



Neutral Citation Number: [2007] EWHC 2910 (Admin)

Case No: CO/4036/2006

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/12/2007

Before :

THE HONOURABLE MR JUSTICE BENNETT

Between :

The Queen on the Application of
BASHIR JUMHA ALI ABO-JULLEDAH

Claimant

- and -

SECRETARY OF STATE FOR THE HOME
DEPARTMENT

Defendant

Mr N S Stanage (instructed by Tyndallwoods) for the **Claimant**
Miss D Sen Gupta (instructed by the Treasury Solicitor) for the **Defendant**

Hearing dates: 29 November 2007

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
THE HONOURABLE MR. JUSTICE BENNETT

Mr Justice Bennett :

1. On 12 July 2006 Collins J., it seems somewhat reluctantly, granted the Claimant permission to bring Judicial Review proceedings against the Defendant. He said:-

“While I recognise the force of the defendant’s contentions that the ‘new’ material is in many respects suspect (and the Libya Watch document clearly does not take the claimant’s case anywhere; the defendant’s reasons for disregarding it are correct), there is just enough to make it arguable that an appeal might succeed. Thus I am not prepared to reject this claim as being unarguable, but I can see considerable obstacles in the way of ultimate success. It needs expedition, but I make no specific time directions.”

2. The proceedings arise from the refusal of the Defendant in letters dated 16 November 2004 and 13 February 2006 to accept the Claimant’s further representations as a fresh asylum claim.
3. The background is as follows.
4. The Claimant is a Libyan citizen. On 13 January 2003 the Claimant, together with 4 dependants, arrived in the UK as a tourist. He was granted leave to enter for 2 months. In March 2003 he claimed asylum which on 1 May 2003 was refused. He appealed.
5. He told the Adjudicator that on arrival he bought 2 mobile telephones for himself and his wife and let his family in Libya know the numbers. On 27 February 2003 he received a telephone call from his cousin who was in Malta at that time. His cousin told him that the police had raided his house and had arrested his father, that the leader of his cell had also been arrested, and that the Claimant should not return. After four days he received another telephone call from the same cousin who had then moved to Tunisia. This cousin told him that the authorities were visiting his house on a daily basis and that his father had been released.
6. The Claimant told the Adjudicator that his father had not spent a full day with the authorities and that he had not been in touch with his father because he feared this might get them into some trouble.
7. On 4 March 2003 he claimed asylum in the UK. The Claimant said he feared that if he returned to Libya he would be mistreated due to his political opinions and activities and his rights under Article 2 & 3 ECHR would be infringed. Specifically he feared persecution from the Libyan authorities because he as a member of the political group Hezbut Taria. He claimed to have been involved with this group for 18 months prior to his coming to the UK and that his duties involved distributing political literature.
8. By letter dated 1 May 2003 the Defendant rejected the Claimant’s asylum claim. Broadly speaking his reasons were these. First, the Defendant did not accept that the Claimant was a member of the group because he was unable to name its leader or state where the party was based. Second, at the time of the Claimant’s departure from the UK, the Libyan authorities must have been unaware of the Claimant’s activities

because he was allowed to leave the country freely. This supported the belief that the Claimant was not a member of any political party. Third, the Claimant accepted in interview that he kept no documents at home. Thus, as the authorities had no reason to suspect him and as no incriminating documents were found at his home, the Defendant had no reason to believe the Claimant was of any adverse interest to the Libyan authorities.

9. On 23 October 2003 the Claimant says that on 20th October 2003 he received a third telephone call from his cousin who was once again outside Libya. His cousin told him on this occasion that his business had been closed down and the security forces had arrested his partner. He also told him that two other neighbours had been arrested and these turned out to be the follow members of the Claimant's cell.
10. The Claimant appealed. His appeal was dismissed by the Adjudicator on 1 October 2003. As to the asylum claim the Adjudicator did not find the Claimant to be a credible witness "in the core of his claim". Between paragraphs 40 and 50 inclusive the Adjudicator made adverse finding as to the credibility of the Claimant. The criticisms were trenchant and, I have to say, devastating to the Claimant's case. Thus the Adjudicator did not accept the core of the Claimant's case i.e. found that he had not been involved in any political party or group. He found that the Claimant would be of no interest to the Libyan authorities if he returned.
11. The adjudicator also rejected the Claimant's human right's claim under Article 3 ECHR.
12. The Claimant appealed. He was refused permission to appeal the adverse credibility findings but granted leave on a discrete point arising by reason of Hassan [2002] UKIAT 62. On 25 May 2006 the Immigration Appeal Tribunal dismissed his appeal, holding that E Libya [2003] UKIAT 200 had superseded Hassan regarding country conditions.
13. On 7 September 2004 the Claimant's solicitors wrote to the Defendant enclosing certain documents requesting him to reconsider his decision in the light of "this new evidence".
14. The enclosed documents were as follows:-
 - a) A document dated 28 May 2004 from Libya Watch for Human Rights. This document purported to "confirm" that the Claimant was a political activist and that his activities had been discovered by Libyan security. It then gave general details of the Libyan's regime "gross violation" of human rights. Before me reliance on this matter was expressly abandoned by Mr Stanage, counsel for the Claimant.
 - b) An envelope posted in Malta marked 28 May 2004, addressed to the Claimant at his address in Bury. Enclosed was a document in Arabic, which was translated into English in October 2004. It is dated 16 March 2004. It is addressed to the Claimant's father. It sets out the Claimant's name, date of birth and ID number. It purports to come from the "Home Security Office" of the Great Socialist People's

