OUTER HOUSE, COURT OF SESSION

[2011] CSOH 48

P713/10

OPINION OF LORD MATTHEWS

in the Petition of

K M

Petitioner;

For

Judicial Review of a decision by the Secretary of State for the Home Department dated 5 May 2010

Pursuer: Byrne; McGill & Co, Edinburgh
Defender: McIlvride; Office of the Solicitor for the Advocate General

8 March 2011

Introduction

[1] The petitioner is KM, who was born on 10 January 1992. He is said to have left Iran with the help of an agent on 20 February 2009. He arrived in the United Kingdom on 2 March 2009 and claimed asylum four days later. His application was refused by the respondent on 5 October 2009. He appealed against that refusal and his appeal was dismissed by an Immigration Judge on 15 November 2009.

[2] By letter dated 22 April 2010, the petitioner made further submissions to the respondent. He relied upon documents purporting to be a copy of a court citation dated 7 June 2009 from the Islamic Revolutionary Court of Boukan, with translation,

and a copy of a court summons dated 30 August 2009 from that same court, also with translation. By letter dated 5 May 2010 the respondent refused to treat the submissions and documentation as amounting to a fresh claim. The petitioner now seeks *inter alia* declarator that the refusal letter is unreasonable *et separatim* irrational and reduction of it.

[3] The petitioner originally sought declarator that the respondent acted unreasonably *et separatim* irrationally in failing to issue a notice of appeal allowing him an in country right of appeal against the refusal letter but Mr Byrne intimated at the outset that he was not going to argue that point, which he categorised as wrong. Nor was he going to rely on Article 8 of the European Convention on Human Rights and Fundamental Freedoms (ECHR).

Submissions for the Petitioner

[4] Mr Byrne's submissions were set out in four chapters. The first related to the test in applications under paragraph 353 of the Immigration Rules (HC 395, as amended by HC 1112), the second covered the role of the Court, the third dealt with the apparent credibility of the further submissions and the fourth considered the materiality of the additional evidence.

[5] Mr Byrne submitted that the petitioner was a national of Iran who feared to return there because of his imputed political opinion. His father was, he believed, active in support of a dissident Kurdish group and he came to the adverse attention of the Government in Iran. He claimed that on about 2 December 2008 he was out of the house tending to livestock. On his return he was informed by his mother that the house had been raided by the authorities and his brother had been arrested and taken away. His father disappeared. His mother warned him that the authorities were

looking for him as the family were politically active and she took him to his maternal uncle's house in the same village. After about three or four days of staying with him, he left with the help of an agent organised by his uncle. He went to Turkey where he stayed in a camp and was then put in the back of a lorry and taken through unknown countries until arriving in Glasgow on 2 March 2009. He feared that he would be arrested and executed by the Iranian authorities because of his father's political activities, and, as was claimed before the Immigration Judge, an arrest warrant had been issued against him in Iran.

[6] He had given evidence before the Immigration Judge on 17 November 2009 at a time when he was 17 and unrepresented. As I have indicated, his appeal was rejected. I was told that thereafter a friend of a friend was in Iran and contacted his family, who passed on the court documents which formed the basis of the fresh claim. Along with the fresh evidence the submissions also included a new legal submission concerning the risk to him of illegally exiting Iran. That was relevant to the fresh claim because it was not considered before.

[7] Paragraph 353 runs as follows:

> "When a human rights or asylum claim has been refused or withdrawn or treated as withdrawn under paragraph 333C of these Rules and any appeal relating to that claim is no longer pending, the decision maker will consider any further submissions and, if rejected, will then determine whether they amount to a fresh claim. The submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered.
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> The submissions will only be significantly different if the content:

(i) had not already been considered; and

(ii) taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection."

[8] It was accepted that the documents had not previously been considered and the issue came down to whether there was a realistic prospect of success. That was a conspicuously low test.

[9] Mr Byrne referred to the case of *R (AK (Sri Lanka))* v *Secretary of State for the Home Department* [2010] 1 WLR 855 where, at paragraph 34, Laws LJ said the following, *inter alia:*

"A case which is clearly unfounded is one with *no* prospect of success. A case which has no realistic prospect of success is not quite in that category; it is a case with *no more than a fanciful* prospect of success. 'Realistic prospect of success' means only more than a fanciful such prospect...".

The test could be understood also in terms of the respondent's own policy in the operational guidance which was issued and which was produced as 6/4 of Process. At pages 17 thereof the following guidance was given:

"Case owners should note that the threshold with regard to a 'realistic prospect of success' is a low one. The Court of Appeal has described the test as somewhat modest.

The test is described somewhat modest for three reasons. First, the question is whether there is a realistic prospect of success in an application before an immigration judge, but not more than that. Second, the immigration judge himself does not have to reach a position of certainty, but only to think that there is a real risk of the applicant being persecuted on return. Finally, since asylum is in issue, the consideration of all the decision-makers, the Secretary

> of State, the immigration judge and the court, must be informed by the anxious sitting of the material... It is inadvisable to suggest that there is no realistic prospect of success solely on the basis that an applicant has demonstrated poor credibility in the past. An applicant may have been untruthful in the past but be telling the truth now, at the further submissions stage. That said, credibility should be taken into account where appropriate in assessing whether there is a realistic prospect of success, but this is simply the same exercise as would be undertaken in assessing an initial claim... For example, both a case owner and an immigration judge might consider that an applicant's account of torture has been fabricated. However, the applicant might later submit expert reports which conclude that, based on physical evidence, the applicant has been tortured in the past. As the reports would be based on physical evidence and not merely the applicant's account, earlier findings on the applicant's credibility would not be relevant. Were the reports to be based simply on what the applicant told the doctors, past credibility findings would become relevant".

[10] As far as the role of the court was concerned, under reference to the cases of *Y H* v *Secretary of State for the Home Department* [2010] EWCA Civ 116 and *I M* v *SSHD* [2010] CSOH 103, Mr Byrne submitted that there was a question whether my considerations should be based on *Wednesbury* grounds or, if I considered the decision of the Secretary of State to be wrong, I could make the decision afresh. Mr McIlvride, for the respondent, very fairly invited me, for the purposes of the present petition, to proceed on the latter basis. In other words, if I thought that there was a realistic prospect of success then I should make the orders sought.

