

THE HIGH COURT

JUDICIAL REVIEW

[2016 No. 559 J.R.]

BETWEEN

MHC

APPLICANT

AND

THE REFUGEE APPEALS TRIBUNAL, MINISTER FOR JUSTICE AND EQUALITY

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 14th day of November, 2016

1. The applicant was born in 1984 and brought up as a Sunni Muslim. He arrived in the State in 2006 on a student visa, which expired in February, 2010. He was arrested in April, 2010, as a person unlawfully in the State. There then followed two significant developments in quick succession. Firstly the notion of applying asylum first occurred to the applicant in May, 2010 (despite having being in the State for four years). Secondly he formally converted to Ahmadiyya Islam, although he says in his affidavit that he had been interested in it during previous years. The certificate of conversion shows a date of 17th May, 2010.

2. His asylum claim was duly refused and he applied for a subsidiary protection on 22nd of August, 2012. That application was rejected ultimately by the tribunal on 15th June, 2016. The present application challenging that decision is out of time, but I will proceed for present purposes on the assumption that time would be extended (although I am not deciding that there are grounds to do so).

3. The substantial grounds test applies by virtue of s. 5 of the Illegal Immigrants (Trafficking) Act 2000, and I have had regard to the law in relation to that test including *McNamara v. An Bord Pleanála* [1995] 2 I.L.R.M. 125 as approved in *In re Illegal Immigrants (Trafficking) Bill 1999* [2000] 2 I.R. 360 at 395.

4. The Refugee Applications Commissioner made a detailed adverse finding regarding the applicant's credibility in relation to the matter of his religious conversion. That finding was basically accepted by the tribunal in rejecting the appeal. The first element of the finding was that the applicant originally stated that he officially converted in 2009, and that he so converted before he was arrested in April, 2010.

5. However during the asylum interview he stated that he officially converted on 17th May, 2010, after his arrest. It was put to him that his conversion seemed coincidental (seeing as how it only occurred after active steps were taken to deport him) and he replied that he did not convert in order to apply for asylum. The applicant failed to clarify the matter during a subsidiary protection interview claiming that he converted in 2009 although the documentation produced supported the date of 2010.

6. Secondly the commissioner was concerned that the applicant did not apply for asylum until May, 2010. In explaining the delay the applicant stated that it was only then that he realised the situation for Ahmadi was becoming worse. However he had previously stated that while in Bangladesh he saw the religious minority receive pressure from other communities.

7. The reasons why the commissioner considered that the alleged conversion was motivated by opportunistic reasons were:

- (i) that the applicant only converted after his arrest in April 2010 and a few days before he applied for asylum;
- (ii) the fact that the applicant was allegedly already an Ahmadi for a period of time but never applied for asylum and remained in Ireland illegally; and
- (iii) the fact that the applicant did not remember the exact dates of his conversion.

8. It seems to me that these findings are well within the jurisdiction of both the commissioner and the tribunal. It is not for the Court to substitute a view more favourable to applicant for that legitimately arrived at by the decision maker. There are no substantial grounds therefore contending that there is any actionable infirmity in the manner in which the Tribunal considered and rejected his claim. Reliance is placed on *Barua v. Minister for Justice and Equality* [2012] IEHC 456 but that case turns on its own facts where supportive documentary material was dismissed without reasons. There is no analogy to the present case.

9. Mr. Michael Lynn S.C. (with Mr. Kieran Doherty B.L.) in an able submission for the applicant relies on a decision of the Canadian Federal Court *Zhang v. Minister for Citizenship and Immigration* [2012] FC 503 (Campbell J.) in which a protection decision is criticised for failure to adequately consider supportive evidence of a pastor in relation to religious conversion. However in the present case, the documentation from the co-religionists of the applicant was actually considered, and indeed the tribunal notes that they were not called to give evidence by the applicant.

10. The finding of the tribunal cannot simply be brushed aside, as Mr. Lynn endeavoured to do, as a "confusion over dates in the interview record", as it was put in oral submissions. It is clearly a finding within jurisdiction adverse to the applicant and no substantial grounds have been demonstrated to contend otherwise. The application seems to be essentially a speculative attempt to suggest that the tribunal could have been more favourable to the applicant. That is not a substantial ground on which to seek judicial review.

Order.

11. For the foregoing reasons I will order

- (i). that the application for leave to apply for judicial review be dismissed.
- (ii). that the applicant be heard on any application for leave to appeal, which, if made, should be on notice to the

respondent; and

(iii). that the applicant serve the CSSO with a copy of this judgment in any event within 7 days.