Upper Tribunal
(Immigration and Asylum Chamber)

MJ (Singh v Belgium : Tanveer Ahmed unaffected) Afghanistan [2013] UKUT 00253 (IAC)

THE IMMIGRATION ACTS

Heard at Field House	**Determination Sent**
On 5 February 2013	**On 26 April 2013**

Before

UPPER TRIBUNAL JUDGE ALLEN
UPPER TRIBUNAL JUDGE JORDAN

Between

MJ

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms V Laughton, instructed by Lawrence & Co, Solicitors
For the Respondent: Mr S Kandola, Senior Home Office Presenting Officer

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.

DETERMINATION AND REASONS

1. The appellant, who was a national of Afghanistan born on 5 June 1975, appealed to a Judge of the First-tier Tribunal against a decision of the Secretary of State of 23 August 2012 to remove him as an illegal entrant. The judge dismissed the appeal, making adverse credibility findings with respect to material aspects of the appellant's claim. The appellant sought and was granted permission to appeal on the basis of five main points, first that he had applied the wrong standard of proof, secondly that he had failed to consider or to consider properly expert evidence, thirdly that he had adopted the respondent's reliance upon an allegation that the appellant had submitted forged documents without applying the proper standard of proof, fourthly that he had failed to have regard to relevant evidence and fifthly that he had failed to verify verifiable documents.

2. In her submissions, Ms Laughton relied upon and developed the points made in the grounds.

3. She argued that the judge had never set out the proper standard of proof but at various points had rejected aspects of the evidence on the basis that they were intrinsically unlikely. Reading the determination as a whole it was not clear whether the judge had applied the right standard of proof. It was a matter of taking together a failure to set out the proper standard and the reliance on inherent likelihood. Cases such as Ghesari [2004] EWCA Civ 1854 and HK [2006] EWCA Civ 1037 set out the concerns with regard to the use of plausibility as a basis for adverse credibility findings. It was the case that unlikely things happened all the time. The question was whether the event in question happened and it was necessary to consider that, even if it was stated that it was unlikely.

4. In this regard, ground 1 was linked to ground 2 with respect to matters which the judge had found to be inherently implausible which were in fact explained by the expert. The first of these was the reason why the appellant had been left alone by Hizb-i-Islami for so long. As regards the tone of the letters, which the judge considered at paragraph 97 of the determination, it did not mean that they were not genuine because they were not threatening and the expert's view was that Hizb-i-Islami tried to cajole and did not forcibly recruit. The appellant had not said that they tried to force him in 2007. Far from being inherently unlikely, the expert report showed that this was plausible. The judge had not referred to the expert's views on this nor with regard to the unlikelihood of the cousins

contriving his arrest in the way in which it was claimed that they had. The cousins were working their way up government ranks in 2007 to 2008, and the appellant believed he was arrested because they had identified him as being a member of Hizb-i-Islami and this was an ongoing risk factor throughout the case. Again the judge had thought this was inherently unlikely and again the matter was dealt with by the expert. It did not make a difference whether the people concerned were close to or within the security agency.

5. Also with regard to the expert report there was evidence about bribery and the judge had said it could not be important if he was able to be released on payment of a bribe, but that did not mean that was the position in every country, and it was the case that the rule of law, even in Kabul, was so limited and the expert commented on this and gave examples of the kind of people who had been released on the basis of payments of bribes including many Taliban. The judge could have rejected the expert evidence but if he did so he needed to give adequate reasons and had not done so. He was wrong in saying the report was generic.

6. There was also an error with regard to considering relevant evidence, at paragraph 100 where the judge was wrong in saying as he did that the issue of the claimed land dispute was not said to have affected the appellant in any way until he was within weeks of leaving the country. The matter was dealt with at paragraph 17 of the grounds, noting the evidence that he had been stabbed by the cousins and that even now his father lived in Pakistan with his family.

7. The issues with regard to documentary evidence could be broken down into three points. The first of these was the use of the term “self-serving”. It was unclear what that meant and if it only meant it supported the appellant’s claim then it was unsurprising that evidence would be provided to do that.

