

THE HIGH COURT**2010 37 JR****BETWEEN/**

SUHA NATEEL, MARIA NATEEL (AN INFANT SUING BY HER MOTHER AND NEXT FRIEND SHUA NATEEL) AND MALAK NATEEL (AN INFANT SUING BY HER MOTHER AND NEXT FRIEND SHUA NATEEL) AND MAHA NATEEL (AN INFANT SUING BY HER MOTHER AND NEXT FRIEND SHUA NATEEL)

APPLICANTS**AND****MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM AND REFUGEE APPEALS TRIBUNAL****APPLICANTS****AND**

**MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM AND
THE REFUGEE APPEALS TRIBUNAL**

RESPONDENTS**JUDGMENT of Mr. Justice Hogan delivered on the 7th October, 2011**

1. This application for judicial review of an adverse decision of the Refugee Appeal Tribunal dated 15th December, 2009, has its origins in the Israeli/Palestinian conflict. The first applicant, Ms. Suha Nateel, is Palestinian and until January 2009 she lived in the Gaza Strip with her four children where she worked as a teacher. Her husband, Mr. Ibrahim Nateel, is the Director of a Non-Governmental Organisation known as the Society Voice Foundation ("SFV") which operates in Gaza. The couple have four children, one of whom, Basil, is an Irish national, having been born in Belfast in 2003. The present proceedings concern the claims of Ms. Nateel and the three other children for asylum in this State.

2. In 2005 Mr. Nateel commenced studying on a doctoral programme at Coventry University where the subject of his thesis concerned the emergence of Hamas as a socio-political force. Mr. Nateel presently has permission to reside both here and in the United Kingdom and he divides his time between the two jurisdictions. For reasons I will later address, Mr. Nateel has never applied for asylum, either here or in the United Kingdom. As we shall presently see, his failure to do so was one of the principal reasons why the Refugee Appeals Tribunal found adversely against his wife's asylum claim on credibility grounds.

3. In January, 2006 Hamas won parliamentary elections for the Palestinian parliament, defeating the Fatah organisation. This in turn led to the effective takeover of the Gaza Strip by Hamas in June, 2007. Since Israel considered that the Hamas administration posed a real security threat, it launched an offensive against Hamas in December, 2008 which, unfortunately, led to widespread loss of life and civilian casualties within the Gaza Strip. While this court could not possibly opine on the rights and wrongs of this offensive, what is indisputable is that the civilian population in the Gaza Strip suffered considerable hardship and misery during the course of this (mercifully relatively short) conflict.

4. When the Department of Foreign Affairs learnt that the life of a young Irish national was in danger, it arranged via our embassies in Cairo and Tel Aviv, along with our representative office in the West Bank in Ram Allah to ensure that the Nateel family (*i.e.*, Ms. Nateel and her four children) could be evacuated from the conflict zone and thus escape from immediate danger. On 19th January, 2009, the Nateels travelled from Gaza to Cairo with the assistance of a diplomat from the Embassy in Cairo, Mr. Garrett O'Brien. Mr. O'Brien then arranged for the Nateels to be flown from Cairo to Dublin via Frankfurt. It is only proper to acknowledge that these actions reflect great credit on the Department of Foreign Affairs and the diplomats involved.

5. When the Nateels arrived in Ireland it seems to have been envisaged by them at least that some form of residency status could thereby be acquired. When this was not forthcoming, Ms. Nateel and her three non-Irish children applied for asylum in February 2009. This set in train a process which culminated in the adverse decision of the Refugee Appeal Tribunal of December, 2009 whereby the Tribunal member rejected the claim on credibility grounds.

6. It is this decision which is challenged in the proceedings pursuant to the single ground identified by Birmingham J. in his order of 8th February, 2011, giving the applicants leave to apply for judicial review. This ground was in the following terms, namely, that the Tribunal member "erred fundamentally in his approach to the assessment of credibility and thereby failed to analyse the core of the applicants' claim".

