AHMED (Documents unreliable and forged) Pakistan * [2002] UKIAT 00439

IMMIGRATION APPEAL TRIBUNAL

Date of hearing: 20/12/2001
Date Determination notified: 19/02/2002

Before

The Honourable Mr Justice Collins (President)
Mr. C. M. G. Ockelton (Deputy President)
Mr. P. R. Moulden (Vice-President)

Between

TANVEER AHMED

Appellant

and

THE SECRETARY OF STATE FOR
THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The Appellant, who is a citizen of Pakistan, appeals with leave against the determination of an Adjudicator (Mr. P. Digney) dismissing his appeal against the Respondent's decision to give directions for his removal from the United Kingdom and to refuse him asylum.

2. Ms S Panagiotopoulou of Counsel, instructed by Adams, Solicitors, appeared for the Appellant. Mr. C. Trent, a Home Office Presenting Officer, represented the Respondent.

3. This is a starred case which is intended to give guidance on the questions raised and should be followed in preference to any other Tribunal decisions which touch on these issues. This decision should therefore be regarded as authoritative and is binding on all Adjudicators and Tribunal Chairman.

4. The Appellant arrived in the United Kingdom on 1 May 2000. He claimed

asylum on 4 May 2000. The Respondent's decision is dated 23 April 2001. The Adjudicator heard the appeal on 9 August 2001 and his determination was promulgated on 14 August 2001. Leave to appeal was granted on 12 November 2001.

5. The Appellant claimed to fear persecution from the authorities in Pakistan because of his membership of the MQM, which he joined in 1997. He had attended rallies since 1993. In 1998 he became the general secretary of the party in his area after his brother, who held the same post before him, was killed. His father was an area controller in Karachi. In December 1999 unknown people murdered a member of the MQM breakaway group, MQM (Haqiqi). The Appellant was named as one of four suspects. He was arrested and detained for three days before being released because of lack of evidence. In February 2000 two further suspects were arrested and one was reported killed attempting to escape. Subsequently the Appellant was arrested on a number of occasions, for a few hours only each time. He was arrested again, in connection with the murder, granted bail but after another suspect was killed he was advised to flee. His party arranged for him to leave the country. He said that the police still wanted to arrest him for the suspected murder. He produced a FIR, an arrest warrant, a letter from his party, the MQM, dated 27 February 2001 and newspaper cuttings.

6. The Adjudicator found that the arrest warrant and the FIR were not likely to be genuine. He gave no weight to the letter from the MQM. It was unlikely that the Appellant's friend would have been able to obtain them so easily or at all. His account of how he did so was vague. The Appellant said that his family received a number of warrants, but he did not produce any of them. There was no reason why a warrant should have been issued on 3 January 2001. If it had been, it was difficult to see how the Appellant's friend could have heard of it. If the FIR was genuine it was not likely that the Appellant would have been released so easily. The Adjudicator said that it was for the Appellant to persuade him that the documents were genuine, to the usual low standard, and he had not done so.

7. The Adjudicator went on to consider whether the Appellant's account of events could be true even if the documents were false. Quite properly he considered whether the Appellant used false documents to strengthen a genuine case.

8. On the country evidence before him the Adjudicator found that the police arrested active members of the MQM arbitrarily and many were killed, particularly in the period before the coup of October 1999. After that date ill-treatment and killings decreased. Whilst MQM activists were ill treated and held for long periods the Adjudicator found that the Appellant was not an activist. Furthermore, if there had been a murder charge against him, even a false one, he would not have been released so easily. This would also indicate that he was not perceived to be a MQM activist. The Adjudicator accepted that the Appellant had been arrested on two occasions but concluded that,

because of his speedy release, the authorities had no serious interest in him. If he were suspected of murdering a member of the opposing group it was most unlikely he would have escaped unscathed.

9. The Adjudicator concluded that the Appellant, who was twice arrested and twice released speedily and without charge, did not have any outstanding warrants for his arrest. His political involvement was at the lowest end of the scale. There was no reason to suppose that he was now of any interest to the authorities. The country evidence showed that, following the coup, the position of MQM members more active than the Appellant had actually improved. Somebody in the Appellant's position would not be at risk.

10. The Adjudicator went on to find that, even if he were wrong in these conclusions, an individual such as the Appellant, who was not "high profile", would be safe if he relocated to another part of the country. The Appellant had not established either a well-founded fear of persecution for a Convention reason or that his human rights would be infringed.

