

MT (Credibility assessment flawed – *Virjon B* applied) Syria [2004 UKIAT 00307]

## **IMMIGRATION APPEAL TRIBUNAL**

Date of hearing: 27 October 2004  
Date signed: 28 October 2004  
Date determination notified: 25/11/2004

Before:

**Mr L V Waumsley (Vice President)**  
**Mr J A Blair-Gould**  
**Mr M J Griffiths**

Between

**Appellant**

and

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

## **DETERMINATION AND REASONS**

For the Appellant: Mr M Al-Rashid of counsel, instructed by Hammersmith & Fulham Community Law Centre  
For the Respondent: Mr C Smith, Home Office Presenting Officer

1. The appellant, a citizen of Syria, appeals with permission against the determination of an adjudicator (Mr N P Dickson), sitting in Bradford, in which he dismissed the appellant's appeal on both asylum and human rights grounds against the respondent's decision to give directions for his removal from United Kingdom as an illegal entrant after refusing an application for asylum made by him.
2. The appellant arrived in the United Kingdom in November 2001. He applied for asylum later the same day. The grounds on which he did so were that prior to his departure from Syria, he was a mathematics teacher at a school. He was also a sympathiser of the Islamic Liberation Party, and distributed books and leaflets on behalf of the party. He fled from Syria when he heard the two of his associates had been arrested, and that members of the security forces had come to his home looking for him. He applied for asylum on the grounds that he would still be at risk of persecution for the same reason if he were to be returned to Syria.

3. In his determination, the adjudicator rejected the appellant's evidence in all material respects. He accepted the appellant's evidence that he may at one time have worked as a teacher in a school, but rejected the remainder of his evidence. It was on that basis that he dismissed the appeal on both asylum and human rights grounds.

4. At paragraph 38 of his determination, the adjudicator stated:

"In evidence the Appellant said that he had contacted the SHRC [Syrian Human Rights Committee] through the internet and obtained the documents from the Moslem Brotherhood after he contacted his brothers. *In view of my findings on the Appellant's credibility, I give no weight to these documents.* With regard to the claimed court proceedings dated 25th July 2000, I do not accept that the Appellant would be in prison for three years and fined a substantial sum for leaving his work without permission. Even if this document was genuine, the judgment discloses that it is possible to appeal against a decision, although the Appellant claimed in paragraph 15 of his statement that it was not possible to appeal against this decision. After looking at all the evidence in the round, I am not prepared to place reliance on these documents and I take into account the guidance in the starred IAT determination of **Tanveer Ahmed**. The Appellant has not established a well founded fear of persecution and in reaching my decision, I take into account not only the history of the matter and the situation at the date of the decision but also the question of persecution if he were to be returned" (emphasis added).

5. Mr Smith, who appeared before us on behalf of the respondent, acknowledged that in light of the judgment of Mr Justice Forbes in the High Court of Justice, Queen's Bench Division, Administrative Court in *R v Special Adjudicator, ex parte Virjon B* [2002] EWHC 1469, he would be unable to resist a remittal of the appeal for rehearing by another adjudicator. He was plainly right to do so. Mr Al-Rashid, who appeared for the appellant, confirmed that he was content with that proposal.

6. With respect to the adjudicator, we are bound to say that he clearly erred in law in arriving at his assessment of the weight to be attached to the documentary evidence referred to at paragraph 38 of his determination. He fell into the same trap as that identified by Mr Justice Forbes in his judgment in *ex parte Virjon B*, particularly at paragraphs 19 to 23 (inclusive) in the following terms:

"19. In this particular case, the Adjudicator dealt with the linked questions of credibility and the medical evidence as follows (I quote from paragraph 24 of the written determination);

"I find that there is little corroborating evidence from Albania about the appellant's wife's rape. The evidence of both the appellant and his wife was that they went to see the public investigator who was afraid to help them because she feared for her job and for her life and therefore referred them to a gynaecologist. Even if the gynaecologist was not willing to write a report stating that the appellant's wife had been raped they could surely have gone to another doctor and told him that she had been raped without mentioning that the attackers were police officers. I find the appellant and his wife both knew about the importance of medical evidence in this

regard. The report produced by the appellant's wife and the gynaecologist only referred to facial injuries. I find that these could have been caused by any incident or even an accident. The medical reports of Dr Rich, Dr George and Dr Varley refer to the clinical depression and post traumatic stress disorder of both applicants resulting from the rape incident. However, these reports were based upon the evidence which the appellant and his wife gave the doctors. I therefore attach little weight to the reports bearing in mind that I have found both the appellant and his wife to be without credibility".