7. The essence of the claim for asylum was that Ms. Nateel had worked for SVF which had sought to counsel teenage female students on a range of issues bearing on family life, such as the role of women, the wearing of Islamic dress and domestic violence. The applicants maintain that Hamas and its generally ultra-Islamic supporters view the Foundation with deep suspicion and that Ms. Nateel had been dismissed from her teaching post as a result. She further contends that the SVF offices have been closed at the instigation of Hamas and that her family home was attacked by Hamas (or their supporters) because her brother-in-law was a senior member of the Fatal security and intelligence unit. She says that, prior to his final departure from Gaza in August, 2008 her husband was interrogated by Hamas on several occasions about funding from the US Government for the Foundation.

8. It is against this general background that we can proceed to analyse key aspects of the Tribunal's decision.

The husband's failure to claim asylum

9. The Tribunal member laid great stress on the fact that Mr. Nateel had failed to claim asylum as part of his rejection of Ms. Nateel's

asylum claim on credibility grounds. There are, of course, many circumstances where the failure of one spouse to claim asylum might seriously impact on the credibility of the other spouse who is claiming asylum. This might be especially so where the couple had been living together in their country of origin and where both had engaged in activities which only one of them claimed give rise to a well founded fear of persecution by State actors or their surrogates or in respect of which there was no effective State protection. In such circumstances the asylum adjudicator might well legitimately think that the failure of the other spouse to claim asylum cast doubt on the assertion of the other that he or she had the requisite well founded fear.

10. This, however, is not such a case. If it is true to say that, as the Tribunal member observed, Ms. Nateel would not be at any greater risk "than her husband in the Gaza Strip arising out of his activities", then the reasons why Mr. Nateel did not make an application for asylum assumes vital importance. Mr. Nateel has, however, fully explained the reason why he did not need to make an application for asylum. As he pointed out in his affidavit:-

"I have not claimed asylum in my own right as I am lawfully in this State and in the United Kingdom and therefore do not require at this time a declaration of refugee status. Additionally, I require to travel between England and Ireland to attend to my studies and to visit my family and making an application for refugee status in the UK or Ireland would enjoin me from so doing and might affect my ability to continue to study in the UK as it would be an abuse of my student visa.

Additionally, as stated in evidence by me to the RAT, I require to travel to various conferences around the world as part of my role as director general of the SVF. The lodgement of an application for asylum would render me unable to travel and this would be an entirely unsatisfactory state of affairs for both myself and the SVF."

11. Neither this explanation nor the fact that it was put before the Tribunal member has been controverted in these proceedings. It is a perfectly valid and completely tenable explanation in respect of Mr. Nateel's failure to make an asylum claim. As he pointed out, he did not presently need such status and the making of such an application would simply complicate considerably his student status and his ability to move freely between various countries as part of his role as Director General of the Foundation.

12. In these circumstances, there simply was no evidential foundation for the Tribunal's conclusion that "his explanation for not claiming asylum are [not] credible or well founded." The conclusion is unreasonable in the sense identified by O'Higgins C.J. in *the State (Lynch) v. Cooney* [1982] I.R. 337, 361, namely, that the conclusion simply does not logically flow from the premise and is not in itself factually sustainable. Put another way, this conclusion violates the fifth principle identified by Cooke J. in his seminal judgment in *R. v. Refugee Appeal Tribunal* [2009] IEHC 353, namely, that:-

"a finding of lack of credibility must be based on correct facts, untainted by conjecture or speculation and the reasons drawn from such facts must be cogent and bear a legitimate connection to the adverse finding."

13. As we have just noted, the Tribunal could not justifiably conclude that Ms. Nateel did not have a well founded fear of persecution simply by reason of her husband's failure to apply for asylum if (as I have found) the reasons for such a failure to apply were not properly evaluated or considered by the Tribunal.

14. Given the centrality of this finding to the Tribunal's conclusion that the applicant's asylum was not credible, this in itself a sufficient ground to warrant the quashing of the Tribunal decision. In these circumstances, I do not propose to dwell on other aspects of the decision of which legitimate criticism might be made. I will simply draw attention to three separate matters.

