Neutral Citation Number: [2008] IEHC 108

THE HIGH COURT

2006 No. 722 J.R.

JUDICIAL REVIEW
IN THE MATTER OF
THE REFUGEE ACT 1996 (AS AMENDED)
IN THE MATTER OF
THE IMMIGRATION ACT, 1999
AND IN THE MATTER OF
THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000
AND IN THE MATTER OF
THE EUROPEAN CONVENTION AND HUMAN RIGHTS ACT 2003, SECTION 3 (1)

BETWEEEN

A.M.R.

APPLICANT

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

RESPONDENTS

Judgment of Mr. Justice Brian McGovern delivered on the 25th day of April, 2008

1. This is an application for leave to apply for judicial review in respect of a decision of the Refugee Appeals Tribunal to refuse the appeal of the applicant. The applicant seeks leave to apply for judicial review by way or order of *certiorari* quashing the decision of the first named respondent and for other ancillary relief as set out in the notice of motion issued in this matter.

2. The applicant is a married man from Iran and he was born in 1975. He claims to be of Kurdish ethnic origin. The evidence before the Refugee Applications Commissioner and the Refugee Appeals Tribunal was to the effect that he was associated with members of the Komala party which was a Communist group which opposes the suppression of human rights in Iran. He says he was involved in the organisation for approximately a year and was not a full member but was waiting to join the organisation. He was storing leaflets for the organisation in his house and he claimed that on 6th February, 2005, his house was raided by the Iranian authorities and that they were looking for him. He was contacted by his wife by mobile phone and he fled to hide with his uncle. He claims that his activities were disclosed to the authorities by two other members of the group who were detained and tortured although there is no evidence of this. There is country of origin information to show that high ranking members of Kurdish organisations have been persecuted by the Iranian authorities but there was evidence from which both the Refugee Applications Commissioner and the Refugee Appeals Tribunal were entitled to conclude that the applicant was a low level member of the organisation and that he may not actually have been a member of it at the time but was awaiting confirmation that he had been admitted. In my view, nothing turns on this. He said that his uncle assisted him in fleeing from Iran and he travelled by horse and car and truck to Istanbul. His uncle arranged for his journey out of Iran to Ireland and paid $5,000 for him. He spent eight days in Turkey when he fled the country.

3. The Tribunal found against the applicant on the grounds of credibility and on the grounds that he has not demonstrated to a reasonable degree of likelihood that he is a refugee within the meaning of s. 2 of the Refugee Act 1996 (as amended).

4. The applicant was out of time in bringing the application, but I am satisfied that there is good and sufficient reason for extending the period within which the application can be made on the basis that any delay arose due to the fact that the applicant was not informed by the Refugee Legal Service until 24th May, 2006, that proceedings would not be instituted on his behalf and then he had to wait for one week for an appointment with the solicitor. It seems to me that he was reasonably diligent in pursuing his application for leave to appeal.

5. Section 5(2) of the Illegal Immigrants (Trafficking) Act 2000, provides that the application for leave to challenge the decision of the Refugee Appeals Tribunal must be made by motion on notice and that leave shall not be granted by the court unless the court is satisfied that there are substantial grounds for contending that the decision, determination, recommendation, refusal or order is invalid or ought to be quashed. Substantial grounds mean grounds which are not frivolous or trivial.

6. One of the issues which arose in this case was the fact that the decision by the first named respondent was only given after fifteen weeks from the date of the hearing. I was informed that the hearing took place on 12th January, 2006, and the decision of the Tribunal member was given on 27th April, 2006. In the course of submissions, counsel referred to a decision of Charleton J. in *Balogun v. Refugee Appeals Tribunal and Ors*. delivered on 29th January, 2008. In that case, the learned judge held that there had been a delay between the hearing date and the date of the decision which was sixteen weeks, and that it was such as to undermine the decision which centred on the issue of credibility. Reference was made to the dissenting judgment of Kearns J. in *Edobar v. Refugee Appeals Tribunal* heard in the Supreme Court in January 2000.

7. There was no doubt that decisions of this nature should be given as soon as possible and there is an obligation on the Chairperson of the Tribunal to ensure that its business is managed efficiently and disposed of as expeditiously as may be consistent with fairness and natural justice.

8. I do not believe that it would be desirable to set down a rigid rule which states that unless a decision is given within three months of the hearing, that it is therefore reviewable on the grounds of excessive delay. Even where credibility is in issue there may be good reasons for the delay. In addition, there may be circumstances in the particular case which would tend to suggest that the applicant has not been prejudiced by any delay on account of the nature of the evidence considered. It seems to me that each case should be considered on its own merits and be dealt with in a way which is consistent with fairness.

9. In this case, two things can be said. In the first place, the issue of delay in giving the decision is not contained in the statement of grounds. Secondly, it was dealt with almost as an aside by counsel in the course of the hearing. In introducing the point, counsel for the applicant stated:

> "There is one very small point, judge, one last point I am going to make and I make it arising out of a relatively recent judgment of Mr. Justice Charleton."

