THE HIGH COURT

JUDICIAL REVIEW

[2012 No. 311 J.R]

BETWEEN

A.C. (BANGLADESH)

APPLICANT

AND

THE REFUGEE APPEALS TRIBUNAL, THE MINISTER FOR JUSTICE EQUALITY AND LAW REFORM, THE ATTORNEY GENERAL AND IRELAND

RESPONDENTS

JUDGMENT of Mr. Justice Eagar delivered on the 3rd day of July 2015

- 1. This is a telescoped application affirming the decision of the Refugee Applications Commissioner to recommend that the Applicant not be a declared refugee.
- 2. The Applicant arrived in Ireland on the 19th April 2011 and applied for asylum. He was interviewed on the 23rd June 2011 in relation to his asylum application by the Refugee Applications Commissioner. The Refugee Applications Commissioner recommended that the Applicant should not be declared a refugee. The notice of appeal was lodged with the Refugee Appeals Tribunal. His oral appeal to the Refugee Appeals Tribunal was heard on the 3rd January 2012 and by letter dated the 21st February 2012 he was notified that his appeal was unsuccessful. Subsequently the proceedings were taken.

The Refugee Appeals Tribunal

- 3. The Applicant was born in Saturia Upazila, Manikganj Bangladesh in 1985. She is single and according to her questionnaire received nine years education. Her two siblings and both of her parents continue to live there. She claims her problems started in 2003 when a terrorist called Ponir would confront her on the way to school. He would propose love to her and would attempt to take her by the hand while the Applicant is going to school. She claims that it was for that reason she stopped going to school in 2003. She claims in 2004 Ponir came to the family home, assaulted her father and siblings and smashed up the place. She claims in 2005 the police arrested Ponir and out him in jail until 2010. She claims her father was constantly afraid of Ponir even whilst he was in jail.
- 4. The Applicant claims Ponir was linked to political families and had many friends. She claimed political leaders used him for their own purposes. She claimed that on his release in 2010 Ponir came to her family home and threatened her father as he still wanted to marry the Applicant. She claims in December 2010 she was kidnapped for a day, brought to an unknown place and raped by Ponir. She claims she was only kidnapped for one day and released because her father agreed she could marry Ponir. On her release her father organised for the Applicant to leave Bangladesh. She was asked if her father contacted the police and the Applicant stated that after the rape her father contacted the police but as the perpetrator was man of influence the police did not act. When asked if her father went to a higher authority the Applicant replied in the negative. She said that if there were too many official inquiries in Ponir it would be dangerous for the Applicant. She claimed that after the rape Ponir and his friend drove her home. Her father organised for the Applicant to leave and she fears returning as Ponir would kill her. When asked why he had not done so since 2003 the Applicant gave an incoherent reply according to the first named respondent. She gave two reasons why she could not relocate another part of her native country:
 - a) Ponir would find her
 - b) The Applicant has no relatives outside her family.
- 5. In reply to the presenting officer she said Ponir was a leader in the local area and the locals used him. It was put to her that as the problem was local she would be safe elsewhere in Bangladesh considering the size of the country. The Applicant said that Ponir has many friends and he would find her. The Applicant repeated that between 2005 and 2010 she was safe as Ponir was in prison. She was asked why she did not go to the police in 2003 when her problems started and according to the first named Respondent she gave an incoherent reply. It was put to her that as Ponir was arrested and jailed in 2005 he had no real power over the police and she could have sought help and again she made no reply. As the Applicant alleges she stopped her education in 2003 owing to Ponir, she was asked why not resume it when he was in jail. The Applicant states her father felt that she should make herself available for marriage. It was put to her that she was no longer interested in education. She was referred to country of origin information which states that if one is to satisfy to the police one can go to a higher authority. The Applicant disagreed and stated her father informed her that if she went further, the terrorists would kill her. An article of the killing of a teacher put in evidence by the Applicant. The Applicant states that it was only after the kidnapping and rape in December 2010 that her father decided she should leave. It was put to her that she made a visa application to attend college in Ireland earlier in 2010. The Applicant replied "it was the agent who made the application". She was asked when was the visa application made and she replied "I don't know". It was put to her that a lot of information supplied in seeking a visa was in conflict with what she told the Commissioner in her application for international protection. The Applicant said that she did not know as the Applicant was given by an agent. She was asked why she was telling the Tribunal she only thought of leaving in December when it fact she made a visa application in August. The Applicant replied that her father decided earlier that something should be done. The Applicant travelled to the UK and spent 6 weeks in Belfast before applying for asylum in this jurisdiction. She was asked why she did not apply in the UK and she replied she knew nothing about the asylum process in the UK and was following the instructions of the agent. The agent had sexual relations with the Applicant and is the father of her child. She said she was unaware of the present whereabouts of the agent.
- 6. The first named Respondent in his analysis of the claim first of all referred to the "UNHCR Handbook on Procedures for Establishing Refugee Status" and then said there were a number of problematic inconsistencies in the Applicant's evidence which undermined her credibility and thus questioned the legitimacy of her claim for international protection. He identified the following problem issues:
 - a) The genesis of the Applicant's claim is that owing to the harassment, threats and violence perpetrated against her and her family since 2003 by a local criminal/terrorist, she was forced to abandon school that year and live at home for the next 7 years. She claims the criminal/terrorist was put in prison in 2005 for 5 years in relation to other matters. Despite

