



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/05960/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 5 September 2017**

**Decision & Reasons
Promulgated
On 18 September 2017**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**K M H
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hodson of Elder Rahimi Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Iran. He appealed to a Judge of the First-tier Tribunal against the Secretary of State's decision of 27 May 2016 refusing to grant asylum.
2. The basis of the appellant's claim to asylum was that he feared persecution due to his political opinion, i.e. that the Iranian authorities had issued an arrest warrant against him and were targeting him because they suspected his brother of being involved with the KDPI.

3. The appellant claimed that his elder brother S had fled Iran in 2004 and that S had been an activist on behalf of the KDPI. The appellant's family were harassed by the authorities subsequent to his departure including their father being taken away for questioning on numerous occasions and the appellant being detained on four occasions between January and October 2015. The appellant said that his brother S who lived in the United Kingdom had obtained a copy of an arrest warrant from Iran via email which he had printed and then sent the appellant two copies two or three days before the hearing. S had told him that the original arrest warrant was in Iran when the appellant believed his father found someone who located the warrant and sent it to his brother. The appellant did not know the name of the person who located it. The appellant could not explain why S had not produced a witness statement to explain how he obtained a copy of the warrant. S did not attend the hearing as he was busy working.
4. S had an asylum appeal dismissed in September 2006. The basis of his claim for asylum was that he had been accused of burglary and smuggling alcohol between Iran and Iraq. The appellant had now become aware of this decision and that his brother had not claimed or asserted in that hearing that he had been involved in the KDPI as the appellant believed. It was accepted on behalf of the appellant that his brother had not assisted him in his appeal and had in fact lied to him about his involvement.
5. The judge took into account the appellant's age (he being 17 at the date of the hearing) and the Practice Direction on Child, Vulnerable Adults and Sensitive Witnesses from the Joint Presidential Guidance Note No. 2 of 2010. He also took into account paragraph 351 of the Immigration Rules which dealt with unaccompanied children and the respondent's guidance on processing asylum applications from children and considered section 55 of the Borders, Citizenship and Immigration Act 2009 and the UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum 1997.
6. The judge considered that the appellant might have genuinely believed his brother was involved with the KDPI but that had turned out to be untrue now. He concluded that as the appellant's brother had never been involved with the KDPI and the circumstances of the appellant's fear of returning to Iran on account of that was unfounded. In light of that the judge did not accept that the appellant had been arrested or detained on four occasions as claimed, tied in as those events were to the claim that they happened because of his brother's involvement with the KDPI.
7. With regard to the arrest warrant, the judge found a number of matters concerning it to be unreliable. He recorded the date of issue as 16 February 2016 asking the appellant to attend the court on 7 March 2016. The warrant was supposedly certified on 18 February 2016 but served on 11 January or February 2016. The date of service predated the issue or certification date. The appellant's occupation was stated as a trader but the appellant had said he did not work and was always at home with his mother. His surname was misspelt and his home address was not on the arrest warrant. In addition the appellant was not able to say how his

brother obtained the warrant or where the original was. The appellant could not remember when the warrant was sent to his brother. In his asylum interview the appellant said that his father had informed him there was an arrest warrant against him and in oral evidence he said that his father told his brother there was a warrant and his brother obtained a copy by email. The appellant did not provide the email to show when and who sent the warrant and to whom. His brother had not produced a statement to explain how he obtained the warrant. The judge went on to say that taking all these matters in the round he did not believe there was a warrant of arrest against the appellant. He found that the document provided was unreliable and relied on the principles of Tanveer Ahmed as it was for the appellant to show that the document was reliable.

8. The judge then went on to consider relevant country guidance and concluded that the appellant did not fit into the risk categories set out in SB [2009] UKAIT 00053 and dismissed his appeal.
9. The appellant sought permission to appeal on the basis that the judge had misinterpreted the arrest warrant and as a consequence this had a prejudicial effect upon the overall findings concerning the appellant's credibility and risk on return. Permission was granted on all grounds, with the emphasis on the issue of the construction of the date on which the arrest warrant was served, but all grounds were said to be arguable.
10. In his submissions Mr Hodson relied on and developed the points made in the grounds. He argued that if the mistakes about the warrant were errors then they were material as the judge relied quite heavily on that. The judge seized upon what seemed to be a point dispositive of a document. It was not a question of where this was dealt within the judge's decision but the question of the influence on the judge's preparedness to give the benefit of the doubt on other matters and hence was of significance. The appellant had been able to give little explanation as to how the warrant was secured as it had been provided by a third party to his brother who had not attended the hearing. There were not inconsistencies but matters for the judge to give the benefit of the doubt in respect of. The point appeared to be a narrow one, but it had the potential to be prejudicial.
11. It was explained in the grounds why it was said that the judge had erred about the date. It had not been properly dealt with on Tanveer Ahmed grounds but the matter was meant to be looked at in the round. The misspelling of the surname was not a proper point as there could be different ways of translating Farsi to English. The question was whether credibility was affected. Errors about the arrest warrant were material as they were relied on primarily as a reason for rejecting it and the matter needed to be considered again.
12. In his submissions Mr Clarke argued that in fact there was no mistake by the judge in addressing the dates in the warrant. The date of service was the Saturday and if the judge who granted permission to appeal was correct about the eleventh month date then it was clear that the date of certification 18 February 2016 was a Thursday so the next Saturday after

