

THE HIGH COURT

JUDICIAL REVIEW

[2013 No. 942 JR]

BETWEEN

E.Y. (Pakistan)

APPLICANT

AND

**PAUL CHRISTOPHER (SITTING AS THE REFUGEE APPEALS TRIBUNAL), THE MINISTER FOR JUSTICE AND EQUALITY, IRELAND
AND THE ATTORNEY GENERAL**

RESPONDENTS

JUDGMENT of Ms. Justice Stewart delivered on the 17th day of June, 2016.

1. This is a telescoped hearing seeking, *inter alia*, an order of *certiorari* in respect of the decision of the Refugee Appeals Tribunal (hereinafter referred to as 'the RAT') to affirm the decision of the Refugee Applications Commissioner to refuse to grant the applicant refugee status, brought pursuant to a Notice of Motion dated 12th December, 2013.

Applicant's submissions

2. The applicant is a Pakistani national who seeks refugee status in this state on the basis of a fear of persecution in his home country due to his Catholic religious beliefs and, in particular, his conversion from Islam in Pakistan.

3. The applicant arrived in the State on 3rd May, 2013, and appears to be residing in Drogheda, Co. Louth. It is stated in the applicant's outline submissions that he travelled to Belgium and Spain before returning to Ireland on 29th May, 2013. It is also stated that the applicant informed the immigration officials at Dublin Airport of his intention to apply for asylum. He was allowed to apply for asylum in June 2013, having first been released from Garda custody.

4. Mr. O'Dwyer, S.C., with Mr. Whelan, B.L. for the applicant, submit that the applicant's refugee application was initially rejected by the Refugee Applications Commissioner (ORAC). The applicant was not permitted to partake in an oral hearing before the Refugee Appeals Tribunal (RAT) due to his delay in applying for asylum at a date earlier than June 2013, which was based upon the Commissioner's decision to exercise his discretion under s. 13(5) of the Refugee Act, 1996 (as amended) to include a finding in respect of the applicant pursuant to s. 13(6)(c) of the 1996 Act.

5. It is stated in the applicant's submissions that the:

"...primary submission of the applicant is that he did not receive an effective remedy in respect of the first instance decision of the ORAC as the decision at the Refugee Appeals Tribunal make the same and some other personal credibility findings against the applicant which weren't put to him and which he couldn't properly address."

6. The applicant submits that because the RAT appeal was on a non-oral basis, a heightened level of scrutiny by the RAT is necessary when considering the applicant's documents. In this regard they rely upon the decision of the CJEU in *MM v. The Minister* (Case C-277/11 22nd Nov, 2012) and by Hogan J. in the same case *MM v. The Minister* [2013] IEHC 9; the decision of Clarke J. in *V.M. (Kenya) v. Refugee Appeals Tribunal* [2013] IEHC 24; B.Y. (Nigeria) v. *Refugee Appeals Tribunal* [2015] IEHC 60 and *E.O. (Nigeria) v. Refugee Appeals Tribunal* [2015] IEHC 380.

7. Along with the perceived adverse consequences to the applicant by the use of a non-oral hearing, the applicant also submits that the reasons provided by the RAT and the credibility findings so found lack any foundation. In this respect, the applicant relies upon the decision of Cooke J. in *I.R. v. MJELR* [2009] IEHC 353 and of the decision of MacEochaidh J. in *Omidiran (An Infant) v. Minister for Justice and Equality* (Unreported, High Court, MacEochaidh J., December 20th, 2012). The applicant says that the reasons proffered by the RAT as to credibility findings are "not cogent and well founded". The applicant relies, in particular, upon a letter provided by a church that seemed to indicate, in the applicant's view, that he is a practising Catholic. The applicant argues that this is an acknowledgement that he is a convert from Islam to Catholicism, which is the basis of his claim.

8. The applicant also states that the RAT's findings in relation to travel are peripheral to the claim made by him and therefore excessive weight was placed on these matters by the Tribunal. Reliance is placed upon the decision of Eager J. in *B.A. v. RAT* (Unreported, High Court, Eager J., 11th February, 2015) in this regard.

9. The applicant also argues that new credibility findings were made by the RAT which were not then put to the applicant. The applicant contends that this occurrence is a fundamental breach of fair procedures which voids the decision.

Respondents' submissions

10. Ms. O'Sullivan, B.L. for the respondents placed emphasis upon the fact that the applicant did not apply for asylum in Ireland on 3rd May, 2013, when he arrived here first. The applicant remained in the state for three weeks before travelling on a false passport to Belgium and Spain and then returning to Ireland.

