

THE HIGH COURT**JUDICIAL REVIEW****[2011 No. 401 J.R.]****BETWEEN****M.S. (PAKISTAN)****APPLICANT****AND****REFUGEE APPEALS TRIBUNAL, MINISTER FOR JUSTICE AND EQUALITY, ATTORNEY GENERAL AND IRELAND****RESPONDENTS****JUDGMENT of Mr. Justice Robert Eagar delivered on the 26th day of November, 2014**

1. The applicant is from Pakistan and arrived in Ireland on 28th September, 2010. He applied for a declaration of refugee status which was refused by the Refugee Applications Commissioner and this was made on 6th January, 2011. He applied to the Refugee Appeals Tribunal by letter dated 30th January, 2011, and attended an oral hearing on 15th March, 2011, with the first named respondent and a decision was made on 26th April, 2011, affirming the recommendation of the Refugee Applications Tribunal that he should not be declared a refugee.

2. The applicant seeks leave to quash the decision of the Refugee Appeals Tribunal on the grounds that the Tribunal, as follows:-

- (i) The Tribunal erred in law in failing to have any reasonable regard to the relevant documents and/or in making adverse credibility findings in respect of the said documents.
- (ii) The Tribunal erred in law in failing to make any determination of the core elements of the applicant's claim and instead determined the appeal on the basis of adverse credibility findings on peripheral matters and grounded on conjecture.
- (iii) The Tribunal erred in law in its finding in respect of internal relocation and this was made without any appropriate analysis, without regard to the UNHCR Guidelines, and without regard to the notice of appeal and attached country reports.
- (iv) There was a ground that no interviewer interpreted facilities such as to meet the minimum requirements of Council Directive 2005/85/EC were provided to the applicant. (This was not pursued in the course of these proceedings).
- (v) The Tribunal erred in law and acted in breach of fair procedures in the manner in which adverse credibility findings were arrived at. Findings were based on conjecture related to peripheral matters and were made without proper regard to the notice of appeal and submissions.
- (vi) The Tribunal failed to make any findings on significant elements of the evidence including the evidence of past persecution. Being assisted in my determination of this application, I had helpful submissions and books of authorities provided by counsel for both the applicant and the respondent.

3. The applicant in his affidavit sworn on 13th May, 2011, states that because he received the adverse attentions of the Taliban he fled Pakistan in fear for his life and remains in such fear. In the application form dated 30th September, 2010, the applicant said he was a resident of Lahore in Pakistan. He also had a motorcycle shop located at McLeod Road, Lahore. He stated that he used to buy and sell motorcycles there. He stated that in front of his shop is a Mosque where he used to go to say his prayers. Some of the people Tableeghi Jamaat (an organised group of people who travel from one city to the other to preach Islam) often used to come there. They would preach Islam to the people there. The applicant said that his shop was situated right in front of the Mosque and that they would sit outside his shop on their way to and from the Mosque and they would talk about religion and Islam for a long time. He stated he had been working in the market for quite a long time and knew the whole market. He said he introduced these people to other people who had workshops in the market. He states that after three or four months he made up his mind that because of the way these people were talking and saying different things that they were related to the Taliban. They asked him to join the Taliban but he refused. He states that they told him that they would kill him if he did not join them. This happened in April 2010. He stated that he was scared for his life so he ran away to Pattuki Village and stayed with his friend for between 15 – 20 days. He returned to his shop then. He states that his shop assistant told him that the Taliban had been looking for him. He went to the Market Secretary and asked him for help. The Market Secretary, according to him, told him to report the matter to the police, which he did. He claimed that the police did not help him. He said there was no escape from the Taliban and arranged to meet another person to see if he could help him. This other person told him he could help him to escape from Pakistan and made the relevant arrangements. He states he had to sell his shop to pay this other man and he states that he could not live in any other part of Pakistan as the Taliban would find him. He states that he fears his life in danger if he returns to Pakistan.

4. In his application form, he indicated that his mother, two sisters and three brothers are still in Pakistan.

Documents

5. The applicant produced a card with his name and indicating that he dealt in second hand motorcycles. He also produced a number of receipts in the name of his motorcycle company with an address which was clearly with the name McLeod Road spelt incorrectly as Mecload. He also produced a letter from Haidri Welfare Society confirming that the applicant lived at a particular address in Lahore, that he was a very gentle man and belonged to a good family and this was purported to be signed by the president of the society.