the seriousness of the incidents surrounding the Applicant and her family she gave no coherent reason why she or the family did not bring their complaints to the authorities from 2003 to 2005 except to say Ponir was a powerful man. His arrest and imprisonment in 2005 showed that he had no power over the police. She claimed to have been raped and the police took no action as Ponir was so powerful (this incident happened after Ponir had been released from his sentence).

- b) The country of origin information stated that other avenues are open to a victim if at first they don't succeed then having their complaint adequately investigated by the police. The Applicant failed to pursue this complaint.
- c) The claim of rape is difficult for an Applicant to prove and for an assessor to accept or reject with certainty
- d) The Applicant, who is highly educated, filled out a questionnaire in arriving here and stated she never applied for a visa. She claims that she had to abandon her education in 2003 because of Ponir however her visa application which she said was applied for by the agent indicated that she had attended a national university between November 2003 and March 2010 and achieved a BA Honours in English at a time she told the Commissioner she was at home.
- e) Further the visa application shows her address to be Dhaka and when confronted with the official evidence grounding her visa application which contradicts that supporting her application for refugee status, the Applicant replied "it was the agent who applied for the visa". The first named Respondent said that this was not credible. He said that the Applicant had lied about part of her evidence that was checked. She now invites the first named Respondent to accept the truthfulness of evidence that cannot be checked and he said he declined to do so and found it unreliable and concluded by saying that he had considered all relevant documentation in relation to the appeal including the notice of appeal, country of origin information, the Applicant's asylum questionnaire, the replies given in response to by or on behalf of the Commissioner and the report made pursuant to s. 13 of the Act and that he affirmed the recommendation of the Refugee Applications Commissioner made in accordance with section 13 of the Act.

Submissions by counsel for the applicant

7. Mr de Blacam SC identified four issues of credibility which were raised by the first named Respondent. He submitted that although the first named Respondent had quoted from the UNHCR Handbook he said that the quotations from the Respondent had taken the quotes from paras. 37 and 42 of the Handbook but had not quoted them in full and indicated that his quotations were taken out of context and submitted that the Handbook made clear that an Applicant's statement cannot be considered in isolation of conditions in the country of origin.

8. Counsel for the Applicant quoted the decision of Kelly J. in Camera v. Minister for Justice (High Court, Unreported, 26th July 2000) where Kelly J. quoted with approval the following passage from Goodwin-Gill, *The Refugee in International Law* (Oxford University Press, 3rd Edition, 2007):-

"Simply considered there are just two issues, First, could the Applicant's story have happened or could his/her apprehension come to pass on their own terms given what we know from available country of origin information. Secondly is the Applicant personally believable. If the story is consistent which was not known about the country of origin then the basis for right inferences had been laid."

- 9. He submitted that this passage from Goodwin Gill makes it clear that the assessment of an Applicant's credibility depends on both the consideration of his or her statements and also on the decision-maker's knowledge of the conditions in the country of origin. He submitted that the Tribunal Member had not appreciated or understood the core claim.
- 10. He submitted that the Tribunal Member wrongly asserted that the Applicant gave no coherent reason why she or her family did not bring their complaint to the authorities from 2003 to 2005 except to say that Ponir was a powerful man. The Applicant did not simply say he was powerful but also that he had strong links with the ruling party and had a good relationship with the police station.
- 11. He also submitted that insofar as the first named Respondent had relied on country of origin information he made unreasoned and selective use of it. He submitted that although the Tribunal Member is required by s. 16(16) of the Refugee Act 1996 (as amended) to consider the notice of appeal and in particular that the notice of appeal explained that the visa application had been falsified as to indicate the Applicant had attended University, the Tribunal Member reiterated the Commissioner's findings that if the visa application contained truthful statements. The Tribunal Member has given no reason for this approach or for the rejection of the explanation given by the Applicant for the contents of the application save only to say that it was not credible that the Applicant had applied for the visa.

