

**THE HIGH COURT
JUDICIAL REVIEW**

[2010 No. 954 J.R.]

BETWEEN

**Z.A.B AND
H.A.S (IRAQ)**

APPLICANTS

AND

**PAUL CHRISTOPHER, ACTING AS THE REFUGEE APPEALS TRIBUNAL AND
THE MINISTER FOR JUSTICE AND LAW REFORM, IRELAND
AND THE ATTORNEY GENERAL**

RESPONDENTS

JUDGMENT of Mr. Justice Eagar delivered on the 4th day of June, 2015

1. This is an application for judicial review for an order of *certiorari* by way of a telescoped hearing of the decisions of the Refugee Appeals Tribunal dated the 1st June 2010 in respect of the first Applicant and dated the 21st May 2010 in relation to the second Applicant refusing the Applicant's appeals against the recommendation of the Refugee Appeals Tribunal.

2. The Applicants are from Iraq. H.A.S., the husband, is a Sunni Muslim and Z.A.B, the wife, is a Shia Muslim. They have two living children. They arrived in the State and applied for asylum in March 2009. The Applicant's proceedings were taken together and I will give one decision in relation to the case in those circumstances.

3. The presentation of the papers was particularly unhelpful in this case in that there was substantial country of origin information which should have been separated into a separate folder. There were also a number of cases heard by the Refugee Appeals Tribunal which were submitted and these also should have been held in a separate folder. In future this Court will not deal with a case with such volume in the papers as makes it almost impossible to follow.

4. The statement grounding the application for judicial review sought the following reliefs:-

- a) An order granting the Applicant's leave to apply for judicial review by way of *certiorari*.
- b) An order remitting the matter to the first named Respondent for a full re-evaluation and for determination *de novo* by a separate member of the Refugee Appeals Tribunal.

5. There were also a number of other reliefs and it was not indicated in the submissions of the Applicant which reliefs and also grounds were being relied upon other than in very general terms. This is particularly unhelpful where ground are pleaded which have already been disposed of by judgments of the European Court of Justice or the Supreme Court.

6. The legal submissions of the Applicant suggested that they were seeking relief on the following grounds:-

- a) Breach of fair procedures in the conduct of the hearing of an oral appeal.
- b) Errors in assessing the Applicant's credibility.
- c) Failure to consider the evidence.

7. The Applicants were bank employees at different banks in Baghdad in 2008 where they resided with H.A.S.'s family. The second named Applicant, H.A.S. was threatened in the course of his employment by a leading member of the Al-Mahdi militia to provide documents so that the man could avail of government contracts. The second named Applicant refused and shortly afterwards the first named Applicant was also threatened at her place of employment in relation to her husband's religion and in connection with the husband's failure to comply with the threats made to him. Within a short period of time both their youngest child and the second named Applicant's brother were killed in a gun attack which the Applicants indicate was linked to the threats made to them. They contend that the second named Applicant was the intended target. They ended their employments and moved to another area which was predominantly Sunni. Shortly after moving there the first named Applicant was threatened for not wearing a hijab and then both the Applicants were threatened on this issue and given a few days to leave or that they would be "burnt out". They left Iraq shortly afterwards and sought asylum in Ireland in March 2009.

8. The Applicants applied for asylum on the 12th March 2009, completed questionnaires in March 2009, attended for section 11 interviews on the 22nd June 2009. The section 13 reports are dated the 29th July 2009 in relation to the first named Applicant and the 20th July 2009 in relation to the second named Applicant. The notices of appeal are dated the 6th September 2009. The Tribunal's decision was dated the 1st June 2010 in relation to the first named Respondent and the 21st May 2010 in relation to the second named Respondent refusing the Applicant's appeal.

9. The decision of the Refugee Appeals Tribunal starts at p. 375 in the book of documents in respect of the first named Applicant

which is an example of the difficulties in dealing with a large set of papers. The two Applicants were dealt with separately and I will deal with the second named Respondent first as he was first at the time. The decision of the Refugee Appeals Tribunal in relation to the second named Respondent, H.A.S., commences at p. 759 of the book of documents and ends at p. 770.