20. Miss Chapman [counsel for the claimant] submitted that it was clear from that paragraph that the Adjudicator had fallen into error in two main respects. First, the Adjudicator had dealt with credibility in advance of a consideration of the medical evidence of Dr George and Dr Varley and had then used the adverse credibility findings in order to reject that medical evidence, that being an incorrect approach to the issue of credibility; see *ex parte Ahmed and Ademaj*. Second, if the medical evidence of Dr George and Dr Varley was to be dismissed, it should not have been dismissed as it was, namely on a peremptory and unreasoned basis. In order to reject that evidence, the Adjudicator had to give sensible and comprehensible reasons for doing so.

21. I find both submissions are well founded. It is clear to me that the Adjudicator used her adverse findings of credibility with regard to the claimant and his wife as the means whereby to reject the important and significant evidence of Dr George and Dr Varley. That was putting the cart before the horse. The evidence of Dr George and Dr Varley was strongly corroborative of the truth of the account given by the claimant and his wife about the serious rape that was suffered by the wife. It was therefore necessary for the Adjudicator to take that evidence into account as part of her consideration of all the evidence, before coming to any conclusion as to the credibility of the claimant and his wife.

22. In my judgment, the Adjudicator thereby fell into error in her approach to the evidence when considering the credibility of the claimant and his wife. Furthermore, the Adjudicator also fell into error in failing to give adequate reasons for rejecting the evidence of Dr George and Dr Varley. The only reason given was the adverse finding as to the credibility of the claimant and his wife but, as I have already said, that finding was itself flawed because it had been reached by the Adjudicator as a result of her error in her approach to the evidence. It would have been open to the Adjudicator to reject this important medical evidence, but only on a properly reasoned basis and no such reasoned basis was put forward. To the extent that any reason was given, the reason was itself a result of an error in the approach adopted by the Adjudicator to the evidence, the error being that which I have already explained.

23. Accordingly, I have come to the conclusion that the Adjudicator's adverse finding as to the credibility of the claimant and his wife cannot stand. The Adjudicator failed to evaluate the evidence properly and approached it in the wrong way. She also rejected an important body of medical evidence which corroborated the truth of the claimant's assertions, without giving any proper reasons for doing so. Accordingly, and for those reasons, the application

succeeds. I should add that, although I have indicated doubts as to the substance of the other grounds raised by Miss Chapman, for the reasons already given, I do not consider that it would be appropriate to express any concluded view as to the criticisms made of the Adjudicator's approach to those matters".

7. In stating at paragraph 38 of his determination, "In view of my findings on the Appellant's credibility, I give no weight to these documents", the adjudicator was plainly, in the words of Mr Justice Forbes, "putting the cart before the horse". We did give consideration as to whether his subsequent reference in the same paragraph to "After looking at all the evidence in the round, I am not prepared to place reliance on these documents" was sufficient to show that in arriving at his assessment, the adjudicator had in fact applied the correct approach. However, Mr Smith expressly confirmed that this was not an argument which he was seeking to advance before us, and it is not one which would have persuaded us in any event. The damage had already been done by that stage, and we are satisfied that the adjudicator's subsequent reference to "looking at all the evidence in around" was not sufficient to repair it.
8. For the sake of completeness, we record that even if we had been persuaded to the contrary on that point, the adjudicator's conclusion that he was unable to place any reliance on the documents in question is not one which we would have regarded as sustainable in any event. On the face of it, the documents appeared to be authentic, and one at least of them emanated from an apparently reliable source, namely the Syrian Human Rights Committee. Whilst it was of course open to the adjudicator to conclude, if so minded, that he was not prepared to place any reliance on them, it was nevertheless necessary for him to give proper, intelligible and adequate reasons for arriving at that conclusion.
9. Paragraph 38 of his determination contains no such reasons. A bald reference to the starred determination of this Tribunal in *Tanveer Ahmed v Secretary of State for the Home Department* [2002] INLR 345 was plainly insufficient for that purpose. Accordingly, had it been necessary for us to do so, we would have found in favour of the appellant on that point as well.
10. This appeal is allowed to the limited extent that it is remitted for a fresh hearing before an adjudicator other than Mr N P Dickson.

Signed

**L V Waumsley**  
**Vice President**

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