

THE HIGH COURT

JUDICIAL REVIEW

[2009 No. 879 J.R.]

IN THE MATTER OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000, AND THE REFUGEE ACT 1996, AS AMENDED, AND IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

BETWEEN

M.I.

APPLICANT

AND

MICHELLE O’GORMAN ACTING AS THE REFUGEE APPEALS TRIBUNAL

RESPONDENT

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

FIRST NOTICE PARTY

AND

IRELAND AND THE ATTORNEY GENERAL

SECOND NOTICE PARTY

JUDGMENT of Mr. Justice McDermott delivered on the 26th day of July, 2013

1. This is an application for leave to apply for judicial review by way of *certiorari* seeking to quash the decision of the respondent made on 2nd June, 2009, which affirmed a recommendation of the Refugee Applications Commissioner pursuant to s. 13(1) of the Refugee Act 1996, that the applicant should not be declared a refugee. A number of other declaratory reliefs were also sought, but the only remedy of relevance is *certiorari*.

2. Twenty grounds for relief were set out in the statement of grounds. Grounds 1 to 6 were unstateable and not pursued, as were grounds 15 to 18 inclusive. Grounds 7, 8, 9, 10, 11, 12, 13, 14 and 19 concerned a challenge to the decision based on alleged deficiencies in findings relating to credibility and the issue of relocation. Ground 20 was a generalised ground of no relevance to the case.

Background

3. The applicant is a Pakistani national born on 23rd March, 1978, in a village near the town of Sargodha in the Punjab where his family owned a 50 acre farm. He was educated to third level but left university after two years without completing his degree course to run the family farm following the death of his father. He lived with his mother, K.B., and his sisters Sh.N, S.N, and A.N. The court is now aware that the applicant’s mother and sisters arrived in Ireland and claimed asylum in 2007. Their applications for asylum failed and were not challenged by way of judicial review. They are subject to deportation orders which are under challenge in judicial review proceedings (2013 No. 113 J.R.).

4. The applicant claimed that in or about 1996 his father attempted to purchase 25 acres bordering his land which also bordered the substantial holdings of a powerful neighbouring family. He claimed that his father paid a deposit for the land and other sums of money to the vendor but no documents were executed. In fact, the vendor sold the property to his more powerful neighbours without informing his father. His father discovered this when he sought completion of the sale. His family were then in dispute with the vendor about the sale and repayment of monies. The title to the land remains in the vendor’s name. A number of meetings of the local elders were held in an attempt to resolve the matter. During that process on or about 6th June, 1996, the applicant claims that his father was murdered at their home by an agent of the powerful rival landowner.

5. In the s. 11 interview the applicant described the killing. His father was sleeping in the smaller of two houses at the family compound with his uncle and his father’s cousin. He stated:-

“I heard shots fired in the night time. We got up and I saw a person jumping the wall. I went into the house. My father was lying in pain. He was bleeding. He told me that one person was there and shot him. I went to the hospital. He was alive for five or six hours. My father died on the way to the District Hospital. I went to the police station to report it.”

6. A police report (FIR) concerning his father’s death was made by the applicant on 6th June, 1996, at 3.15am in which the applicant states that he came out of the house having heard one shot and:-

“Saw a person jumping over the wall...who suddenly ran in the street and disappeared. We went to the courtyard...and saw that my father had a wound on the back of his left shoulder and on the front of his chest, a wound of the bullet coming out...A.M. said that an unknown person came in, jumping over...and ran away after firing at my father. After leaving my father H.N. in R.H.C...in an injured condition, I had to come here to register my report at the police station.”

7. In the s. 11 interview the applicant stated that he heard shots and that his father died on the way to hospital, in contra distinction to the suggestion that he heard only one shot and went to the police station while his father was lying injured in the

hospital.

8. Following his father's death the applicant claimed that he and his uncle engaged with the local elders in order to resolve the land dispute and also attempted to discover who killed his father. Matters were not resolved at the various meetings convened. He believed that the powerful neighbouring family was responsible for his father's death. Proceedings were initiated in the local civil court in Sargodha against the vendor. He claimed that when returning from a hearing in respect of that case in 2002, he and his uncle were attacked at Sakasar village by four or five people. His uncle was shot and killed and he managed to escape through tall sugar cane. In his initial accounts he did not mention that he too had been shot but, much later, in oral evidence he informed the tribunal member that he had been shot in the leg indicating a scar said to have resulted from the wound.