[11] Mr Byrne then turned to the apparent credibility of the documents. He submitted that the Secretary of State could only reject documents if they were intrinsically incredible or if, when looking at the whole case in the round, one could say that no person could reasonably believe them. Reference was made to the case of *R (TN) (Uganda)* v *Secretary of State for the Home Department* [2006] EWCA Civ 1807. That case concerned a fresh submission based on a letter which the applicant received from Uganda reporting that her youngest sister had been killed by her father and that he had become an active member of a resistance army. About the same time she heard that her aunt had died and her brothers had disappeared. At paragraphs 10 and 11 of the judgment Maurice Kay LJ said the following:

> "...It is important to remember the level at which I have to consider this case. I am not called upon to decide the ultimate credibility of the new material. As Collins J said in *Rahimi* v *Secretary of State for the Home Department* [2005] EWHC 2838 (Admin) if that information is intrinsically incredible, or if when one looks at the whole of the case it is possible to say that no person could reasonably believe it, then of course it must be rejected. However, that is not this case. The Secretary of State's ultimate submission before Hodge J was in the form of scepticism about the new material but did not go so far as to categorise it as intrinsically incredible.
>
> 11. If it is on its face credible, even though it may ultimately not find favour, then it seems to me that it is at least arguable that the challenge to the decision of the Secretary of State has some prospect of success. I consider the appropriate questions to be those set out in paragraph 26 of Miss Hooper's skeleton argument to this court, namely:-
>
> (1) Has the material been previously considered?

(2) If not, could it reasonably be believed?

(3) If it could, when considered with the previously considered material is there a reasonable prospect that a favourable view could be taken of the new claim...".

[12] Mr Byrne submitted that if a person could reasonably believe the documents submitted then that was enough for his purposes.

[13] He also submitted that another formulation about the credibility of documents was to be found in *A K (Afghanistan)* v *Secretary of State for the Home Department* [2007] EWCA Civ 535. The appellant in that case was a citizen of Afghanistan. The adjudicator found the appellant to be credible but was not persuaded that he was at risk of persecution for a refugee convention reason or of violation of his rights under articles 2 and 3 of ECHR. Certain further representations were made as to the general state of affairs in Afghanistan and the risks to Pashtuns, of which the appellant was one. There was also an affidavit from his mother giving certain details. At paragraph 23 of the judgment Toulson LJ, with whom the other judges of the Court of Appeal agreed, said the following:

> "Precisely because there is no appeal from an adverse decision under rule 353, the decision maker has to decide whether an independent tribunal might realistically come down in favour of the applicant's asylum or human rights claim, on considering the new material together with the material previously considered. Only if the Home Secretary is able to exclude that as a realistic possibility can it safely be said that there is no mischief which will result from the denial of the opportunity of an independent tribunal to consider the material".

I am not entirely sure whether this formulation goes any further than that set out in *AK (Sri Lanka)*.

[14] Nevertheless Mr Byrne also referred to the case of *Abul Hassan* v *Secretary of State for the Home Department* 2004 SCLR 524, a decision of Lord Bracadale. In that case the respondent decided that fresh evidence was very similar to the petitioner's earlier claim and also lacked credibility. It was argued that the decision on the first representations collapsed two separate stages namely whether the fresh representation amounted to a fresh application and secondly, if so, whether the application showed that the applicant was entitled to asylum. In any case the respondent's decision was said to be unreasonable as the fresh representations were new evidence not previously available to the petitioner and as they were baldly declared to be incredible when there was nothing apparently incredible about them. It was held that there was a two stage process to be applied, ie whether there was a fresh claim and, if so, whether it was well founded, and these must be kept separate, because the first is unappealable. The respondent's rejection was in part on the ground of similarity which failed to take account of the fact that the representations concerned fresh evidence which meant that the subject matter was very similar to that of the original application. At the first stage the respondent was required to ask whether the claim related to substantially the same circumstances as before and if so, was there fresh evidence. If so, in turn, was it credible and was there good reason why it was not advanced previously. The authorities showed that all that was required was apparent credibility for the first of the two stages and the respondent appeared not to have addressed the question of credibility at all. It might be permissible to look ahead in the first stage to see if the fresh representations had any hope of success but in the present case, so doing had

confused the two stages. Reference was made in particular to paragraph 36 of his Lordship's opinion where he said the following:

> "It is clear from the passages in the judgments in *Onibiyo* and *Boybeyi* quoted above, that, in order to pass the test of credibility at the stage of consideration of whether representations amount to a fresh application, all that is required is apparent credibility. The respondent does not appear to have addressed the question of apparent credibility at all. He appears to have formed a view about credibility more appropriate to the second stage of the decision-making process. Furthermore, no explanation is given by the respondent as to why he has reached the conclusion that the representation lack credibility. There is nothing in the documents themselves that point to a lack of credibility. The conclusion appears to have been arrived at by a comparison with the conclusion arrived at by the adjudicator in the earlier application. In my opinion this approach is not consistent with the approach to credibility required by the authorities at the first stage".

[15] Mr Byrne's submitted that the documents in this case were not apparently incredible and passed the test. The court had to look at the documents and the representations themselves in assessing whether they passed that test.

[16] He then referred to 6/1 of process, the letter from the petitioner's solicitors dated 22 April 2010 which was said to amount to a fresh claim. Paragraph 1 is in the following terms:

> "The application is submitted to you for consideration in accordance with the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 which implements council directive 204/83/EC. The client has advised that his family passed the document to a friend of a friend who

was holidaying in Iran. He collected the document and brought the document back. We would submit that the applicant is unable to obtain effective protection from the Iranian authorities to protect himself bearing in mind that he is known to them for his political affiliations and bearing in mind the lower standard of proof, we submit that there is indeed a very real risk for the applicant. He would still be noted of interest to the authorities upon return". (*sic*)

[17] Mr Byrne submitted that since the documents came from a friend of a friend they could not be said to be affected by any previous adverse credibility findings *viz* the petitioner. I pointed out to him that the source of the information that they came from a friend of a friend was the petitioner himself but Mr Byrne submitted that all the circumstances could be taken into account and evidence could be led from the petitioner and the friend of a friend if he was available. There was a seed of information that they came from another person, although there was no affidavit from this individual. I confess I found it difficult to see how much further that could be taken since the Secretary of State only had available the documents which were submitted to him and I was in that same position.

[18] Nonetheless Mr Byrne submitted that the documents were not intrinsically incredible and could not be excluded from consideration.

[19] He then referred to paragraph 11 of the Secretary of State's decision letter, no 6/2 of process. That is in the following terms:

"Your client claimed that his mother came to his uncle's house and gave him an arrest warrant issued in his name, that had been left at their home. He claimed this arrest warrant had been handed to the social worker who carried

out his initial age assessment. On considering this claim the Immigration Judge said in the determination dated 18/11/09:

> 'I find this claim to be incredible...I do not consider it credible that the social worker would retain such evidence'". (para 42).

