

THE HIGH COURT
JUDICIAL REVIEW

2008 1431 JR

BETWEEN

F. F.

APPLICANT

AND

BEN GARVEY SITTING AS THE REFUGEE APPEALS TRIBUNAL AND THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENTS

JUDGMENT of Mr. Justice Cooke delivered the 14th day of October 2011

1. The applicant in this case is a national of Iran who applies for leave to seek judicial review of an appeal decision of the first named respondent dated the 22nd October, 2008, which affirmed the negative recommendation upon his asylum application contained in a report of the Refugee Applications Commissioner under s. 13 of the Refugee Act 1996, dated the 29th August, 2007.
2. The applicant is described in the contested decision as "articulate, competent, educated and well able to communicate to the Tribunal" and the essential details of his background and his personal circumstances were not, as such, doubted either by the Tribunal member or by the Commissioner in the s. 13 Report. The negative recommendation is, nevertheless, based entirely upon a finding of lack of credibility in the essential claim to a fear of persecution upon which the application for asylum was based.
3. He claimed to be at risk of persecution if returned to Iran because of his past political activities as a member of a particular political group and he claimed that it was because his life was in danger as a result of these activities that he was forced to flee Iran in October 2006 and shortly afterwards to claim asylum in the State.
4. It is this claim to involvement in the activities of this opposition or dissident group that was at the heart of the finding of lack of credibility. In particular, the applicant's claim was doubted because no trace could be found of the existence of the group in question.
5. According to the applicant, his father was a dentist and his mother a teacher and both were politically active. He had an older sister who he claimed had also been obliged to flee Iran because of her similar political activities. She had gone to Canada and when his flight from Iran was arranged he believed that he too was headed for that country.
6. The applicant claimed to have been born on the 9th September, 1990 and thus to have been a minor when he arrived in Ireland "in or about, 21st November, 2006". Prior to leaving Iran he claimed to have been active in a political group called "Etelafeh Aftab" in the Farsi language, a name which appears to have been translated during the asylum process as the "The Sun Organisation Group" or "Sun Group". He said his role involved printing and distributing leaflets in order to promote interest in civil liberties issues. At the age of fifteen he claimed that he followed his parents in joining the Sun Group. His activity particularly involved the use of the computer to propagate the views of the group. He claims that as a result of his activities with a particular friend in distributing pamphlets he was arrested in December 2005, detained, interrogated and tortured over a period of 63 days. He and his friend were beaten but then released apparently because the security forces appeared to accept the story they gave of having been given the pamphlets to distribute by strangers.
7. In spite of these events he decided on his release to recommence his activities on behalf of the Sun Group and he claimed that he was encouraged to do so by his parents. He described his role as an activist as involving collating photos which showed the brutal behaviour of the police towards those involved in demonstrations and publishing them on the internet.
8. The s. 13 Report based its negative recommendation upon the implausibility of the applicant's account and specifically upon doubts as to his claim to have been that actively involved in a particular political group of which no trace could be found through internet searches. The report noted the lack of any documentation corroborating his claim to have been so involved. It concluded, "On balance, it is difficult to accept the applicant has presented a credible claim that he was persecuted for membership of the Sun Group or that he was an active member of such a group. The lack of any corroborating evidence concerning the Sun Group, his inability to offer any documentary evidence of this group or of his involvement in it, and serious inconsistencies regarding his return to work for this group after his alleged detention are issues that go to the heart of that claim".
9. The contested decision of the Tribunal is also, as mentioned, based entirely upon a finding of lack of credibility as to the applicant's claim to political involvement in the group in question. The analysis of the claim in this regard as set out in Part 6 of the decision is, in the view of the Court, thorough, careful, balanced and detailed. The analysis extends over six pages. It acknowledges that the applicant was able to give detailed information about the area from which he claimed to come so that "his claim to be from Iran is not doubted". Nevertheless, the Tribunal member identified "a number of problematic inconsistencies" which put his credibility in question. It is these specific points, identified by the Tribunal member in the account and claim of the applicant, which form the basis of the grounds sought to be presented by way of challenge to the validity of the conclusion as to lack of credibility upon which the Tribunal decision rests.
10. Nine particular points are identified on behalf of the applicant and challenged as being based upon errors of fact, mistaken assumptions, on speculation or on matters which ought not to have been relied upon without first having been put to the applicant for comment or rebuttal. The nine specific points thus identified were set out in the applicant's submissions as points A to I, and were relied upon both individually and cumulatively as undermining the soundness in law of the conclusion on credibility ultimately reached.
11. Before addressing the specific arguments raised in this regard it may be no harm to recall some of the basic principles which

circumscribe the jurisdiction of this Court in entertaining and evaluating attempts to set aside assessments of credibility made by administrative and quasi-judicial decision-makers which have been reached in procedures involving the hearing and personal assessment of the credibility of a claimant. This Court endeavoured to distil some of the salient principles from the case law in this topic in its judgment of 24th July, 2009, in *I.R. v. Minister for Justice, Equality and Law Reform and Another* [2009] I.E.H.C. 353. It is unnecessary to reiterate the ten points set out by the Court at para. 11 of that judgment, but in the context of the present case, the Court would draw attention to the principle identified at subparagraph (8):