Libyan Arab Republic. It is headed: "He who Joins or Favors a Party is a Traitor". The body of the document reads as follows:-

"After reviewing case file number (12650) of year 2003, known by the Freedom Party Organization in which the above mentioned person is a leading member, the Court of Revolution Security convicted him according to the article (206) of the Punishments Code issued in 1975 and article number (207) of the same code number 71 issued in 1972; based upon that the Court of Revolution Security has issued its sentence, in his absence, of life imprisonment because he is a member of a group of lost dogs who oppose the Revolution of the Great Conqueror and its leader. Since he escaped out of the country, the Court of Revolution Security is going to confiscate all his physical possessions that are of any value and that may help him in his stay outside the country. Therefore, the Home Security Office requests your attendance immediately to its quarters located in Jamaherriya Street in Tripoli with a list of all of his possessions and to sign a guarantee to hand in your son or to inform us of his returning back. Note that if you fail to comply you will be faced by severe punishment.

This is to be aware of, acknowledge, and execute.

Go forward as the strife for the revolution continues."

- c) An envelope posted in Malta, marked 21 July 2003 addressed to the Claimant in Manchester. Enclosed was a document dated 22 February 2003 addressed to the Claimant's father in respect of the Claimant. The document describes itself as a "Fetching and Searching Order". The body of the document reads:-

"You are requested to search the house, and bring the named Bashir Juma Abo Jlida to the court's quarters located in Jamaherriya Street in Tripoli; in any attempt to flee, you will be faced by severe punishment.

Go forward as the strife for the revolution continues."

- d) A letter dated 7 June 2004 allegedly from the Claimant's father to the Claimant. It reads:-

"In the Name of God the Most Gracious the Most Merciful

My best Greetings,

How are you and how are your family members and how are Noor and Rana and Mohamed? I hope you are all well and fine. I would like to inform you that all the family members are in good health. But the security men are still coming to me and they asked for a personal photo of you. They are also still

requesting me to go to the security zone in Souk Aljuma. So do not come back because the situation for you is not good and extremely dangerous because of your political activities which are now known to the security forces. In the end I would like to send you and your family my warmest greetings.”

15. As I have said, on 16 November 2004 the Defendant rejected the claim. The letter correctly set out Paragraph 353 of the Immigration Rules (HC 395, as amended by HC 1112). The relevant parts are as follows:-

“3. The points raised in your submissions have not previously been considered, but taken together with the material which was considered in the letter giving reasons for refusal dated 1 May 2003 and the appeal determinations of 5 December 2003 and 25 May 2004, they would not have created a realistic prospect of success.

4. You have submitted a letter from Libya Watch dated 28 May 2004. It is believed that if your client had believed that a letter from this organisation would help his claim, that he would have endeavoured to attain it at the earliest possible opportunity. The fact that the letter dated 28 May 2004 follows very shortly after the refusal of your client’s appeal to the tribunal adds doubts of credibility to your client’s claim. Furthermore it appears to be a general letter which has only been amended with his personal details. The letter also states that your client left Libya because of his fears of persecution however your client clearly stated in his asylum interview that he came here for tourism when he was asked why he came to the United Kingdom. In our view this letter is being used to embellish your client’s claim. Furthermore the contents are not specific to your client and merely give a brief summary of Libya’s regime.

5. The other documents from Libya submitted have been sent via either Malta or Tunisia. Your client stated that following the purchase of a telephone he gave his number to his family in Libya and was in contact with them. It is therefore not believable that documents of such a serious nature would not have been sent to him directly.