Regarding the issue of arrest warrants the IJ continued:

> "But as indicated in the COIS report at paragraph 11.44 and onwards an arrest warrant in criminal cases would not be served by substituted service through members of the family; if the accused cannot be found then the arrest warrant would be passed onto law enforcement officers to arrest the accused whenever and wherever he is found. Accordingly the appellant's claim that the arrest warrants were left with his mother (although according to questions 169 to 171 of the substantive interview it was given to him by his uncle) runs counter to the objective evidence". (Para 47).

[20] The arrest warrant referred to was a document which the petitioner claimed he had with him when he was first interviewed. Mr Byrne submitted that an Immigration Judge would be bound to take account of the fact that it was not a criminal court which was involved. Courts in Iran could be civil courts, criminal courts or the revolutionary court and it was clear that the documents now tendered emanated from the revolutionary court. It was unsafe to apply the procedures of the criminal court to the revolutionary court.

[21] Mr Byrne said that his researches did not indicate the function of the revolutionary court. He did however refer to 6/7 of process, an objective report by the Danish Immigration Service. Section 9 of that report deals, *inter alia* with summonses. It reads as follows:

"**9.1 Summonses**

The Attorney at Law explained that summonses can be issued by the Civil-Criminal-or Revolutionary Court.

A western embassy confirmed that there are different kinds of summonses and added that summonses are also issued by the Secret Service.

The Attorney at Law stated that if a person does not respond to a summons, the person is breaking the laws regulating the obligation to report to the authorities when summoned. Failing to report when summoned does not mean that the person will be prosecuted. This would depend on the reason for the person being summoned. The attorney at law added that a person who has been summoned and has subsequently left Iran during the investigation phase, will not necessarily face prosecution upon return just because the person has failed to report to the authorities after being summoned.

According to a western embassy, a person who does not meet when summoned is searched for by the authorities. The embassy does not know what happens to a person who fails to report to the authorities after being summoned.

The Attorney at Law stated that summonses can easily be obtained illegally and that it is also easy to forge summonses by erasing information in the summons and adding new details.

The Attorney at Law also informed that a notice to meet in court can be sent by text messages (sms) and by e-mail. In terms of the use of text messages a document has to be presented as proof of the text being sent to the person.

9.1.1 Civil Cases

According to a western embassy any person being accused of an offence

according to the Civil Code will be summoned. If the accused does not respond to the summons the person will be summoned again.

The Attorney at Law stated that a civil summons is issued by the Civil Court or branch when a plaintiff has filed a case at the court house. A person who has been served a summons must respond within five days. If the summons is published in the legal gazette the person has 30 days to react to the summons. If a person who has been summoned does not show up, the court may issue a ruling.

9.1.2 Criminal cases

A western embassy explained that a person suspected of having committed a criminal act will be summoned according to the Penal Code.

According to the Attorney at Law, when a person is summoned in a criminal case the person must report to the authorities within three days. However, if the summons has been published in the legal gazette, the person must report to the authorities within ten days. If a person fails to report when summoned according to the Penal Code, the person will be searched for and an arrest warrant may be issued.

A western embassy added that a person who fails to report to the authorities when summoned may be sentenced in absentia to imprisonment if found guilty of the crime. The sentence may be appealed within 10-20 days.

9.1.3 Summonses issued by the Secret Service

A western embassy stated that summonses by the Secret Service do not have a specific format and may even be issued over the phone. A document is rarely issued by the Secret Service. A person who fails to meet for a summons issued

by the Secret Service will be searched for. The embassy does not know what happens to the person in such cases.

9.2 Description of a Summons

According to the Attorney at Law, a summons is a form consisting of blank sections. The court or the requesting authority will fill in the summons by hand. Though, recently some courts have begun to issue computer generated summonses as well.

A western embassy stated that summonses are always filled out by hand and only the copy is served to the summoned. The summons is stamped by the issuing authority.

The Attorney at Law explained that all summonses have a registration number. By this number any Iranian lawyer can find out if the summons is registered in the system and thereby verify the authenticity of the summons. With the use of the number of the summons, the lawyer can find information on the date of issue, the case number, court type (Civil, Criminal or Revolutionary) and branch number of the court issuing the summons.

The case number is written in the left top corner. In the top middle there is a number of the court and in the top right corner the date is written. A summons is most often written on A5 size paper.

Summonses are always stamped, though not necessarily signed. The stamp contains the following information: city, name, court and division. Divisions all have individual numbers. All cities start with the number '1'. The name of the city will not appear but only the city's number code...".

[22] Mr Byrne submitted that it was clear that only copy summonses were provided but the practice in connection with service was only detailed in connection with civil

and criminal courts. While 9.2 applies to all three courts, the conclusion of the Secretary of State that a summons would not be served on a family member was not based on any description of the practice of the Revolutionary Court. That Court dealt with political offences, criticism of the leader and such matters. Paragraph 14 of the refusal letter criticised the fact that the petitioner had submitted a copy of the summons and not the original document. It went on to quote the country of origin information report for Iran dated January 2010 which in turn quoted the Danish Immigration Service report of 2009 which I have already mentioned. Mr Byrne submitted that paragraph 9.2 of that latter report made it plain that only a copy was served. Paragraph 15 of the decision letter reads as follows:-

> "It is noted, contrary to the above objective information, there is no case number written in the left top corner, nor is the number of the court detailed in the top middle of the submitted documents..."

Mr Byrne submitted that as far as the case number was concerned, the decision letter was simply incorrect. The number was on the right of the translation but it was on the left of the original.

[23] Furthermore, the document was the right size, A5, and it had a stamp, which it should have. The document was written in handwriting next to the *pro forma* sections and again that was as it should be. The stamp had a number 2 indicating to which court it referred, as it should, and, Boukan not being a city, the number did not start with "1". The only matter referred to in 9/2 of the Danish Immigration Service report which was not readily apparent on the summons was the number of the court in the top middle of the summons. That number, however, was on the stamp. But for the absence of that court number in the middle of the document, the documents were apparently credible. There was a real prospect that they were reliable. They accorded

almost exactly with the description in the Danish report and I could not exclude the possibility that someone would find them credible.