11. The grant of leave to appeal records grounds alleging that the Adjudicator's rejection of the authenticity of the warrant and FIRs was based on an approach which incorrectly placed the burden on the Appellant. The parties' attention was drawn to the apparent tension between the approach in **ex parte Shen [2000] INLR 389 QBD (CO-3808-98)** and that in **ex parte Mukhtar Shala Mohammed [2001] Imm AR 162**.

12. Ms Panagiotopoulou submitted that the Adjudicator erred in law when he said that it was for the Appellant to persuade him that the documents were genuine to the usual low standard. What he should have done, as soon as the Respondent alleged that they were forgeries, was to hold that it was for the Respondent to establish this to the higher civil standard. Ms Panagiotopoulou appeared for the Appellant before the Adjudicator and informed us that, even though it was not recorded in the determination, Counsel who appeared for the Respondent alleged that the documents were forgeries. Mr. Trent confirmed that his papers said that the authenticity of the documents was challenged. Ms Panagiotopoulou submitted that the Adjudicator allowed his findings in respect of the documents to cloud his other findings. The documents were submitted to the Home Office on 23 July 2001 and, before the hearing, Ms Panagiotopoulou asked the Presenting Officer if the Respondent wanted more time to consider the documents. The offer was not taken up. Mr. Trent accepted that often the Respondent did not arrange for documents to be checked in the country where they purported to have been issued.

13. In reply to our questions Ms Panagiotopoulou accepted that the Appellant had to establish prima facie evidence that a document could be relied on. However, the Appellant was not present when the documents were obtained and in the circumstances could not give details of how this was done. Although she could not direct us to the evidence to support the contention Ms Panagiotopoulou submitted that, even though the arrest warrant was against an

individual whose names were not identical to the Appellant's, this was likely to have been an error by whoever translated the document. It was accepted that the Appellant had not absconded from official custody, but was released unconditionally. There was no explanation for the fact that one of the documents indicated a payment of 50,000 rupees (approximately £500). Ms Panagiotopoulou submitted that the country evidence showed that bribes and/or influence could persuade the police to bring false charges. An individual's release could be procured in the same way. The Appellant's case was that the MQM (Haqiqi) were acting in conjunction with the authorities and in particular the police. The Appellant feared what the police would do to him if he returned. The Adjudicator had not made clear findings as to what happened to the Appellant in custody, although he accepted that the Appellant had been arrested and detained. We were asked to allow the appeal to the extent of remitting it for hearing afresh before another Adjudicator.

14. Mr. Trent submitted that there were four possible scenarios for the documents in question. 1. The documents and the information they contained were genuine. 2. Both the documents and their contents were false. 3. The document was genuine but the information it contained was false. 4. The information was genuine but the document was false. Even if the Respondent had carried out investigations the information he obtained was not likely to be conclusive. Often it was not possible for the Respondent to verify documents. Even if the Respondent did not allege that the documents were forgeries it did not mean he accepted they were genuine. There was nothing in this warrant to say that it was a re-issue of an original warrant. The Appellant had ample time within which to obtain evidence to back up the warrant. For example he could have obtained an affidavit, perhaps from a local lawyer. He had not done so.

15. Mr. Trent submitted that the Adjudicator's conclusions were open to him on the evidence. Unless there was a clear allegation of forgery the burden of proof did not transfer to the Respondent. We were asked to dismiss the appeal.

16. The Appellant's bundle contains reports of

    i. **Ex parte Shen** (see ante) heard in May 2000 and
    ii. **Ex parte Mukhtar Shala Mohammed** (see ante), heard in July 2000, to which we have already referred, together with
    iii. **A, B, C, and D v Secretary of State for the Home Department (HX/61156/96)**, heard in July 1999.
    iv. **Fodjo v Secretary of State for the Home Department (C-2000-220**), heard in September 2000.
    v. **Thaukumar Vijeyaratnam v Secretary of State for the Home Department (HX/76028/97)**, heard in February 2000 and
    vi. **Sait Findik, Hatim Findik v Secretary of State for the Home Department (TH/26021/92**), heard in April 1998.
    vii. **Makozo (20033)** heard in December 1998.

17. Our researches led to two other reports;

    i. **Ex parte Nasim Quyyum Khan (CO/107/1999)**, heard in July 2000 and
    ii. **Ex parte Jose Vincente Davila-Puga (C/2000/3119**), heard in May 2001.

