

**THE HIGH COURT
JUDICIAL REVIEW**

[2020] IEHC 545

Record no. 2019/580 JR

**IN THE MATTER OF SECTION 5 OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT
2000 (AS AMENDED), AND IN THE MATTER OF THE INTERNATIONAL PROTECTION ACT
2015**

BETWEEN:

FD AND SAA

APPLICANTS

AND

**INTERNATIONAL PROTECTION APPEALS TRIBUNAL AND THE MINISTER FOR JUSTICE
AND EQUALITY**

RESPONDENTS

JUDGMENT of Ms Justice Tara Burns delivered on 29 day of October, 2020

General

1. The first Applicant is a married mother of four from Pakistan. The second Applicant is the first Applicant's dependant daughter and youngest child; she was born in Saudi Arabia on 27 April 2001.
2. The Applicants lodged an application seeking international protection in the State on 27 September 2017 on the grounds of their imputed political opinion and/or membership of a particular social group, namely women who defy social traditions and the honour of their family in Pakistan.
3. The Applicants submitted an Application for International Protection Questionnaire in October 2017 and a s. 35 interview was held on 16 May 2018. By letter dated 22 June 2018, the Applicants were notified that an International Protection Officer had recommended refusing them refugee and subsidiary protection status.
4. A notice of appeal was lodged with the first Respondent on 11 July 2018 and detailed grounds of appeal were submitted on 18 July 2018 with supporting documentation.
5. An oral hearing of the appeal was held before the first Respondent on 6 December 2018. On 11 July 2019, the first Respondent determined that the Applicants were not entitled to refugee or subsidiary protection and affirmed the recommendation made by the IPO.
6. Leave to seek Judicial Review by way of an order of certiorari quashing the decision of the first Respondent was granted by Humphreys J on 21st October 2019.

The Claim for Protection

7. The Applicants' claim for protection is based on the following asserted facts: the first Applicant's husband has worked in Saudi Arabia for approximately thirty-five years. The first Applicant remained with their children in Pakistan up until 1999 when she left with her three children to join her husband. This decision was arrived at because of difficulties which the family encountered with neighbours, specifically the A family. It was claimed that these neighbours were political and had influence within Pakistan. They had been harassing the first Applicant's children and stealing their money, taking advantage of the fact that the husband was absent. Matters came to a head when her youngest son was

kidnapped by this family and a ransom demanded for his return. Ultimately, the first Applicant's father in law intervened and the child was returned. However, it was decided that things were too dangerous for the family and a decision was reached between the first Applicant and her husband that the family would move to Saudi Arabia. The second Applicant was born in Saudi Arabia in 2001. She attended school there, achieved good results and was hoping to study medicine.

8. During a visit to this jurisdiction in July 2017, by the Applicants and the husband, to visit their son who is studying here, the Applicants learnt that two older wealthy men in Saudi Arabia were seeking to marry the second Applicant: one was the first Applicant's husband's boss and the second was their landlord. This information came in tandem with the news that the second Applicant was doing so well with her studies that she was on course to study medicine. According to the Applicants, the husband was of the view that a marriage to one of these men would have to take place: his boss threatened to withhold his pension built up over 35 years; his landlord would throw the family out of their home.
9. The Applicants were absolutely against such a marriage taking place. The first Applicant did not want her daughter marrying at such a young age (16) to such an older man and not pursuing her desire to study medicine when she had a good opportunity to do so. It was asserted that this attitude led to a significant dispute between the parties as a result of which the husband returned to Saudi Arabia and the Applicants remained in Ireland. The first Applicant claimed that arising from her stance, her husband was now estranged from her and wanted a divorce.
10. The Applicants asserted that they had nowhere to go. If they returned to Saudi Arabia, her husband would divorce her and require her daughter to get married to one of these men. It was not possible, in any event, to return to Saudi Arabia as their visas had expired and her husband would not apply for new visas for them in light of their attitude to the proposed marriage. She did not think that they would get visas in any event because of a change of visa requirements in Saudi Arabia.
11. The only other option for the Applicants was to return to Pakistan and this was something which the Applicants asserted they could not do. They claimed that in Pakistan, as a single mother and having defied her husband's wishes, the first Applicant and her daughter would be at risk of persecution. The A family also remained a risk: they had risen in prominence in Pakistani political and law enforcement circles.
12. Documentation was submitted in support of the Applicants' claim. Some of that documentation, a birth certificate and school reports, related to the second Applicant and was date stamped after the date when the family had left Saudi Arabia. Evidence was given that this documentation had been sent by the husband at the request of the son resident in this jurisdiction.