He was referring to the *Balagon* judgment. The matter appears to have been raised almost as an afterthought or a peripheral point.

10. It seems to me that this is understandable because the decision of the Tribunal member was a lengthy decision of some seventeen pages in which the facts and the legal principles were set out in considerable detail. Judicial review is a discretionary remedy and should not be fitted into rigid confines, save where this is provided for by the Rules of the Superior Courts or by legislation. In my view, the correct approach is to look at the decision in this case and see whether there is anything in it which would tend to suggest that the person making the decision was hampered in some way by the delay between the hearing and the making of that decision. While the applicant contends that the first named respondent did not properly assess the evidence in making adverse credibility findings and engaged in conjecture, it is clear from the decision itself that it contains a detailed account of the applicant's case and in no way supports a contention that the decision maker may have been hampered due to the length of time between the hearing and the date of the report. The notes of the hearing and all relevant material was before him and there is nothing to suggest that the Tribunal member was acting on memory. In so far as he made an assessment as to the credibility of the applicant this was on the basis of information recorded in written form. For this reason, and because it was not one of the matters contained in the statement of grounds, in the exercise of my discretion I reject the submission that the delay in issuing the decision is a basis on which leave to apply for judicial review should be granted in this case.

11. Having considered the decision of the Tribunal member, it seems to me that there was evidence on which the Tribunal member could conclude that the applicant was not credible. The Tribunal member says that he considered all the papers submitted to him and considered the factors listed in s. 11(b) of the 1996 Act and was also guided by the statement, "a negative inference as to credibility ought only to be based on inconsistencies that are material or substantial." If the applicant's statements are to be believed, he would be entitled to refugee status. But credibility is an important ingredient in the asylum process and every applicant has a duty to co-operate in the process. In the notice of appeal against the decision of the Refugee Applications Commissioner, the applicant stated that his father was a member of the Kurdish Democratic Party who was murdered when the applicant was four years old. In his affidavit grounding these proceedings, he stated that his father was killed in fighting Government forces and that in the note of the hearing before the Tribunal member he confirms that his father died in battle.

12. In the course of his application before the Refugee Applications Commissioner and the Tribunal member, he produced identity documents which were incomplete and suspicious. A birth certificate purported to have a photograph of him as an adult and had no stamp over the photograph. A document which was supposed to contain a fingerprint had no such fingerprint, and there were pages missing from identity documents produced. The applicant's account of spending eight days in Turkey without providing a satisfactory explanation as to why he did not seek asylum there or in the next country which he passed through was a matter the Tribunal member was entitled to take into account in assessing the application. There is one matter in the decision on which I might have reached a different conclusion. I refer to the statement where the Tribunal member says "it also appears somewhat coincidental that the applicant should have been notified by a mobile telephone by his wife, if indeed the authorities were intent on apprehending him." Whether this was conjecture or whether it was a correct conclusion, does not materially affect my views on the Tribunal member's decision, having regard to the remaining matters contained therein and the totality of the decision. It would be wrong, in my view, to approach the matter on the basis that because the Tribunal member may have indulged in speculation on one particular point, that the entire decision should be judicially reviewable if this matter was peripheral or but one of many other matters which were taken into consideration.

13. In *Ribanje v. The Refugee Appeals Tribunal* (Unreported), Peart J., 31st July, 2007, the learned judge said:

> "An applicant must be credible in order to have his personal story believed. If that person's story is not believed, and there is shown to a rational basis for that disbelief, then it serves no useful purpose to consider whether, in the light of country of origin information, the story fits that information - in other words, could it have happened?"

14. In this case, the applicant appeared before the Refugee Appeals Tribunal represented by counsel and with an interpreter present. Although the applicant wanted a member of Amnesty International to be heard, the proposed witness acknowledged that she had never been in Iran and there was sufficient country of origin information to enable the Tribunal member to deal with the matter without hearing that witness. It was also established that the witness had never known the applicant prior to his arrival in Ireland. In those circumstances, the Tribunal member was quite entitled not to hear such evidence.

15. The courts have always been reluctant to interfere with a finding of credibility by another Tribunal other than in cases where the process by which the assessment of credibility has been made is legally flawed (see Peart J. in *Imafu v. The Refugee Appeals Tribuna*l (Unreported) 9th December, 2005).

16. I am satisfied that in this case the Tribunal member had evidence on which he could reasonably conclude that the applicant was lacking in credibility. There is no evidence available which persuades me that the Tribunal member acted on foot of a "gut feeling" or conjecture, other than perhaps on the issue of his wife's communication by telephone with him being a "coincidence", but this was only one of many matters considered by the first named respondent.

17. I conclude that the decision of the first named respondent was, when considered as a whole, rational, fair and reasonable, and based on the facts as presented and established legal principles.

18. In the circumstances, I hold that the applicant has failed to discharge the burden of establishing substantial grounds for contending that the decision ought to be quashed.

19. I refuse leave to apply for judicial review in this matter.