[24] Assuming they were credible, were they material to the claim? Mr Byrne submitted that if they were accepted as reliable by an Immigration Judge, he not having to achieve certainty, then the petitioner's core account could be believed. Secondly, the documents coming from the Revolutionary Court, several inferences about the risk to the petitioner could be drawn. Paragraph 11.06 of the Country of Origin Information report of January 2010 (number 6/6 of process) showed the business of the Revolutionary Court. *Inter alia* that paragraph reads as follows:

> "The 2005 Danish fact-finding mission (FFM) report *On certain crimes and punishments in Iran: Report from the fact-finding mission to Teheran and Ankara*, 22 January to 29 January 2005, stated that there were the following courts in Iran:
>
> > 'The various courts:
> >
> > 1. Public courts: a) criminal courts b) civil courts
> > 2. Revolutionary courts
> > 3. Religious courts
> > 4. Military courts
> > 5. Administrative courts
> > 6. Appeal courts
> > 7. The Supreme Court
> >
> > The source explained in relation to the distribution of case areas in the Iranian courts that the public courts deal with cases concerning adultery, homosexuality, the consumption of alcohol, religious conversion, breaches of clothing rules etc.

> The revolutionary courts deal with matters of national security, terrorism, improper pronouncements on Khomeini and the supreme leader, espionage and narcotics-dealing. According to the source 99% of the revolutionary court's cases involve drug crime'".

[25] According to paragraph 11.05

> "...Revolutionary courts try cases involving political offenses (*sic*) and national security".

[26] Mr Byrne submitted that the petitioner's being summoned by apparently credible documents to the Revolutionary court of Boukan was a matter of significance. An Immigration Judge would be bound to apply the country guidance case of *S B* v *Secretary of State for the Home Department* [2009] UK AIT 00053. I need not go into the details of that case but paragraphs (ii) and (iii) of the rubric read as follows:

> "(ii) Iranians facing enforced return do not in general face a real risk of persecution or ill-treatment. That remains the case even if they exited Iran illegally. Having exited Iran illegally is not a significant risk factor, although if it is the case that a person would face difficulties with the authorities for other reasons, such a history would be a factor adding to the level of difficulties he or she is likely to face.
>
> (iii) Being a person who has left Iran when facing court proceedings (other than ordinary civil proceedings) is a risk factor, although much will depend on the particular facts relating to the nature of the offence(s) involved and other circumstances. The more the offences for which a person faces trial are likely to be viewed as political, the greater the level of risk likely to arise as a result. Given the emphasis placed both by the expert report from Dr Kakhki and the

April 2009 Danish fact-finding reports sources on the degree of risk varying according to the nature of the court proceedings, being involved in ongoing court proceedings is not in itself something that will automatically result in ill-treatment; rather it is properly to be considered as a risk factor to be taken into account along with others".

[27] Mr Byrne submitted that if the petitioner was summoned to a political court then he was likely to be in the category of risk described in paragraph (iii). The terms of the summonses were oblique and in his submission, sinister. They were consistent with his account of his father being a member of a prescribed Kurdish party. Reference was made to the operational guidance note on Iran issued 20 January 2009, no 6/5 of process at paragraph 3.11.10 on page 16 as follows:

"**Conclusion**. Unless the individual has come to the direct attention of the Iranian authorities, it is unlikely that the authorities will demonstrate an interest in an individual of Kurdish ethnicity or a low level supporter of the KDPI or Komala. However there is objective evidence which indicates that leaders and militant supporters of the KDPI and Komala would be at a real risk of persecution because of their activities. For applicants that are able to demonstrate that they fall within this category, a grant of asylum would be appropriate. There have been reports that the regime may use allegations that an individual is a member of a banned organisation to silence them. In credible cases of this type a grant of asylum will only be appropriate where the individual is able to demonstrate that he/she has come to the attention of the authorities and as a result faces a serious risk of persecution".

[28] Mr Byrne submitted that the petitioner fell within the exception, having come to the attention of the authorities, as demonstrated by the new evidence. The Secretary of

State had made her own assessment of credibility. Reference was made to paragraph 34 of *Hassan*. The decision of the Immigration Judge was relevant but a tribunal would readily depart from that earlier decision if it found fresh evidence pointing to a risk. A new Immigration Judge would take account of a number of factors and so should this court. In the first place a new Immigration Judge would be aware that the petitioner was not represented before the first one. In the second place he was a teenage boy at the time of the hearing. In the third place he was a teenage boy trying to represent himself and make legal submissions so another Immigration Judge might be forgiving of his case as it was first presented.

[29] Paragraph 47 of the Immigration Judge's determination is in the following terms:

> "But as is indicated in the COIS at paragraph 11.44 and onwards an arrest warrant in criminal cases would not be served by substituted service through members of the family; if the accused cannot be found then the arrest warrant would be passed onto law enforcement officers to arrest the accused whenever and wherever he is found. Accordingly the Appellant's claim that the arrest warrants were left with his mother (although according to questions 169-171 of the substantive interview it was given to him by his uncle) runs counter to the objective evidence".

[30] Mr Byrne submitted that while the judge had relied on the Danish report in so far as it dealt with criminal arrest warrants she had nowhere determined that the missing document was a criminal warrant. It was now clear that it came from an entirely different court. That amounted to an error of law. She had equiparated the procedure in criminal cases with that in the Revolutionary court. In any event there was no evidence about the procedures for serving summonses from the Revolutionary court so the finding in paragraph 7 was an unsafe one.

[31] Mr Byrne submitted that there were only two other criticisms made of the petitioner in the Immigration Judge's decision. Paragraphs 34 and 35 of that decision run as follows:-

> "34. At paragraph 11 of the witness statement the Appellant states that at the time of his brother's arrest he was not at home as he was tending livestock outside the village. In the substantive interview at question 122 the Appellant stated that he did not sell and buy sheep but simply looked after them. At question 18 he stated that the family had 60 sheep. At questions 55-56 the Appellant stated that he was tending to the sheep at the time of his brother's arrest.
>
> 35. Yet when asked by Mr Armstrong at the hearing how long the gestation period of a sheep was the Appellant was unable to say. The Appellant stated that he understood the concept of pregnancy but he did not know how long a sheep is pregnant. Given that the Appellant is nearly 18 years old (and therefore is not a young child) and claims to have been a shepherd controlling a flock of 60 sheep I find it incredible that the Appellant does not know the gestation period of sheep. Similarly in the substantive interview at questions 120-125 the Appellant displayed total ignorance of the selling price of various farm products".

[32] Paragraphs 39 to 46 of the determination run as follows:

> "In the social worker's report at page A9 of the Respondent's bundle the social worker refers to the Appellant having two documents. One document is described as an identification card with the photograph. This appears to be the identity card produced by Mr Armstrong at the hearing, (see paragraph 17 above).

40. The social worker stated in regards to the other document '[the Appellant] states the other is a letter authorising his arrest'. In the substantive interview at questions 167 and 168 when asked about the whereabouts of this document the appellant stated that he had lost it.

