Neutral Citation No. [2011] IEHC 452

THE HIGH COURT

2011 844 JR

BETWEEN

Y. M.

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Hogan delivered on the 6th day of December, 2011

1. The applicant is a Pakistani national, who arrived here on the 13th August, 2009. Shortly after his arrival the applicant applied for asylum contending that he had been threatened by agents of an upper caste Pakistani family, with whose daughter he had allegedly eloped.

2. The applicant's application for asylum culminated in a decision of the Refugee Appeal Tribunal on 5th May, 2010, which rejected his application on credibility grounds. An application for subsidiary protection was refused by decision of the 27th June, 2011, again on credibility grounds. The Minister then made a deportation order in favour of the applicant on the 12th August, 2011, which was notified to the applicant on the 28th August, 2011. The applicant then commenced the present judicial review proceedings whereby he seeks leave to apply for judicial review on a variety of grounds which I will later consider. Critically, however, the applicant also seeks an interlocutory injunction restraining his deportation since the Minister is unwilling to give an undertaking to that effect pending the determination of the application for leave.

3. What is striking about these proceedings is that the applicant has nowhere challenged the decision of the Refugee Appeals Tribunal delivered on the 5th May, 2010. In the course of that ruling the Tribunal member comprehensively ruled against the applicant's credibility. During the course of the applicant's interview for the purposes of s. 7 of the Refugee Act 1996, it was put to him that he had previously applied for visa for Ireland to cover the period from May, 2009 onwards. This was an essential aspect of the questions put during the course of the s. 11 interview, yet the applicant denied all knowledge of that visa application. Critically, however, the Tribunal member found on this point as follows:-

> "It was put to the applicant that the information furnished by the Visa Section in the Department of Justice disclosed that a person with the same name and date of birth of the applicant had filled out the visa application to the Irish authorities in Pakistan. Submitted with this application (as would be the normal procedure) were a passport, bank statements and various written testimonials. The photograph on both the visa application and the passport supplied therewith bore a striking resemblance to the photograph of the applicant on the appeal file. The signatures on both passport and visa application were strikingly similar to that of the applicant. It appears on the foot of each page of his s. 11 interview notes and also on his questionnaire. The similarities in signature were put to the applicant at the appeal hearing. He denied any knowledge of how this could possibly have happened. The Presenting Officer put the various testimonials and bank statements supplied in support of visa application. Again the applicant denied all knowledge. The applicant stated in his questionnaire that he had never applied for an Irish visa before.
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> I do not accept the applicant's evidence when he ever denied ever having applied for an Irish visa. The similarities in signatures on all of the visa application, copy passport, on the questionnaire and on the foot of each page of the s. 11 interviews are remarkable. I consider that it is apparent that the same person (namely, the applicant) signed all these documents.
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> I find that the applicant failed in his duty under s. 11C of the 1996 Act to cooperate in the investigation of the application and the determination of his appeal and I have had regard to this, and s. 11B(i) of the 1996 Act, as amended, in assessing the applicant's general credibility. And I do not accept the answers given to both the s. 11 interview and before the appeal hearing when the applicant denied all knowledge of the visa application, I further find that the applicant has adduced manifestly false evidence in support of the application, and has otherwise made false representations both orally and in writing…"

4. As we have already noted, this decision has never been challenged or even disputed in any way by the applicant. This is a critical factor which now requires to be considered so far as the grant of a stay is concerned.

The test for interlocutory injunctions in pre-leave applications

5. The test governing the grant of a stay in pre-leave applications has been the subject of several judgments of this Court in recent times. It is only right to acknowledge that a perusal of these judgments would reveal a difference of approach as between the judgments delivered by the other judge presently assigned to asylum matters, Mr. Justice Cooke and myself.

6. It is probably unnecessary to explore this apparent difference of approach in any detail so far as the present case is concerned. In *PJ v. Minister for Justice, Equality and Law Reform*, High Court, 18th October, 2011, I expressed the view that an a litigant should not be placed at a procedural disadvantage by reason of the fact that his or her application for leave to apply for judicial review under s. 5(2) of the Illegal Immigrants (Trafficking) Act 2000, has yet to be determined. Proceeding from that premise and from an analysis of the provisions of O. 84, r. 20(7)(a) as distinct from O. 84, r. 20(7)(b), I concluded that such an applicant should generally be entitled to a stay of a deportation decision pending the determination of the leave application save where it was plain that the application was unsustainable in law or there were other special circumstances.