certification took it into the next month. So therefore if it had been a Saturday then it must either have been the following month or before the date of certification. The judge was therefore right for the wrong reason.

13. It was also open to the judge to conclude that the reference to the person being a trader was a reference to the appellant as the warrant set out what seemed to be attributes of the person summonsed.
14. He argued that in any event there was no impact on the outcome of the appeal. The judge had set out how the warrant appeared, at paragraph 44 of the determination. Evidence on this could be seen from paragraph 17. There was a concession noted at paragraph 33 concerning the untruthfulness of the brother. The case was based on the brother's involvement with the KDPI. It was clear from the case that that was the basis of the claim for example at A29. It is clear that he fled because of his brother and his involvement with the KDPI. This was the whole premise of the appellant's case. It was hard to see what weight could be given to the warrant emanating from the brother. Whether the judge was right or wrong concerning the dates on the warrant as there was no credibility to the audit trail and there were the unchallenged adverse findings the determination was clearly sound and the findings were not undermined.
15. Mr Hodson had no points to make by way of reply.
16. I reserved my determination.
17. The grounds argue that the mistake made by the judge in respect of the arrest warrant was that he misread it in that under date of service where it says month: 11 (Jan/Feb) year 1394 (2016) the judge read this as having been served on 11 January or February 2016 whereas it was supposedly certified on 18 February 2016. The grounds make the point that the reference to month 11 is to the eleventh month in the Iranian calendar which is Bahman which runs from 21 January 2016 to 19 February 2016 and the reference to Jan/Feb is simply a truncated representation of this fact.
18. I see the force of this, but equally I see the force of the point made by Mr Clarke given that 18 February 2016 was a Thursday the next Saturday after certification would take it to the next month. So if it were on a Saturday it would either have been the following month or before the date of certification.
19. These matters have come very close indeed to the representatives giving evidence. It is not necessary in my view to come to a decided view on the point, because I am entirely satisfied that the judge did not materially err in this case. Taking it at its highest, even if he was wrong about the proper interpretation of the dates on the warrant and also as to the occupation "trader" which the judge attributed to the appellant but which Mr Hodson had argued should have been attributed to his father who is named above the description of occupation, it is clear that the claim was

based on risk on account of the appellant's brother's affiliation to the KDPI, which claim clearly fell apart in light of the determination in the brother's case and the fact that that was not the basis upon which he said he feared risk on return. Clearly in light of that, detentions on account of that specific involvement clearly fell away. In addition, with regard to the arrest warrant, the judge went on at paragraph 44 to note that the appellant was unable to say how his brother obtained the warrant or where the original was. He could not remember when the warrant was sent to his brother. He did not provide the email to show when the warrant was sent and who sent it and to whom. There was no evidence by way of clarification from his brother. It is not without importance also that the judge went on to say at paragraph 45 and taking all these matters in the round he did not believe there was a warrant of arrest against the appellant. Even if that was limited to the matters considered under the heading "is there an arrest warrant issued against the appellant?" that would be sufficient. Equally it could be read as applying to taking the claim as a whole and bearing in mind the fact that the claim had essentially fallen apart because of the fact that the brother did not claim to be at risk on account of involvement in the KDPI and had not been involved with the KDPI. There is no basis for the appellant being at risk in relation to collaboration with the Democrat Party of Iran as described in the arrest warrant if the claim that he was at risk on account of his brother's involvement in the KDPI was not borne out. That was the only basis upon which the appellant claimed risk on return. Accordingly I see no materiality to any error by the judge with regard to the warrant either with regard to the dates or the occupation description, as a consequence. I conclude it has not been shown that the judge materially erred in law in any respect and his decision dismissing this appeal is maintained.

Notice of Decision

The appeal is dismissed.

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



Upper Tribunal Judge Allen