Decision of the Respondent

13. Having considered the first Applicant's evidence and Country of Origin information relating to attitudes to single women in Pakistan, the first Respondent accepted as credible the first Applicant's claim that her neighbours took advantage of the fact that she was living alone with her children, subjected the first Applicant and her family to harassment and kidnapped her son.
14. However, in light of the fact that the husband had sent documentation from Saudi Arabia which was necessary for the second Applicant to continue her education in this jurisdiction, the first Respondent did not accept as credible the claim made by the Applicants that the husband wanted the second Applicant to discontinue her education and enter an arranged marriage with an elderly man. Arising from that finding, the first Respondent did not find as credible the claim that the first Applicant and her husband quarrelled over this issue and had separated.
15. In relation to the Applicants' claim that they were at risk of being subjected to attack, harassment or kidnapping at the hands of the A family, or of other men in Pakistan, due to societal attitudes to single mothers and single woman, the first Respondent found that the acts feared by the Applicants amounted to persecution for the purpose of s. 7(1) of the International Protection Act 2015 (hereinafter referred to as "the Act of 2015") in that they comprised acts of a gender specific or child specific nature. The first Respondent further found that the persecution feared by the Applicant had a nexus to convention grounds in that she claimed to be at risk as a member of a particular group comprising single mothers/divorcees in Pakistan.
16. The first Respondent was satisfied that the Applicants' claim that they faced a future risk in Pakistan was based on her assertion that she would have to return to Pakistan without her husband in light of her asserted estrangement from him. However, as the Respondent did not accept that her husband had abandoned her, it found that there "*is no reasonable likelihood that the Applicant will have to live in Pakistan as a single/divorced mother or be subjected to any of the risks associated with this*". Further, as the Tribunal rejected the first Applicant's claim that she defied her husband's wishes regarding the forced marriage, there was no reasonable likelihood that the Applicant would face persecution for defying traditional codes of family honour.

Grounds of Judicial Review

17. The Applicants seek an order of certiorari quashing the decision of the first Respondent on the following summarised grounds:-
 - (i) that the first Respondent erred in rejecting the credibility of the Applicants' claim that the first Applicant's husband wanted to force the second Applicant to marry, by failing to take into account Country of Origin Information and relevant facts.
 - (ii) that the first Respondent erred in failing to consider and/or make a finding as to whether the Applicants would be at risk of persecution in Pakistan, from the A family or more generally, on the basis of the status of the first Applicant as a *de facto* single woman and/or parent, as opposed to legally separated or divorced.

Credibility of the Applicant's claim that the first Applicant's husband wanted to force the second Applicant to marry

18. The Applicants assert that the first Respondent failed to have regard to Country of Origin information to the effect that forced marriages are an aspect of Pakistani culture when determining that the Applicants lacked credibility regarding their assertion that the first Applicant's husband wanted to force the second Applicant to marry.
19. The role which the Court has in terms of a challenge to the credibility findings made by the first Respondent is well established. In judicial review proceedings, 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.
20. At para 2.16 of the first Respondent's report, it was stated that all the information and documentation provided by the Applicants has been fully considered.
21. The specific facts of this case have a different focus to the Country of Origin information relating to the culture of forced child marriages in Pakistan. The assertion by the Applicants in this case was not that the husband wanted the second Applicant to marry in any situation; rather the Applicants' claim was that in the particular situation which the husband found himself, namely being pressurised separately by his boss and landlord to marry his daughter, that the husband indicated that this course of action had to be taken. Accordingly, the Country of Origin information had a limited relevance to the specific claim being made by the Applicants. The first Respondent did not err in its treatment of that information when assessing the Applicants' credibility.
22. While the specific fact that the second Applicant chose to forgo her studies in Saudi Arabia where medical studies were on the horizon and instead remain in Ireland to commence study here, was not specifically addressed by the first Respondent in its determination, it is clear that evidence surrounding this issue was given in the course of the hearing. In light of the statement from the first Respondent that all evidence and material submitted to it were considered, it is not appropriate for this Court to engage in a guessing game as to what weight was attached to that evidence. The finding by the first Respondent that it did not accept that the husband wanted to get his daughter married rather than pursuing her studies, in light of him sending documentation necessary to pursue her education within this jurisdiction, was a finding open to the first Respondent which it made after a reasoned and considered evaluation of the evidence.