The amount of Mr. Nateel's salary

15. First, the Tribunal member made remarks which effectively sought to deprecate the size of Mr. Nateel's salary, describing the "situation as a little disconcerting for an NGO to find itself in, if his evidence to be believed." It is far from clear how the amount of Mr. Nateel's salary was in any way relevant to any issue which was before the Tribunal member. In these circumstances, these critical comments were, with respect, quite unwarranted and really out of place in the decision, although I appreciate that the concern of the Tribunal member was, of course, entirely well intentioned.

Newspaper Article

16. The Tribunal member relied on a newspaper article in order to doubt another aspect of Mr. Nateel's credibility, namely, whether he was actually working in the United Kingdom. On this point the Tribunal member observed:-

"The appellant's husband gave evidence that he is now currently pursuing a Ph.D. in England and has been for some years now. He stated that he is in receipt of salary of €2,000 per month from his NGO. His evidence in this respect conflicts with what he told the *Irish Daily Mirror* in his story which they published on 8th January, 2009, to the effect that he "moved back to England to find work". He confirmed that he was the one who approached the newspaper and not vice versa."

17. This, however, cannot be regarded as a completely accurate statement of the position. First, there is in fact no attribution of these words – "moved back to England to find work" – to Mr. Nateel in the newspaper article in question. The words in question simply reflect what the journalist *wrote* as distinct from a specific quotation which was actually ascribed to Mr. Nateel. Second, the tribunal member made no reference in this context to a subsequent article in the *Irish Daily Mirror* of 28th January, 2009, which clearly acknowledges that Mr. Nateel was returning to his post in the UK. It seems plain that there was something of a misunderstanding on the part of the journalist who covered the arrival of the Nateels in the first article. In any event, the question of Mr. Nateel's occupation was really only a detail in the context of the wider picture, namely the evacuation of the rest of the Nateel family from the Gaza Strip just as the hostilities were coming to an end. One way or the other, this was a very slender basis on which to make an adverse credibility finding against Mr. Nateel and, as it happens, it is one which has no sound factual foundation.

Circumstances of the Birth of Basil in Belfast

18. In August, 2003 Ms. Nateel travelled to Belfast from London with a view to giving birth there. Her son Basil was born in Belfast on the 16th August, 2003. As the Constitution then stood, every person born on the island of Ireland was entitled to claim Irish citizenship. Basil is accordingly an Irish citizen as a result. Dealing with this question the Tribunal member said:-

"In brief, the Tribunal found the fact that the appellant travelled to Belfast specifically to give birth to her son, arriving there a matter of days before the birth and departing a matter of days afterwards, incongruous. Her husband had confirmed that none of the family had travelled to Northern Ireland previously, had no family or other significant links there in his explanation and that the reason they travelled from London to Belfast for the purpose was that the hospitals were less crowded in Belfast did not impress the Tribunal as convincing."

19. It seems difficult to avoid the conclusion that the principal motive behind the Nateels travelling to Belfast for the purposes of Ms. Nateel giving birth was to ensure that any child born as a result would be entitled to claim Irish citizenship. To that extent the Tribunal was fully entitled to reject the Nateels' argument to the contrary as unconvincing. Nevertheless, the issue of Basil's citizenship was really fundamentally irrelevant to anything which the Tribunal was required to decide. The mere fact that the Nateels may have given an unconvincing explanation for their motive in travelling to Belfast for the birth of their son, Basil, in August, 2003, cannot *in itself* be held against them in respect of a general credibility assessment with regard to their asylum claim. This is an example of where, to adapt the words of Cooke J. in *R.*, there is no "legitimate connection" between the motives of the Nateels in seeking to have their child born in Belfast and the ultimate adverse finding in relation to the asylum claim.

Conclusions

20. For the reasons stated, I would therefore grant an order of *certiorari* quashing the decision of the Tribunal and, I accordingly remit the matter to the Tribunal for fresh consideration in the light of this judgment.