10. The first named Applicant claimed that he had lived with his brother, his wife and children. He said he was a Sunni and that his wife was a Shia. He said that his first two children were born in Iraq and the third was born in Ireland. He said that his mixed marriage created no problems within his own family and they were quite happy to welcome his wife into the family. He claimed to have been a banker with an international bank since 2006. He said that it was the major office of a small bank that operated throughout the Middle East. He said that his bank was not an exclusively Sunni one and that it had Shia employees as well. He said his colleagues did not concern themselves with the Applicant's marriage or that he had married a Shia. In other words they went about their own affairs without unduly interfering on one of their colleagues family life, as one would expect. He said that in the course of his duties he had been requested in June 2008 to issue a letter of guarantee to some construction companies that were linked by a common owner. He said he could not comply with the request as the applicant construction company owner had not accompanied his application with the necessary paperwork. When he was asked what necessary paperwork was missing he said it was two letters. When he was asked to be a bit more specific and specify the type of letters the Applicant could not give any more specifics and became vague.

11. He was asked what companies had applied for the said guarantees and he said that one was a legitimate company which had won the contract to pave all the streets in Baghdad and also contracts to build a hospital and a school (the identity of which the Applicant could not specify). The other company was an illegitimate company.

12. He said that the principal of these companies offered to bribe him to process the request without insisting on the necessary paperwork, a request which the Applicant refused. He said that this caused the principal and his associate to threaten the Applicant to quite his job. He said he received four or five threats by telephone and in person, none of which he took seriously he said.

13. He said he informed his assistant manager about this incident as his manager was absent on business for the bank in Jordan. The Applicant did not know what the nature of the business trip his manager was on. He said the manager had been away on the business trip and there was no indication of his returning anytime soon.

14. The Applicant contended that the same people who threatened him over his refusal to process the guarantee application also insulted his wife at a nearby bank where she happened to work. He said that she had a back officer position entering data into computers but these men spotted her and insulted her for not wearing a hijab.

15. The Applicant then said that the threats stopped and a week later his brother and son were killed on their way to a hospital. The Applicant said he had received a telephone call at work from his in-laws informing him about the killing and rushed to the scene where he took them to hospital. He said he did not return to work afterwards as he believed that he had been the intended target. When he was asked how he came to this conclusion, he responded that they knew that it was the Applicant's car that his brother had been driving at the time.

16. The second named Applicant said that the attackers are the same people who tried to bribe him at his bank previously. They were reasonably regular customers at the bank and knew the Applicant from there. He contended they were members of the Al-Mahdi army. When asked how he knew this he said that one of his work colleagues told him so. The second named Applicant did not know this colleague would know this information and neither did he think to ask his colleague how he came to know this information but merely took it on faith.

17. After this attack the Applicant said that he moved two months later to a Sunni area however he contended that he had been threatened there as had his wife while she was out shopping. When he was asked who threatened her and the nature of the threat he contended it was some unknown curious person who began quizzing his wife about her background to which she provided the details. He said the police reassured him not to worry about the incident.

18. He said that a bearded man came to the house around the same time demanding that his wife wear a hijab and threatened to burn their house if she did not. He then decided to flee Iraq after this and arranged with a trafficker to bring his wife and himself to Turkey. He spent five months in Turkey but there were problems obtaining a false passport which caused the delay.

19. When the second named Applicant was asked why he did not apply for asylum in Turkey he said that the trafficker advised him not to. He arrived in the State on the 12th March 2009.

20. The second named Applicant stated that his mother still lived in Iraq in the same family home with his two brothers and sister. He said that his wife's family moved house in October 2009 to Benyar, Baghdad as they had been threatened by the same construction contractor as the Applicant had been. They had not discovered his in-laws new address but the second named Applicant denied he could move there due to his Sunni religion. The second named Applicant was asked how the construction client would know that his wife was a data entry clerk in a different bank. The second named Applicant said it was because her bank was located close to his bank.

21. In answer to the presenting officer the second named Applicant said that the conditions required before his bank would issue a guarantee letter were that the client had to have both sufficient funds in his account and the ability to repay the sum guaranteed.

22. The presenting officer asked the Applicant whether his bank had a designated bank manager for various clients and the second named Applicant replied in the negative. He stated that the bank's client was engaged in the business of seeking government construction contracts. He said that all government departments required letters of guarantee before awarding state contracts. He said his job title was a supervisor and he said he supervised four people.

23. The second named Applicant said the procedure when approving guarantee letters was that his colleagues would check the paperwork and the Applicant would approve the application. He said that his department was the only one engaged in issuing letters of guarantee. The Applicant said that he did know the customer in question personally but had never dealt with him before. He had been aware of him from previous occasions in which he visited the bank. The second named Applicant had not been aware that the man was an Al-Madhi militia man at the time.