18. Both representatives were provided with copies during the hearing and given leave to make written submissions no later than 11 January 2002. No such submissions have been received from the Respondent. Ms Panagiotopoulou has made further written submissions in which she argues that this appeal should be distinguished from **Davila-Puga** and **Khan**. In those cases the Respondent did not make an allegation of forgery. In this appeal the Respondent expressly alleged that documents were forgeries. This was not based on an examination of the documents and was unsubstantiated. In these circumstances the burden fell on him to prove that the documents were forgeries, following **Shen**. The position would have been different had the Respondent simply invited the Adjudicator to consider the documents as part of the Appellant's case and attach as much weight to them as he deemed appropriate. Ms Panagiotopoulou accepts that in such circumstances the burden of proof would have remained on the Appellant, "to prove his case (including the authenticity of the documents) to the required standard".

19. In **A, B, C, and D** (paragraph 39) the Tribunal said,

> "It is our view that the burden of proof is on the Secretary of State to show that the blacklists are not authentic, rather than on the Appellant to prove (on the reasonable likelihood test) that they are authentic."

20. In **A, B, C, and D** (paragraph 39) the Tribunal quoted from two earlier Tribunal determinations **(Findik** and **Makozo)**.

21. In **Findik** the Tribunal said,

> "We have to say that these documents are not free from doubt, but in our view the Secretary of State does need to show exactly why he considers they are not genuine. We think it right to give the benefit of the doubt that we accept exists surrounding these documents in favour of the first Appellant."

22. In **Makozo** the Tribunal said,

> "It has long been a practice, and we think it is now settled as law, that if the Home Office specifically challenge a document as being forged the burden lies on them to prove it to be so."

23. In **A, B, C, and D** the Tribunal went on to consider the question of the standard of proof by which the Secretary of State had to establish that a document was not authentic. In paragraph 42 they said,

> "Standard of proof issues have plagued status determination in the area and asylum, and we do not feel it is either necessary or advisable to construct another standard of proof for these questions. We would rather deal with the matter by saying, as was said in **Findik** and **Makozo**, that the burden is on the Secretary of State and insofar as the decision maker has reasonable doubts as to the authenticity of the document, he should exercise those doubts in favour of the Appellant. To put it another way, the Secretary of State would simply not have come up to proof".

24. In **Shen** Mr. Justice Dyson said;

> "20. Mr. Kadri submitted that, as a matter of law, since the Secretary of State was contending that these documents were forgeries, the burden of proving this fell on the Secretary of State. Mr. Ward, for whose helpful submissions on behalf of the Secretary of State I am grateful, does not take issue with that. There are now three decisions of the Immigration Appeal Tribunal which support that proposition, which is plainly right as a matter of general principle. Perhaps the most authoritative one is **A, B, C, and D** promulgated on 16th July 1999. That, in turn, referred to earlier decisions which made the same point."

25. In **Mukhtar Shala Mohammed** Mr. Justice Newman said,

> "6. Miss Richards for the Respondent pointed out, in my judgment correctly, that these cases could not provided a good ground of challenge unless Miss Baruah could submit that a particular rule of evidence applied in asylum cases in connection with the validity of documents which did not apply in all other cases. In my judgment, again correctly, she submitted:
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> 1. That the passages from the cases relied upon did not support such a general principle; and
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> 2. If they did, there was no foundation in law for special rules to apply.
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> 7. In **Makozo** the Tribunal, so far as it referred to clear, settled law, followed the principle that the burden of an issue of forgery lies upon the Home Office. In stating, "they must produce some evidence to show why", the Tribunal was not laying down that only if evidence were produced by the Home Office would a

> Special Adjudicator be entitled to conclude that a document is forged. The requirement is that there must be some evidence, whatever its source, and a source is the document itself."