6. No explanation has been given as to why the document dated 22 February 2003 was not submitted earlier. Furthermore it is not believed that if the authorities in Libya were indeed so interested in your client that he would have been allowed to leave the country on his own passport just a month earlier. As your clients has clearly stated that he has been in contact with his family there is no explanation why this document could not have been submitted earlier. It is even less credible that having asked for your client’s presence in February 2003 that the authorities took no further action until March of this year.

7. The alleged court documents are not deemed to corroborate your client's claim and are not accepted as genuine documents. Neither documents are printed on official letter headed paper and the name of the political party does not correspond to that given by your client. Furthermore your client previously stated that he was informed by telephone on the 20 October 2003 that two fellow members of his cell had been arrested. If this is true we do not find that it would be unreasonable to have evidence to support this.

8. Although the documents themselves are new the core of your client's claim remains the same and this was dismissed by both the adjudicator and the chairman. The adjudicator concluded: "Having already found that I do not accept that he is of interest to the authorities, because he has not been involved in any political group as claimed, I do not see that he would be on any interest to the authorities on his return."

9. When considering your client's case the adjudicator concluded: "I did not find the Appellant to be a credible witness in the core of his claim. I find that there are inconsistencies, that his account is implausible and that there are far too many fortunate coincidences." Furthermore the adjudicator concluded that there would be no breach of article 3 if your client were to be returned to Libya.

10. The timing of your representations just after our service of IS 151A's, informing your client and his family that they are liable to detention and removal, would suggest that these submissions have merely been made to delay removal action. Your client has had these documents for some time, confirmed by the post marks on the envelopes submitted. This further undermines the credibility of your client's claim as if he truly believed his life was still in danger he would have submitted them at the earliest possible opportunity, particularly as he instructed a different firm of solicitors in June of this year.

11. For the reasons given above we do not believe that article 3 would be breached if you client was returned to Libya.

12. As we have decided not to reverse the decision on the earlier claim and have determined that your submissions do not amount to a fresh claim, you have no further right to appeal.

13. The asylum claim has been reconsidered on all the evidence available, including the further representations, but we are not prepared to reverse our decision of 1 May 2003 upheld by the independent adjudicator on 5 December 2003 and upheld by the Immigration appeal Tribunal on 20 May 2004."

16. After some inconclusive correspondence between the Claimant's solicitors and the Defendant, on 2 December 2005 they wrote again enclosing further documents described as "new evidence", as follows:-

- a) A document dated 28 December 2004 from the Revolutionary Committee's Coordination Office, headed "Summons", and directed to the Claimant's father. It reads as follows:-

"Greetings of the Great Al Fateh Revolution

After consulting the name-lists of stray dogs living abroad and after due investigation it has become clear beyond any doubt that your son Bashir Jumaa Abo-Jelledah, born in Tripoli on 5 September 1966, living in Ain Zarah District, Aldoji Area, is one of the stray dogs living abroad and is accused of distributing leaflets and taking part in a partisan organization called Hizb ul Tahrir. His views and ideology which oppose the ideologies and thoughts of the Great Al Fateh Revolution are punishable under Revolution Protection Act 71 (20 May 1972), and under the decision of the Revolution Leadership Council regarding the protection of the revolution dated 11 December 1969 which prohibits all ugly partisan activities, and according to the Green Book's saying "he who joins a party is a traitor", your son is considered a traitor.

The Revolution Leader's instructions urge all guardians to disband all familial relationships that link them to traitors who deserted the Great Al Fateh Revolution and its achievements.

Therefore, the Revolutionary Committee of Ain Zarah asks you in your capacity as the father of the aforementioned person to present yourself to the HQ of the Revolutionary Committee of Ain Zarah in no later than a week from your receipt of this letter to swear the oath of support to the revolution and cut relationships with traitors as well as provide us with needed information and details about your aforementioned son. You should refrain from contacting him or providing him with any material or moral support. Otherwise you will be considered sympathetic with him. If you do not attend within time, you will be subjected to legal questioning.

Forward we move and the revolutionary struggle continues."

- b) A document from the Libyan Ministry of Justice in Tripoli, dated 11 July 2005, headed "Summons", and directed again to the Claimant's father. It reads:-

"Greeting of the Great Al Fateh Revolution

You are requested to present yourself at the HQ of the Internal Security Service at Al Jamahiriyya Street, Tripoli as soon as

you have received this summon, for a matter related to your son:

Bashir Jumaa Abo-Julledah, Born 5 September 1966.