Risk of persecution as a single woman from the A Family or more generally

23. While the first Respondent found that the acts feared by the Applicants amounted to persecution for the purpose of s. 7(1) of the Act of 2015 in that they comprised acts of a gender specific or child specific nature, and that the persecution feared by the Applicants had a nexus to convention grounds in that the first Applicant claimed to be at risk as a member of a particular group comprising single mothers/divorcees in Pakistan, the first Respondent found that these future risks were not established as they only arose in a situation where the Applicants returned to Pakistan without the first Applicant's husband.

As the first Respondent did not accept the asserted estrangement between the first Applicant and her husband, the future risks were not established.

24. These are findings which were open to the first Respondent to make. However, the Applicants submit that having made these determinations, the first Respondent failed to consider whether the first Applicant's husband would in fact return to Pakistan with her.
25. It was submitted that all the evidence pointed to the first Applicant's husband remaining absent from Pakistan for a significant period, through difficult times for his family. Accordingly, it was argued, accepting the first Respondent's findings for the purpose of the argument, that the outcome of refusing the Applicants' claim for protection status was that the Applicants possibly continued to be at risk of future harm as the Applicants were a single mother and daughter who might return to Pakistan alone.
26. In relation to this issue, the Applicants submitted that the first Respondent failed to have regard to section 28(6) of the Act of 2015 which states:-

"The fact that an Applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such serious harm, is a serious indication of the Applicant's well-founded fear of persecution or real risk of suffering serious harm, unless that are good reasons to consider that such persecution or serious harm will not be repeated."

27. Counsel for the Applicants submitted that s. 28(6) placed an onus on the first respondent to be satisfied that good reasons existed to consider that persecution would not be repeated and that accordingly, it was necessary for the first respondent to consider whether the husband would return to Pakistan.
28. Counsel for the Respondents submitted that this would be an incorrect consideration for the first Respondent to engage in; that any such analysis would amount to conjecture or speculation on the first Respondent's part.
29. It seems to me that there are a number of reasons why it was appropriate that this issue was not considered by the first Respondent. Firstly, this was not the Applicants' case: their case was that the first Applicant was estranged from her husband and for that reason she would be returning to Pakistan alone; it was not that the first Applicant and her husband were still together, but she would be at risk in Pakistan because the couple chose that he would remain working in Saudi Arabia. In a situation where this claim was never made out by the Applicants, there was no requirement on the first Respondent to consider the possible effect of its conclusion.
30. Secondly, with respect to the conclusion reached by the first Respondent that the couple were not separated, it is a personal choice for the first Applicant and her husband as to how they order their affairs. Protection status is not afforded because a family have chosen to order their affairs in a particular way which results in a possible future risk to

the family. Protection status is granted to a person where there is a necessity in their situation arising from circumstances external to the asylum seeker.

31. While the provisions of s. 28(6) of the Act of 2015 were not set out in the first Respondent's considerations, it cannot be said that this provision placed an onus on the first Respondent to consider whether as a non-separated couple, the husband would return to Pakistan with the Applicants. As it will be a personal choice for the couple as to how they order their affairs, this issue does not fall to be determined by the first Respondent. The "*good reasons*" referred to in s. 28(6) of the Act of 2015, that future persecution or serious harm will not come to the Applicants, are that the first Applicant is not a separated woman and will have the company of her husband on her return to Pakistan. It is a matter of personal choice for the first Applicant and her husband as to whether her husband remains in Saudi Arabia to work.
32. Accordingly, the first Respondent did not err in failing to consider the possible consequences of its ruling for the Applicants, nor is there non-compliance with s. 28(6) of the Act of 2015.
33. I therefore refuse the relief sought by the Applicants and make an order of costs against them in favour of the Respondents.