Neutral Citation Number: [2010] IEHC 422

THE HIGH COURT

JUDICIAL REVIEW

2010 51 JR

BETWEEN

HANNA IRFAN

APPLICANT

AND

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENT

JUDGMENT of Mr. Justice Cooke delivered on the 23rd day of November 2010

1. By order of the 25th January, 2010, the Court granted leave for the present application for judicial review of the respondent's decision of 1st December, 2009, refusing revocation of a deportation order which had been made in respect of the applicant on the 20th January, 2006. The applicant seeks to have that refusal ("the Refusal Decision") quashed.

2. The background to the case is as follows. The applicant is a married woman from Pakistan who arrived in the State in 2004. She is a Christian. She claimed asylum on the basis of fearing persecution if returned on account of her Christian faith. She gave an account of having worked for a Muslim employer who had insisted that she work on Sundays and that she convert to Islam in order to enable her to do so. She says that she was then threatened by that employer and his son and was forced to quit her job when she said she would report her mistreatment to the police. She claimed that the employer's family said that they had bribed the police and that they would kill her.

3. Her asylum claim was unsuccessful before the Refugee Applications Commissioner and her appeal before the Refugee Appeals Tribunal was rejected. She made representations against the proposal to deport her and sought permission to remain in the State on humanitarian grounds. This was refused and the deportation order was made. The consideration of the making of a deportation order coincided with the devastating consequences of an earthquake in Pakistan in the autumn of 2005 and the Minister was asked on that basis to reconsider returning her to Pakistan in the light of those changed circumstances. The Minister agreed to do so and appears to have treated the request as an application to revoke the deportation order.

4. For some unexplained reason no decision on the application to revoke was taken for almost four years and during that time six further sets of representations were made to the Minister accompanied by additional documents which had been received from Pakistan. For the most part, these were not related to the consequences of the earthquake but to new information as to the basis of the original fear of persecution, namely the alleged risk she would face of severe harm on account of her religion if returned to Pakistan. This new material consisted primarily of letters and documents received from Pakistan and was directed at showing the continuing and enhanced instances of violence against the Christian minority in the Gujranwala district from which the applicant came, but included also reports of complaints made formally to the police in respect of incidents involving attacks and false accusations made against members of the applicant's family.

5. The challenge to the Refusal Decision is directed at two facets of the Minister's decision as explained by him in the memorandum entitled "Consideration of Application for Revocation of Deportation Order in respect of Hanna Irfan" (hereinafter "the memorandum"). This had been written by the Repatriation Unit of the Department on the 28th October, 2009 and finally signed off as the recommendation to the Minister for his decision by an assistant principal of the Department on the 6th November, 2009.

6. It is first submitted that, by analogy with the similar assessment of the s. 5 prohibition on refoulement in *Meadows v Minister for Justice, Equality and Law Reform* [2010] IESC 3, the memorandum gives no adequate reason why the prohibition did not apply, given the clear evidence of persecution of Christians and lack of protection for them by the police authorities, in the information on which the refusal is based. Secondly, it is argued that insofar as the memorandum can be read as containing any reasons for rejecting the claim that the s. 5 prohibition is applicable, the Refusal Decision is irrational because not only is it contradicted by the information submitted by the applicant, but it is internally inconsistent because its own country of origin information contradicts its conclusion.

7. A twofold legal problem is posed by this challenge. In the first place, the matters relied upon relate in effect to the same essential source of persecution or harm which had been addressed and rejected throughout the asylum process and in the making of the deportation order. It is settled law that the grounds upon which a failed asylum seeker can challenge a refusal to revoke an extant and valid deportation order are extremely limited. In effect the power of the Minister under s. 3(11) to revoke an order exists in order to permit the Minister to accommodate circumstances which have arisen since the making of the order and which give rise to a material change such that it becomes either illegal (by reason of the intervention of one of the prohibitions on refoulement) or inappropriate on humanitarian grounds or otherwise to implement the valid order. The obligation of the Minister in dealing with an application to revoke an order has been dealt with in a number of cases and is well settled at this stage. (See for example the judgment of O'Neill J. in *Dada v. Minister for Justice, Equality and Law Reform* (Unreported, High Court, 3rd May, 2006); of MacMenamin J. in *Akujobi and Anor v. Minister for Justice, Equality and Law Reform* [2007] I.E.H.C.19; and *O.O and Anor v. Minister for Justice, Equality and Law Reform* [2008] I.E.H.C. 325). This Court summarised the position as gleaned from that case law in a judgment of 17th December, 2009 in *M.A. v. Minister for Justice, Equality and Law Reform*:-

