

**THE HIGH COURT
JUDICIAL REVIEW**

[2016 No. 985 J.R.]

BETWEEN

M.H. (BANGLADESH)

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 26th day of June, 2018

1. The applicant is a national of Bangladesh, born in 1982. He claims to have borrowed money in 2004 to travel to the UK to work, having obtained a work permit there. He claims he was not paid for this work and left the UK, coming to Ireland on 12th December, 2004, where he remained both present and working unlawfully ever since. He claims that in January, 2012, eight years after the borrowing of the money involved, threats commenced against his family in Bangladesh due to his failure to repay the money he was loaned. The lender allegedly threatened to bring proceedings against him, on the applicant's account.

2. In March, 2012 the applicant was detected by Gardaí working unlawfully in a restaurant. He applied for a work permit, which was refused. A deportation order was made against him on 16th July, 2013. Over a year later, the applicant sought asylum on 29th September, 2014. That application was rejected by the Refugee Applications Commissioner on 6th March, 2015. The decision refusing asylum was appealed to the Refugee Appeals Tribunal, which rejected the appeal in a decision by Ms. Elizabeth O'Brien, dated 14th November, 2016. At paras. 2.16 and 3.1 of the tribunal decision, it is clear that regard was had to all relevant documentation. The decision notes that the applicant had changed his story about how much he borrowed and could not explain the discrepancy (para. 3.4). He did not know the full name of the person he borrowed the money from (para. 3.5). Having offered one name, he then gave a different name and changed his story as to whether he remembered the lender's name or his identity. He did not know the lender's telephone number, although he had previously telephoned this person, on his account (para. 3.7). He claims he only learned about asylum after being threatened but in fact he applied for asylum two years after the alleged threat following the Garda raid, refusal of a work permit and the proposed deportation. He did not know under what legal authority he could be imprisoned in Bangladesh and no authority was provided to the tribunal by his legal advisors (para. 5.3). Indeed, Mr. O'Halloran at the hearing accepts that the applicant did not provide any details of such a provision of the penal code.

3. The applicant could not explain why a lender would advance ten years' wages with no security, undertaking or prospect of repayment (para. 5.5). The tribunal member's conclusion was that *"the applicant's account is unpersuasive and his evidence unreliable"*. Further *"it was clear he was searching for a name but he just plucked one out of the air and then later plucked another and different name when asked to write the name down"*. This was the assessment and finding of an office-holder who saw and heard the witness in question and who is certainly in a better position than the court to judge the credibility of such a witness.

4. Furthermore, at para. 5.8 the tribunal member found that when asked to write down the amount of the loan *"he hesitated for more than a reasonable period of time before he could come up with a figure"*.

Relief sought

5. The present proceedings seek *certiorari* of the tribunal decision refusing asylum. I have received helpful submissions from Mr. Garry O'Halloran B.L. for the applicant and Mr. William Mark Murphy B.L. for the respondents.

Procedural history

6. The tribunal decision was notified to the applicant on 18th November, 2016. The present proceedings were filed on 19th December, 2016. The leave application was opened before MacEochaidh J. on 20th December, 2016 and then adjourned. However, the applicant failed to prosecute the leave application expeditiously and has offered some relatively uninspiring excuses for not having done so, namely that a particular document was missing and secondly, that he was waiting to see how another case got on in relation to the point pleaded at ground 1. Ultimately, following a direction I gave to the effect that any adjourned leave applications would have to be re-mentioned, the matter was mentioned again on 17th October, 2017 when leave was granted.