8. The second was the allegation of forgery in contrast to the assessment that could be made of evidence as unreliable. With regard to the latter, the burden was on the appellant. With regard to the former the burden was on the Secretary of State. It was apparent from the determination that an allegation of forgery had been made and the judge’s findings were that the documents had been forged in that he said that they were created to assist the appellant’s claim. There was a difference between finding a document unreliable, which was a neutral factor, and finding it was a forgery. Attaching no weight to a document was not the same as finding it was a forgery, as in such a case there would have been a positive fabrication of evidence and that was why the burden of proof was on the Secretary of State. It was clear from paragraph 70 that fraud was alleged by the Secretary of State but the judge having also made a finding of forgery had not placed the burden where it should have been placed.

9. The third point related to what had been said by the Court of Human Rights in Singh v Belgium (Application No. 33210/11). The particularly relevant paragraphs were 101 to 104. If a document was verifiable and the investigating authority, the Secretary of State or whoever in the relevant state, chose not to verify it, it was a breach of Article 13 in conjunction with Article 3. The nature of the documents in Singh was set out at paragraph 13 (the second paragraph 13) in the judgment. They were identity documents and emails from the UNHCR. It was clearly the case that not every document was verifiable and indeed many were not. The ruling here related to those documents that were verifiable and at least one of the documents in the instant case was, being the letter from the faction of Hizb-i-Islami which was aligned with the government and which had provided contact details and a number. If it was accepted that it was a verifiable document, then the Secretary of State had breached her duty to verify it and weight should be attached to that.

10. In conclusion, there were multiple flaws in the determination, several of which overlapped. Those adverse matters left were not enough by themselves to maintain an adverse credibility finding.

11. In his submissions, Mr Kandola argued, with respect to Singh v Belgium, that the letters were considered in the refusal letter at paragraph 35 onwards and were said not to be reliable and to be lacking in weight. Forgery had not been asserted. Cases such as RP [2006] UKIAT 00086 dealt with the situation where the Secretary of State asserted forgery on examination of a document, but Tanveer Ahmed [2002] IAT 00439 was the appropriate authority in asylum proceedings. This was referred to at paragraph 38 of the refusal letter.

12. If the appellant's submission was accepted, then it would be very difficult if the burden was on the Secretary of State to discharge it in this context especially when the letters came from a non-state actor of persecution. The documents in Singh related to UNHCR documentation which were easily verifiable and with no room for forgery in those circumstances. There was a very obvious source to the documents. In contrast, in this case the position was very different. Even if there were a general duty, Singh v Belgium did not apply in such a case involving putting the appellant at risk and there had to be a commonsense approach compatible with the Convention.

13. With regard to the use of the term "intrinsically unlikely", it was argued that there was the possibility that the balance of probabilities test was being employed but equally, since the word "likelihood" was within the standard test anyway of a reasonable degree of likelihood, it was particularly compatible with that. This did not take the wording used outside the proper standard of proof. The fact that there was said to be no reason not to believe certain matters in the claim was equally not an improper formulation. Also, prior to the judge finding as he did about Hizb-i-Islami at paragraph 96, what he said at paragraphs 93 and 94

needed to be borne in mind, considering the actual facts of the case, for example the answer to question 86 at interview. Paragraph 94 identified an inconsistency. There was an overall credibility assessment on a proper basis. Proper findings had been made at paragraphs 93 and 94. The judge had made appropriate comment on the expert report at paragraph 107 and dealt with the conclusions of the expert at paragraph 108. The history was accepted at paragraph 110.

14. By way of reply, Ms Laughton argued that whatever was said in the refusal letter, the Presenting Officer had alleged forgery at the hearing. It was not enough to say the burden could not be satisfied. If that were the case, then the Secretary of State should be careful what words she used. The same point could be made with respect to the Singh v Belgium argument. It was not being argued that there was a duty to verify every document but only if the document was verifiable, as some documents were in this case. Paragraph 107 was not an adequate assessment of the expert evidence. Cases such as Mibanga [2005] EWCA Civ 367 and FS & AA (Sudan) made clear that if an expert's evidence was rejected it was necessary to say clearly why. It had to go beyond the spectrum of a reasonable holding of such views. There was an aspect of specific risk that had not been considered in this case.

15. If we were with Ms Laughton we were asked to remit the matter to the First-tier, given the nature of the findings that would have to be made. Mr Kandola had no objection to that course of action, were an error of law to be found.

16. We reserved our determination.

17. The appellant claimed to have been involved with Hizb-i-Islami from the age of 18 until 2001 when he reverted to being a farmer. He would therefore have been a member for some eight years. His father had previously been a member. The judge accepted the appellant's membership of Hizb-i-Islami during that period.