24. He said that when approached his assistant manager refused to get involved in the matter and when asked why, the Applicant said that the assistant manager's role was to prove letters of guarantee. The second named Applicant was asked if he could have contacted his manager who had been in Jordan on bank business at the time and the second named Applicant denied that he could have contacted him.

25. The second named Applicant said he worked from 8am to 3pm getting home between 4 and 5pm. But it was put to him that the attack on his brother and son occurred during his office hours, the second named Applicant said that his persecutor expected him to be at home at the time. He gave no reason as to why his bank client would expect this given that the attack occurred during normal working hours.

26. The second named Applicant stated that he did not report the matter with his bank client to the police as he had no faith in the police believing them to be dominated by Al-Madhdi militiamen. It was put to him that this contradicted his action in making a complaint to the police subsequently over threats made to his wife for not wearing a Hijab. He explained that it was different because the police in that area were Sunni and he had confidence in them.

Decision of the first named Respondent in relation to the second named Applicant

27. In the analysis of the second named Applicant's claim the first named Respondent said that he was not generally satisfied as to the Applicant's credibility in relation to the particular claim for asylum advanced by him. He said that some of his evidence ran contrary to common sense and was implausible and that on other occasions his evidence was contradictory. He set out ten issues which he stated were implausible and, also in a number of cases, not credible.

28. In relation to the issues of passing through immigration controls on a false passport without encountering any difficulties with trained immigration officers, the first named Respondent found this implausible. I regard this as a peripheral issue. This Court has stated that in *M.S.M. v. Refugee Appeals Tribunal* (High Court, 22nd May 2015):-

"It has often been expressed by members of Refugee Appeals Tribunal that they take notice of the fact that immigration officers in Dublin Airport and other international airports operate very rigorous examination of passports and other entry documentation and every adult is required to present their own documentation. It is the experience of this Court that it is inappropriate to take such judicial notice. Certainly since 2006 arising out of the British authorities identification of a plot to use liquids in drink bottles to combine into explosive cocktails aboard flights that there has been a very rigorous scrutiny of a persons' baggage at security checks in airports.

Immigration officers in Dublin and other European International airports tend to have a quick note of the photograph and document of anyone purporting to travel under a European Union passport. Anyone who does not hold a European Union passport is subject to examination by immigration officers and is likely to be stopped. The experience of the Refugee Appeals Tribunal, the Refugee Applications Commissioner and the courts is that Applicants for asylum often travel through international airports, particularly European airports with the help of traffickers who presumably are using European Union passports which they retrieve from the trafficked person in Dublin Airport. Clearly these passports are valuable to the traffickers for use again with a different photograph. In those circumstances it appears to me that the credibility finding of the first named Respondent is unreasonable. In this case the Applicant travelled on an Italian passport."

29. Whilst that is the Court's view I do not believe that it impinges on the other credibility findings of the first named Respondent. I am satisfied that the first named Respondent has given reasons for each of the findings of credibility. The first named Respondent stated he has considered all the relevant documentation in connection with the appeal including the notice of appeal and submissions, country of origin information, the Applicant's asylum questionnaire and the replies given in response by or on behalf of the Commissioner on the report made pursuant to s. 13 of the Act and he affirmed the recommendation of the Refugee Applications Commissioner in accordance pursuant to s. 16(2) of the Act.

30. In relation to the Applicant's claim, the second named Respondent indicated that the second named Respondent's appeal had been largely determined on the basis of serious credibility issues and the first named Respondent said he would adopt these credibility findings in her appeal as well. Her evidence did not differ from that of her husband other than that she said that neither she nor her husband had a pension associated with their employments with their respective banks, and that after the murder of her brother-in-law and her son, her family left their own apartment and moved to her mother's apartment for two months. She contended also that it was impossible for women to be seen in public in Iraq without a veil. She also contended that Sunni girls did not attend university and that Shia girls had to wear a partial veil and that if her daughter refused to wear a veil she would not progress in education.

31. As the cross examination was about to commence the Tribunal Member entered the hearing stating that he was dispensing with cross examination and had formed a view of credibility.

Decision of the first named Respondent in relation to the claim of the first named Applicant

32. The first named Respondent stated that he was not generally satisfied as to the first named Applicant's credibility in relation to the particular claim for asylum advanced by her. He said that the appeal was predicated to a large degree on the claim advanced by her husband and the Tribunal would adopt the findings made in relation to his appeal and he also stated that some of her own evidence ran contrary to common sense and was implausible. He set out four examples and stated that the above issues on credibility lead to the conclusion that the first named Applicant was not credible in her evidence.