9. Once again, the applicant filled out a police report (FIR) on 12th August, 2002. In this account the two were said to be travelling to court, not returning from court, and the applicant stated that "the accused also fired at me but luckily I was safe". He stated in his s. 11 interview that he knew two of his assailants identified as cousins of the powerful family and that the police discovered that three others were also behind the attack. He accepted that the police investigated the case. He believed the powerful neighbouring family was also responsible for his uncle's death.

10. He also complained that this powerful family made constant complaints to the local police that he had been involved in numerous criminal offences in respect of which he was investigated on a number of occasions. He was arrested regularly and imprisoned for periods of up to one month during which he was allegedly tortured. He was never charged with any offence and there are no documents or medical reports to support these contentions. The applicant acknowledged that the civil case against the vendor remains open. The vendor was summoned to court and gave evidence that he received money from the applicant's father as a loan and not for the land. He claimed that the powerful neighbour paid him money for the land and he said that the vendor still holds title to the property.

11. The applicant left the farm for Lahore in 2004, where he remained for approximately two years. He and his family lived on savings. In December, 2006 he claimed that he was fired upon in the vegetable market in Lahore and again went to the police where he made out another complaint (FIR). After this incident his mother had a heart attack and the family then went to live in Rawalpindi. In the meantime he leased the lands.

12. While in Rawalpindi he claimed that two men came to his house, stated that they were Secret Police and that they wanted to investigate him. They said he was wanted by a Police Inspector and he went with them. When he got into the car he was blindfolded and taken into custody for a year. He was held in what he described as a private house in a "torture cell", not in a regular police station. He claimed that he was there from January, 2007 to January, 2008 and was ill-treated. His mother wrote a letter to the Chief Justice of Pakistan in Islamabad complaining about this abduction and claiming that it had been effected by the powerful neighbouring landowners through their own agents or through the agency of the Pakistani Secret Police. In this letter the abduction was alleged to have taken place on 12th January, 2007. In his s. 11 interview the applicant claimed that the High Court of Pakistan had appointed some "prosecutors" to the case who came to the house with the police and released him.

13. On his release he returned to Rawalpindi and found that his mother and sister were no longer there. His mother had a house in Sargodha which she sold following which she obtained the services of an agent and travelled to Ireland with his three sisters. He claimed that he did not know the date of these events because he was detained at the time. He explained that he decided to come to Ireland because his family were here and he believed them to be safe. He had previously indicated that he did not know where his mother and three sisters were, but believed they were in the United Kingdom or Ireland and wished to find out. He explained that he did not understand the difference between the Republic of Ireland and Northern Ireland and did not understand to which part of Ireland they had travelled. Following his release he sold a house which had been given to him by his father and arranged his travel to Ireland.

14. Between January and 18th April, 2008 he remained living with fellow classmates in Sargodha City. He arrived in Ireland and claimed asylum on 20th April, 2008. He produced an identification card which had been issued to him on 12th January, 2007.

15. The Refugee Applications Commissioner issued a report recommending that the applicant should not be declared a refugee on 24th October, 2008, following which the matter was appealed to the Refugee Appeals Tribunal. Following an oral hearing on 24th February, 2009, the Tribunal by decision of 2nd June affirmed the recommendation of the Commissioner.

16. In evidence to the Tribunal the applicant stated that he had been released by a High Court bailiff in the company of a number of police officers, together with a number of other detainees whose families had sought their release. Apart from his mother's letter, no other documentation was furnished to indicate what applications had been made to the Pakistani High Court, by whom, what hearings were convened or what orders issued.

The Tribunal Decision

17. The Tribunal decision considered four aspects of the case adversely against the applicant:-

(1) The applicant claimed that following his release from detention he returned to Sargodha and lived with a friend for two or three months. He also claimed that the powerful family who had organised his detention and ill-treatment also had a house in Sargodha. The Tribunal concluded that it was not credible that the applicant would have gone to Sargodha after his release and stayed there having regard to the stated power and influence of this family in the area.

(2) The Tribunal found that the fact that the applicant's current and permanent addresses given on an identification card issued on 12th January, 2007, were that of the family farm when the applicant stated he had not lived there for over two to three years, called into question his credibility.