18. The appellant said that after he left Hizb-i-Islami he had been sent letters by them from time to time to come and join them again but he did not want to go back. He said that he was arrested by the intelligence services about three and a half months before he left Afghanistan and was taken to the police station where he was beaten and asked questions about Hizb-i-Islami. He believed that this had come about as a result of a land dispute with his cousins, one of whom at least was a senior police figure. He believed that this man had caused his arrest. He had previously been knifed by younger members of the family as a result of the land dispute and said that he had problems with them every day and he felt they had caused his arrest because they had wanted to kill him.

19. He said he was detained for 49 days and escaped when a man approached him, took him outside, and he got away on a lorry. The agent he used said

his family had arranged for him to go to a safe place. He believed that his cousins had taken over the land that had belonged to his family. Since arrival in the United Kingdom he claimed that his wife had received a letter from Hizb-i-Islami accusing him of defecting from them and supporting the collaboration forces and that meant his life was at risk. He also had a letter from the authorities stating that because he escaped he needed to be re-arrested.

20. He said that since leaving Hizb-i-Islami in 2001 he had never been arrested or questioned until the three and a half months before he left the country. He suggested that this was due to Hizb-i-Islami not being active during this period of time although he said they had become more so recently. He claimed to have been beaten and tortured in custody and to have been accused of working for Hizb-i-Islami. He said his captors were trying to kill him. He provided three letters which he said had been sent to him by Hizb-i-Islami. The last one was sent to his wife. He said that the rest of his immediate family had now relocated to Peshawar in Pakistan, including his father. Evidence was given on his behalf by Mohammad Jabarkhel who said he had worked at the same base in Kabul as the appellant as a trainer of members of Hizb-i-Islami in the use of weapons.

21. At the hearing the appellant was asked why he had no problems for some seven years after leaving Hizb-i-Islami in 2001, and he said he had had some trouble all the time. He was asked why he had not been killed when he was in detention if they had wanted to do that to him and he said “God protected me”. He said they were going to beat him first and then “kill him gradually” and he had eventually been allowed to escape as a result of a bribe of $10,000 being paid.

22. As we have noted above, the judge accepted that the appellant had been a member of Hizb-i-Islami for a number of years when he was young. The judge noted that when the appellant made his application he did not claim to have had any significant difficulties to deal with in Afghanistan between 2001 and 2007. At interview he was asked “Before arrest had you been questioned by police/Afghan authorities about role in Hizb-i-Islami?” and he said, “No I was a farmer wasn’t questioned at that time only when I was arrested”. The judge considered that he had tried to go back on that at the hearing by suggesting in very general terms that there had been ongoing problems during this period, but the judge found that to be contradictory and adverse to his credibility, the answer at interview being conclusive in the judge’s view.

23. The judge went on to say at paragraph 96 of the determination that he found it intrinsically unlikely that Hizb-i-Islami would suddenly start to show interest again in a man they had left entirely alone for such a long period of time, particularly as clearly no effort at all was made to stop him leaving in the first place and settling down to family life. He went on to note the two letters from Hizb-i-Islami of 23 August 2007 and 3 November of that year. He considered the content and timing to be curious. The first

letter appeared to invite a discussion about military operations in "the summer of the current year" and the later letter again referred to military operations in the summer of that year and said "It has been a long time but I did not hear any news from you … obey the order and meet me as soon as possible". The judge noted that neither letter was written in even a threatening tone and that even if they were genuine it was far from clear that the appellant could not simply make it clear that he was no longer willing to be actively involved in any way because of his family commitments. He said however that his primary finding was that they were inherently unlikely to have been written at all and to have been created simply to boost the asylum claim.

24. The judge was of the same view in respect of the Hizb-i-Islami document said to have come into the possession of the appellant's wife and dated 14 February 2012. He noted that there had been a five year gap since the previous letters and considered it somewhat odd in the context for it to say "Contact us quickly and clarify your position to us". He considered that it did not really make any sense at all and that although it was written in suitably threatening terms it clearly betrayed how little contact or knowledge Hizb-i-Islami had of him if they could write such a letter when he had been out of Afghanistan altogether for some four years. He gave no weight to that letter and did not believe that it was ever sent.