41. When this point was put to the Appellant at the hearing the Appellant stated that the identity card and the arrest warrant had been given to the social worker who had carried out the initial age assessment. She had returned the identity card to the Appellant and stated that a copy of the arrest warrant would be faxed to the Home Office in Liverpool. The Appellant stated he had explained this in the substantive interview and his answer concerning the whereabouts of the arrest warrant must have been misrecorded.

42. I find this claim to be incredible. The social worker was involved in the Appellant's case in regard to the assessment of age. I find it incredible that the identity card (which presumably refers to the Appellant's age) was returned to the Appellant by the social worker but the arrest warrant (which presumably had no bearing on the Appellant's age) was retained by the social worker who stated that she would fax a copy to the Home Office. I do not consider it credible that the social worker would retain such evidence.

43. I do not consider it credible that if the Appellant had explained in the substantive interview that the arrest warrant had been retained by the social worker that the Appellant's answer has been translated and recorded simply that he had lost it.

44. Furthermore when asked at the hearing, the Appellant stated that he had not told his solicitors that the arrest warrant had been retained by the social worker. He stated that he had assumed that a copy of the arrest warrant had

been faxed by the social worker to the Home Office in Liverpool who in turn had passed it onto his solicitors. Accordingly he did not think to mention to his solicitors that the arrest warrant had been retained by the social worker. I find this claim to be incredible. It is clear from the substantive interview at questions 167 and 168 that it was being indicated to the Appellant that the Respondent was not in possession of the arrest warrant. Paragraph 25 of the reasons for refusal letter specifically refers to the Appellant stating that he had lost the arrest warrant and that it had not been submitted in support of the Appellant's claim. Given that the heart of the Appellant's claim is his fear of being arrested on return to Iran by the Iranian authorities, I find it incredible that the Appellant failed to mention to his legal representative that the arrest warrant had been left in the possession of the social worker if that were the case.

45. In my view the Appellant's recorded reply in the substantive interview that he has lost the arrest warrant describes the true situation.

46. Furthermore when asked at the hearing how he had obtained the arrest warrant, the Appellant stated that it had been brought to his uncle's house by his mother; the arrest warrant had been left with his mother at their home. The Appellant stated that a separate arrest warrant had been left for his father".

[33] The judge did not find the petitioner to be credible. It was not accepted that his father was active in an opposition political party, that his father had disappeared or that his brother had been arrested by the Iranian authorities. It was not accepted that an arrest warrant had been issued for the arrest of the petitioner and his father or that at the time of his departure from Iran the appellant was of adverse interest to the Iranian authorities. It was not accepted that if he were to return to Iran he would be of

adverse interest to the Iranian authorities on the basis of his father's political activities or for any other reason.

[34] Mr Byrne submitted that if the petitioner were minded to produce false documents then he could have done so. The warrant referred to by the Immigration Judge and the arrest warrant now under scrutiny were different things. The social worker had not given evidence and it was not incredible that she should retain the arrest warrant which the petitioner had given her. The reasons for finding the petitioner incredible were not strong or compelling ones. His claim did not inherently lack sense. His failure to get his productions in order were perhaps due to his being a boy representing himself. Another Immigration Judge would take account of the fact that he had paid an agent to leave Iran, which was relevant because it suggested he had left Iran illegally.

[35] Paragraph 2 of his solicitors' letter runs as follows:

> "We would also refer to the case *R C* v *Sweden* EC t HR 4182 7/07 and *S B* v *SSHD* [2009] UK AIT 00053 and would submit that the client would be questioned on return in terms of the arrest warrant that is outstanding and that his asylum claim would be discovered. He would thereafter be at real risk and there is no evidence to show that the applicant would lie on return. Indeed an applicant would not be expected to lie and modify his behaviour on return".

[36] Mr Byrne submitted that this was a new legal submission which was not before the Immigration Judge. It was based on *SB*, a case which had been promulgated after the original decision. Mr Byrne drew my attention to paragraph 52 of the determination, which is in the following terms:

> "What we derive from our above analysis is that the most likely position is as follows. Illegal exit is not a factor which in itself is a significant risk factor,

> although if it is the case that a person would face difficulties with the authorities for other reasons, it could be a factor adding to risk. Normally illegal exit is considered as an offence attracting only a fine involving a relatively modest sum of money; however, matters can become more problematic when the person is (or is discovered to be) someone involved in ongoing court proceedings or someone who has a previous criminal record or someone who is viewed in a political light as having views contrary to that of the current regime. Given the updating we have now done of the evidence on this issue, the case of AD (Risk-Illegal Departure) Iran CG [2003] UK AIT is to be treated as historical guidance only".

[37] Mr Byrne also referred to the case of *R C* v *Sweden* ECtHR 3rd Chamber application no 41827/07. In dealing with the risk of ill-treatment paragraph 56 of the judgement of the Chamber runs as follows:-

> "In assessing such a risk, regard must be had, firstly, to the current situation that prevails in Iran and to the very tense situation in that country where respect for basic human rights has deteriorated considerably following the election of June 2009 (see paragraphs 31-34). In addition regard must also be had to the specific risk facing Iranians returning to their home country in circumstances where they cannot produce evidence of their having left that country legally. The Court notes that according to information available from independent international sources (see paragraphs 35 and 36 above) such Iranians are particularly likely to be scrutinised for verification as to the legality of their departure from Iran. The Court observes that the applicant has claimed that he left Iran illegally and that his claim in this regard has not been rebutted by the Government. Therefore, in the light of the information

available to the Court, it finds it probable that the applicant, being without valid exit documentation, would come to the attention of the Iranian authorities and that his past is likely to be revealed. The cumulative effects of the above factors adds a further risk to the applicant". (See *mutatis mutandis N A* v *The United Kingdom*, no.25904/07, 134-136, 17 July 2008).

[38] That judgment was dated 9 March 2010. The background was that the applicant claimed that he was a Shia Muslim and came from a city in the South of Iran. A smuggler had arranged for his travel to Sweden and he had travelled all the way hidden in a lorry. He claimed that he had criticised the government on several occasions and the last time he had participated in a student demonstration to show his sympathy he had been arrested. He had spent two years in prison where he had been subjected to torture. He had never been formally tried but every third month there had been a sort of religious trial where he had been put before a priest who decided on his continued imprisonment. The court considered that he had substantiated his claim that he had been detained and tortured by the authorities.

[39] Mr Byrne submitted that there was a real risk that if the petitioner was returned to Iran he would be asked why he had left and that the arrest warrant and the summons would be discovered, as well as his father's details. That was a new legal submission that a new Immigration Judge would require to consider.