11. The respondents submit that the applicant's assertion that he had wanted to apply for asylum but was placed in Garda custody and not allowed to do so has not been previously pleaded and as a result cannot be relied upon in evidence.

12. In the applicant's 'ASY 1 Form', the applicant stated that he converted from Islam to Christianity in January, 2013. Pakistan is a predominantly Muslim country and an Islamic extremist group called Jamaat-e-Islami beat him, threatened him and ordered him to

leave and go where Christians live.

13. In the applicant's questionnaire, the applicant stated that on 10th April, 2013, four men with long beards and wearing turbans, two of whom had revolvers, knocked at the door and when the applicant answered one of the men hit him on the forehead with the butt of his weapon. The men threatened the applicant with his life if they found him again on 'sacred land'.

14. The applicant claims that he was inspired to convert to Christianity by a Christian friend of his and by the Christian ideology about which the applicant learnt. At pg. 5 of the applicant's s. 13 interview, the applicant states "...also I compared and balanced Islam and Christianity". The applicant was also asked as to why he chose Catholicism in particular? The applicant answered "That's the Christian that I know. That in my research is the top of Christian. I was inspired by my surroundings and where I lived." The applicant replied at interview that he attended mass nearly every Sunday. The applicant also states that he conducted his own research into the Catholic faith by reading, going on the internet and watching Christian movies. He stated at interview that he did not attend a Catholic church in Ireland as he did not have access, but that he had visited St. Patrick's church in Dublin and St. Francis' church.

15. At pg. 6 of the applicant's s.13 interview, the applicant responded that he had not attended any ceremony nor had he received any sacrament upon his conversion to Christianity because he was short of time. The applicant was also asked in interview whether he had been baptised and answered that "No water was poured on me but water was sprinkled on me." The respondents submit that there was a contradiction between on the one hand the applicant believing that there was no ceremony undertaken, and on the other hand, him being baptised. The applicant believed that the baptism held great significance to him, saying "It's great, it's very special to me...".

16. The applicant was unable, when asked, to name the books of the Bible, stating that he was in a "learning process" and that he only read a basic version of the bible from which he read passages. Furthermore, the respondents highlight that the applicant was unable to name any of the disciples nor was he able to identify any of the Ten Commandments. When asked about the significance of the mass and what prayers he would say at mass, the applicant responded "When you pray you talk about Jesus and different part of the testimonies. Jesus is all about love, shares the bread with people, does miracles, he is the son of God it is all about loving and sharing food, don't commit adultery, God loves children". The applicant was unable, according to the respondents, to actually refer to the contents or names of any of these "prayers".

17. The applicant was also asked about the significance of the bread and water. He stated that it was for good health, but planned to do more research into this issue. He was also asked the name or dates of any significant holy days in the Catholic church's calendar. He replied "Christmas is in December. They also have Good Friday."

18. The respondent submits further that the applicant's reliance on the *SUN/Nkosi (South Africa) v. Refugee Applications Commissioner & Ors* [2012] IEHC 338 is misguided, as the applicant in the present case delayed making an asylum application in the State.

19. The respondents rely, inter alia, upon the Supreme Court decision of *V.Z. v. Minister for Justice* [2002] 2 I.R. 135, where McGuinness J. held that an oral hearing was not necessary in all cases in the context of the Hope Hanlon procedure. In *SUN*, Cooke J. stated at para. 42:-

"It might be said that there is some logical connection between the removal of the oral hearing on appeal and some of the other findings covered by s. 13 (6). Thus, for example, if an applicant's claim has been based upon false and misleading information there may be some logic and justification for considering that he has forfeited an entitlement to be heard once again. Similarly, a significant delay in making an application for asylum may give rise to the inference that the applicant is not genuinely a refugee and justify a presumption to that effect."

The respondents re-emphasize that the applicant delayed making an asylum application once he reached Ireland.

20. The applicant submitted a letter from a priest stating that he was attending that church in Ireland. This evidence was introduced by the applicant at the appeal stage only and so could not have been assessed by ORAC at that stage of the process. The respondents rely on decisions in *Nicolai v. Refugee Appeals Tribunal* (Unreported judgment, High Court, O'Neill J., 7th October, 2005), *Nassar v. Refugee Appeals Tribunal* (Unreported judgment, High Court, Clark J., 7th October, 2009) and in *S.Z. v. The Refugee Appeals Tribunal* (Unreported judgment, High Court, MacEochaidh J., 10th July, 2013) establish that the Tribunal is entitled to draw inferences from the evidence and need not debate its conclusions in advance with the applicant.