"When subjected to judicial review, a decision on credibility must be read as a whole and the Court should be wary of attempts to deconstruct an overall conclusion by subjecting its individual parts to isolated examination in disregard of the cumulative impression made upon the decision-maker especially where the conclusion takes particular account of the demeanour and reaction of an applicant when testifying in person."

12. That is obviously an important consideration in the present case having regard to the approach adopted for the purpose of this application of isolating nine particular passages in the assessment made by the Tribunal member and subjecting each to distinct criticism.

13. In the judgment of the Court what clearly emerges from a reading of the contested decision when taken as a whole is that the central focus of the Tribunal member's source of disbelief was the apparent contradiction between the applicant's description of his computer and internet-based political activities as an activist in the Sun Group on the one hand and on the other, the failure of the applicant himself to provide, and the inability of the Commissioner through internet searches to locate, anything by way of corroboration of the existence of the group in question. In that sense the case could be seen as an illustration of the dilemma which frequently faces decision makers in the asylum process. On the one hand, the applicant is clearly from Iran and this is a country notorious for both oppression of political opposition and dissident activity and for the sophisticated surveillance and censorship of internet communication, websites, e-mails and so called "chat-rooms" and "blogs". As against that, in spite of the lapse of time and the doubts created by the s. 13 Report, the applicant was wholly unable to produce any form of corroboration by way of a record of his internet-based activities whether from his family, from members of the Sun Group or other activists or from the internet itself. Thus the Tribunal member was faced with the crucial question which frequently arises: is this an applicant who has fled from the country of origin for the reasons and in the circumstances claimed, or, is this an applicant who, while coming from that country of origin has endeavoured to create an asylum-friendly scenario which is superficially compatible with conditions known to exist in the country of origin? It is in that context, in the view of the Court, that it is necessary to examine the specific criticisms made of the contested decision with a view to assessing whether any substantial ground has been raised which would warrant the grant of leave to proceed to judicial review of the decision.

14. The particular passages or findings in the contested decision identified as being flawed are as follows:

"A. The applicant stated that his sister had to leave Iran because of her political activities . . . His sister however left Iran when she was twelve years of age and allowing for cultural differences, it is not plausible that a person so young would be in the company of such people and participating in meetings which were essentially to criticise the government."

15. It is accepted by the respondents that this observation is based upon a mistake on the part of the Tribunal member as to the evidence of the age of the sister. She was in fact older than twelve years when she left Iran and it was the applicant who was twelve years old at that point. Such a mistake, however, as to a particular fact is not of itself sufficient to render the decision as a whole invalid unless it is material to the underlying soundness of the overall conclusion or unless it contributes cumulatively with other errors to the invalidity of the decision. For the reasons given below the Court does not consider that this is the case here. Although this passage is challenged as containing "a finding" it is not strictly speaking a finding of fact as such. The Tribunal member was not concerned with deciding the correct age of the sister as a fact. The passage contains an assessment or judgment going to the credibility of the applicant but is based upon a mistake as to a particular piece of evidence before the Tribunal in relation to the sister's age.

16. *"B. The applicant's father is a dentist and his mother a teacher and it is not plausible that such parents would pressurise ministers over sixty-three days, during which time their son was allegedly tortured, have their son released and shortly thereafter would encourage him to continue once again in an organisation whose objective was to oust the government."*

It is submitted that this "adverse credibility finding" is flawed because it is not based on specific and cogent reasons but upon speculation and conjecture not supported by evidence. The Court does not agree. The passage contains essentially an assessment on the part of the Tribunal member as to the likelihood of the described account being true. As such it is the application of the Tribunal member's common sense judgment to the postulated situation. In effect, the Tribunal member asks himself the question: "how realistic is it to suppose that two parents of such education and standing, who have been sufficiently concerned about their son's detention to overcome their own opposition convictions that they approach the government to plead on his behalf, would immediately thereafter actively encourage their son to resume his activities which created that crisis for them?" The question is logical and obvious in the view of the Court and as such is neither erroneous nor speculative. Nor is it unsupported by evidence: it is the posing of a question as to the plausibility of the evidence given by the applicant himself.

