

## THE HIGH COURT

2006 1402 JR

BETWEEN

O. S.

APPLICANT

AND

THE REFUGEE APPEALS TRIBUNAL AND  
THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENTS

**Judgment of Mr. Justice Hedigan, delivered on the 4th day of November, 2008.**

1. The applicant is seeking leave to apply for judicial review of the decision of the Refugee Appeals Tribunal ("RAT") to affirm the earlier recommendation of the Office of the Refugee Applications Commissioner ("ORAC") that the applicant should not be declared a refugee.

**Factual Background**

2. The applicant claims to be a national of Iran of Kurdish ethnicity. He says that until 2006, he lived in a village in Iran with his parents and siblings. His father, who is a member of the Kurdistan Democratic Party of Iran (KDPI), made a living by transporting materials including KDPI propaganda across the border from Iraq into Iran. The applicant worked in his father's transportation business from 2003 to 2006 but although he is a sympathiser, he was not a member of the KDPI.

3. The applicant claims that on 8th January, 2006, he and his father were smuggling materials including KDPI propaganda across the border when officers began shouting at them from a mountain base and started shooting in the air. The officers arrested the applicant's father but the applicant managed to run away. Upon reaching his aunt's house, he found out that the officers had brought his father to the family home, searched it, recovered items relating to the KDPI and were now looking for the applicant. The applicant feared that if he was arrested, he would be imprisoned, tortured or killed and so, he made arrangements to flee the country.

**Procedural Background**

4. The applicant arrived in the State on 8th February, 2006 – having travelled via Turkey – and applied for asylum. With his ASY-1 form he submitted a *shenasnameh*, an Iranian birth certificate that doubles as an identity card. He attended for interview with an authorised ORAC officer who then drew up a report, dated 12th April, 2006, in compliance with 13(1) of the *Refugee Act 1996*. In the section 13 report, the ORAC officer found that the applicant lacked credibility and therefore recommended that he should not be declared a refugee. From that decision, the applicant appealed to the RAT and an oral hearing was held.

**The RAT oral hearing**

5. At the RAT oral hearing, the Tribunal Member relayed her belief that the applicant's *shenasnameh* (identity card) was altered or falsified in some way. She referred to a conference that she had attended in London which had dealt with matters relating to Iranian identity cards and she questioned the applicant on the procedures used with respect to the identity card. At the request of his counsel, the applicant was given a fortnight from the date of the hearing to make written representations on the issue. On 21st July, 2006, the Refugee Legal Service (RLS) wrote to the Tribunal Member requesting "copies of the conference notes / materials to which she referred at the oral hearing" and stating that no representations would be made until such materials were disclosed. Receipt of the request was acknowledged by the RAT but no substantial reply was forthcoming. No written submissions were made by or on behalf of the applicant.

**The RAT decision**

6. By decision dated 9th October, 2006, the Tribunal Member refused the applicant's appeal. She noted discrepancies and contradictions in his account of events and found his explanations for those inconsistencies to be unacceptable. She rejected the evidence that he provided to the effect that he is from Iran. She noted that it is understandable that applicants for refugee status may not always tell the complete truth, but that an applicant's evidence as to nationality or identity must be core or central to their claim.

**Extension of Time**

7. The applicant commenced the within proceedings outside the 14-day period allowed under section 5(2)(a) of the *Illegal Immigrants (Trafficking) Act 2000*. He has offered an explanation for the delay in instituting proceedings and the respondents have not raised any objections to the extension of time. In the circumstances, I am satisfied that there is good and sufficient reason to extend time.

**The Submissions**

8. The applicant's primary complaints in respect of the RAT decision concern:-

- a. Treatment of the applicant's credibility; and
- b. Reliance on undisclosed material.

**(a) Treatment of Credibility**

9. The applicant complains that the Tribunal Member acted unreasonably by drawing negative credibility findings from the applicant's account with respect to:-

- (i) The frequency of his smuggling trips;
- (ii) The number of arrests for smuggling;
- (iii) His *shenasnameh* (identity card).

10. The respondents contend that given the unexplained inconsistencies in the applicant's account of events, it was open to the Tribunal Member to doubt the applicant's credibility.

**(b) Reliance on Undisclosed Information**

11. The applicant contends that the Tribunal Member acted unfairly in reaching the conclusion that the applicant has not established that he is a national of Iran, on the basis of her doubts with respect to the veracity of his *shenasnameh*. It is said that such doubts stemmed from information that she had acquired at a London conference, and it is complained that the materials pertaining to that

conference were not disclosed to the applicant.

12. The respondents note that the Tribunal is an expert body entrusted with the task of assessing asylum applications, that it is to be expected that Members of the RAT will amass expertise and familiarity with issues that recur before them, and that they must be entitled to use this expertise. It is argued that the applicant was not entitled to demand that copies of the "conference notes / material" be furnished to him, nor was he entitled to make the submission of written representations on the matter conditional upon the disclosure of such documents to him.

### **The Court's Assessment**

13. This being a leave application, the applicant must establish substantial grounds for the contention that the Tribunal Member's decision ought to be quashed. As is now well established, this means that grounds must be shown that are weighty, arguable and reasonable, as opposed to trivial or tenuous.