21. Furthermore, the respondents submit that there is no obligation to apply a forward-looking test where the applicant's claim of past persecution has not been accepted as being well-founded. The respondents rely on the decision of Finlay Geoghegan J. in *Kramarenko v. Refugee Appeals Tribunal* [2004] 2 ILRM 550.

The impugned decisions

22. The applicant's s. 13 report was forwarded to the applicant under cover of a letter dated 6th August, 2013, and signed by the Higher Executive Officer at the Office of the Refugee Applications Commissioner.

23. The Commissioner based the analysis of the application on the applicant's submitted 'ASY1 Form', Questionnaire and s. 11 interview and recommended that the applicant should not be declared a refugee.

24. As regards the Commissioner's assessment of the applicant's religious conversion, at pg. 63 of the book it is stated at para. iv:-

"The applicant was asked a number of questions about his beliefs /practices as a Catholic. Whilst it is acknowledged that he provided some information in relation to some of these questions, he was vague with some of his answers, he appeared to know little about the Bible, little about the sacraments associated with Catholicism, little about the ten Commandments, little about the twelve disciples, and little about the ceremony of mass and/or any prayers which were recited... The applicant's lack of knowledge in this regard raises serious credibility issues regarding this aspect of his claim and undermines the very foundations on which his claim is based."

25. The s. 13 report continues with its analysis of the applicant's claim at para. v, when it focuses upon the applicant's travel around Europe, it states:-

"He contended that he arrived in Ireland on May 3rd, however he departed for Belgium on May 22nd. He contended that

he spent four days in Belgium before travelling to Spain where he also spent four days. He did not seek asylum in either Belgium or Spain, contending that he felt Ireland would be a better country to claim asylum because of its human rights record, its Catholic history, and the fact it is an English speaking country, see Q's 76-79-, Interview Pages 16-17...[He] contended that he travelled to Ireland via London using a fake British passport. He did not seek asylum in the UK, contending that there is a large Pakistani community in the UK...It is noted that the UK, Belgium, and Spain are EU countries and are signatories of the 1951 Geneva Convention. It is considered that the applicant could have sought asylum in any of these countries. Furthermore, it is considered that the applicant could have sought asylum in Ireland upon his original arrival or in the days following his original arrival."

26. Having assessed the applicant's claim for asylum on the basis of a stated fear of persecution in Pakistan for reasons of his religion, the ORAC determined that the applicant had not demonstrated a reasonable degree of likelihood that he would be persecuted for a Convention reason if returned to Pakistan.

27. The ORAC applied s. 13(6)(c)- *"that the applicant, without reasonable cause, failed to make an application as soon as reasonably practicable after arrival in the State."* The s. 13 report is signed by Ms. Caroline McGlinchey for ORAC and dated 29th July, 2013. The applicant subsequently appealed this recommendation to the Tribunal pursuant to Form 2 Notice of Appeal dated 12th August, 2013 and drafted by the applicant's solicitors Trayers & Co. The grounds of appeal are stated as being 'religion' and 'of being of a membership of a particular social group'.

28. With regard to the credibility findings made in the Commissioner's report, the applicant makes the following submissions in relation to these findings:-

- a. The fact that the client did not go through the formal rite of baptism is not fatal to his claim that he did convert to Catholicism. The applicant has confirmed at his s. 11 interview that some formal process did take place which welcomed him into the Catholic faith, as he underwent a prayer ceremony and was blessed.
- b. In relation to the applicant not being killed by the group of Islamists who confronted him, the applicant argues that this is an irrational finding on the basis that they did not kill him;
- c. The Commissioner also made adverse comments on the fact that the police did not take any action against him when he went to report the attack to the police;
- d. The Commissioner found that the applicant was vague with some of his answers on the Catholic faith. However, as the applicant argues, the Commissioner did not specify precisely how the appellant was allegedly inaccurate or vague. The applicant maintains that he has been clear in his submissions as regards his religious conversion; and
- e. The applicant submits that the travel findings are ancillary in nature and does not go to the core of the applicant's claim for refugee status.

29. The decision of the RAT was finalised on 22nd November, 2013, and was signed by Mr. Paul Christopher and was issued to the applicant under cover letter received by 27th November, 2013, signed by the Higher Executive Officer at the Tribunal.