17. *"C. He told the Tribunal that his friend's father rang his house on the 11th October to tell him his son was arrested however, the applicant in his interview stated he received the phone call in November. When asked to explain the difference, he blamed the interpreter. If such an event precipitated his departure from his country of origin, he should at least know the month."*

It is argued that this finding is made in error on the basis that the date actually given at the hearing was 20 Aban 1385 which translates from the Islamic to the Gregorian calendar as 11th November, 2011. It appears that at the hearing this was mistakenly translated as 20th October 1385. As with the issue raised as to the passage at point A above, if it is accepted that there has been a misunderstanding due to a mistranslation, the question it raises here is whether it is sufficiently material to render the overall assessment unsound.

18. *"D. Further, he said his new role in the Sun Group was the development of photographs showing members of the Sun Group in demonstrations and the brutal behaviour of the police force against those members. This is inconsistent with his evidence concerning the structure of the Sun Group. He said it was a secret organisation which operated in cells and at the same time he told the Tribunal that he would chat with strangers, find out their politics and send photographs of members in demonstrations."*

It is submitted that the Tribunal member in this regard failed to take account of the fact that the applicant clarified during the interview that the photographs in question were of demonstrators and photographs of demonstrators taken by members. It is also

argued that as this point was not part of the s. 13 Report, it was one which ought to have been put to the applicant specifically at the Tribunal hearing so that it could be answered.

19. In the judgment of the Court this is an over-analysis of the point being made. The point made by the Tribunal member, as the Court interprets the decision, is directed at the inconsistency between the role the applicant claims to have performed within the Sun Group as a secret organisation and his assertion that he would openly chat with strangers encountered on the internet and send them photographs. This goes, in effect, to the overall finding of implausibility on the part of the Tribunal member as to the existence of the Sun Group and the applicant's claimed role in it. Given that the point goes to the fundamental basis of the s. 13 Report, the Court does not consider that it is a stand-alone finding which is required to be put specifically to the applicant for response prior to being made and put into the contested decision. The distinction sought to be made between "photographs of members" and "photographs of demonstrators" is immaterial to the basis of the Tribunal member's observation.

20. *"E. During the course of his interview, he said that human rights organisations know nothing about the Sun Group because they are local and not affiliated with the other groups of dissidents. However, he went on to say as a local group, they have connections with political groups outside Iran but he, the applicant, did not know those operating outside."*

It is argued that this is based upon an error of fact and a misunderstanding. It is claimed that the applicant did not say that human rights organisations knew nothing about the group because they were not affiliated to other dissident groups; but that he claimed that the only groups that would be known are groups having their activities outside Iran, as those active within Iran must remain secret. Although this is sought to be challenged as a distinct finding, in the view of the Court, it forms part of a lengthy passage in the contested decision in which the Tribunal member refers to a number of aspects of the evidence given and the claim made as contributing to the lack of credibility in the claim as a whole. The particular force of the point being made by the Tribunal member is in fact encapsulated in the sentence which immediately follows the above quotation from the contested decision: "The Commissioner attempted on numerous occasions to find information about the Sun Group but was unsuccessful yet the applicant stated he had a email address and could send photographs to anybody who was interested in the activities of the Sun Group. The Tribunal does not consider this to be credible". In the judgment of the Court this was a logical and reasonable conclusion well within the scope of the Tribunal member's jurisdiction of assessment of the evidence before him.

21. This last quoted passage from the decision is itself the subject of the complaint raised at point F. It is said to be flawed because it relies on both facts and on an assumption for which there is insufficient evidence. It is claimed the applicant never said that he had e-mailed photographs to anyone, but only that he had put them on a CD. It is said the Tribunal member assumed that e-mails sent by the applicant ought to have been found. As there is no evidence of this assumption or assertion the conclusion is said to be not based on evidence or on cogent reasons.

22. In the judgment of the Court this observation is again one which forms part of the overall evaluation of the core of the credibility of the applicant's claim. Both the Commissioner and the Tribunal member have doubted his assertions because no trace of the existence of the "Sun Group" can be found anywhere in the vast domains of the internet. It is not a matter of tracking down specific e-mails said to have been sent by the applicant himself. This is a finding which goes to the overall conclusion that the Sun Group is not shown to have existed at least in the ways in which it is claimed to have performed as an active entity on the internet. Given the challenge that was made to the findings of the s. 13 Report, if this overall conclusion was wrong, it was open to the applicant to direct the Tribunal member to it or himself to download appropriate corroborating material from the internet and produce it to the Tribunal member. This was not done.