26. In **Khan**, an application for judicial review, Mr. Justice Langley said;

> "In that context, Mr. Gill was particularly critical of the rejection of the documents produced on behalf of the applicant. He submitted, relying on dicta in **A, B, C, and D V Secretary of State for the Home Department,** a decision of the Immigration Appeal Tribunal notified on July 16 1999, that if documents are to be rejected as bogus the onus was on the Secretary of State to prove them to be so. In this case the special Adjudicator had taken on himself the task of assessing the authenticity of the documents and had done so without giving the applicant or his representatives an opportunity to comment on the matters he relied on.
>
> I cannot accept that the authorities cited (or those to which the Tribunal in **A, B, C, and D** and Mr. Gill referred) justify a general principle on the burden of proof of the breadth submitted by Mr. Gill. There can be no doubt the burden of proof on the right to asylum itself lies upon an applicant. If he chooses to produce documents which are relied upon in support of that right, they may range from documents which are original, apparently authentic, and from recognisable government or official sources, to those which are poor photo copies, raise obvious questions of authenticity and purport to emanate from sources which would make official verification of them difficult if not impossible. Moreover, the circumstances in which the documents are produced may make inquiries into them on behalf of the Secretary of State impossible without adjournment of the proceedings. In my judgment the matter is not sensibly addressed in terms of burden of proof in isolation from the material under consideration. The documents relied upon in this case fall very much at the doubtful and unverifiable end of the range and they were only produced after two adjournments and the long time after the events to which they purport to relate." He went on to say, in connection with the documents before him, "the documents are of a doubtful nature and set against the alleged grant of bail and the passport application there was nothing irrational in the special Adjudicator's conclusion, [viz. That they added nothing to the applicant's case]."

27. In **Davila-Puga,** the Court of Appeal, hearing an appeal from Mr. Justice Elias, quoted from his judgment in the following terms;

"28. What Mr. Fripp also says is that if one looks at the documentation in this case, it was very powerful. There were far more relevant documents than one normally finds in an asylum application; they were ostensibly strongly supporting the applicant's case and were, on the face of it, cogent and authentic documents. Very broadly, they fell into three categories: the documentation which was evidencing complaints made to the police and the judges; the documentation from certain doctors evidencing the fact that the applicant and his wife had sustained in some cases quite serious injuries and evidence that the applicant was wanted by the police.

29. Some of this documentation, as Mr. Underwood for the Respondent pointed out, is self-serving in the sense that the complaints to the police and the judiciary are of course, documents which the applicant has produced. Some of them do not fall into that category, namely, in particular, the documentation relating to the injuries sustained by the applicant and his wife.

30. Mr. Fricke went so far as to submit that where there is apparently objective evidence of that kind, then really it is not open to the Adjudicator to go behind it in asylum cases. With respect, that cannot be right. There are various ways in which documents may be obtained and may be presented to the authorities which are not genuine. Either they may be forgeries or it may be that individuals have been persuaded to produce these documents to represent something which is other than true.

31. In this case it is plain that the Adjudicator was not persuaded that these documents were sufficient to demonstrate the credibility of the account given by the applicant. It must be said that when interviewed on the first occasion the applicant had told the immigration officer that he was not a member of the FIE and he had produced the certificate - which he had formerly produced for the government itself - to persuade the immigration officer that he was not a member of the FIE, and had no links with it.

32. So, unfortunately, he had been willing on a previous occasion to rely upon a document which he subsequently accepted had been fraudulently obtained, albeit for the understandable reasons of wanting to preserve his job, and he had sought to rely upon that as part of his claim before the immigration officer.

33. It is true that the Adjudicator does not form a view about these documents, in the sense that he has not said which he considers to be authentic, or why he does not give these documents the weight Mr. Fripp says they deserve. But it seems

> to me that it is very difficult for him to do that; he will not know whether, for example, the medical documents are forgeries, or whether they are misrepresenting the facts, or whether there were injuries but they were not sustained for the reasons given by the applicant. What he was clearly satisfied about was that looking at the evidence in the round (and he does say on two occasions that he has done that) he was not persuaded by the credibility of the applicant's case. It seems to me impossible for him to form a concluded view about individual documents or how they were obtained. But he plainly was not satisfied, looking at all these matters, that they were sufficient to lead him to conclude that the evidence of the applicant was substantially credible."

28. In commenting on these passages the Court of Appeal said, at paragraph 11,

> "In my judgment this reasoning is correct. All these cases have to be considered in the light of their individual circumstances. This is not a case, as sometimes happens, where the documents are essentially self-proving or are positively demonstrated to be authentic by reference to material, including expert evidence, that is independent of the Appellant himself. It is a case where the Special Adjudicator entertained substantial objective reasons, which he explained at length, for doubting the truthfulness of the Appellant's account. In those circumstances the Special Adjudicator cannot in my judgment be said to have fallen into error by compartmentalising the evidence or failing to look at issues of credibility in the round. The short truth of the matter is that the special Adjudicator here was simply not prepared to accept that the Appellant was to be believed in the light of the whole case and notwithstanding the contents of the documents relied on. Having regard to the factual history as it was recounted by the judge below, in my judgment this is wholly unsurprising."