Submissions by counsel for the respondent

- 12. Counsel on behalf of the Respondent stated that the first named Respondent had decided that state protection was available to the Applicant in Bangladesh and said that the onus was on the Applicant to establish that he or she was a refugee. The Applicant had failed to meet his burden of proof before the first named Respondent.
- 13. Counsel for the Respondent submitted that in relation to the passages of the Handbook he said that it was not accepted that there was any requirement for the Tribunal Member to cite the entire section of the Handbook dealing with credibility. He stated that in relation to the submission that the first named Respondent had not considered properly the country of origin information it was clear that the country of origin information was considered by the first named Respondent in the context of state protection. Counsel also submitted that there is no obligation on a Tribunal Member to refer to every piece of country of origin information considered by him.
- 14. In relation to the assessment of credibility counsel on behalf of the Respondent indicated that the first named Respondent's credibility findings could not be faulted and that it was not the function of the Court to replace the first named Respondent's credibility findings with its own. He stated the major criticism made by the Applicant was in relation to the credibility issues arising from the visa application. The Applicant complains that the Tribunal Member referred to the visa application as if the information therein were true. Despite the explanation provided by the Applicant in the grounds of appeal and at the first named Respondent's hearing namely that the agent had submitted the visa application and provided inconsistent information, he stated that the Applicant was denying that she had previously applied for a visa and that the visa application was made in August 2010 while the kidnapping took place on the 16th December 2010. In relation to the allegation of failure to understand the core claim he submitted that the statement of the Tribunal Member "the genesis of the Applicant's claim is that she was forced to abandon school and live at home for the next 7 years etc" was not a failure to understand the core claim.

Discussion

- 15. This Court notes the submission on behalf of the Applicant in relation to the available country of origin information. The Court is satisfied that the Tribunal Member has in his decision referred to the appropriate country of origin information and this Court is of the view that the first named Respondent did not make unreasoned and selective use of the country of origin information. This Court is also of the view that the first named Respondent had understood the core claim of the Applicant.
- 16. In relation to the first named Respondent's indication that the visa application contained truthful statements it is reasonable in this Court's view that the first named Respondent took account of the visa application, the date the visa application was made and the contents of the visa application, all of which were made in August 2010 prior to the kidnapping and rape.
- 17. The role of the High Court in respect of application for judicial review was considered by the Supreme Court in the *EMI Records* (*Ireland*) *Ltd* & *Ors* v. *The Data Protection Commission and Eircom* [2013] IESC 34. The decision was given by Clarke J and he stated at para. 6.8:-

"Legal certainty requires, as was pointed out in Christian, that it must be possible to accurately determine what the reasons were. There should not be doubt as to where the reasons can be found. Clearly, an express reference in the decision itself to some other source outside of the decision document meets that test."

Further he states:-

"But it seems to me that, in a case where any party affected by a decision could be in any reasonable doubt as to what the reasons actually were, it must follow that adequate reasons have not been given."

18. In I.R. v. The Minister for Justice Equality and Law Reform & Ors [2009] IEHC 353, Cooke J stated:-

"In most forms of adversarial dispute the assessment of the credibility of oral testimony is one of the most difficult challenges faced by the decision-maker. The difficulty is particularly acute in asylum cases because, almost by definition, a genuine refugee will be someone who has fled home in circumstances of stress, urgency and even terror and will have arrived in a place which is wholly strange to them; whose language they do not speak and whose culture may be incomprehensible. Inevitably, many will have fled without belongings or documentation from areas in a state of anarchy or from the regimes responsible for their persecution so that obtaining any administrative evidence of their status and even identity may be impractical, if not impossible."

He further stated:-

"In such cases the decision-makers at first instance have the unenviable task of deciding if an Applicant can be believed by recourse to little more than an appraisal of the account given, the way in which it was given and the reaction of the Applicant to sceptical questions, to the highlighting of possible discrepancies or to contradictory evidence from other sources. Recourse will also be had in appropriate cases to what is called 'country of origin information' but in most cases this will be of use only in ascertaining whether the social, political and other conditions in the country of origin are such that the events recounted or the mistreatment claimed to have been suffered, may or may not have taken place."

He further continued:-

"It is because in such cases the judgment of the primary decision-maker must frequently depend on the personal appraisal of an Applicant, that it is not the function of the High Court in judicial review to reassess credibility and to substitute its own view for that of the decision-maker. Its role is confined when a finding of lack of credibility is attacked, to ensuring that the process by which that conclusion has been reached is legally sound and not vitiated by any material error of law."

Decision

19. It appears to me that the decision of the first named Respondent satisfies the requirement to give reasons for its findings both of state protection and lack of credibility. The first named Respondent clearly identified from the country of origin information that there were ways in which Bangladeshi citizens could proceed if the police refused to investigate a particular complaint, and further that the Applicant's claim in relation to her alleged rape happened after the visa application had been submitted in August 2010 and further that her application contradicted what was stated in her visa application about her education.

20. In those circumstances I believe that this Court is satisfied that the decision of the first named Respondent is reasonable. In those circumstances I refuse the application for certiorari.

Counsel for the Applican: Mark de Blacam S.C., Garry O'Halloran B.L., instructed by Trayers and Company, solicitors

Counsel for the Respondent: Nap Keeling B.L., instructed by the Chief State Solicitors Office