Otherwise, necessary measures will be taken against you.

Forward we move, and the revolutionary struggle continues”

- c) An unsigned, undated letter from Khalid Abdulsalam Assuaie. He had left Libya in November 2003 for the UK, was granted asylum in October 2004, and met the Claimant in December 2004 in a mosque in Manchester. In his letter he said he knew the Claimant from childhood. His uncle was a neighbour of the Claimant and his family in Libya. He said he had seen Libyan security talking to the Claimant’s father and bother. His cousin told him that they were looking for the Claimant.
 - d) An unsigned, undated letter from Salem Ali Abushima. He had come from Libya to the UK and in June 2004 was granted asylum. He says he had known the Claimant from childhood as neighbours. He too understood that the Libyan authorities were looking for the Claimant. He saw them at the Claimant’s home interrogating the Claimant’s father.
17. In the same letter the Claimant’s solicitors said that they accepted the blame for the delay in submitting the documents. The letter said:-
- “We must apologise for the delay in submission of these documents to you. We were first aware of the Summons received by our client in March 2005 shortly after it was received by our client. In addition, when our client attended this office on the 9 September 2005, he gave to us a document which he had received the previous month which is the Summons issued on the 11 July 2005. We obtained a translation before the end of September and there has then been a considerable delay in preparation of these representations. Responsibility for the delay since March 2005 therefore rests with this firm.”
18. Again, the letter is part of the “fresh claims” made by the Claimant.
19. On 20 December 2005 the Claimant’s solicitors submitted yet further documents, namely an Amnesty International Briefing of 20 October 2005. It drew attention to a Libyan citizen who had returned voluntarily to Libya in July 2005 having lived in the UK since 1981 and having received assurances from the Libyan Authorities that he would not be at risk. Shortly after his arrival he was detained and his family do not know his whereabouts. The letter also submitted excerpts from the Libyan media related to an opposition conference in London in June 2005.
20. On 13 February 2006 the Defendant replied rejecting the claim. It correctly set out Paragraph 353 of the Immigration Rules. The relevant passage reads as follows:-

“6. The points raised in your submissions have not previously been considered, but taken together with the material which was considered in the letters giving reasons for refusal on 1 May 2003 and 16 November 2004 and the appeal determinations of 5 December 2003 and 25 May 2004; they would not have created a realistic prospect of success.

7. With your letter of December 2 2005 you have provided 2 documents, with translations, which are said to be summonses. One is dated 28 December 2004 and it is noted that you were aware of its existence in March 2005 and the other is dated 11 July 2005 and came into your possession on 9 September 2005 but you have only just thought fit to provide them as evidence. It is noted that you take responsibility for the delay in their presentation.

8. The summons dated 28 December 2004 asks that your client’s father attends the HQ of the Revolutionary Committee of Ain Zarah to provide information in respect of his son. The document states that he is accused of distributing leaflets and taking part in an organisation called Hizb ul Tahrir and states that he is considered a traitor for joining a party. The summons dated 11 July 2005 merely requests that your client’s father presents himself at the HQ of the Internal Security Service for a “matter related to your son” but fails to provide any further detail.

9. We have given due consideration to these documents and have considerable doubts as to their authenticity. It is noted that the headings on the documents are noticeably different in that on the document dated 11 July 2005 it is more indistinct and lacks the script beneath. On the document dated 28 December 2004 there is no indication as to the identity of the signatory.

10. We note that your client states he received the documents in March and August 2005. We find it incredible that the documents were issued over 2 years after your client left Libya and further consider that in view of the apparent ease in which your client received the documents via France and Malta they could have been presented earlier.

11. In any event your client’s alleged membership and activities within Hizb ul Tahrir were considered both in the initial refusal of his asylum claim on 1 May 2003 and in the determination of his appeal on 23 February 2004. It is noted in the refusal letter that your client claimed that he had been a member for 18 months but was unable to name the leader or where the party

was based. (Paragraph 8). In view of his lack of knowledge it was considered that he was not a member of this group.

12. In the Determination of his appeal your client stated in his evidence he was a member of Hizb al Tahrir and that he used to distribute leaflets on their behalf. The adjudicator noted that your client had left Libya freely using his own passport with a valid visit visa for the United Kingdom. He found your client not to be a credible witness in the core of his claim. He found his account implausible with too many fortunate coincidences (Paragraph 40). He stated in paragraph 52 that he did not accept that he was of interest to the authorities because he had not been involved in any political group as claimed and he did not see that he would be of any interest to the authorities on his return to Libya.