25. The judge noted the absence of any independent evidence concerning the claimed land dispute with the cousins. He said it was curious that it was not claimed to have affected the appellant in any way until he was within weeks of leaving the country altogether, even though the dispute was said to go many years back. He went on to note that the appellant's family were said no longer to be in possession of the land anyway and that he himself had obviously not challenged that or become directly involved in any confrontation about it. He said that it was therefore inherently unlikely that trouble would be made for the appellant in that respect and at what might be described as a very convenient moment when an asylum claim was about to be made. He considered that if anyone really wanted to cause trouble for the appellant it was hardly likely that he would be politely asked to attend the police headquarters in the notice to that effect dated 4 March 2008.

26. He also went on to note that in the context of his claim that those who had him detained wanted to kill him that when it was suggested that it was hardly likely they would have failed to do so during the claimed 49 day period of detention he then said they wanted to "kill him slowly" and in the end the position was that he was released on payment of a bribe in what the judge described as the standard fashion and as being a clear indication that his detention would not have been particularly important anyway if it had occurred at all. The judge went on to make a primary finding that the appellant was not affected by any longstanding land dispute if there ever was one. He did not find it credible that police officers attended his house with the claimed document. He did not accept

that the arrest warrant was a genuine document. He noted another letter, said to have come into the possession of the appellant's wife from the police dated 26 March 2012, stating "We have sent you warrant letters before to surrender and I am not sure where those may have gone". It was not related in any sense to the current situation which was one where he had been out of the country for nearly four years and the judge considered the letters suggested that their writer knew absolutely nothing of the appellant's circumstances and he considered that this was further evidence that they were not genuine and had been manufactured for the purpose of this claim.

27. He went on to comment that it was in no way inconsistent to give weight to the documents suggesting that the appellant was a member of Hizb-i-Islami historically and little or no weight to later documents, bearing in mind that the latter bore all the hallmarks of self-serving documentation produced for the purposes of the appeal and noting further discrepancies referred to at paragraphs 35 to 37 of the refusal letter where it is noted among other things that the first letter provided no details of how or when he had to contact Hizb-i-Islami by which time the aim of the letter was unclear, the letters never told him whom to respond to and he was unaware from whom they came, and that it lacked internal consistency that the latest letter would locate his wife and not realise he had not been living with her for over three years and again there was no way of knowing whom to contact, where to contact them or who was responsible for the letters. The judge considered that these points added further weight to the unlikelihood of these documents being genuine, particularly in relation to their vagueness and the sheer unlikelihood of the later ones having been sent long after the appellant left the country. The judge noted that complaint was made about the view taken of those documents by the respondent in the context of Tanveer Ahmed [2002] IAT 00439, but the judge was of the view that it was in practical terms impossible for the Home Office to verify such vague and informal documentation from such distant countries and that it was entitled to take the view that surrounding circumstances made the contents of the documents themselves inherently unlikely and therefore to be given little or no weight. He noted submissions in respect of Singh v Belgium (Application 33210/11) but considered the suggestion that the Home Office could contact Hizb-i-Islami officers in Kabul and police headquarters in Nangarhar Province to be wholly unrealistic. He said that dealing with documents on Tanveer Ahmed principles was an essential part of the legal process in this area of the law and he did not accept that Singh v Belgium was saying that it was necessary to make contact with obscure police stations in Afghanistan or indeed a militant organisation there.

28. The judge went on to say that the findings he had made in preceding paragraphs of course followed a careful perusal of the report of Dr Giustozzi. He considered that the report was almost entirely generic with only the occasional reference to the appellant himself and that it really said little more in relation to his case than what he had said was

reasonably consistent with known background evidence about Afghanistan and that was a long way from saying that it was a true reflection of his own experiences. It was clearly based upon everything the appellant said being true and he considered that there was little more than a recital of the obvious such as "The police are widely reported to extract bribes from individuals in exchange for their release or for avoiding arrest".

29. The judge went on to note two entirely speculative assertions as he found them to be in Dr Giustozzi's report and considered that the report, although it made interesting reading, added little in his view to the particular case.

30. Ms Laughton's first ground concerns, as we have seen, the failure by the judge to state the correct standard of proof and to have applied the wrong standard of proof in using terminology such as "inherently unlikely" and "intrinsically unlikely".

