439 (*Tanveer Ahmed*) to submit that such consideration was required: otherwise how can the evidence be seen "in the round"? Assuming then that there was such an omission in the decision, was it material?
9. The principles in *Tanveer Ahmed* are often referred to, but rarely actually cited. They are as follows:

31. It is trite immigration and asylum law that we must not judge what is or is not likely to happen in other countries by reference to our perception of what is normal within the United Kingdom. The principle applies as much to documents as to any other form of evidence. We know from experience and country information that there are countries where it is easy and often relatively inexpensive to obtain "forged" documents. Some of them are false in that they are not made by whoever purports to be the author and the information they contain is wholly or partially untrue. Some are "genuine" to the extent that they emanate from a proper source, in the proper form, on the proper paper, with the proper seals, but the information they contain is wholly or partially untrue. Examples are birth, death and marriage certificates from certain countries, which can be obtained from the proper source for a "fee", but contain information which is wholly or partially untrue. The permutations of truth, untruth, validity and "genuineness" are enormous. At its simplest we need to differentiate between form and content; that is whether a document is properly issued by the purported author and whether the contents are true. They are separate questions. It is a dangerous oversimplification merely to ask whether a document is "forged" or even "not genuine". It is necessary to shake off any preconception that official looking documents are genuine, based on experience of documents in the United Kingdom, and to approach them with an open mind.

...

38. 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.
10. The first principle then, is that it is for the Appellant to show that the documents could be relied on. The background to any such exercise are the comments made by the Presidential panel in *Tanveer Ahmed* at paragraph 31 (above). Here it was the Appellant's evidence that his mother obtained the reports. No explanation is given as to how, a question of particular relevance to the second of the reports, which relates to the arrest of a suspect. Whilst one can assume that she might have been given records of her own attendance at the police station, it is not immediately obvious why the police would share with her internal records of their investigations. It is not apparent whether the documents - submitted to the Home Office before the decision - were originals or copies. It does not appear that there was any request for them to be produced for the hearing. They were not shown to Dr George in their original form, and although he was shown the copies and translations (his paragraph 28) he makes no reference to them in the body of his report. Given that there was a wholesale challenge to the Appellant's credibility, it must be the case that he has failed to show that these documents are reliable. He did not ensure that the 'originals' - by which I mean the original way they were presented to the Home Office - were available; nor was the envelope they were sent in produced; no expert opinion was offered as to their authenticity.
11. The second principle derived from the review of the jurisprudence in *Tanveer Ahmed* is that the reliability of the document must be assessed after looking at all of the evidence in the round. Here the evidence had been comprehensively rejected by Judge Williams, who by his own direction had looked at all of it. His assessment was, in essence, that the entire account was a "tall story" [at FTT §24]. Although Judge Williams makes extensive criticism of the particulars of the account [at §19, §22 and §24] the crux of his reasoning is found at §20: it is inherently improbable that the Jafaar clan would conceivably blame the Appellant for anything. It was his evidence, supported by Dr George, that they are a powerful and connected

family in the Bekaa Valley. Judge Williams queries how, in those circumstances, they would not know, or quickly be able to establish, that the Appellant has got nothing whatsoever to do with the Suhl clan and that he had not even been in Lebanon for years preceding the incident. There was absolutely nothing about the circumstances to suggest that he would be perceived as anything other than what he was - a bystander like the child and her grandfather. As Judge Williams points out, the men lying in wait for their target would have seen the Appellant come out of his house and start jogging. Even assuming that the Jafaar clan members who were the targets did have body guards, it would seem unnecessarily elaborate and frankly bizarre, for them to be deployed, unarmed, pretending to be joggers. It was therefore wholly improbable that he would be seen as such. Those being his conclusions on the account itself, any documentary evidence would have to attract significant weight to dispel his concerns. In the absence of verification or expert evidence supporting their authenticity, Judge Williams could do little more than weigh the police reports in the round, as he indicates he has done.

12. I would add that had Judge Williams gone in to examine the police reports in greater detail he would have found that one at least creates more problems than it solves. The document dated the 15th May appears to be an internal police document: there is no apparent reason on the face of it why a copy would have been supplied to the Appellant's mother. It details that a man named Rageh Shafiq Jaafar was arrested with his mother at a checkpoint at Dahr al-Baydar for possession of a stolen identity document. Checks established that he had "multiple priors" and was wanted in relation to 23 different crimes, including the kidnap of the Appellant. The document further states that the police were in possession of "pictures and video clips" establishing that the suspect was the driver of the car which kidnapped the Appellant. As the Respondent points out in the refusal letter, these pieces of information rather undermine the Appellant's case on sufficiency of protection. The clips are said to have led to the suspect's immediate confession. He told officers that there was a meeting at the family home and that it was ascertained that the cause of injury to one of their own was the Appellant: those facts having been found there was a "unanimous decision to kill him". For the reasons elaborated by Judge Williams, it is inherently improbable to the Jafaar clan would have reached such a conclusion; the 'confession' makes no mention of the actual culprits, the Suhl clan; it is difficult to see why clips of him driving a car would lead the suspect to admit to conspiracy to murder.
13. Ground (iii) is predicated on the general complaint that Judge Williams erred in failing to have regard to the expert opinion of Dr George that this account was plausible. That is wholly without merit, since under a sub-heading 'factors that support the credibility of the appellant's evidence' the Tribunal specifically lists Dr George's opinion on that matter as being something weighing in the Appellant's favour.

Ground (iii) also encompasses a more specific complaint. At paragraph 22 of its decision the Tribunal questions how a notorious and powerful clan who are described as having “scoffed” at a crackdown by the Lebanese military would have waited two days before taking revenge on the Appellant. They could have questioned or assassinated him at the hospital, or at home, or at the airport. Mr Wood asserts that there was nothing to suggest that this clan were in control of either the airport or the hospital and in so finding the Tribunal had misunderstood the evidence. I reject that interpretation. All the Tribunal is saying here is that there was no explanation of the delay in coming for the Appellant.

Anonymity Order

14. The Appellant continues to seek international protection. As such I am satisfied, having had regard to the guidance in the *Presidential Guidance Note No 1 of 2013: Anonymity Orders*, that it would be appropriate to make an order in accordance with Rule 14 of the *Tribunal Procedure (Upper Tribunal) Rules 2008* in the following terms:

“Unless and until a tribunal or court directs otherwise, or the Appellant’s protection claim is finally determined, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him, any of his witnesses or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Decisions and Directions

15. The decision of the First-tier Tribunal is upheld.
16. The appeal is dismissed.
17. There is an order for anonymity.



Upper Tribunal Judge Bruce

21st

December 2021