6. Apart from this documentation, there was no other evidence of the applicant's identity.

7. When asked what route he came to Ireland, he said from Karachi, he boarded a ship, that the ship stopped three times but he did not know the places. He could not read or write. When the ship arrived in Ireland, he states that the agent and himself were picked up by a car.

8. The first named respondent outlined that the burden of proof in accordance with s. 11A(3) 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.

9. The first named respondent outlined the requirements of s. 11B of the Refugee Act 1996, as amended, to have regard to the following in assessing in the credibility of the applicant, *inter alia*:-

(a) whether the applicant possesses identity documents and if not whether he or she has provided a reasonable explanation for the absence of such documents.

(b) whether the applicant has provided a reasonable explanation to substantiate his or her claim that the State is the first safe country in which he or she has arrived since departing from his or her country of origin or habitual residence.

(c) whether the applicant has provided a full and true explanation of how he or she travelled to and arrived in the State.

Credibility

10. The Tribunal was not generally satisfied as to the applicant's credibility in relation to the particular claim for asylum advanced by him. The first named respondent said some of his evidence ran contrary to common sense and was implausible and on other occasions, his evidence was contradictory and he set out some examples:-

(a) The applicant contended that the main basis of his claim was that members of the Taliban were persecuting or threatening to persecute him because he said he knew all their secrets. The applicant agreed at interview that he was unaware of even the most elementary facts such as where they were from and their addresses. The first named respondent in asserting his view as to the applicant's credibility said that the Tribunal could find no error in the credibility finding of the Refugee Applications Commissioner.

(b) It struck the Tribunal as inherently implausible, the evidence concerning his purported report to the police about strangers he contends are persecuting him and that the Tribunal would also uphold the credibility finding of the first named respondent, in this regard.

11. The Tribunal also held that the applicant said that he had owned his own business and employed a child to help out. He was asked who did all the paper work for his business in the light of his contention that he was illiterate and the first named respondent suggested that the applicant became vague and evasive and merely replied "some people".

12. The first named respondent also said that he had not submitted any photographic identity documents to the Tribunal but the business cards and invoices were submitted by the applicant related to a Mecload Road rather than McLeod Road, and the Tribunal indicated there was no weight to be attached to these documents and in the circumstances found that they did not advance his claim in any material response.

The Law

13. In *I.R. v. The Refugee Appeals Tribunal* [2009] IEHC 353, Cooke J. outlined nine principles that emerge from case law as a guide to the manner in which evidence going to credibility ought to be treated from the review of conclusions and credibility to be 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.

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 to the account given.

7. A mistake as to one or more facts will not necessarily vitiate a conclusion as to the 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.”

Grounds of Review by the Applicant

14. Counsel on behalf of the applicant stated that the first named respondent made the simple but central error as was made by the Refugee Applications Commissioner. The applicant’s consistent evidence that the Taliban member stated he would be killed because of his knowledge he had about them. However, it appears that the applicant knew very little about them and this was one of the reasons why the first named respondent identified this as a credibility finding against the applicant.

Internal Relocation

15. The first named respondent then indicated that he would deal with internal relocation “lest the Tribunal be wrong in relation to the findings premised on an assessment of the credibility of the history presented in support of his asylum claim”. The first named respondent found that internal relocation to Karachi was possible, for example and this particular suggestion which was put to the applicant would have availed the applicant”. The applicant contends that the finding in respect of internal relocation was unreasoned whilst the respondent indicated that the Tribunal did carry out an assessment in accordance with the requisite legal principles.

The Court’s Analysis

16. The court finds no fault with the reasoning of the first named respondent in respect of the issue of credibility having regard to the failure of the applicant to be able to give any information as to the identity or background of the persons whom he describes as being associated with the Taliban. Also proceeding on the assumption that the Tribunal accepted that the applicant, who owing to a well founded fear of persecution, for reasons of religion or membership of a particular social group, could amount to persecution, I am satisfied that the consideration by the first named respondent of internal relocation was unnecessary having regard to his findings of credibility. However, it is my view that his decision to consider the issue of internal relocation was not such a fundamental issue that would vitiate the decision of the first named respondent.

17. It seems to this Court having regard to the principles and practice of applications for judicial review of a decision that the first named respondent had evidence which justified its findings and conclusions and gave reasons in relation to same.

18. Accordingly, this Court refuses the application for leave to apply for judicial review.