

THE HIGH COURT**JUDICIAL REVIEW****[2011 No. 60 J.R.]****BETWEEN****P.I.M.K. (PAKISTAN)****APPLICANT****AND****THE REFUGEE APPEALS TRIBUNAL, THE MINISTER FOR JUSTICE AND LAW REFORM, ATTORNEY GENERAL, IRELAND****RESPONDENTS****JUDGMENT of Mr. Justice Robert Eagar delivered on the 25th day of November, 2014**

1. This is an application for judicial review of the Refugee Appeals Tribunal recommending the refusal of refugee status to the applicant. In effect, the decision is challenged on the basis that the first named respondent failed to perform its function of assessment of the facts in accordance with the Refugee Act 1996. Further, that the first named respondent failed to make any clear findings on significant elements of the evidence, including the evidence of past persecution and that the Tribunal's finding in respect of internal relocation was made in total disregard to the notice of appeal and was made in circumstances where it was accepted that state protection is unavailable.

Background

2. The applicant was born on 8th November, 1986. The applicant claimed that he was a member of Ahmadi religious movement which is internationally recognised as being Islamic. The applicant stated that he resided in different areas of Pakistan before fleeing to Bahrain. He said that when it was no longer possible for him to remain there he fled to Ireland in fear of his life. He arrived in Ireland on 16th August, 2010, and applied for asylum on 30th August, 2010. He stated that he was interviewed in relation to his asylum application by the Refugee Appeals Commissioner on 12th October, 2010, and was notified on 28th October, 2010, that the Commissioner had refused him asylum status. A notice of appeal in support of submissions were submitted to the Refugee Appeals Tribunal by letter dated 9th November, 2010, and by letter dated 13th January, 2011, he was notified that his appeal was unsuccessful.

3. In addition to the papers before the court, a supplemental affidavit of the applicant, together with an affidavit of an officer of the Refugee Applications Commissioner were furnished to the court. I will deal with these at a later stage. Helpful submissions were also provided by counsel for the applicant and the respondents. The applicant is a Pakistani national born on 8th November, 1976, into an Ahmadi Muslim family according to the applicant. As a result of persecution of Ahmadis, including an experience where about ten or twelve years ago, another Muslim group set fire to fifty or sixty houses of Ahmadis in a village of the District of Gujarat, and the applicant claimed that he was targeted by a man in Gujarat who is a follower of Jamat-e-Islami and that he wanted to take his money and land away from him. This man was threatening him according to the applicant as he was a member of the Ahmadi minority and accused him of not being a Muslim because of this. He left Pakistan for Bahrain in approximately 2007. He claims he had problems there. There were problems between the Sunni and Shia factions. He claims that one day a fire destroyed the building where the shop where he worked was located and because the owner of the shop was a Sunni. The applicant came to Ireland through an agent on 16th August, 2010.

4. The applicant explained that he had travelled from Bahrain to Amsterdam where he stopped for three to four hours, and then from Amsterdam to Cork. He did not apply for asylum in Amsterdam. The applicant was asked to provide evidence of his manner of travel and he claimed that the agent had all the documents. It was put to the applicant that according to his visa application he had been living in Bahrain for seven years, but he denied this. It was put to the applicant that the information was that the applicant had booked flights from Bahrain to Turkey to Ireland, but the applicant claimed he had never been to Turkey. It was also pointed out to the applicant that most Ahmadis are identified in their passports as Ahmadi and the applicant stated he did not have any information about this and he did not know that Ahmadis were identified as such in their passports. Prior to moving to Bahrain he lived in both Lahore and Karachi and that he spent three or four months in Lahore and he had no problems because there was no one who knew him there. He also spent six to seven months in Karachi. He said that "Karachi is quite a big city. I did not really have any problems there".

5. Section 11A(3) of the Refugee Act 1996, provides that where an applicant appeals against the recommendation of the Commissioner under s. 13, it shall be for him or her to show that he or she is a refugee.

6. The first named respondent dealt in the analysis of the applicant's claim with the applicant's travel route and that he did not apply for protection either in Amsterdam or at the frontiers of the State. The first named respondent said that his claim was not credible and that his evidence points to his being targeted on the basis of his possession of property and his unwillingness to sell that property. The first named respondent did not accept that this constitutes persecution on the basis of a Convention ground. There was no evidence that the applicant was an Ahmadi and secondly, his own evidence does not lead to the conclusion, that the applicant is in fear of persecution on the basis of religion whether that be Ahmadi or otherwise, and held that the applicant's claim failed on two grounds. Firstly, that the applicant did not prove with any requisite degree of standard that he fears persecution on the basis of religion or any Convention ground and secondly, insofar as the applicant claimed that he suffered any persecution he did not accept that relocation was an option and would not be unduly harsh in the applicant's circumstances.

7. I turn now to the affidavit of James Kenny who described himself as an officer of the respondent. The applicant attended for an interview on 12th October, 2010, and was asked at Q. 72 whether he had ever applied for a visa for the United Kingdom using his Pakistani passport, to which he replied no. At Q. 73 the applicant, having been told that the Irish authorities shared information with the authorities in the United Kingdom, asked the applicant again had he ever been to the UK to which the applicant replied, "no, I

have never been there or applied for a visa". Mr. Kenny further states that the applicant had been required to provide a clear set of his fingerprints to the authorities for the purpose of checking same on the EURODAC system.

8. Mr. Kenny went on to say that the UK Border Agency sent a letter confirming that the set of fingerprints were matched to a UK Data Record seeking a visa to enter Britain by the applicant. The visa was refused. This was in July, 2009. The application was made in Abu Dhabi on 15th July, 2009.

9. I refer now to the supplemental affidavit of the applicant. His response to what he said at Q. 72 and 74 of the interview was that he stated no because he was afraid that if he said yes, the Commissioner would not examine his application and that he would be returned to Pakistan.

The Role of the Court

10. In *I.R. v. The Refugee Appeals Tribunal* [2009] IEHC 353, Cooke J. found the following principles that emerged from the case law as a guide to the manner in which evidence going to credibility ought to be treated and the review of conclusions on credibility being carried out:-

"1. The determination as to whether a claimant has a well founded fear of persecution is credible falls to be made under the Refugee Act 1996, by the administrative decision maker and not by the court. The High Court on judicial review must not succumb to the temptation or fall into the trap of substituting its own view for that of the primary decision maker.

2. On judicial review the function and jurisdiction of the High Court is confined to ensuring that the process by which the determination is made is legally sound and is not vitiated by any material error of law, infringement of any applicable statutory provision or any principle of natural or constitutional justice.

3. There are two facets to the issue of credibility, one subjective and the other objective. An applicant must first show that he or she has a genuine fear of persecution for a Convention reason. The second element involves assessing whether that subjective fear is objectively justified or reasonable and thus well founded."

At paragraph 5, Cooke J. states:-

5. 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.

6. The reasons must relate to the substantive basis of the claim made and not to minor matters or to facts which are merely incidental in the account given."

The role of this Court is to ensure that the process by which the determination is made is legally sound and is not vitiated by any material error of law, infringement of any applicable statutory provision or of any principle of natural or constitutional justice.

11. In my view, the first named respondent did not err in the circumstances and facts of this case. In *M.I. v. The Minister for Justice, Equality and Law Reform & Ors*, Peart J. (9th December, 2005) stated that:-

"...it seems to follow that even where the court may be satisfied that there was some error in the process it can refuse relief where it is also satisfied that such an error as did occur did not go to the heart of the decision such as would render the decision unlawful."

This is the view that I take of this case and I, therefore, refuse the relief sought in this application.