#### **(a) Treatment of Credibility**

14. In her decision, the Tribunal Member detailed the following inconsistencies, among others, in the applicant's account of events.

##### **(i) Frequency of smuggling trips**

15. When asked how frequently he and his father would smuggle materials across the border from Iraq, the applicant stated on four occasions in his section 11 interview (see pages 8, 18, 20 and 27) that they would do so three times a week. At the end of the interview, the interview notes were re-read to him and, raising no objections to the translation, he initialled each page. At the RAT oral hearing, however, his counsel stated that the applicant wished to clarify this point, saying that the translator had made an error and that the interview notes should have read "three times a month".

16. In her decision, the Tribunal Member expressed doubts as to the claim made at the oral hearing, given that he had not picked up on the mistake in four separate places when the interview notes were read back to him. She stated that the frequency with which he transported goods was "clearly core or central to his claim", and was not peripheral, as was suggested by the applicant's counsel.

##### **(ii) Arrests for smuggling**

17. When asked, in the section 11 interview, whether he and his father had ever been stopped by guards when smuggling goods over the border, the applicant answered that they would be stopped roughly two times per month in summer and once every three months in winter and that they had been caught a couple of times over the past years, but that that they were never stopped when carrying KDPI material. Similarly, at the RAT oral hearing, the applicant stated that although they had been stopped ten to fifteen times over a three-year period, they were never arrested when they were carrying KDPI goods.

18. At the oral hearing, the applicant stated that he and his father would carry KDPI materials once or twice a month; two out of every three times they crossed the border. It was pointed out to him that on a conservative statistical analysis, he would have been caught at least three times carrying KDPI materials if he had been arrested ten to fifteen times. In reply, he simply reiterated that they had never been stopped carrying KDPI materials, and said that they usually carried such materials in winter.

19. In her decision, the Tribunal Member noted that it was incredible and illogical that the applicant would not have been carrying KDPI materials on one of the ten to fifteen occasions on which he was arrested.

##### **(iii) The Shenashnameh**

20. As noted above, the Tribunal Member posed a number of questions to the applicant in respect of his *shenashnameh* (identity card). When asked why the photo on the card was not the original, he stated that the current photo had been placed on the card when it was renewed some 7 years previously. When asked why the details on the card had not been renewed at that time and why the card bore only one stamp, covering the existing photo, he stated then that the photo was the original, taken when he was 16 or 17 years of age. The Tribunal Member noted that photos are usually placed on a *shenashnameh* when the bearer is 15 years of age and questioned why, if the applicant's account was true, the card was without a photo for 16 or 17 years. The applicant then stated that he could not remember if there had been a photo on it.

21. In her decision, the Tribunal Member noted that "perhaps the most important" factor in her analysis of the applicant's claim was that he did not provide a truthful account of his identity or nationality. She pointed out that he had provided "false or contradictory evidence in relation to his nationality document" and gave contradictory answers in respect of his *shenashnameh* at the oral hearing. She also noted that he showed little knowledge of his claimed area of residence.

### **The Court's Decision on Credibility**

22. I have read the relevant papers (including the applicant's ASY-1 form and ORAC questionnaire, the ORAC section 11 interview and section 13 report, the applicant's Notice of Appeal, and the Tribunal Member's decision) and it is my view that it was open to the Tribunal Member to highlight the above inconsistencies and to draw negative credibility findings from those discrepancies, among others. Her decision is not only comprehensive, rational and reasonable, but also convincing. Although – as is well established – it is immaterial whether or not I agree with the Tribunal Member's assessment of credibility, I would add that I also find the applicant's account of events to be implausible.

#### **(b) Reliance on Undisclosed Information**

23. When issues arose at the oral hearing as to the identity card, the Tribunal Member allowed the applicant a period of two weeks to make written submissions on the matter. Thus, he was given an opportunity to address the questions that were raised. The decision of the applicant and/or his representatives not to avail of the opportunity to make written submissions meant that the inconsistencies in the applicant's answers in respect of the identity card went unexplained and the doubts that were consequently cast on the applicant's credibility were not dispelled. If explanations were available in respect of the inconsistencies, they should have been put before the RAT, either at the hearing or in written submissions.

24. It was not open to the applicant to decide not to make written submissions until the "conference materials / notes" requested were provided to him. There is, in my view, no basis for the contention that because a Tribunal Member draws on knowledge acquired at a conference, the applicant has a right to see materials relating to that conference. There can be no objection to a decision-maker relying on knowledge acquired in the course of their experience and training. This must particularly be so in circumstances where the applicant was thereafter afforded an opportunity to make written submissions on the subject. It would be irrational if decision-makers were precluded from relying on objective information with which they gain familiarity through their work. The applicant's submissions in this regard were argued vigorously by Mr. Power on his client's behalf. Notwithstanding his eloquence on this matter, I remain unconvinced. I consider the point to have no merit.

**Conclusion**

25. In the circumstances, I am not satisfied that substantial grounds have been established and accordingly, I must refuse leave.