31. We do not consider it to be necessary for a First-tier Judge, particularly a judge as experienced as this judge, to set out the proper standard of proof in the determination, although it is clearly desirable to do so. Nor do we consider that the terminology criticised by Ms Laughton is such as to display use of the wrong standard of proof. We consider that it was open to the judge to find it "intrinsically unlikely" that Hizb-i-Islami would suddenly start to show interest again in a man they had left entirely alone for such a long period. As Mr Kandola pointed out, very much a part of this terminology is the use of the concept of likelihood itself, a fundamental part of the reasonable degree of likelihood test. It is relevant also to note that the judge had previously to this, two paragraphs earlier, found a discrepancy in the appellant's evidence as to the extent to which interest in him had been shown. Likewise, with regard to the use of the term "inherently unlikely" at paragraph 98 of the determination, this has to be seen in the context of the judge's concerns at paragraph 97 about both the content and the timing of those letters. We consider that the views he expressed at paragraph 97 were proper views for him to have come to and that there is no error in the application of the correct standard of proof in his assessment of that part of the evidence. Again with regard to the use of the phrase "inherently unlikely" at paragraph 100 of the determination concerning the claimed dispute with the cousins, this has to be seen in the context of the evidence that the appellant's family was said no longer to be in possession of the land and that he himself had obviously not challenged that or become directly involved in any confrontation about it and again we consider it was open to the judge to find it to be inherently unlikely that trouble would be made for him in that respect at what might be described as a very convenient moment in time when an asylum claim was about to be made. This is reinforced by the further point in that paragraph that if anyone really wanted to cause trouble for the appellant it was hardly likely that he would be politely asked to attend police headquarters in the notice to that effect of 4 March 2008.

32. Again, with regard to the use of the term “inherently unlikely” at paragraph 105, this is in the context of the judge’s view that the Home Office was entitled to take the view that the surrounding circumstances made the contents of the documents themselves inherently unlikely bearing in mind the vagueness and informality of the documentation and that this meant the documents were to be given little or no weight. This has to be seen in the context of the findings at paragraph 104 concerning the judge’s own concerns about the documentation together with the discrepancies identified at paragraphs 35 to 37 of the refusal letter.

33. We should say in passing that we agree with the point made by Ms Laughton in submissions concerning the use of the term “self-serving”. If that were the only basis upon which the judge had rejected evidence then we would find it to be lacking in proper reasoning. No doubt an appellant will generally, if not always, find it of assistance to put forward evidence that assists his case and to that extent such evidence may be regarded as “self-serving”, but that cannot in any sense be said to be a reason for marginalising it. The use of this term is, in general, unhelpful, but in this case it does not in our view materially flaw the determination because of the other matters we have identified above which justified the judge in coming to the findings that he did.

34. These matters though are, as Mr Laughton argued, linked with the judge’s views on the report of Dr Giustozzi. In particular it is argued that the judge’s conclusion that the letters from Hizb-i-Islami lack credibility because of the length of time during which the appellant had heard nothing from them gave no consideration to the evidence of Dr Giustozzi that from 2001 Hizb-i-Islami had struggled to recruit but from 2006 they started to re-emerge as a significant political player and by 2008 they were becoming more significant in the insurgency.

35. Dr Giustozzi did not however link this into the appellant’s claim. Having looked at his report, we consider that the judge was entitled to regard the report as being almost entirely generic. The fact that Hizb-i-Islami began to emerge as a significant political player since 2006 (and there is no suggestion that Hizb-i-Islami wanted the appellant for his political skills) and that it had started becoming a more significant player in the insurgency as of 2008 is in no sense compelling evidence supporting the credibility of the appellant’s claim to have been approached effectively out of the blue by Hizb-i-Islami after several years’ silence. The point has to be seen also as tied into the proper concerns of the judge expressed at paragraph 97 of the determination about the content as well as the timing of the two letters from Hizb-i-Islami of 2007. Again, with respect to the 2012 document, the criticisms of the credibility of that made by the judge at paragraph 99 again in our view were entirely open to him. It is true that at paragraph 11 of his report, having set out a good deal of evidence concerning the situation in Afghanistan generally and then in Nangargar Province, Dr Giustozzi says the chronology of the expansion of the

insurgency helps to explain why until 2007 the appellant was left alone by Hizb-i-Islami and the authorities. That is one of the few specific references to the appellant. But as we say, we see no material error in the judge's failure to advert specifically to this point given the concerns that he otherwise had about the Hizb-i-Islami letters and the generality otherwise of Dr Giustozzi's evidence in this regard.