29. With the exception of the Tribunal determination in **A, B, C, and D** and to some extent **Findik**, we find no inconsistency between what have been regarded as the leading authorities in this area. In **Shen** Mr. Justice Dyson stated the principle, not in terms of the words used in **A, B, C, and D**, but by adopting Counsel's submission that if the Secretary of State contended that documents were forgeries, the burden of proving this fell on him. However, he failed, no doubt because of the concession of Counsel for the Secretary of State, to consider whether apparent reliability had been established. Only if it had been could a need to establish forgery arise. This is consistent with the statement in **Makozo** that, "It has long been a practice, and we think it is now settled as law, that if the Home Office specifically challenge a document as being forged the burden lies on them to prove it to be so". We do not agree with the statement in **Findik** that it is for the Home Office to show exactly why they consider that a document is <u>not genuine</u>. This goes too far.

Furthermore, it is not clear what is meant by "not genuine". It does not differentiate between the document and the information it contains.

30. The statement in **A, B, C, and D**, that the burden of proof is on the Secretary of State to show that a document is "not authentic", rather than on the Appellant to prove (on the reasonable likelihood test) that it is "authentic", is not consistent with Rule 39 (2) of the Immigration and Asylum (Procedure) Rules 2000 (to which we will refer: at the time **A, B, C, and D** was decided the Rule in force was 31 (2) of the 1996 Rules, of which the wording is identical). There will be a burden on the Secretary of State only in those rare cases where it is necessary to establish that the document is not merely unreliable but actually a forgery. The standard of proof in such cases is the higher civil standard.

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.

32. Rule 39 (2) of the Immigration and Asylum (Procedure) Rules 2000 provides;

> "If in any proceedings before the appellate authority a party asserts any fact of a kind that, if the assertion were made to the Secretary of State or any officer for the purposes of any statutory provisions or any immigration rules, he would by virtue of those provisions or rules be for him to satisfy the Secretary of State or officer of the truth thereof, it shall lie on that party to prove that the assertion is true."

33. It is for the individual claimant to show that a document is reliable in the same way as any other piece of evidence which he puts forward and on which he seeks to rely.

34. It is sometimes argued before Adjudicators or the Tribunal that if the Home Office alleges that a document relied on by an individual claimant is a forgery and the Home Office fails to establish this on the balance of probabilities, or even to the higher criminal standard, then the individual claimant has established the validity and truth of the document and its contents. There is no legal justification for such an argument, which is manifestly incorrect, given that whether the document is a forgery is not the question at issue. In only question is whether the document is one upon which reliance should properly be placed.

35. In almost all cases it would be an error to concentrate on whether a document is a forgery. In most cases where forgery is alleged it will be of no great importance whether this is or is not made out to the required higher civil standard. In all cases where there is a material document it should be assessed in the same way as any other piece of evidence. A document should not be viewed in isolation. The decision maker should look at the evidence as a whole or in the round (which is the same thing).

36. There is no obligation on the Home Office to make detailed enquiries about documents produced by individual claimants. Doubtless there are cost and logistical difficulties in the light of the number of documents submitted by many asylum claimants. In the absence of a particular reason on the facts of an individual case a decision by the Home Office not to make inquiries, 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.

37. We accept Ms Panagiotopoulou's statement that the Respondent alleged that the documents produced by the Appellant were forgeries. It is not clear whether the Adjudicator found that the documents were forgeries. He did not state in terms that they were. This is a case in which it was not necessary for the Adjudicator to make a specific finding as to whether the documents were forgeries. The Adjudicator’s finding about two of the documents was in the following terms, "I do not accept that there is a reasonable likelihood that either the warrant or the FIR is genuine". He went further and found that the documents had been "manufactured". It is clear that the Adjudicator gave little or no weight to these documents. He could have been even more specific, as was the case when he said that he gave no weight to the letter from the MQM in Pakistan. On the evidence these conclusions were open to him, as were his conclusions in relation to the country evidence. It is clear that he looked at the documentary and oral evidence in the round. Very properly, he considered the question of whether, even if the documents were false, the Appellant's story could be true. On the evidence the Adjudicator was entitled to reach his conclusions in relation to the documents and the evidence as a whole. This

evidence supports the final conclusions that the Appellant has not established either a well-founded fear of persecution for a Convention reason or that his human rights would be infringed.

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.

39. For the reasons we have given we dismiss this appeal.

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P. R. Moulden
Vice-President.