13. You have also provided two typewritten statements (undated and unsigned) said to be from Khalid Abdulsalam Assuaie and Salem Ali Abushima who have been granted refugee status in the United Kingdom. Both these persons claim to have been neighbours of your client who have known him since childhood and claim to have witnessed the authorities visiting your client's home and talking to his father. You have provided no evidence that these persons were neighbours of your client and knew him since childhood. The documents are unsigned and undated and give no indication of an address of origin or proof of identity of the writers. No evidence is given as to the reason of such alleged visits by security agents other than that they were looking for your client. We find it incredible that after the time that has elapsed two persons should now be found, both of whom reside in the North West of England who both met your client shortly after having been granted Refugee status and who claim to have been neighbours of your client in Libya who witnessed visits to his home by security personnel. In all the circumstances we do not attach any credence to these documents.

14. You state that an international opposition conference took place in London at the end of June 2005 and was followed by a demonstration outside the Libyan Embassy the following Monday that that this has attracted international media attention. You state that condemnations have been made in public on behalf of the Libyan regime. You state that you have two clients of Libyan origin who were detained on arrival in Libya following the conference and demonstration and are aware of two other British citizens who returned to Libya who are in detention. Whilst these incidents may well be accurate we do not consider they have any bearing on your client's case and we do not consider them to be relevant.

15. With your letter of 20th December 2005 you have submitted 2 documents, a copy of a Media Briefing from Amnesty International concerning the Deportation of terror suspects to various nations including Libya and a selection of excerpts from the Libyan Media relating to the Opposition Conference held in London in June 2005 referred to above.

16. We consider that these documents are subjective by nature and have no bearing of your client's case. Whilst some of the assertions made in the documents may well be accurate it is noted that your client has not been considered to be a terror suspect nor has it been accepted, as it is stated in paragraph 10 above, that your client has been involved in any political group in Libya or that he would be of interest to the Libyan authorities.

18 (sic). As it has been decided not to reverse the decision on the earlier claim and it has been determined that your submissions do not amount to a fresh claim, your client has no further right of appeal.

19. Careful consideration has been given as to whether your client should qualify for Discretionary Leave in the United Kingdom but your client has not raised any issues which would give rise to such a grant of leave.

20. The asylum claim has been reconsidered on all the evidence available, including the further representations, but we are not prepared to reverse our decision of 1 May 2003 upheld by the independent adjudicator on 23 December 2003 and upheld by the Immigration Appeal Tribunal on 25 May 2004."

21. On 9 November 2006 the Court of Appeal delivered judgment in WM(DRC) v SSHD and SSHD v AR (Afghanistan) [2006] EWCA Civ 1495. Both cases raised the same issues in relation to the proper role of the Secretary of State and of the court in its supervisory role in fresh claim cases.
22. As to the court's supervisory role Buxton LJ, with whose judgment Jonathan Parker and Moore-Bick LJ agreed, said (at paragraph 10) that the court must address the matters which he set out at paragraph 11:-

"First, has the Secretary of State asked himself the correct question? The question is not whether the Secretary of State himself thinks that the new claim is a good one or should succeed, but whether there is a realistic prospect of an adjudicator, applying the rule of anxious scrutiny, thinking that the applicant will be exposed to a real risk of persecution on return: see paragraph 7 above. The Secretary of State of course can, and no doubt logically should, treat his own view of the merits as a starting-point for that enquiry; but it is only a starting-point in the consideration of a question that is distinctly

different from the exercise of the Secretary of State making up his own mind. Second, in addressing that question, both in respect of the evaluation of the facts and in respect of the legal conclusions to be drawn from those facts, has the Secretary of State satisfied the requirement of anxious scrutiny? If the court cannot be satisfied that the answer to both of those questions is in the affirmative it will have to grant an application for review of the Secretary of State's decision."

23. As to the task of the Secretary of State under rule 353 of the Immigration Rules, Buxton LJ said at paragraphs 6 and 7 as follows:-

"6. There was broad agreement as to the Secretary of State's task under rule 353. He has to consider the new material together with the old and make two judgements. First, whether the new material is significantly different from that already submitted, on the basis of which the asylum claim has failed, that to be judged under rule 353(i) according to whether the content of the material has already been considered. If the material is not "significantly different" the Secretary of State has to go no further. Second, if the material is significantly different, the Secretary of State has to consider whether it, taken together with the material previously considered, creates a realistic prospect of success in a further asylum claim. That second judgement will involve not only judging the reliability of the new material, but also judging the outcome of tribunal proceedings based on that material. To set aside one point that was said to be a matter of some concern, the Secretary of State, in assessing the reliability of new material, can of course have in mind both how the material relates to other material already found by an adjudicator to be reliable, and also have in mind, where that is relevantly probative, any finding as to the honesty or reliability of the applicant that was made by the previous adjudicator. However, he must also bear in mind that the latter may be of little relevance when, as is alleged in both of the particular cases before us, the new material does not emanate from the applicant himself, and thus cannot be said to be automatically suspect because it comes from a tainted source.