23. *"G. He was asked why would the authorities allow such a chat room to exist and he replied "the country don't have the know how to block the information". However, country of origin information put in evidence in relation to internet filtering in Iran, states that that country has put in place one of the world's most substantial internet censorship regimes. That country, along with China, is among a small group of states with the most sophisticated state mandated filtering systems in the world."*

Again, this is said to be not based on evidence. This submission is unfounded. The Tribunal member has had a regard to and has relied upon specific evidence put before the Tribunal as to the comprehensiveness and effects of State-sponsored filtering systems in Iran. As such, the Tribunal member's finding is based upon appropriate evidence.

24. *"H. The applicant's lack of any documentation is problematic as it means there is no evidence that he was involved in the Sun Group other than his own testimony and considering he was allegedly directly involved in the publication of media and literature for this group, it is not credible that he was unable to have access to any shred of evidence in relation to his activities for the organisation considering his father allegedly organised for his departure and gave the applicant an educational diploma."*

This is said to be based on an error of fact, although the precise fact is not identified in the submissions. It is suggested that the Tribunal member took the view that the applicant should have been able to bring documents relating to his activities in the group with him when he came from Iran because he had, for example, brought a computer certificate with him. Again, this is part of the overall credibility finding based upon the implausibility of the general claim made by the applicant as to his particular activities in the Sun Group and the absence of any independent corroboration of the particular role he claims to have performed. In the judgment of the Court this was a conclusion entirely open to the Tribunal member having regard to the basis upon which the claim was made and the evidence, and lack of evidence, at the stage of the hearing. It is suggested that the finding ignores the particular context described by the applicant in that on hearing of the arrest of his friend, he immediately destroyed all of the documents which he might otherwise have brought with him. In the view of the court, that is not the point being made by the Tribunal member. He is not accused of having failed to bring with him documents he might have possessed. He is being criticised for his inability, in the light of the content of the s. 13 Report, to substantiate his claim by any material whether drawn from the internet or from contacts with friends or family in Iran which would serve to corroborate his claim. In the judgment of the Court, the finding of the Tribunal member on this account cannot be questioned.

25. *"I. In his interview, he stated that after his arrest, he was taken to his house and his parents were interrogated. When he was questioned about this at his oral hearing, he stated he was never taken to his house and the interviewer was at fault."*

This finding is said to be flawed because the applicant had said at the hearing that it was when he was arrested the authorities went to his parents' house – not that he was taken there at the same time. Again, what is essentially alleged here is not so much a mistake of fact on the part of the Tribunal member as much as a failure on his part to inquire into whether or not there had been a mistake in interpretation. There is no doubt, as the respondents point out, that at p. 17 of the report of the s. 11 Interview the follow exchange is recorded:

"Q. Did the intelligence interrogate members of your family at the time of your arrest?"

A At the time of my arrest they took me to my house and interrogated my parents.”

26. The applicant points out that this exchange is at variance with evidence given elsewhere by the applicant both in the asylum questionnaire and in the interview and at the appeal hearing where he described being taken immediately to prison following his arrest and not back to his home.

27. Here again, the Court considers that if there has been some discrepancy as a result of an interpretation failure, it does not amount to a mistake as to a material fact on the part of the Tribunal member. There does not appear to be any doubt but that the applicant was claiming that his parents were interrogated at the time when he was arrested. Whether or not he was present or in prison, does not, in the view of the Court, have a material bearing upon any fact which goes to the substantive assessment of the credibility of the asylum claim made by the applicant.

28. It follows, in the judgment of the Court that no substantial ground has been made out as to lack of soundness in the assessment of credibility made by the Tribunal member when considered in the round. Although, as indicated above, it may be possible to point to one admitted error and a number of other arguable discrepancies or mistakes attributable to mistranslation, these are not either individually or in their cumulative effect sufficient to undermine the validity of the overall assessment made by the Tribunal member. As indicated above, the Tribunal member has, in the view of the Court, carefully considered the essential basis upon which the claim to a fear of persecution has been made namely, the applicant’s description of his activities in and involvement with the “Sun Group” and found it wanting. The rationale of the assessment lies in the dichotomy between the very nature of the applicant’s alleged involvement and activities on the one hand and the subsequent total absence of any independent trace of that involvement or those activities or of the existence of the Sun group combined with the applicant’s inability to produce any form of corroboration whatsoever in the course of the appeal when the issue had been so clearly identified in the s. 13 report of the Commissioner. This assessment of plausibility is precisely the task assigned to the decision makers in the asylum process including the Tribunal member on appeal. Where, as here, the Court is satisfied that such mistakes or misunderstandings do not materially undermine the soundness of the overall assessment, it is not the function of the High Court to intervene.

29. For all of these reasons the Court is satisfied that no substantial ground for the grant of leave has been made out and the application must therefore be refused.