> *"When an application to revoke is made to the Minister under s. 3(11) of the Act, the Minister has, in effect, two duties. He is required to consider carefully and fairly the reasons that are put forward for revocation; and he must also verify that since the deportation order was made, no change of circumstance has occurred, either so far as concerns the applicant or the situation in the country of origin, which would bring into play any of the statutory prohibitions on the return of a failed asylum seeker to the country of origin. ...Otherwise… in dealing with an application to revoke, the*

Minister is not obliged to embark on any new investigation or enquiry; nor is he obliged to enter into any exchange of observations and replies or into any debate with the applicant or the applicant's legal representatives or even perhaps to supply any extensive narrative statement of his reasons for refusal. Once it is clear to the court that the Minister has properly discharged those two functions, a decision to refuse to revoke a valid order of deportation will not be interfered with."

8. Thus, in the absence of any material change in the circumstances of the applicant or in the conditions prevailing in the country to which the deportation will take place, the Minister is under no obligation to reopen or re-examine any of the matters dealt with during the asylum process or at the time of the making of the order. Nevertheless, the statutory prohibition on removal from the State contained in s. 5 of the Act of 1996 continues to apply after the making of the order. Accordingly, where a lapse of time has occurred without implementation of the order, the Minister remains under an obligation to ensure that when implementation takes place, the prohibition will not be infringed. This may be particularly so where conditions in the country of destination are known to be volatile such that the risk to life or freedom in areas of religious, ethnic or political strife and violence is a possibility.

9. It is also the case that, while the Minister's obligation in stating reasons for rejecting a request for revocation is limited, whenever he chooses to give any extensive explanation, the Court will necessarily assess the validity of the refusal by reference to the lawfulness of the reasons given. (See for example, *Mishra v Minister for Justice* [1996] 1 I.R. 190)

10. There is no doubt that in this case the authors of the memorandum were alive to the claim made as to why the situation in Pakistan gave rise to a need to consider the applicability of the s. 5 prohibition. In the first place, the general information as to the continuing attacks upon Christians and the lack of protection for them on the part of the police authorities was emphasised in the submissions made. Secondly, the documentation submitted pointed to specific and personal information of harassment of members of the applicant's own family.

11. The memorandum runs to some twenty pages and is in many respects thorough and detailed. On p. 2, the contents of the six sets of representations made between 2006 and 2009 are summarised with references to the articles submitted dealing with violence against religious minorities and the translations of police reports relating to the incidents involving the family.

12. Significantly, the memorandum addresses the s. 5 prohibition in eighteen of its twenty pages (pp. 2-19). The claim made is described at the outset and is followed by extensive quotations from a variety of sources relating to the treatment of religious minorities in Pakistan both under the law and in practice and relating to the performance and reputation of various authorities including the security forces, the judiciary, human rights organisations etc. There can be no doubt but that this cited information provides some support for the general proposition that Christian and other minorities face discrimination and disadvantage including sporadic violence notwithstanding the apparent declarations in the Pakistan constitution and laws. To a large extent the information cited has an overall effect corresponding with the information submitted by the applicant with regard to the general position in Pakistan.

13. Comments or conclusions in relation to the claim and the information cited are given in a number of places in the memorandum. On p. 2 following the summary of the contents of the six sets of representations, the author says:-

"Having considered the above correspondence, I consider that there is nothing contained therein that would warrant the Minister revoking the deportation order in respect of Ms. Irfan."