7. The rule only imposes a somewhat modest test that the application has to meet before it becomes a fresh claim. First, the question is whether there is a realistic prospect of success in an application before an adjudicator but not more than that. Second, as Mr Nicol QC pertinently pointed out, the adjudicator himself does not have to achieve certainty, but only to think that there is a real risk of the applicant being persecuted on return. Third, and importantly, since asylum is in issue the consideration of all the decision-makers, the Secretary of State, the adjudicator and the court, must be informed by the anxious scrutiny of the material that is

axiomatic in decisions that if made incorrectly may lead to the applicant's exposure to persecution. If authority is needed for that proposition, see per Lord Bridge of Harwich in *Bugdaycay v SSHD* [1987] AC 514 at p 531F."

24. I now turn to Counsel's submissions.
25. Mr Stanage based his engagingly concise submissions on his recent skeleton argument and paragraphs 15 (c) to (i) of the Detailed Statement of Grounds. He abandoned (b), in my judgment rightly.
26. The foundation of his argument is that the Defendant had not applied the two stage test in WM. He had failed to ask himself the question "could (as a realistic prospect) an adjudicator reasonably find on the evidence that the Claimant would be at risk of persecution on return to Libya?" The Defendant must not decide the matter on his own view but rather ask objectively whether an Adjudicator (now, of course, an Immigration Judge) might allow the appeal in the light of the new evidence.
27. Furthermore, it is submitted that the Defendant failed to give the material anxious scrutiny. Both letters, it is said, read as though the Defendant has simply rubbished the material, and failed to scrutinise it anxiously.
28. Specifically Mr Stanage referred to the various documents, which I shall take in turn by reference to the above sub-paragraphs.
29. c) and d) This complaint relates to the documents referred to at paragraph 14(b) and (c) above. Mr Stanage makes three points. First, the documents were posted with an official letter head, contrary to paragraph 7 of the Defendant's letter of 16.11.04. The logo could be seen on the documents in Arabic. Second, the Defendant had described them in para 7 of his letter of 16.11.04 as "alleged court documents" whereas it was plain on their face that each came from the "Home Security Office". Third, the name of the political party in the document of 16.3.04 given as "The Freedom Party Organisation" did not correspond to that given by the Claimant, i.e. "Party of Freedom". The Defendant failed to have regard for the fact that translations into English may differ.
30. e) The Defendant was not reasonably entitled to state at paragraph 8 of his letter that "the core of your client's claim remains the same". It was an irrational approach given that the document of 16.3.04 refers to the Claimant being convicted and sentenced to life imprisonment in absentia.
31. f) This sub-heading concerns the documents described at paragraph 16(a) and (b) above. It is submitted that it was irrational for the Defendant to say at paragraph 9 of the letter of 13.2.06 "the headings on the documents are noticeably different". The headings, it is said, would be different since the document of 28.12.04 emanated from the "Revolutionary Committees' Co-ordination Office" and the document of 11 July 2005 from the Libyan Ministry of Justice in Tripoli. Further, the lack of any indication of the signatures [see paragraph 9 of the letter] could only be relevant if the signatories routinely identified themselves in the text after the signature. But there was no evidence that such a practice prevailed.