30. At the section 6 analysis of the Tribunal's decision, it is stated:-

"It is contended in the notice of appeal, in "connection with the credibility findings made at para. 3.3 of the s.13 report... that...the fact that [the appellant] did not go through the formal rite of baptism is certainly not fatal to his claim..." That, of course, is true. However, it is also a fact that it is certainly a relevant consideration."

31. The Tribunal agreed that travel was an ancillary matter but nonetheless deemed it a matter that must be considered in relation to credibility. Furthermore, the Tribunal rejected the assertion that the applicant's case was a State persecution case. This assertion was unsubstantiated as the applicant had actively sought state protection from his alleged persecutors.

32. The Tribunal also highlighted that the Commissioner underlined its finding that the applicant lacked credibility on the basis that, after actively and voluntarily seeking to convert to Catholicism from Islam in Pakistan, after conducting research concerning Catholicism and being active in learning about the faith, that after some seven months of attending mass regularly, the applicant was still unaware of the importance of baptism within the Catholic faith. These facts were stated by the applicant in the course of his s. 11 interview. The Tribunal member found nothing wrong with the Commissioner's finding that this scenario lacked credibility.

33. The Tribunal also re-examined the applicant's answers given during his s. 11 interview in relation to the perceived attack on his house by the extreme Islamists known as the Jaamat-e-Islami group. At question 52 the applicant answered:

"They would have, when the gun was taken out I thought this was my last day. I think God was on my time. My mother looked out and started shouting and their [sic] were quite a few neighbours about. I think this may have scared them. My father came down and lay down and their feet and told them to leave me alone. I personally think they wanted to kill me but God wanted to keep me alive."

34. The Tribunal believed that the above answer, when read in conjunction with his belief that they wanted to kill him, was not credible. As a result, the Tribunal member stated that *"I do not think the Commissioner erred in finding this undermined the credibility of the appellant's story."*

35. The Tribunal also found the applicant's reasons for not seeking asylum earlier in either Spain or Belgium to be unreasonable and to lack cogency. For instance, the Tribunal member felt that the applicant's stated reason as to why he wanted to seek asylum in Ireland due to Ireland being a predominantly Catholic country did not make sense as both Spain and Belgium were also traditionally viewed as being Catholic countries. The Tribunal member held that *"I find his delay in claiming asylum further undermines the credibility of his claim to have a well-founded fear or persecution which could only be resolved by seeking international protection."*

36. The Tribunal also believed that the applicant's use of a false passport when he had access to a genuine passport lacked credibility. In relation to the letter submitted by the applicant from the Church of the Good Shepherd, which states that the appellant has been attending the Churchtown parish church, was found to be a device that was being used in order to remain in Ireland.

Decision

37. This case focuses upon the credibility findings made by the Tribunal Member in the applicant's case. These credibility findings are predominantly made on the basis of the answers in relation to the alleged conversion that he underwent from Islam to Catholicism.

38. Having regard to the decision of Cooke J. in *I.R. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 353, which states at para. 11 the following well-known principles to which this Court adheres:-

"1. The determination as to whether a claim to 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-makers.

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 of 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.

4. The assessment of credibility must be made by reference to the full picture that emerges from the available evidence and information taken as a whole, when rationally analysed and fairly weighed. It must not be based on a perceived, correct instinct or gut feeling as to whether the truth is or is not being told.

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.

7. A mistake as to one or even more facts will not necessarily vitiate a conclusion as to lack of credibility provided the conclusion is tenably sustained by other correct facts. Nevertheless, an adverse finding based on a single fact will not necessarily justify a denial of credibility generally to the claim.

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.

9. Where an adverse finding involves discounting or rejecting documentary evidence or information relied upon in support of a claim and which is prima facie relevant to a fact or event pertinent to a material aspect of the credibility issue, the reasons for that rejection should be stated.

10. Nevertheless, there is no general obligation in all cases to refer in a decision on credibility to every item of evidence and to every argument advanced, provided the reasons stated enable the applicant as addressee, and the Court in exercise of its judicial review function, to understand the substantive basis for the conclusion on credibility and the process of analysis or evaluation by which it has been reached."

39. Each of the findings made by the Tribunal member were open to him to make based on the evidence before the RAT. This Court cannot substitute its view of the evidence for that arrived at by the Tribunal member, absent some flaw being established in the decision arrived at by the Tribunal member. I can discern no error in the manner in which the Tribunal member conducted the hearing and arrived at his decision. I am satisfied that the decision complies with the guidelines/principles set out in *I.R.* The Tribunal member acted within jurisdiction and I therefore refuse leave.