

**THE HIGH COURT
JUDICIAL REVIEW**

[2009 No. 895J.R.]

BETWEEN

S. Z.

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 10th day of July 2013

1. This is a telescoped application for judicial review in respect of a decision of the Refugee Appeals Tribunal of 1st July 2009, refusing a recommendation to the Minister that the applicant be declared to be a refugee.

2. The applicant was born in 1973 in China and says he fears persecution from the Chinese Government and police in connection with anti-Government protests with which he and his family were associated. He also claims he fears persecution from loan sharks who gave him money to bribe the police so that the circumstances of his parents, who were in custody connected with the protests, could be ameliorated.

3. On 12th December 2008, an ASYI form was completed by the applicant. The ASYI form records the result of the s. 8 interview. The interviewer states that:

"The applicant stated the Chinese police are after him because his parents have a religious problem in China."

4. A questionnaire was subsequently filled out and this confirms that the applicant had four years of primary education only. The reason stated on the questionnaire for leaving China is as follows:

"My parents are leaders of a faction called 'Huhan'; the Chinese government declared that the 'Huhan' faction was an evil cult. So my parents, sister and any other members were arrested. I was a driver in the faction and because I regularly shuttled some people gathering in my place, the police looked for me everywhere too. And there was another driver who was from Nipu [the applicant's village] ... who, because he refused to be arrested, was shot to death by the Chinese police in the act. In order to rescue my parents, I borrowed over [€65,000] from relatives, friends and the loan shark. Giving these to the Chinese police and the Judge, my parents were not sentenced to death but life imprisonment ..."

5. At Question 23A and Question 23B, the applicant was asked about his and his family's membership of any political, religious or other organisations and he answered in relation to the 'Huhan' faction.

6. There followed a s. 11 interview, the report of which was exhibited before the court. In this interview, the applicant indicated that he had been given a passport and that he had stopped in different countries en route to Ireland but that he could not identify the countries "as they were in English". He confirmed that he could not speak English. He was asked what the nationality of the passport was and he answered that he did not know "but there was two tigers on it and it was in English". The applicant was asked why his parents are in prison and he said:

"My father was always opposing against the government, there is a passage that people pass by and have to pay a toll, my father organised the villagers and protested against paying the toll and they faught many times. The gov build the passage way on my fathers land and the gov never paid my father for the land so they protested and they were arrested by the psb." [sic]

When asked about the cost of travelling to Ireland, the applicant said that he got the money from his father's friend and that it was about €20,000 to €30,000.

7. A s. 13 report was issued by the Refugee Applications Commissioner. Significant credibility findings are made therein. The first related to the fact that the applicant asked his father's wealthy friend for money to assist with the trip to Ireland, but yet needed to approach loan sharks for the money required to bribe officials.

8. The second credibility finding related to the inconsistencies in the applicant's statement of the reasons for his fear of persecution.

9. The third credibility finding is that while the applicant claims in his questionnaire that he fears persecution for a religious reason, the group or faction associated with this family was stated not to be a religion at the s. 11 interview.

10. The fourth credibility issue was the implausibility of the applicant passing through international airports without knowing details about the passport on which he was travelling.

11. The fifth credibility finding related to the applicant's failure to claim asylum in Spain where he spent a month en route to Ireland and the report says that "it is clear from the applicant's testimony that Ireland was not the first safe country since departing China". The s. 13 report also found that as the applicant had remained safely in a village in a different province for six months, internal relocation was a viable option in this case.

12. The recommendation from ORAC was that the applicant should not be declared a refugee, "that the application showed either no basis or minimal basis for the contention that the applicant is a refugee" and that there would be an appeal to the Tribunal on the papers only. This is an important aspect of the case. The written grounds of appeal were submitted on 28th May 2009. Running to some 12 typed pages, the grounds of appeal do not criticise the basis upon which the credibility findings are made. The grounds are general in nature and by reference to case law and textbooks urge a certain approach to determining refugee claims. I have not been able to identify any submission in relation to facts peculiar to the applicant's claim for asylum. It was in these circumstances that the Refugee Appeals Tribunal came to decide the appeal. The applicant's claim was rejected on credibility grounds and given the absence of criticism of the first instance credibility findings it not surprising that the RAT's credibility findings are very similar to those made at first instance.