(3) The Tribunal held that it would have been reasonable of the applicant to seek asylum as soon as practicable after arriving in the United Kingdom rather than risk further immediate illegal travel to Ireland. It noted that when he applied for asylum in Ireland he did not know the location of his mother and sisters but believed they were in the United Kingdom or Ireland. On arrival in London he travelled by van to Liverpool and then travelled by boat to Ireland.

(4) The Tribunal concluded that the applicant was able to move freely within Pakistan having lived at various locations prior to coming to Ireland. It noted that the powerful landowners had possession of the disputed land for some time and that his father had never signed any contracts in relation to the land. It was considered unlikely that that family would consider it necessary to search throughout Pakistan for the applicant as they would have nothing to gain even if they found him. It was accepted that the family described by him were very powerful in the Punjab area: one of the family was

a Cabinet Minister. However, the Tribunal concluded that internal relocation was a viable alternative for the applicant because of the size and population of Pakistan, the fact that he was an educated man, had experience as a farmer and was somewhat resourceful.

Relocation

18. The Tribunal devoted a considerable part of its decision to the issue of relocation. It was claimed that the Tribunal erred in law in considering the issue of relocation as part of the determination of whether the applicant had a subjective and objective fear of persecution. It was submitted that internal relocation was an alternative to refugee status and not a component of the test of whether one was entitled to claim that status. It was submitted that the State, through its Secret Police or local police force, was the instrument of his persecution and that the police were used by the local powerful landlord as his agents. The applicant contended that there was no detailed consideration of whether the risk of persecution extended to any other area of Pakistan to which he might relocate.

19. The respondent submitted that the Tribunal was entitled to take account of the possibility of internal relocation in determining whether a well founded fear of persecution exists in the circumstances of this case.

20. Although there is no specific reference to internal relocation in the Refugee Act 1996, or in the 1951 Convention in the definition of a refugee, the guidelines issued by the United Nations High Commissioner on Refugees in the Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention contains the following reference to the issue:-

"90. ...an applicant's well founded fear of persecution must be in relation to the country of his nationality. As long as he has no fear in relation to the country of his nationality, he can be expected to avail himself of that country's protection. He is not in need of international protection and is therefore not a refugee.

91. The fear of being persecuted need not always extend to the whole territory of the refugee's country of nationality. Thus, in ethnic clashes or in cases of grave disturbances involving civil war conditions, persecution of a specific ethnic or national group may occur in only one part of the country. In such situations, a person will not be excluded from refugee status merely because he could have sought refuge in another part of the same country, if under all the circumstances it would not have been reasonable to expect him to do so."

21. In *B.P. v. Minister for Justice* [2003] 4 I.R. 200, Gilligan J. in granting leave to apply for judicial review, held that the applicant had established substantial grounds for contending that the Tribunal had erred in law on the ground that internal relocation should be considered as an alternative to refugee status and not as a component of the test as to whether one was entitled to claim it. Clearly, this was not a post leave decision.

22. The issue was also considered in the case of *Imoh & Ors v. Refugee Appeals Tribunal & Ors* (Unreported, High Court, 24th June, 2005) in which Clarke J. stated:-

"That a decision maker within the refugee process contemplating whether it might be appropriate to recommend refusal of refugee status on the basis of the so called "internal flight or relocation alternative" must, in order to properly reach such a conclusion, comply with the guidelines in that regard issued by the United Nations High Commissioner on Refugees. As those guidelines point out the concept of internal flight or relocation alternative is not explicitly referred to in the criteria set out in Article 1A(2) of the 1951 Convention. It is, however, the case that the question of whether a claimant has an internal flight or relocation alternative may arise as part of the holistic determination of refugee status. Amongst other things the guidelines require that a decision maker who is contemplating the possibility that internal flight or relocation might be considered in the assessment of refugee status must apply what is called "the reasonableness test". That is to say the decision maker must consider whether it would be reasonable in all the circumstances of the case for the claimant to relocate in a manner suggested."