32. g) The Defendant erred in law, Mr Stanage submitted, in that he relied upon the irrelevant observation that the Claimant was asked to leave Libya without difficulty, using his own passport because the Claimant's claim has at all times turned on him being at risk of persecution by reason of events that took place after he left Libya.
33. h) This sub-heading concerns the unsigned statements – see paragraph 16 (c) and (d) above. It is submitted that the Defendant was perverse (at paragraph 13 of his letter of 13.2.06) to say that the Claimant had provided “no proof of identity of the authors of the two unsigned statements”, whereas included in the documents submitted were documents showing that each had been granted asylum in the UK in June and October 2004. It was further perverse to say that the Claimant had provided no evidence that they were neighbours and/or had known him since childhood, since that evidence was in their statements.
34. i) and j) These concern the documents referred to at paragraph 19 above which are commented upon by the Defendant at paragraphs 14 to 16 of his letter of 13.2.06. It is said that the Defendant irrationally ignored the evidence of mistreatment meted out to those returned to Libya voluntarily.
35. Ms Sen Gupta, for the Defendant, submitted that the Defendant did in fact apply the tasks as laid down in WM, albeit that the decision letters predated that decision. The Claimant had not provided any corroborative evidence of the validity of the documents submitted, and particularly so after the rejection (and its terms) contained in the Defendant's letter of 16.11.04. The Claimant ought to have supplied (or there was nothing to prevent him from supplying) an expert's report as to whether the documents from the Libyan authorities were consistent with those routinely and authentically issued. The letters, moreover, make detailed criticism of the timing of the documents and when they were submitted to the Defendant. The criticism of the witness's statements were reasonable. In the round, Ms Sen Gupta submitted, the Defendant had asked himself the correct questions and was not irrational in the way he answered them.
36. She referred me to the decision of Collins J in R (in the application of Naseer) v SSHD [2006] EWHC 1671 Admin, given on 21 June 2006. She submitted that the purport of this decision and its dicta were still good law post WM; a proposition which Mr Stanage did not controvert in reply.
37. In Naseer the claimant came from Pakistan. His claim in the UK for asylum was rejected. The Immigration Judge did not believe his account as to what led him to claim asylum. He concluded that the claimant's account was a fabrication. The SSHD rejected his fresh claim. Judicial review proceedings followed, which Collins J dismissed.
38. Having at paragraph 21 of his judgment set out paragraph 353 of the Immigration Rules, Collins J said at paragraphs 22 to 24 inclusive 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.

23. He knows, and the appellate authority has confirmed that documents which appear to come from official sources in some countries, including Pakistan, can be obtained by bribery or other means and are not necessarily to be taken at face value. The Tribunal decided that as long ago as February 2002 in the starred decision of Tanveer Ahmed v Secretary of State [2002] UKIAT 00439. That was a decision of the Tribunal, presided over by myself when I was President. What the Tribunal said in that at paragraph 31 was this:

“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.”

It is to be noted that the case of Tanveer Ahmed in fact concerned an FIR and an arrest warrant from Pakistan.

24. Again, the fact that it is easy to obtain such documents, and they may look genuine but may well not be, is not something which can be assumed in every case. It is necessary, as Tanveer Ahmed itself indicated, to look at all the evidence in the round and to look at the whole case”

39. The judge then analysed the defendant’s decision, commented upon the absence of any expert evidence, and dismissed the claim.
40. In my judgment, having carefully considered the submissions, I conclude that the Claimant has failed to make out his case. Accordingly the claim will be dismissed. My reasons are as follows.
41. On a careful reading of the two decision letters from the Defendant I am satisfied that the Defendant did ask the correct questions, did give the matter anxious scrutiny, and was not irrational or perverse. The Secretary of State is not required to suspend his own belief having examined the material, and operate in a sort of vacuum. He is entitled to treat his own views as a starting point. But, if having given the matter anxious consideration, he is driven to the conclusion that there is no realistic prospect of success of an Immigration Judge concluding that the applicant will be exposed to a real risk of persecution, in my judgment there is no reason why he should not express himself robustly, if necessary casting doubt on the validity of documents and expressing incredulity about evidence tendered.
42. The Claimant’s case is that, although he was conducting anti-government activities prior to him leaving Libya in January 2003, his activities only came to the attention of the authorities after he left and thus there is nothing surprising about him (and his family) being allowed to leave Libya. However, in my judgment the comments of the Adjudicator at paragraph 41 of his decision is very pertinent. Despite the fact that the Claimant had been active in his cell for 18 months prior to his departure yet the Libyan authorities only found out about his activities very shortly after he left, is indeed “the major coincidence”.
43. The statements of Mr Assuaie and Mr Abushima, if taken at face value, are equivocal as to precisely when the Libyan authorities came to the Claimant’s home. Neither say whether it was before or after he left Libya. Neither make any reference to the Claimant leaving Libya. Both statements can be read as undermining the Claimant’s case i.e. that the Libyan authorities came to his home looking for him on occasions prior to his departure. If any credence can then be given to that evidence it makes the unimpeded departure of the Claimant from Libya even more difficult to understand.
44. The Adjudicator, it seems to me, made a telling point at paragraph 44 where he said:-

“I have also noted that despite this organisation supposedly being so secret the Appellant’s cousin is supposed to have told the Appellant when he rang him the first time on 27th February 2003 to say that his house had been raided and his father arrested that he also told him that the leader of the group had been arrested. The point about this is that even if the Appellant’s cousin knew the name of the leader of the group why would he know that he was any way connected to the

Appellant, bearing in mind the secrecy with which the Appellant said the group operated. Following on from this the cousin is also supposed to have told the Appellant on 20th October 2003 (coincidentally close to the hearing date) that the other two members of the cell had been arrested. This of course further begs the question as to how the Appellant's cousin would know both that these people had been arrested and that their arrest would be of interest to the Appellant."