13. The first of these is that the questionnaire completed by the applicant in support of the asylum claim did not mention religious persecution and did not mention protests against the seizure of his parents' lands without compensation.

14. The second credibility finding is that the applicant's testimony in relation to the 'Huhan' faction was inconsistent. The Tribunal found that:

"Considering the Applicant's association to this group/religion is a central aspect to his claim it would be reasonable to expect that the Applicant would be clear when recounting the nature of this group/organisation. The Applicant's inconsistency in recounting central elements of claim calls into the question the well foundedness of the Applicant's fear."

15. The third credibility finding is that it was not credible that the applicant would have initially borrowed money from loan sharks and not from his father's wealthy friend.

16. The fourth credibility finding related to the fact that the applicant did not know the nationality of the passport he used to travel to Ireland. The Tribunal Member says:

"Had he been questioned by any immigration official his lack of knowledge of his passport would have created a serious difficulty for the Applicant and the agent. The Applicant's account of not knowing the nationality of his passport, when he had to transit through a number of international airports is difficult to believe."

17. The Tribunal Member doubts the applicant's credibility because of his failure to seek asylum in Spain where he spent a month. The Tribunal Member says:

"The applicant's failure to apply for asylum as soon as practicable after leaving China is not indicative of a person fleeing persecution and Section 11B(b) is relevant to the Applicant's claim."

18. The Tribunal Member finds that "fear of criminals whom he borrowed money from does not bring his claim within Section 2 of the 1996 Act" and finally, the Tribunal Member considers the effect of a (translated) summons to court or summons to a police station and dismisses its probative value because the reason for the summons is not indicated.

19. The applicant complains in the statement grounding application for judicial review that there was a failure to make findings on the applicant's core claim and a failure to consider past persecution. I disagree with this submission. The papers reveal an inconsistent and incoherent asylum claim. The Tribunal Member was entitled to weigh inconsistencies and reject general credibility for the reasons stated above and if this has the effect of not deciding the applicant's core claim, in my view, such an approach is lawful. Alternatively it is possible to characterise the rejection of the applicant's credibility as a rejection of the applicant's core claim in as much as it is possible to say that the applicant was not believed about important aspects of his account and such findings cumulatively signal that the applicant's entire asylum claim is rejected for want of credibility.

20. Grounds 3 and 18 of the statement grounding application for judicial review make complaint that the respondent failed to take into consideration country of origin information, in particular, a report from Amnesty International indicating persecution of activists opposing construction related evictions in the context of the then Beijing Olympics. In my opinion, there was no obligation on the Tribunal Member to refer to this particular piece of country of origin information as it is not sufficiently connected to the experiences expressed by the applicant. In other words, the fact that country of origin information supports the contention that persons who protested against construction associated with the Beijing Olympics suffered persecution does not necessarily add anything to the claim that the applicant's parents suffered because they protested against the government compulsorily taking their land without compensation.

21. Complaints are also made in the pleadings in respect of the credibility findings. It seems to me that the complaints advanced in the proceedings are in the nature of points of appeal that should properly have been comprised in the notice of appeal submitted to the Tribunal against the ORAC findings. As already indicated, that notice of appeal singularly failed to make any detailed complaints about the original credibility findings in the s. 13 report. In effect, what the applicant seeks to do in these proceedings is to appeal these findings and judicial review cannot be used for that purpose. Credibility findings must comply with the decision of Cooke J. in *I.R. v. The Refugee Appeals Tribunal* [2009] IEHC 353 who said:

"11. So far as relevant to the issues dealt with in this judgment it seems to the Court that the following principles might be said to emerge from that case law as a guide to the manner in which evidence going to credibility ought to be treated and the review of conclusions on credibility to be carried out:-

1) The determination as to whether a claim to a well founded fear of persecution is credible falls to be made under the Refugee Act 1996 by the administrative decision-maker and not by the Court. The High Court on judicial review must not succumb to the temptation or fall into the trap of substituting its own view for that of the primary decision-makers.

2) On judicial review 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.

3) There are two facets to the issue of credibility, one subjective and the other objective. An applicant must first show that he or she has a genuine fear of persecution for a Convention reason. The second element involves assessing whether that subjective fear is objectively justified or reasonable and thus well founded.