14. At the bottom of p. 17 following the extensive quotation relating to the treatment of religious minorities the memorandum states:-

"Finally, state protection is available to anyone who is targeted or attacked."

This leads into an extract from a document on the UNHCR website which comments that police effectiveness varied greatly by district "ranging from reasonably good to completely ineffective". As counsel for the applicant pointed out, the quoted passage ends somewhat inconsistently having regard to the basis upon which it is introduced:-

"Police often fail to protect members of religious minorities – particularly Christians, Ahmadis and Shi'as - from societal attacks."

15. The memorandum then states:-

"The applicant has previously submitted that the people she fears in Pakistan had blackmailed the police so that they would not listen to her complaints. However, she has submitted that her sons have made complaints to the police, that they have taken a report from him and lodged his complaint. There is conflict in come areas of Pakistan – namely, though not exclusively in border regions."

16. Finally, on p. 19 there is what appears to be a general conclusion in relation to the s. 5 prohibition as follows:-

"The above information indicates that the North West Frontier Province (NWFP) the Federally Administered Tribal Areas (FATA) and Balochistan are the areas most affected by violence. The applicant stated she lived in Gujranwala in Pakistan. According to country of origin sources . . . Gujranwala is a city in the North Eastern Punjab province of Pakistan. COI information above indicates that 90% of Pakistan's Christians live in the Punjab province. Having considered all the facts of the case, I am of the opinion that repatriating Ms. Irfan to Pakistan is not contrary to s. 5 of the Refugee Act 1996, as amended, in this instance."

17. In the judgment of the Court the Minister's decision could not therefore be quashed upon the ground that there is a failure to give reasons. It may be possible to quarrel with the cogency or extent of the reasons, but the memorandum, read as a whole, is clearly based on the conclusion that (a) the general violence against the Christian minority is confined to particular regions which the applicant might avoid and (b) the particular threats which the applicant claims to fear could be avoided by state protection as evident from the fact that the particular incidents involving the family had been reported to the police and, apparently, investigated.

18. It is, in the view of the Court, a mistake to seek to read a memorandum of this kind in the same way as the equivalent memorandum supporting the making of a deportation order might be read. Not only is the Minister's obligation to give reasons more limited but such reasons as are given must be read in the context of the basic issue which the Minister is considering, namely, whether the new information constitutes evidence of a material change of circumstances such that the prohibition in s. 5 is now liable to be infringed?

19. Accordingly, so far as concerns the submission that the memorandum fails to give reasons or adequate reasons for the rejection of the revocation request, the Court is satisfied that the ground is not sustained. In reality, the case made is directed at the coherence of the conclusion reached by the Minister in relation to the information submitted and is thus based on the proposition that the decision is irrational because the information before the Minister contradicts the finding that the return of the applicant to Pakistan would expose her to no risk to life or freedom within the meaning of section 5.

20. It might be said that there would be some support for this proposition if the analysis set out in the memorandum had been written to support an initial decision to deport under s. 3 of the Act, rather than the present decision to refuse revocation. This is because much of the information cited could be said to support the proposition that Christian minorities are at risk and that there inadequacy in the availability of state protection for them. In the view of the Court, however, that is not the issue that must be addressed in the present context. The issue faced by the Minister, as already indicated, is whether the fresh information being put before him is evidence of such a material change of circumstances as now gives rise to a risk of infringement of the prohibition on refoulement if the existing deportation order is implemented.

21. The difficulty, obviously, is that the material thus put before the Minister on the application does not relate to any new or different risk or any altered circumstance. The information is in two parts. On the one hand, there is a body of country of origin information designed to corroborate the general proposition that Christian minorities (like some other minorities) are exposed to threats of repression, violence and the lack of adequate protection by security forces, including the police. The second category is of personal information relating to the incidents involving members of her family.

22. It must be borne in mind that the apparent source of the latter incidents was already considered in its earlier manifestation both in the decision of the Refugee Appeals Tribunal of 26th May, 2005 and again in the "Examination of File" memorandum which supported the deportation order. The Tribunal member considered in detail the account given of the threats made to her by her Muslim employer and of their having bribed the police. She concluded however, that she was not "entirely satisfied that the appellant's evidence discloses a genuine risk of serious harm to her in her country of origin, even if I were to conclude that there was such a risk there is a serous failing in this case in that the applicant failed to seek the protection of the authorities".