23. In *Januzi v. Secretary of State for the Home Department* [2006] 2 A.C. 426, the House of Lords determined that internal relocation may be considered as part of the determination of whether an applicant has a fear of persecution. Lord Bingham stated that the "causative condition" namely, the existence of a well founded fear of persecution for a Convention reason governs that part of the definition of a refugee that requires the applicant to be outside the country of his nationality. He stated:-

"7. The Refugee Convention does not expressly address the situation at issue in these appeals where, within the country of his nationality, a person has a well-founded fear of persecution at place A, where he lived, but not at place B, where (it is said) he could reasonably be expected to relocate. But the situation may fairly be said to be covered by the causative condition to which reference has been made: for if a person is outside the country of his nationality because he has chosen to leave that country and seek asylum in a foreign country, rather than move to a place of relocation within his own country where he would have no well-founded fear of persecution, where the protection of his country would be available to him and where he could reasonably be expected to relocate, it can properly be said that he is not outside the country of his nationality owing to a well-founded fear of being persecuted for a Convention reason."

Lord Bingham quoted para. 91 (see above) to the effect that a person will not be excluded from refugee status merely because he could have sought refuge in another part of the same country, if under all the circumstances it would not have been reasonable to expect him to do so. However, he also noted that:-

"The corollary of this proposition, as is accepted, is that a person will be excluded from refugee status if under all the circumstances it would be reasonable to expect him to seek refuge in another part of the same country."

The refusal of refugee status in those circumstances is based on the fact that the person is not within the Convention definition, a refugee.

24. In *Darjanja v. Refugee Appeals Tribunal and the Minister for Justice, Equality and Law Reform* [2006] IEHC 218, McGovern J. noted the effect of the *Januzi* decision on United Kingdom law namely, that when addressing whether a person has a well founded fear of persecution for a Convention reason and was, therefore, outside his or her country of nationality, consideration of the internal relocation alternative is a proper exercise. McGovern J. concluded that it was appropriate to adopt the holistic approach referred to in the *Imoh* judgment and that the Tribunal had not erred in law in holding that the applicant did not suffer from a well founded fear of persecution in view of the option of internal relocation available to him.

25. Internal protection is also dealt with in Article 8 of the Qualification Directive (Council Directive 2004/83/EC of 29th April, 2004) which provides:-

- "1. As part of the assessment of the application for international protection, member states may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country.
2. In examining whether a part of the country of origin is in accordance with para. 1, member states shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and the personal circumstances of the applicant.
3. Paragraph 1 may apply notwithstanding technical obstacles to return to the country of origin."

This provision has the force of law in this jurisdiction since 2006 as transposed under Regulation 7 of the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518/2006) which clearly post-dates the *B.P.* decision.

26. The applicant claims that the conflict in this case arose out of a local land dispute and the abuse of power of a local powerful landlord and politician. The Tribunal, having considered the applicant's history decided that he was able to move freely within Pakistan and stay at various addresses prior to his coming to Ireland. This included a two and a half to three month stay in Sargodha where the landowners family had a presence and owned property. It was reasonable for the Tribunal to conclude that the Punjab was one of four provinces in Pakistan which had a population of 168 million people within which the applicant could relocate. It was also reasonable to conclude that it was highly unlikely that the family would pursue him or that he would be located, if he returned to another part of Pakistan. It was noted that he did not feel the necessity to move from Punjab when he left the family farm with his family and each of the towns where they stayed was in Punjab. The Tribunal considered the applicant's personal circumstances, including that he was a young, educated and resourceful man. (See *C.A. v. Refugee Appeals Tribunal & Ors* [2008] IEHC 261 and *G.O.B. v. Minister for Equality and Law Reform* [2008] IEHC 229). The court is also satisfied that this is a case in which it was appropriate to consider relocation particularly having regard to the local non-state origins of the conflict that was said to be at the core of the applicant's difficulties.

27. It should be noted that the applicant accepts that he availed of state protection with varying degrees of success. He reported the killing of his father and uncle to the police and while no progress was made in the investigation of his father's death, he reported some progress in relation to the killing of his uncle in that the police identified three further suspects in the case in the course of their investigation of whom the applicant had been unaware. The applicant applied to the civil court in Sargodha and sought a remedy against the vendor of the property in proceedings which are still pending for reasons that have never been made clear by the applicant. In addition, when detained unlawfully he obtained the protection of the Courts of Pakistan which ordered his release. His release was effected by the Pakistani police in execution of a court order. Thus, while the applicant, on the one hand complains of police support for the local strongman, nevertheless, he sought and obtained the support of the police and the Courts in Pakistan with varying degrees of success.