[40] In summary, the provenance of the documents had been explained, they were apparently credible and it could not be said that no-one would accept them. The petitioner had been a teenage boy who was unrepresented at the hearing and the findings as to credibility were thin and inadequate. In addition there was an error in law in relation to one finding. The test was a very low one and in all the

circumstances the petitioner's case had a more than fanciful prospect of success. I should therefore find in his favour.

Submissions for the respondent

[41] Mr McIlvride invited me to uphold the third plea in law for the respondent and to dismiss the petition. He submitted that the Secretary of State had identified the proper test and correctly applied it. The fact that the proper test was identified could be seen in paragraph 5 of 6/2 of process which effectively reflected what Buxton LJ had said in the *WM (DRC)* case. Paragraph 7-17 of the decision letter set out broadly how the respondent's decision was reached. It was noted that the Immigration Judge made very few positive credibility findings regarding the petitioner and that there were crucial discrepancies and inconsistencies. The letter referred to the copies of the citation dated 7 June 2009 and the summons dated 30 August 2009 purporting to be from the Islamic Revolutionary Court of Boukan. It was said that applying the legal principles enunciated in the case of *Tanveer Ahmed* it was for the individual to show that the documents on which he sought to rely could indeed be relied upon and should be considered in the round. Another Immigration Judge would attach little weight to these documents, said the respondent. The citation was dated 4 months after the petitioner claimed his problems began and his brother was arrested. There was no evidence as to how the document was acquired. No evidence had been submitted as to how, when and from whom the documents had been received. The citation was dated 7 June 2009 and the summons dated 30 August 2009 yet there was no explanation for the delay in submitting them nor was there any explanation why they were not submitted at the asylum interview or the appeal hearing. It was said by the petitioner that his mother came to his uncle's house and gave him an arrest warrant issued in his

name which had been left at their home. He said that this arrest warrant had been handed to the social worker who carried out his initial age assessment. The Immigration Judge had found this claim to be incredible. He did not believe that the social worker would retain such evidence. The Immigration Judge went on to indicate that an arrest warrant in criminal cases would not be served by substituted service through members of the family. If the accused person could not be found then the arrest warrant would be passed to law enforcement officers to arrest the accused whenever and wherever he was found. This was based on the COIS report at paragraph 11.44. The petitioner's claim that the arrest warrant was left with his mother (though he had said in the substantive interview that it was given to him by his uncle) ran counter to the objective evidence. The letter went on to say that the issue whether the petitioner was of any interest to the authorities in Iran had previously been considered. The core elements of his claim were not accepted. The Immigration Judge stated that there were such discrepancies, inconsistencies, implausibilities and general unreliability in his account and evidence that it was considered that the petitioner had not given a genuine account of the events that led to his departure from Iran. It was not accepted that his father was active in an opposition political party, that his father had disappeared, that his brother had been arrested or that an arrest warrant had been issued for the arrest of the petitioner and his father. In short, it was not accepted that at the time of the petitioner's departure from Iran he was of adverse interest to the authorities for any reason. It was not accepted that if he were now returned to Iran he would be of adverse interest to the Iranian authorities. Furthermore, the documents did not detail why he had been summoned to appear before the court. There was no evidence that the authorities had recently been actively looking for him. It was also pointed out that a copy of the document and not the original one had been submitted.

Reference was made to the Danish Immigration Service report of 2009 which said, at paragraph 9.1, that:-

> "The Attorney at Law stated that if a person does not respond to a summons, the person is breaking the laws regulating the obligation to report to the Authorities when summoned.... The Attorney at Law added that a person who has been summoned and has subsequently left Iran during the investigation phase will not necessarily face prosecution upon return just because the person has failed to report to the authorities after being summoned...The Attorney at Law stated that summonses can easily be obtained illegally and that it is also easy to forge summonses by erasing information in the summons and adding new details."

The decision-maker was entitled to start from a position of extreme scepticism, given that the previous claim had been rejected by an adjudicator as wholly incredible. There was no reason to expect his credibility to have any greater weight before an immigration judge on this occasion, unless supported by corroborative material or at least plausible detail. Neither was apparent in his initial answers. If anything, they raised more doubts about his veracity. The assertion that he had returned because of 'cold/flu' and his doctor's advice to 'live in a warm country', curious in itself, omitted the significant fact that he was in fact paid £3,000 to return under the AVR scheme.

46. The only significant new element is the arrest warrant, and the report relating to it. The judge referred to the guidance in *Tanveer Ahmed* v *Secretary of State* [2002] UKIAT 00439, which, as he said, established that it is for the claimant to establish the reliability of a document if it is at issue; and that a document should not be viewed in isolation but in the context of the evidence as a whole (para 35). He also referred to *Asif Naseer* v *Secretary of State* [2006] EWHC 1671 in which Collins J in a similar context had emphasised the importance of 'evidence indicating how the relevant documents came into existence and supporting their genuineness' (para 37).

47. Dr Fatah's report falls far short of that test. I accept that it reads as a reasonably objective consideration of the issues, by someone who, on the face of it, appears adequately qualified for the task. There are no obvious errors or deficiencies of approach, which would justify discounting it altogether at the threshold stage. However, it proves very little. It says no more in substance than that the document is sufficiently plausible on its face to justify taking it

seriously. There is nothing to indicate how it came into existence, or how it came into the hands of the applicant's family".

[51] It was thus for the claimant to establish the reliability of the document in the context of the evidence as a whole.

[52] Mr McIlvride also referred to the case of *Asif Naseer*, quoted in *Y H*. In particular he referred to paragraphs 22 and 31 to 34 of the judgment of Collins J as follows:

"22. So the question is, when dealing with what is said to be fresh evidence, whether that evidence is such that, even though the Secretary of State rejects the claim, it can be regarded as creating a realistic prospect of success were there to be an appeal against the rejection. It is obviously right that the Secretary of State, in considering the evidence that is produced, should be able to form a view as to its reliability and the starting point in a case such as this, where there has been a rejection by the appellate authorities of a claimant's account that he has been disbelieved, is the decision of the AIT. That by itself will not mean that anything that he thereafter states or puts forward must equally be disbelieved, but it is proper for the Secretary of State to take that into account in assessing whether the fresh material is indeed such as will provide a realistic prospect of success....

31. In all the circumstances, this is a case in which, in my view, the Secretary of State was fully entitled to say to himself

'I have had no proper explanation of how these documents came into existence. I note how useful they suddenly are, produced at this late stage. I note too that there has still been no production of the August 2004 FIR. In all those circumstances, I take the view that I am

entitled to reject the genuiness of these documents and to take the view that there is no real prospect of success'.