23. In dealing with the prohibition on refoulement, the Repatriation Unit in the examination of file note dated the 26th July, 2005, referred to that finding and said:-

> "The Refugee Appeals Tribunal affirmed the ORACs recommendation stating that by ceasing employment, Ms. Irfan effectively withdrew herself from the situation of risk. The RAT member stated that Ms. Irfan failed to seek state protection in Pakistan and did not find the explanation that her boss had bribed the police to reasonable."

24. So far as concerns the general information as to the continuing repression and violence faced by religious minorities in Pakistan, including Christians in particular, its effect is that the applicant, as a member of the Christian community, may well face those difficulties. In that regard, however, she will be in the same position as other members of the minority communities in question. The information does not substantiate the proposition that she, as an individual, might be singled out for such persecution or serious harm. Although it was suggested that there was some religious pretext for the particular source of harm she professed to fear in that her employer was a Muslim and she was a Christian and he wanted her to work on Sunday, the threats in question were specific to that relationship and not a manifestation of the general repression, discrimination and violence characterised in the general country of origin information.

25. In this regard it must be borne in mind that the issue before the Minister was not whether there was evidence that a particular religious minority was at times or in some places subjected to violence, repression and discrimination – such evidence is acknowledged in the memorandum. The issue was whether the applicant as an individual would, on the balance of probabilities, suffer such mistreatment if returned.

26. The mere fact of membership of the minority community in question does not establish the necessary proof of that likelihood. Situations do arise in which an entire community is the subject of a pogrom or ethnic cleansing and in such a case proof of membership of the relevant group may of itself attract the need for international protection of all members forced to flee. This distinction between general conditions facing part of a population and the existence of a risk of individual persecution or serious harm is reflected, for example, in recital (26) of the Qualifications Directive (Council Directive 2004/83/EC of 29 April 2004 [OJ L304/12 of 30/09/2004]): "*Risks to which a population of a country or a section of the population is generally exposed do normally not create in themselves an individual threat which would qualify as serious harm*." Having regard to the information consulted by the Minister as to the size and distribution of the Christian community in Pakistan – over 2 million, 90% of which are in the Punjab – it could not be said that it was irrational of the Minister to conclude that the applicant would not be exposed to an individual threat of serious harm because she was a Christian and that she would be without recourse to state protection if returned.

27. Finally, the memorandum must obviously be read as rejecting the translated police reports as constituting evidence of a new threat to the applicant for which state protection would not be available to her. As already mentioned, on the second page of the memorandum this material is referred to with the conclusion:-

> "Having considered the above correspondence, I consider that there is nothing contained therein that would warrant the Minister revoking the deportation order in respect of Ms. Irfan."

28. An examination of the documentation in question indicates that the incidents there described, do not appear to be episodes of violence, such as would come within the prohibition in section 5. For example, the details of the police report enclosed with the letter of the 13/05/2009 shows that the assailants were known by name and were shouting:-

> *"Catch them and teach them a lesson for lodging the cases against us."*

Terrifying though the incidents may be for the members of the applicant's family in question, it was clearly open to the Minister to conclude that this was not evidence which would provoke the application of the prohibitions on refoulement, because it has all the hallmarks of a private feud. Furthermore, as already mentioned, it was open to the Minister to consider as significant the fact that the family members had been able to report the matters to the police and that, on the face of it, the complaints had been accepted and sent for investigation.

29. Although, accordingly, it might be said that in some respects the draughtsmanship of the memorandum is laconic in parts of its response to the material put forward in the application, there is not, as already mentioned, any obligation in these circumstances to enter into a narrative explanation of reasons and the Court does not consider that the decision is so flawed as to be condemned as

irrational or unreasonable having regard to the fact that the Minister was considering an application to revoke an existing deportation .

30. The application must therefore be refused.