

THE HIGH COURT
JUDICIAL REVIEW

[2010 No. 691 J.R.]

BETWEEN**M. E.****APPLICANT****AND**

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

RESPONDENTS**JUDGMENT of Mr. Justice Mac Eochaidh delivered on the 21st day of March 2014**

1. This is a telescoped application for judicial review. The applicant says that he is an Iranian man who was born on 12th February 1982, who has suffered persecution because of his political activities and because he has renounced his Muslim faith. He claims to have been arrested and detained on numerous occasions and to have been badly beaten and tortured. He says that his brother, who was politically active, was executed in 1999, and that he was detained for many months after he attended a demonstration to mark the second anniversary of his brother's execution.

2. The applicant's claim was rejected because of numerous adverse credibility findings. The principal complaint pursued in these proceedings is that these findings are unlawful. The first credibility findings made by the Tribunal Member related to issues connected with the applicant's departure from Iran and eventual arrival in Ireland. Rather than paraphrase the multiplicity of negative findings made in respect of these issues, I set out the terms of the Tribunal's finding as follows:

"The applicant did not supply a passport in support of his application. He claimed that he travelled on a false (possibly Italian) passport which had been given to him by the agent. The agent took this passport back off the applicant when they arrived at Dublin. The applicant stated that he travelled from Iran, to Turkey, and then onward to Ireland via an unknown country. The applicant claims that he did know where this country was, as it was his first time travelling outside of Iran. The applicant presented as a young, articulate 27-year old man. He claims to be educated to Third Level and claims to have taken an active interest in politics and campaigning. I find this is inconsistent [**Credibility finding No. 1**] with the applicant's claim not to have known how he got from Iran to Turkey, or the country through which he allegedly passed *en route* to Ireland. In making this finding, I have regard to the age and education of the applicant, and to the fact that announcements would have been made on the airplane on which he was travelling, as to the destination. I do not accept that the applicant was wholly in ignorance of the means whereby he got from his country of origin to Ireland.

The applicant claims to have travelled on a false Italian passport [**Credibility finding No. 2**]. This would be inconsistent with his claim that the passport was stamped by Immigration officials on his arrival at Dublin Airport. Had he been travelling on an Italian passport, while he would have had to pass through immigration, his passport would not have been stamped.

[**Credibility finding No. 3**] I find that the applicant has not given a reasonable explanation for the absence of a passport by means of identification. In making this finding, I have regard to the fact that such documentation would have been required for him to pass through Turkey and then another unknown country, before coming to Ireland. [**Credibility finding No. 4**]. The applicant claimed that he did not speak with immigration, but that the agent did all the talking on his behalf. The applicant said he travelled with the agent and three others.

If the applicant's account is to be believed, he would have had to pass through international security (and all the attendant checks and security procedures) while firstly leaving Iran; then at arrival to and subsequent departure from Turkey; while passing through the unknown country; and finally on arrival at Dublin Airport. If his account is to be believed, he achieved this while travelling on a false passport, unaware as to the name of the supposed passport on which he was travelling, and with the agent answering all questions to immigration, on behalf of the applicant.

At every border crossing, he would have been subject to the standard border security, passport and visa checks. I find that the applicant could not have travelled, as he alleged, knowing so little concerning the passport on which he allegedly travelled . . . I do not consider that the applicant has given a full and true explanation of how he travelled to and arrived in the State, and I have regard to this, and to section 11B(c) of the 1996 Act, as amended, in assessing the applicant's general credibility.

[**Credibility finding No. 6**] I also do not consider that the applicant has given a reasonable explanation for not having a passport by means of identification, and I have regard to this and to section 11B(a) of the 1996 Act, as amended, in assessing the applicant's general credibility."

Findings

3. The first credibility finding is that the applicant's claim not to have known how he got from Iran to Turkey or the country through which he allegedly passed en route to Ireland is inconsistent with the manner in which he presented himself as an articulate, 27-year old man, educated to Third Level with an active interest in politics. At the heart of this finding, is the mistaken assertion by the

Tribunal Member that the applicant says he did not know how he got from Iran to Turkey. He has given detailed information of having stayed in a village in the north of Iran for three months in a place called Mashak. The Tribunal Member records his evidence, saying that he had travelled for one and a half days from Iran to Turkey and that a cousin of his in Tehran knew an agent who had facilitated this journey. Further, at interview, he said he had travelled from Tehran to a place called Maragagh in the province of Tabriz and from there to the border of Turkey. He said that he had:

"Travelled by foot from an unknown village to another unknown village by car. We travelled to Istanbul by car, staying 12 or 11 days and from there I came to here."

4. In the absence of clear evidence as to the applicant's language skills on the day he travelled from Turkey to Ireland, it seems to me that it is unfair to conclude that the applicant would have understood announcements made on the airplane in relation to its destination. In my view, this compound credibility finding is irrational.