45. The first document, in point of time, is the document is dated 22 March 2003 which was submitted in September 2004 to the Defendant. But this document, on the Claimant's own case, was received by him in July 2003. No mention of it was made at all before the Adjudicator or before the IAT Judge in seeking permission to appeal against the credibility findings. It was only produced on 7.9.04, 5 days after the service of IS 151As informing the Claimant that he and his family were liable to detention and removal. No explanation is anywhere forthcoming as to why this document was not submitted to the Adjudicator. Thus, it is a perfectly permissible inference to draw that this document may well have been manufactured to lend credence to the Claimant's case.
46. The document of 16.03.04 purports to give very serious news i.e. that in his absence the Claimant had been convicted and sentenced to life imprisonment. Yet, despite this apparently important information being received by the Claimant in May 2004 he waited almost 4 months before submitting it, and again only after the service of the form IS 151A. It is also permissible to query the authenticity of the document on the ground that it was posted in Malta. On the Claimant's own case the Libyan authorities knew he had left Libya and was probably in the UK. What then is to be gained, or avoided, by posting it in Malta?
47. As to Mr Stanage's criticisms I have to say that that they pale into insignificance when set against what I have said at paragraphs 45 and 46 above. In any event, the Claimant failed to submit any expert evidence that such documents were consistent with authentic documents issued by the Libyan authorities, particularly so when submitting yet further documents in late 2005. By then the Claimant was fully aware that in November 2004 that the Defendant was not convinced that the documents submitted in September 2004 were authentic. The Claimant thus did nothing to persuade the Defendant of the authenticity of the documents dated 22 March 2003 and 16 March 2004.
48. The next document is dated 28 December 2004, again sent from Malta in March 2005, but which was not sent to the Defendant until December 2005. The document dated 11 July 2005 was sent from France in August 2005 and was not sent to the Defendant until December 2005. The claimant's solicitors take the blame for the delay, which the Defendant "noted" at paragraph 7 of his letter of 13.2.06.
49. In my judgment the Defendant was entitled to comment, adversely to the Claimant, in relation to these 2 documents that they were issued over 2 years after the Claimant had left and could have been presented earlier.
50. Furthermore, in the light of the Defendant's considerable doubts as to the authenticability of the July 2003 and March 2004 documents, the Claimant took no

steps, by way of expert evidence, to seek to persuade the Defendant that the March and July 2005 documents were authentic.

51. Again, I have to say that when the contents of paragraphs 48, 49 and 50 above are seen against the criticisms of Mr Stanage, the latter are very insignificant. But, again, the Claimant could have allayed the Defendant's concerns if he had produced expert evidence as I have set out above.
52. As to the statements, I do not doubt that a Mr Khalid Abdulsalam Assuaie and a Mr Salem Abushima were granted asylum as per the Defendant's letters of 11 October 2004 and of 24 June 2004, respectively. But what the Defendant, as he effectively said at paragraph 13 of his letter of 13.2.06, needed to be persuaded of was that the letters which purported to come from them in support of the Claimant were in fact from them. Both letters had no address. Both were undated. Both were unsigned. Why? No explanation is given. Furthermore, the Defendant was entitled to express incredulity that quite by coincidence 2 persons, who claimed to know the claimant from childhood and who could allegedly speak of the Claimant's risk of persecution, should both reside in the same area of the UK as the Claimant.
53. Mr Stanage conceded that the documents from Amnesty and the press reports were of less importance. The Defendant at paragraph 16 of his letter of 13.2.06 was careful to note that "some of the assertions made in the documents may well be true". However, I agree with the submission of Ms Sen Gupter that those documents really add very little, if anything.
54. In my judgment the Defendant's decision letters a) ask the correct questions b) gave anxious scrutiny to the Claimant's case and c) are in no way irrational or perverse. The Defendant was fully entitled, having looked at all the circumstances including the findings of the Adjudicator, to conclude as he did.