28. In the *Januzi* case, the House of Lords held that the consideration of relocation was not confined to cases of non-state involvement in the persecution alleged. It was also available when the state sanctions or connives in the creation and maintenance of that fear of persecution because there could be a range of situations in which the state may be involved. It was held that it is for the decision maker to determine the extent to which state and non-state involvement are relevant. In this case the applicant's claim is that there was some support for the local landlord from the police, but the judiciary and other elements of the police took steps which were unsupportive of the landlord. The court is satisfied in the circumstances of this case that the issue of relocation was properly considered by the Tribunal and its conclusion that, even if the events alleged by the applicant occurred, relocation was available to him was a decision made within jurisdiction and relevant to the determination of whether he was a refugee. The applicant has not established that he is entitled to relief in respect of the issue of relocation.

Credibility

29. The Tribunal considered in detail three aspects of the credibility of the applicant. Firstly, it considered that it was not credible that having suffered detention and torture of the nature described by the applicant, he would return to the City of Sargodha after his release in January, 2008 and remain there unmolested for three months even though he knew that his enemies had a house and presence in the same town. Secondly, the Tribunal questioned the date upon the National Identity Card produced by the applicant which gave his current and permanent addresses as the family farm near Sargodha, even though he had been absent from the family farm for many years prior to the 12th January, 2007, the date of the issuance of the card. Further, that was also the date upon which he alleged he had been arrested and then detained for a year. By 2007 the applicant had lived in Rawalpindi having moved there from Lahore where he had lived for two years. The Tribunal found that the inclusion on the card of the farm as his current and permanent address seriously called into question the credibility of the applicant's account. It was not unreasonable of the Tribunal to draw that conclusion having regard to the other issues and evidence in the case.

30. The Tribunal also concluded that:-

- "Considering the applicant's age, education, the persecution he stated he was fleeing from, it would be reasonable to expect that the applicant would have sought asylum as soon as practicable after arriving in the UK rather than risk further immediate illegal travel to Ireland."

This finding may be viewed by reference to the unsatisfactory account that the applicant gave of his reasons for travelling to Ireland. He had travelled from Pakistan to Ireland on 18th April arriving on 20th April, 2008. He flew from Lahore to Dubai to Heathrow, London and then travelled by van to Liverpool from where he came to Ireland by ship. He was accompanied by an agent and travelled under a forged British passport which he claimed was in his own name. It should be noted that he had earlier claimed that this passport was in the name of another. No documentation was produced to substantiate his travel route. He claimed that following his release from detention in January, 2008 his mother and sisters had left Pakistan. He told immigration officials in Dublin that he did not know where his mother and sisters were, but wished to find out. He believed them to be in Ireland or the United Kingdom. In his s. 11 interview he stated that he decided to come to Ireland because his family was here, and he believed them to be safe. He expressed ignorance of the difference between Northern and the Republic of Ireland. In evidence he stated that he did not seek asylum in the United Kingdom because he did not know if his family were there or in Ireland. In the questionnaire he maintained that his mother's location was unknown and that his sisters were in the United Kingdom or Ireland. The court is now aware, following inquiries, that his mother and sisters arrived here some time in 2007, and each had made an application for asylum. Further, though it was claimed that his mother wrote a letter to the Chief Justice in Pakistan in May, 2007 no attempt was made by her or his sisters to leave any forwarding

address or maintain any contact or provide any avenue of contact to the applicant. There is no evidence of any further interest by his family in his plight following the letter in May, 2007. The court is not satisfied that the Tribunal's findings on these matters were unreasonable. The weight to be afforded to these issues was a matter for the decision maker and the court may not act as a court of appeal. Further, there were clearly other issues that arose in the applicant's various inconsistent accounts which otherwise support the Tribunal decision in this case. The challenge to the Tribunal's credibility assessment also fails.

Conclusion

31. The court is, therefore, satisfied having considered all of the evidence in the case, together with the submissions of counsel, that the applicant has not demonstrated any substantial ground upon which to grant leave to apply for judicial review in respect of any of the grounds advanced in this case. The application is refused.