5. The second credibility finding is based on that part of the applicant's narrative which asserts that he travelled on a false Italian passport but that this was stamped at Dublin Airport. I agree with the finding by the Tribunal Member that had he been using an Italian passport it would not have been stamped at Dublin Airport as EU passports are not stamped crossing EU borders. However, the Tribunal Member records the applicant's evidence in relation to his passport, saying "he believed it was an Italian passport" and therefore it seems somewhat harsh to make a negative credibility finding on the unlikelihood of the Italian passport having been stamped when it was never asserted with certainty that the passport used by the applicant was Italian in origin.

6. The third credibility finding is that the applicant has not given a reasonable explanation for the absence of a passport by means of identification. The Tribunal Member says that the finding is made having regard to the fact that "such documentation" would have been required for him to pass through Turkey and then another unknown country before coming to Ireland.

7. I have not been able to comprehend what the Tribunal Member intended by this finding. In his questionnaire, the applicant indicated that he had never been issued with a passport and that the false passport he had used to enter Ireland had been returned to the smuggler/agent on his arrival in Ireland.

8. Nothing in the documents before the Tribunal or in the letter accompanying the documents to the Tribunal offered any comment as to why the applicant did not have an Iranian passport. Therefore, this credibility finding is irrational. Its related finding that the documentation (the passport) would have been required for him to pass through Turkey is an inconsequential comment having regard to the applicant's claim that he travelled on a false passport. Therefore, the credibility finding in relation to the requirement to have a passport is irrational.

9. The sixth credibility finding is based on the incredulity on the part of the Tribunal Member as to the possibility that the applicant travelled on a false passport "unaware as to the name of the supposed passport on which he was travelling". I can find no trace of any evidence that the applicant was unaware of the name on the false passport. I am unclear whether the Tribunal Member is referring to the uncertainty on the part of the applicant as to the national identification of the false passport or as to whether he was unaware of the name of the person on the false passport. None of this is clear from the text of the decision and therefore does not constitute a part of a rational credibility finding.

10. The next credibility finding is related to the one just described and addresses the implausibility of the applicant knowing so little concerning the passport on which he was travelling. Again, I find that this finding does not appear to be based on any evidence that I have been able to identify in relation to the extent of the applicant's knowledge about the passport on which he was travelling.

11. In summarising the multiplicity of related findings in respect of the applicant's travel and passport, the Tribunal Member refers to s. 11B(a) and s. 11B(c) of the 1996 Act, and says that he has regard to these matters in assessing the applicant's general credibility. It seems to me that the findings made in respect of s. 11B(a) and (c) are so flawed that they cannot but have infected the general credibility finding made by the Tribunal Member in this case. In many instances, the part of an asylum seeker's narrative describing travel, border crossing and knowledge of third country transit may be delivered in a manner which is difficult to believe. It is not uncommon for such matters, though not capable of being believed, to be considered peripheral to an asylum claim. There are many reasons why an asylum seeker might not tell the truth about how they travelled to Ireland, including the fear of negative consequences for their claim if they were to tell the truth about being trafficked and using false documents. As has been frequently remarked, the existence of untruths about peripheral matters unrelated to a core claim of persecution, though required to be considered in the context of general credibility, will not of itself necessarily deprive an asylum seeker of protection.

12. In this case, a problem of the opposite sort is presented by the manner in which the Tribunal Member has dealt with what might ordinarily be peripheral issues to an asylum claim. I have found that significant unfairness has characterised the manner in which the applicant's narrative as to travel, passport possession and border crossing has been rejected. As required by law, the Tribunal Member weighed these credibility findings as to these matters - though unrelated to the core claim - against the applicant's general credibility. It seems to me that once I find that the decisions on the matters identified at s. 11B(a) and (c) are found to have been unlawfully made, nothing that follows can stand and this decision must be quashed and taken again.

13. For the sake of completeness, I would also comment that the Tribunal Member makes significant credibility findings on the core claim based on speculation. I refer, in particular, to the credibility finding based upon the applicant's claim that he completed his degree course and the suggestion that this could not have happened given that he was expelled from university. It seems to me that these two ideas are not so absolutely inconsistent as to result in a rejection of credibility based thereon. In addition, a significant credibility finding is made based upon the applicant's evidence as to the name of the political group with which he was involved. His evidence that the group had no name, in the sense of a formal name that might be given to a political party or grouping, and his evidence that it was known by a moniker does not present a degree of inconsistency or a circumstance of incredulity warranting a rejection of credibility.

14. Further, it seems to me that the Tribunal Member has unfairly decided on the consequences for the applicant of the renunciation of his faith. It would not be necessary for him to be actively working against the Muslim faith in order to draw negative attention to his circumstances and I accept the argument made that the country of origin information supports the claim that persons who renounce or do not practice their Muslim faith suffer negative consequences in Iran.

15. The Tribunal Member engages in speculation about how the question of bail bonds operates in Iran. The applicant indicated that his parents were required to submit the Deeds of their family home in order to secure the applicant's release from prison. He also gave evidence that notwithstanding the submission of the Deeds and his apparent forfeiture of the bond, that his parents were still living in the family home. It seems to me that to reject credibility based upon such speculation creates an unlawful credibility finding unfairly

against the applicant.

16. For these additional reasons, I also am of the view that this decision should be quashed.