32. Against that, there has been raised, and certainly was in the claim as set out in writing, a decision of mine in *Rahimi* v *Secretary of State* [2005] EWHC 2838 (Admin). I refer to it only because I am aware that it has been relied on in a number of cases since. I am equally aware that the Secretary of State is unhappy with it and is seeking to appeal, and indeed has leave to appeal and I am told that the appeal is due to be heard some time in the Autumn. That was a case in which there had equally been a rejection of the account given by the claimant. It was a case involving Afghanistan and it was based upon his assertion that he had worked for the Taliban, although not willingly, and as a result he was being targeted by an extremist organisation which was concerned to root out and to deal with any who had been involved with the Taliban.

33. What he relied on in that case was a newspaper article, which referred to him and I think his father, and which indicated that he was indeed being sought. There was evidence that, if he was a target of this particular organisation, then there would not be an ability by the authorities in Afghanistan to provide him with the necessary protection. He also had a statement from an expert, a Dr Antonio Giustozzi, and that expert had examined the original newspaper, and from his knowledge of that paper and of the situation in Afghanistan expressed the opinion that it could well be genuine. I should say that the expert in question was a respected expert, and one who was able, because of his expertise, to give credible evidence as to the authenticity of that particular document. So one had in that case an explanation

> and detailed evidence which supported the genuiness of the document upon which Mr Rahimi was relying. That is totally absent in this case.
>
> 34. Furthermore, as I indicated in the course of my judgment, the newspaper or article, if it was genuine, was central to the claim because if it was right, it showed beyond any question that there was likely to be a real risk for Mr Rahimi were he to be returned to Afghanistan. Accordingly, its genuineness was central. Since there was the evidence of the expert, and since it meant that the new claim would have a realistic prospect of succeeding on an appeal before an immigration judge, it seemed to me that the Secretary of State had no good reason to reject it or to treat it as evidence which he would not rely on and thus would not accept as showing a fresh claim".

[53] It was clear from the decision letter in the current case that the Secretary of State had had regard to the new documents and the old evidence in the round and also to other factors. Although the onus was on the petitioner to demonstrate the genuiness of the documents, no evidence had been provided from an independent source as to where and how they were obtained. There was a statement in the letter from the solicitors that a friend of a friend got them and brought them back but there was no affidavit or letter from this friend of a friend. The Secretary of State had to consider the matter on the evidence actually available to her. In the second place the Secretary of State had had regard to the fact that there was no explanation for the delay in producing these documents until the petitioner's appeal rights were exhausted yet they were dated June and August 2009. Thirdly the Secretary of State had regard to the fact that neither document indicated why the petitioner had been summoned to appear and there was no evidence that any continuing attempts had been made to bring him before the courts since the documents had been issued. Mr McIlvride referred to the

nature of the work of the Revolutionary court as I have already explained it and highlighted the information that, according to the source, 99% of its cases involve drug crime.

[54] The Secretary of State also relied on other factors based on an examination of the documents themselves. It was apparent from an examination of the Danish Immigration Service report, at paragraph 9.1 that summonses could easily be obtained illegally. Mr McIlvride also referred to paragraph 9.2 of that document which described a summons. I have already referred to that description, which appears to be a general one covering all summonses. Mr McIlvride conceded that Mr Byrne might be right in saying that the translator had reversed the information about the case number from the top left to the top right but he could not tell. He went on to point out, however that in the top middle the number of the court always appeared and there was always a stamp containing the city, the name, the court and the division. While Mr Byrne had said that the court number was not in the middle at the top but was on the stamp, the objective evidence made it plain that notwithstanding the stamp a genuine summons had the court number in the top middle and that was simply not present. A photocopy had been produced to the Secretary of State so it was more difficult to say if it had been tampered with. The Danish report indicated that, according to a western embassy, whilst summonses were always filled out by hand only the copy was served to the summoned, but Mr McIlvride questioned whether that would refer to photocopies. For all these reasons the Secretary of State was entitled to take the view that a new Immigration Judge could not place any weight on the new documents without independent evidence to support their authenticity or provenance. Even if, contrary to that, it was thought that another Immigration Judge might give credence to them that could only mean that the evidence was that the petitioner had

been summoned for some unknown reason to attend a court 99% of whose business was drug crime in circumstances where even if that were true it must be taken in light of the original Immigration Judge's findings that for quite independent reasons the petitioner's account of his home life and background and the mechanics of departure from Iran would be treated as incredible. The question of the sheep, the family background and the payment of the agent were independent of whatever view was taken of the warrant so the Secretary of State reasonably took the view that having additional material before another judge would not create a realistic prospect of success.

[55] As far as the risk of questioning on return was concerned, it could be seen from paragraph 2 of 6/1 of process, the agent's letter, that it was being claimed, under reference to the cases of *R C* v *Sweden* ECtHR 41827/7 and *S B* v *SSHD* [2009] UK AIT 00053 that the appellant would be questioned on return in terms of the arrest warrant which was outstanding and that his asylum claim would be discovered. He would thereafter be at real risk and there was no evidence to show that he would lie on return. He could not be expected to lie and modify his behaviour on return.

[56] The background however was that the Immigration Judge had held that there was no arrest warrant and his account was fabricated and if so the warrant would not give rise to any risk at all. On one view that would be an end of the matter. Even if the summons and citation were considered to be genuine, the objective evidence did not indicate that this petitioner would be at any particular risk. Mr McIlvride referred me to *S B* and in particular to paragraphs (ii) and (iii) of the rubric.

[57] At paragraph 49 of the determination reference is made to the penalty for a past illegal exit in the following terms:

"49. So far as concerns the position prior to June 2009, we do not consider that the evidence taken as a whole indicates that the mere fact of a past illegal exit is viewed by the authorities in Iran as a reason to do anything other than impose a relatively modest fine on the individual concerned. If it had been otherwise, we consider that this would have been noted by the non-governmental sources consulted by the Danish Immigration Service and would also have become known, through local informants, to one or more of the international human rights organisations closely monitoring events in Iran. We do not know what is (are) a source(s) on which Dr Kakhki (and his colleague) relies (rely) for his account and we note that he himself does not seek to address its apparent conflict in at least some respects with the descriptions given in other sources. That is in contrast to many other observations set out in his report which are squarely based on established sources".

[58] Paragraph 50 goes on as follows:

"50. In any event, we note that even on Dr Kakhki's account, whether or not an individual taken before this court suffers adverse consequences depends on the outcome of the court's investigation. It is apparent from the questions Dr Kakhki describes as being asked by those who run this court that they consider that the mere fact of illegal exit is not enough to result in adverse treatment. Those questions indicate that they are looking for persons who have a particular profile, criminal and/or political".