7. What, then, is the situation here? Passing over the fact that the statement of grounds contains many generic pleas of illegality which are not directly linked to the applicant's case, I will assume for present purposes that at least some of them are sufficiently

arguable for this purpose. Given the special circumstances of the present case, however, this does not mean that the applicant is automatically entitled to a stay or to its equivalent.

8. As already noted, it is significant that no challenge has been taken to either the findings of the Tribunal or to its conclusions. It is clear from those findings that the applicant has, I regret to say, engaged in a brazen deceit so far as the asylum process is concerned. In this regard, it is noteworthy that the applicant's rather perfunctory and largely formal affidavit grounding this application is totally silent so far as these findings are concerned. Yet this deceit was fundamental to the operation of the asylum process itself. The applicant must have known that he made a visa application in May, 2009 and his failure to acknowledge this could not be regarded as some minor error or be charitably attributed to forgetfulness on his part.

9. This deceit also strikes at the heart of his application for judicial review. Were the court to grant a stay, it would be implicitly condoning and, indeed, indirectly rewarding those who would seek to circumvent our immigration legislation by resorting to calculated acts of deception of this nature. The courts cannot be asked to avert its eyes and to facilitate the applicant obtaining the benefit of a discretionary relief to which he is not justly entitled: cf. by analogy my own judgment in *Robertson v. Governor of Dochas Centre* [2011] IEHC 24.

10. I stress here that the deceit at issue here went to the heart of the asylum application. Thus, the applicant's lack of candour is fundamental to the grant of this discretionary relief. In this respect, I would respectfully repeat what I said on this point in *Oboh (a minor) v. Minister for Justice, Equality and Law Reform* [2011] IEHC 102:-

> ". . . it is equally clear that the lack of candour must be *relevant* to the question of relief. In other words, the mere fact that a litigant has been guilty of lack of candour cannot *in itself* disentitle an applicant to relief. Discretionary relief is not withheld on this ground as a form of punishment or because judges are personally offended or feel slighted by such contumelious behaviour on the part of the litigant in question. It is rather that the court, being desirous to uphold the integrity of the system of administration of justice may withhold relief where it is satisfied that the litigant has told an untruth which, if it had been otherwise accepted by the court, would have materially influenced the disposition of the proceedings."

11. I went on to point out, however, that the untruths which had been told in the course of the asylum process in that case were not relevant to the issues which I then had to consider, namely, the potential effect on the family if Mr. Oboh were to be deported:-

> "I further agree that if one were to look at this matter solely from the standpoint of Mr. Oboh, there would be a good deal to be said in support of the contention that, subject to the question of relevancy, his deceitful conduct and flagrant abuse of the asylum system should *per se* disentitle him to any relief from this Court. This would be especially so where the untruths went to the core of the case which he was making. Save, perhaps, in quite exceptional circumstances, the Court, for example, could not have been asked by Mr. Oboh to quash the decision of the Refugee Appeals Tribunal rejecting his asylum application in circumstances where he admitted that a key document submitted in support of that application was fraudulent.
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> The present case does not, however, come into that category for two main reasons. First, these untruths – while deplorable and inexcusable – are not central to the fundamental case now made regarding the potential break-up of the family. The exact date on which the applicant entered the State is not directly relevant to the resolution of these issues. Second, it is plain that . . . I must rather view this matter from the standpoint of the innocent children applicants who must, where possible, be shielded from the consequences of the behaviour of their parent or parents."

12. None of the special considerations which applied in *Oboh* are present here, since the applicant's deceitful conduct does go to the heart of his asylum application.

Conclusions

13. In these circumstances, I am driven to the conclusion that by his acts of deception the applicant forfeited his right to seek the assistance of this court by way of discretionary relief, even if that is a relief to which the applicant was otherwise prima facie entitled pending the determination of the leave application. In the light of these considerations, I will accordingly refuse to grant the applicant a stay pending the determination of the leave application.