36. The other issue in respect of which Ms Laughton argued that the judge had not taken proper or any consideration of Dr Giustozzi's evidence is the point at paragraph 13 of his report concerning "bad tips" which he said are often used in Afghanistan to eliminate personal rivals by people close to the Americans or to the security agencies. This, it is said, provides an explanation which the judge should have considered, concerning the likelihood of the appellant's cousins giving his name to the authorities. Again, the judge's consideration of the evidence at paragraph 100 of the determination is of significance. Dr Giustozzi's evidence is again not linked to the particular position of the appellant, and the judge's point as to the timing of this, the fact that his family were no longer in possession of the land and he had not challenged that or become directly involved in any confrontation about it and in particular the fact that if anybody had really wanted to cause trouble for him it was hardly likely that he would be politely asked to attend the police headquarters in the notice are matters of weight. The judge was also entitled at paragraph 101 of the determination to note inconsistencies in the appellant's evidence and the fact that in the end he was released on payment of a bribe.

37. In this regard, there is the point on which Ms Laughton relies, building on paragraph 10 of the grounds of appeal, where it is argued that the implication of what the judge says is that only those implicated in minor incidents could be released by payment of a bribe, whereas at paragraph 39 of his report Dr Giustozzi states that the police are widely reported to extract bribes from individuals in exchange for their release or for avoiding arrest, including a case where the kidnappers of three UN electoral workers in autumn 2004 were freed from their prison by a General of the Ministry of the Interior without authorisation of the judiciary. He also says that many Taliban have been able to bribe their way out of prison.

38. We do not think that that detracts from the force of the judge's conclusions and again the failure specifically to address what is said by Dr Giustozzi there materially mars the determination. The judge had, as we say, noted the discrepancy in the evidence, and the fact that the appellant was released on payment of a bribe is clearly not irrelevant to the degree of interest that there was in him, particularly bearing in mind the matters that are set out at paragraph 100 in any event.

39. It is relevant to go on also and to note paragraph 108 of the determination commenting on two entirely speculative assertions as the judge described them by Dr Giustozzi that on the one hand the threat from Hizb-i-Islami to the appellant was unlikely to derive from his refusal to join the party but

could be motivated by rumours about him perhaps again spread by his relatives in the NDS, and, in relation to the receipt of letters from the police, that the long time span over which they had been distributed might relate to reports received by the police concerning his presence in his home area. As the judge rightly commented, there was no evidence for those assertions at all and of course the appellant was not in his home area at any time during the period in question.

40. Bringing these particular matters together, we consider that the judge did not materially err in not specifically adverting to the points in Dr Giustozzi's report that it is said he should have taken into account. He made it clear that he had come to his findings following a careful perusal of Dr Giustozzi's report, and, though that is in no sense a saving provision, it is also not without relevance bearing in mind the further points that we have made above.

41. The next issue is the allegation of forgery. Ms Laughton is obviously right to argue that the fact that the refusal letter only spoke in terms of unreliability of documentation cannot be the final point. It seems from paragraph 70 of the determination that in submissions on behalf of the Secretary of State the point was made that many of the documents produced could easily be forgeries. However saying that a document could easily be a forgery is some distance from an assertion that it is a forgery, in our view, and the comments of the judge, quoted in the grounds, from paragraph 98 of the determination, that the Hizb-i-Islami letters had been created simply to boost the appellant's asylum claim, and what he said at paragraph 110 that the appellant "would be easily able enough to contrive the supportive evidence that has been produced in relation to the issue of risk" are not in our view properly to be interpreted as assertions of forgery. No doubt an allegation of forgery must be proved by the person who asserts it, but in this case we do not consider that forgery was asserted by the Secretary of State and nor was it asserted by the judge. He clearly had concerns about the reliability of the documentation for the many reasons that he set out in his determination, and it is a matter where the burden remains on the appellant.

42. This is tied in also with the final point which is the reliance placed in the grounds and indeed before the judge of the decision of the European Court of Human Rights in Singh v Belgium. We do not have an official translation of the judgment in this case from the original French, but we have been provided with a helpful translation prepared for Howe & Co Solicitors by an organisation. The case involved a family of Afghan nationals, who had come to Belgium from Russia and who argued that their deportation to Russia would entail a risk of repatriation to Afghanistan in breach of their rights under Article 3 of the European Convention on Human Rights. At the stage where they appealed against the initial refusal decisions, (to the CGRA, which rejected their claims) they provided documentation in the form first of emails between their solicitor and a representative from the Belgian Committee for the Support of Refugees (CBAR), an operational

partner of the UNHCR, who was sending emails from an official of UNHCR in New Delhi which had as attachments attestations which stated that the petitioners had been recorded as refugees under the UNHCR mandate. Emails also stated that the second petitioner had asked for a naturalisation in India at the end of 2009 and that the investigation of her petition was just beginning and that she had a valid Afghan passport issued by the Afghan Embassy in New Delhi.