[59] It was submitted that there was nothing in this case beyond the question of illegal exit to make the petitioner of any interest to the Iranian authorities. The Secretary of State was well founded in deciding that there was no realistic prospect of another Immigration Judge deciding that if he was returned there would be a real risk of

persecution or article 3 ill-treatment. The decision was neither unreasonable nor irrational and the petition should be dismissed.

Reply for the petitioner

[60] As far as the question of an error of law was concerned, Mr Byrne submitted that the Secretary of State placed reliance on the decision of the Immigration Judge but could not have it both ways. It could not be regarded as a starting point without being subject to some sort of analysis. A fundamental finding about credibility was flawed but Mr Byrne was not asking this court to make any finding to that effect. The reality was that the Immigration Judge was referring to criminal service. The arrest warrant may not have covered the same ground as the summons. There was no evidence that it was from a criminal court and that could be said to be an error of law on the Immigration Judge's part. A number of fresh claims were looked at in the context of original judgments and those had to be looked at with all of their flaws. *YH* was distinguishable. At paragraphs 42 and 43 Carnwath LJ said that the Secretary of State was right to approach the evidence with extreme scepticism but that was because the criticism of the appellant was so strong and his claim made no sense. The underlying incredibility justified an approach which was sceptical. The Secretary of State could not avoid the conclusion of Lord Bracadale in *Abul Hassan* that all that was required of the documents was apparent credibility. The conclusions in *T N (Uganda)* could not be avoided. Could it really be said that no person could accept the documents? Reference had been made to the COIS report at paragraph 11.06 to the effect that 99% of the work of the Revolutionary court was drug related and there seems to be an imputation therefore that if the petitioner was wanted it was for drug offences. This was a new and speculative criticism and one for which there was no evidence. The

petitioner had never been accused of this by the Secretary of State. The documents were entirely consistent with his claim of imputed political opinion.

[61] As far as the copy summons was concerned, Mr McIlvride appeared to be suggesting that perhaps the summons was a copy of a copy but that was not Mr Byrne's reading of the Secretary of State refusal letter which made the point that it was not an original summons. That was not a good point because paragraph 9.2 of the Danish report clearly indicated that only a copy would be produced.

Discussion

[62] If I may deal with the last point first, it is more likely, I think, that what is being referred to as a copy summons would not be a photocopy but it seems to me that an Immigration Judge might reasonably take a different view of that and if that were the only criticism of the documents which were submitted then I would be minded to find in favour of the petitioner.

[63] Obviously however, that is not the case.

[64] At this stage it may be helpful if I deal with the question of any potential error of law on the part of the Immigration Judge. I respectfully agree with Mr McIlvride that this process is not a substitute for reconsideration on the basis of an error of law but I do not think that that was how Mr Byrne approached it. In considering fresh claims the Secretary of State is going to have a look at all the evidence in the round and to have regard to the findings of the original Immigration Judge. Where the criticisms of an appellant are trenchant and well founded then the more difficult it will be for him or her to satisfy the Secretary of State that another Immigration Judge will reach a different conclusion. The findings of the original Immigration Judge have to be looked at critically and with the anxious scrutiny which is axiomatic in these cases. I

do not consider that it is appropriate to limit the scrutiny of the original Immigration Judge's decision to questions of fact. If there has been an error of law the Secretary of State is entitled to take the view that another Immigration Judge will not make it again. An error of law, if identified, seems to me to be a matter which would be relevant for a petitioner to bring to the attention of the court in a case such as this.

[65] I think that the Immigration Judge has made an error of law in regarding the arrest warrant to which she refers as being a criminal one. There is no finding to that effect and she refers to no evidence which would entitle her to make such a finding. However, that is not an end of the matter since there were a number of other findings adverse to the credibility of the petitioner to which I will return in due course.

[66] I am prepared to approach this case on the rather wider basis set out in *Y H* and *I M*, rather than on the *Wednesbury* basis, in view of the concession made by Mr McIlvride. Logically, it seems to me that the first step is to look at the two new documents which have been submitted. Following *A K (Afghanistan)* and *Abul Hassan* I ask myself whether these documents are apparently credible. Are they intrinsically incredible or can I say that no person could reasonably accept them? In making this assessment I take account of the information contained in the Danish Immigration Service report which describes summonses. I also take account of the circumstances in which these documents are said to have come into the possession of the petitioner and the apparent delay in their being submitted to the Secretary of State. The onus is on the petitioner to satisfy the Secretary of State and ultimately me, as to the genuineness of these documents. In my opinion he has failed to do so. In the first place they have no properly explained provenance. Saying that they come from a friend of a friend is unsatisfactory. The delay is unexplained. More crucially however is the form of the documents themselves. Leaving aside the question whether a

photocopy would be served and accepting for the purposes of the arguments that Mr Byrne is correct when he says the case number has been put in the wrong place by the translator, there remains the difficulty that the number of the court is not written in the top middle but is apparently in the stamp. I do not regard that as a mere technicality, bearing in mind the apparent ease with which documents can be forged. In the whole circumstance I do not consider that any reliance can be placed on these documents at all and accordingly the petitioner's case fails to get off the ground. In any event, looking at the evidence as a whole and the treatment of it by the Immigration Judge I do not consider that even if the documents were to be considered as genuine there is any realistic prospect of another Immigration Judge finding in the petitioner's favour. While another judge would surely find, if the documents were genuine, that they related to the Revolutionary court, there would be no basis for holding that they related to political activities, given that 99% of the activities of that court are drug related. While Mr Byrne correctly stated that the Secretary of State had never accused the petitioner of being involved in drug related crime, it is a fact that that is what makes up the bulk of that court's work and it is for the petitioner to show that he is wanted for political activities. He has failed to do that. Whilst some of the criticisms of his credibility might not be made by another Immigration Judge (such as reference to the gestation period of sheep or the price of farm products) there remain the other inconsistencies to which I have already referred.

[67] In the whole circumstances the petitioner's claim so far as is based on these documents cannot succeed in my opinion.

[68] There remains the question of the claimed risk on return. Once again I find that the petitioner's claim fails. This is because the country guidance case of *S B* makes it plain that a return to Iran having illegally exited does not in itself give rise to any risk

of persecution or ill-treatment. The more the offences for which a person faces trial are likely to be reviewed as political, the greater the level of risk but in this case the petitioner has failed to discharge the onus of showing that there is any basis for thinking that he faces trial in connection with his father's political activities or anyone else's for that matter, including his own. The risk on return is linked inextricably to the question whether he has established that he is at risk of persecution for political reasons and his failure to establish the latter can only have one result.

Decision

[69] I shall repel the pleas in law for the petitioner, uphold the third plea in law for the respondent and dismiss the petition.