7. Ground 1 relating to the balance of proof is not being pursued, and I will now deal with the remaining grounds.

Ground 2 - alleged factual errors

8. The tribunal states at para. 2.1 that the reason the applicant came to Ireland was to work. It is claimed this is an error because the section 8 interview allegedly does not say this. The tribunal must be taken to be referring to his evidence overall. The asylum questionnaire says that the purpose of his journey was *"work"* (Q. 31c). At para. 5.1 of the tribunal decision, it is said that no *"reliable"* identity documents were produced. That appears to be an assessment of the situation which is well within the jurisdiction of the tribunal member. It is not an error; rather it is a judgment or a finding. The *"identity document"* produced by the applicant is, on any view, a cheap-looking piece of paper that could easily have come out of a home printer. On no view could it be called *"reliable"*. Mr. O'Halloran says that a finding of no *"reliable"* identification does not equate to a finding that the particular identity document produced is not reliable but normally, and certainly here, it in fact does. In any event Mr. O'Halloran accepts that this point does not particularly impact on the decision of the tribunal. At para. 5.9, the tribunal notes that the timing of the threats coincided with the applicant's detection by Gardaí. Mr. O'Halloran submits that the alleged threats occurred in January or February, 2012 and the detection was March, 2012, but, even if one accepts that chronology, that is sufficient proximity in time to make the comment of the tribunal member reasonable. All she said was that coincidentally the threat and the Garda detection both occurred in 2012. As submitted by Mr. Murphy at para. 5.49 of the written submissions *"the rejection of the applicant's credibility by the Tribunal was in no way dependent on the timeline referred to"*. The finding of coincidence can, in any event, be more plausibly interpreted, as the respondents submit, as a decision by the applicant *"to fabricate allegations of threats over January/February 2012 in an effort to avoid an appearance that he had only made a claim for asylum as a last resort"*.

9. There is then an alleged error at para. 5.3 of the decision that the tribunal member could not find an offence for which the applicant could be imprisoned. As phrased this is clearly not an error. The tribunal member checked the penal code and did not find an offence and was not pointed to one. That is entirely correct. The applicant now says that a separate document, the Code of Civil Procedure 1908 s. 55(1), provides for imprisonment for debt. Of course the applicant completely failed to draw this provision to the attention of the decision-maker but rather pulled this rabbit out of the hat in the course of preparing the judicial review papers. Prior to that he was content to rely on vague generalities. It is complete gaslighting of the tribunal to run crying to the High Court about a

point like this that an applicant could not be bothered researching prior to the hearing before the tribunal. It is true that there is a shared burden on the decision-maker, but the tribunal member discharged that burden by specifically asking the applicant's legal advisers for references to relevant legal provisions. Mr. O'Halloran accepts, as he has to, that there was no response to that: see *Efe v. Minister for Justice and Equality* [2011] IEHC 214 [2011] 2 I.R. 798 [2011] 2 I.L.R.M. 411, per Hogan J.

10. More fundamentally the tribunal decision was not based on this point. The reasoning at paras. 5.6 to 5.10 is based on an assessment of the credibility of the applicant on other, much more personal factors, made by an office-holder who had the opportunity to see and hear the applicant giving evidence.

Ground 3 - failure to provide a reason for rejecting the applicant's explanation for delaying seeking asylum

11. This ground is misconceived. It is clear the reason was that the tribunal did not find the applicant credible. Thus a reason was provided.

Ground 4 - lack of regard to country reports

12. I would uphold the respondent's objection that this complaint is insufficiently specific and contrary to O. 84 r. 20(3) but in any event the point is misconceived because it confuses the duty to have regard to material with the question of whether the material is narratively discussed. As I have noted above it is clear that the country material - and all other relevant material - was considered by the tribunal.

Ground 5 - failure to consider persecution by reference to political opinion or social group

13. While the applicant ticked the political opinion box he did not in reality put forward such a claim. In any event, and more generally, the applicant's credibility was rejected so the convention nexus issue does not arise. This point simply does not get off the ground.

Ground 6 - failure to consider exploitation and status as victim of trafficking.

14. The tribunal was dealing with the claim made seeking asylum and not dealing with *ad misericordiam* points. Exploitation in the U.K. and Ireland as alleged does not as such mean that the applicant will be persecuted if returned to his home country.

Ground 7 - failure to consider exposure to persecution in the light of the applicant's personal circumstances, lack of education and inability to protect himself from exploitation

15. Again the tribunal dealt with the claim actually made to it and the points in relation to ground 6 also apply here.

Delay by the applicant

16. As the application fails on the merits I do not need to consider the effect of the applicant's failure to properly progress the leave application having opened and delayed it for a lengthy period.

Order

17. The application is dismissed.