43. At the appeal hearing it was deemed that the petitioners had failed to prove their Afghan nationality as well as the reality of the protection of UNHCR. The appeal court (the CCE) believed that the documents of the UNHCR were easy to falsify and because the petitioners had failed to provide originals they were of no convincing value.

44. At paragraph 101 the European Court of Human Rights considered that the documents provided were not insignificant since they were emails sent by the intermediary of CBAR a partner of the UNHCR in Belgium and after the CGRA decision by UNHCR official in New Delhi. These emails had attachments which were attestations from the UNHCR that the petitioners had been recorded as refugees under the UNHCR mandate and which confirmed the dates declared by the petitioners to support their journey during their interviews by the OE (the Belgian Bureau of Foreigners). The Belgian Court had not given any weight to these documents because they were easily falsified and the petitioners failed to provide originals.

45. The court went on at paragraph 103 to note the importance of Article 3 and the irreversible nature of the harm likely to be caused in a case of the realisation of the risk of ill-treatment and that as a consequence it was the responsibility of the national authorities to show that they were as rigorous as possible and carry out a careful investigation of the grounds of appeal drawn from Article 3 and that such an investigation must remove all doubt, legitimate as it may be, as to the invalidity of the request for protection regardless of the competences of the authority responsible for the control.

46. At paragraph 104 the court went on to say that the removal of documents which were at the heart of the request for protection, not only by the CGRA but also the CCE, by judging them not to be convincing, without previously checking their authenticity, when it would have been easy to do this at the UNHCR, could not be viewed as a careful and rigorous investigation expected of national authorities within the meaning of Article 13 of the Convention and did not give an effective protection against any treatment contrary to Article 3 of the Convention.

47. In Tanveer Ahmed [2002] Imm AR 318, a starred decision of the Immigration Appeal Tribunal, the following principles were set out after a careful assessment of the case law.

> "37. 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."

48. It is clear from paragraph 36 of the determination that the respondent alleged forgery, though it was not clear whether the Adjudicator had found that the documents were forgeries. The Tribunal said that he did not state in terms that they were and that it was a case where it was not necessary for the Adjudicator to make a specific finding as to whether the documents were forgeries. He had commented that there was not a reasonable likelihood that either the warrant or the FIR in the case was genuine and went further and found that they had been "manufactured". On the evidence it was said that these conclusions were open to him.

49. At paragraph 35 the Tribunal made the point that there was no obligation on the Home Office to make detailed enquiries about documents produced by individual claimants. It was said that doubtless there were cost and logistical difficulties in the light of the number of documents submitted by many asylum claimants. The Tribunal went on to say as follows:

> "In the absence of a particular reason on the facts of an individual case, a decision by the Home Office not to make enquiries, produce in-country evidence relating to a particular document or scientific evidence should not give rise to any presumption in favour of an individual claimant or against the Home Office."

50. This is a starred decision of the IAT and we are bound by it. It is relevant however to consider it in the context of what was said in Singh v Belgium. Upon consideration we do not think that what was said in Singh is inconsistent with the quotation we have set out above from paragraph 35 of Tanveer Ahmed. Tanveer Ahmed does not entirely preclude the existence of an obligation on the Home Office to make enquiries. It envisages, as can be seen, the existence of particular cases where it may be appropriate for enquiries to be made. Clearly 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. We do not think that Ms Laughton has entirely correctly characterised what was said in Singh in suggesting that in any case where evidence was verifiable there was an obligation on the decision maker to seek to verify. What is said at

paragraph 104 is rather in terms of a case where documents are at the heart of the request for protection where it would have been easy to check their authenticity as in that case with the UNHCR. That is a very long way indeed from the difficulties that would have been involved in this case in attempted verification by the Home Office of documents emanating from Hizb-i-Islami. We do not think that what is said in Singh v Belgium in any sense justifies or requires any departure from the guidance in Tanveer Ahmed which is binding on us and which we consider to remain entirely sound.

51. In conclusion, therefore, we do not find an error of law in any of the respects in which it has been argued in this case, and our conclusion is that the decision of the judge dismissing the appeal on all grounds is to be maintained.

Signed Date

Upper Tribunal Judge Allen