33. In conclusion the first named Respondent stated that he had considered all relevant documentation in connection with the appeal including the notice of appeal and submissions, country of origin information, the Applicant's asylum questionnaire and the replies given in response to questions by and on behalf of the Commissioner on the report pursuant to s. 13 of the Act and the first named Respondent affirmed the recommendation of the Refugee Applications Commissioner made in accordance with s. 11 of the Refugee Act 1996 (as amended).

Submissions of counsel

34. The submissions related to the procedures at the oral hearing of the first named Applicant and counsel stated that dispensing with cross examination and forming a view on credibility in advance of the completion of the first named Applicant's evidence without putting the adverse credibility findings to the first named Applicant and denying her an opportunity to address those issues amounted to a denial of fair procedures. She also submitted that the Respondent's determination of the first named Applicant's appeal stated that her appeal was "predicated to a large degree on the claim advanced by her husband". Counsel submitted that it was explicitly submitted on behalf of the first named Applicant that her case, despite being based on many facts common to her husband's, nonetheless was an independent application for refugee status and set out separate Convention links.

35. In relation to the assessment of credibility counsel submitted that the Respondent failed to consider the evidence of the first named Applicant in relation to people she could meet during the course of her employment and submitted that it was unfair for the first named Respondent to state that the first named Applicant changed the reason for not mentioning to the police that she and her

husband were threatened prior to their son's murder. In relation to the second named Applicant, counsel on behalf of the Applicants criticised the first named Respondent in relation to his findings of credibility and suggested that some of the findings of the second named Respondent were based on a subjective and speculative surmise rather than a consideration of the facts of the claim. Counsel also indicated that there was a failure by the first named Respondent to consider country of origin information.

36. Counsel on behalf of the Respondents submitted that there was no right on the part of the first named Applicants to be cross examined. Each of the Applicants were allowed to give their evidence in chief in full to the Tribunal and were not prevented from putting forward any aspect of their claim. The right to cross examine is the right of an opposing party to prove evidence given in chief. In response to counsel for the Applicants she submitted that adverse credibility findings arose as a result of her examination in chief.

37. Counsel on behalf of the first named Respondent argued that the first named Respondent had assessed the core claim regarding the letters of guarantee and found it inherently implausible.

38. She quoted also from *Idiakheua v. The Minister for Justice* [2005] IEHC 150 where Clark J. stated that an Applicant is put on notice of all the adverse findings in a report of the ORAC and it is up to the Applicant (and not the Tribunal Member or Presenting Officer) to address those issues in the course of a hearing. Also it is clear from the Tribunal Member's decision that many of the issues were in fact specifically put to the second named Applicant. Counsel submitted that it was clear on the basis of these findings that there were serious credibility issues regarding the entire factual matrix for the difficulties which the Applicant stated they had encountered in Iraq. These findings went to the core credibility of both the Applicants and were sufficient to ground the refusal of refugee status. She submitted that the first named Respondent complied in all material respects with the proper principles for assessing credibility as set out in the decision of Cooke J. in *Radzuik v. The Minister for Justice and the Refugee Appeals Tribunal* [2009] IEHC 353.

Decision of the Court

39. This Court is satisfied that a Refugee Appeals Tribunal Member is entitled (as in any court hearing) to indicate to the Presenting Officer that he or she does not require the Presenting Officer to cross examine an Applicant. This Court is also satisfied that the first named Respondent was entitled to have regard, *inter alia*, to the section 13 report in the course of its determination. The Applicants have an opportunity to consider the section 13 report in advance of the hearing. The Applicants are, therefore, aware of any of the matters which are set out in the section 13 report and have had an opportunity to deal with them in the course of the evidence. I am not satisfied therefore that there is any obligation on the part of the Tribunal or the representative of the Commissioner to raise any such matters in the course of questioning the Applicant. The Applicants are already aware of any adverse concerns in the report and had a fair opportunity to deal with same whether by evidence or argument. In relation to the issues of credibility I am satisfied that having regard to the principles set out in *Meadows v. The Minister for Justice and Equality* [2010] IESC 3 in considering the test for reasonableness, the basic issue to determine is whether the decision is fundamentally at variance to reason and common sense.

40. I am satisfied that the findings on credibility are reasonable and rational and are based on a rational analysis. I am satisfied that the findings of credibility are untainted by conjecture and speculation and the reasons drawn are cogent and bear a legitimate connection to the adverse finding.

41. For these reasons I am refusing the application for *certiorari* on behalf of both Applicants.