4) The assessment of credibility must be made by reference to the full picture that emerges from the available evidence

and information taken as a whole, when rationally analysed and fairly weighed. It must not be based on a perceived, correct instinct or gut feeling as to whether the truth is or is not being told.

5) A finding of lack of credibility must be based on correct facts, untainted by conjecture or speculation and the reasons drawn from such facts must be cogent and bear a legitimate connection to the adverse finding.

6) The reasons must relate to the substantive basis of the claim made and not to minor matters or to facts which are merely incidental in the account given.

7) A mistake as to one or even more facts will not necessarily vitiate a conclusion as to lack of credibility provided the conclusion is tenably sustained by other correct facts. Nevertheless, an adverse finding based on a single fact will not necessarily justify a denial of credibility generally to the claim.

8) When subjected to judicial review, a decision on credibility must be read as a whole and the Court should be wary of attempts to deconstruct an overall conclusion by subjecting its individual parts to isolated examination in disregard of the cumulative impression made upon the decision-maker especially where the conclusion takes particular account of the demeanour and reaction of an applicant when testifying in person.

9) Where an adverse finding involves discounting or rejecting documentary evidence or information relied upon in support of a claim and which is *prima facie* relevant to a fact or event pertinent to a material aspect of the credibility issue, the reasons for that rejection should be stated.

10) Nevertheless, there is no general obligation in all cases to refer in a decision on credibility to every item of evidence and to every argument advanced, provided the reasons stated enable the applicant as addressee, and the Court in exercise of its judicial review function, to understand the substantive basis for the conclusion on credibility and the process of analysis or evaluation by which it has been reached."

22. I also gave some guidance on adequacy of reasons in credibility findings in *R.O. v. The Refugee Appeals Tribunal* [2012] IEHC 573 as follows:

"A survey of this case law reveals principles which may be used to assess the adequacy of reasons for credibility findings in asylum cases:

(i) Reasons must be intelligible in the sense that the reasons should enable the reader to understand why the applicant for protection is disbelieved on a certain point and/or generally...

(ii) Reasons must be specific, cogent and substantial. ..

(iii) Reasons must be drawn from correct facts and must bear a legitimate connection to the adverse credibility findings...

(iv) Reasons must relate to the substantive basis of the claim and not to minor matters..."

23. In my opinion, the credibility findings in this case cannot be faulted and comply with the dicta from the decisions mentioned above. What the applicant invites me to do in this case is to replace the Tribunal Member's credibility findings with my own and it is not open to me to do that.

24. Complaint is also made in these proceedings that an unlawful finding under s. 11B(b) of the 1996 Act is made by the Tribunal Member. I disagree with this submission and regard the finding made that the applicant did not apply for asylum in Spain as a matter which the Tribunal Member was entitled to weigh in the balance in respect of credibility. However, it was erroneous for the Tribunal Member then to refer to s. 11B(b). That section could only be invoked in the context of a credibility finding where an applicant expressly claims that Ireland was the first safe country encountered in flight from the country of origin. It is clear from the decision in suit that the fact that the applicant spent a month in Spain and did not claim asylum suggested that he was not truly fleeing persecution. The implication here is that a person genuinely fearing persecution will seek asylum in the first safe country encountered. That, in my view, is a logical and lawful conclusion for a Tribunal Member to reach and where a person reaches a safe a country and spends a month there and does not seek asylum, it is open to a decision maker to draw an adverse inference as to credibility therefrom. The inappropriate reference to s. 11B(b) by the Tribunal Member in this context is not enough to vitiate the decision.

25. The applicant also makes complaint as to the manner in which the Tribunal Member dismissed the probative value of the summons certificate. The complaint in the written submissions in this regard claims that the Tribunal Member "attached disproportionately little weight to the document in question". I do not regard the criticism made of the manner in which this issue was handled by the Tribunal Member as constituting a legal flaw sufficient to set aside the decision and it is another example of a matter which is classically a point of appeal. The translated summons gave no indication why the applicant was summoned to the authorities and therefore it was not possible to say whether it supported the claim of persecution or not and such conclusion by the Tribunal Member was lawful.

26. In all the circumstances, I am not of the view that substantial grounds have been made out to grant leave in this case and I refuse to make the orders sought by the applicant.