

THE HIGH COURT
JUDICIAL REVIEW

[2013 No. 229 J.R.]

BETWEEN

A. B.

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr. Justice Mac Eochaidh delivered on the 12th day of June 2013

1. The applicant was born in 1988 in Bangladesh. In 2004, he went to Thailand to become a Buddhist Monk. He fears returning to Bangladesh because he claims a particular group persecuted his family in his home village and because Buddhists suffer religious discrimination and persecution in Bangladesh.

Procedural History

2. The Refugee Applications Commissioner and the Refugee Appeals Tribunal rejected his asylum claim. In due course, the applicant applied for subsidiary protection and this, too, was rejected. Subsequently, a deportation order was made. The applicant instituted proceedings challenging the deportation order and the decision on subsidiary protection.

3. Those proceedings came on for hearing before me on 5th October 2012. Counsel for the applicant sought to challenge those decisions based upon recent acts of violence perpetrated against Buddhists in Bangladesh and an attempt was made to persuade the court that the dangers in Bangladesh could be called in aid to neutralise or undermine the decisions under challenge.

4. My view was that I could take no account of the recent violence in Bangladesh when considering the legality of the deportation order and the refusal of subsidiary protection as the recent violence had not been before the decision makers. However, in view of the seriousness of the matters raised by the applicant, I adjourned the proceedings to permit the applicant to bring those matters to the attention of the State authorities. I did not direct what application might be made by the applicant to the authorities.

5. It was open to the applicant to seek to be re-admitted to the asylum system pursuant to s. 17(7) of the Refugee Act 1996 (as amended). Where consent is given to re-enter, an existing deportation order is revoked. However, the applicant chose to make an application under s. 3(11) of the 1996 Act for a revocation of the deportation order.

6. By a decision notified to the applicant on the 20th day of November 2012, the Minister refused to revoke the deportation order. On a subsequent application to this court, I declined to permit the applicant to amend the proceedings to include a claim challenging the refusal of the revocation of the deportation order because that was a discrete decision requiring separate challenge. The applicant duly instituted the present proceedings seeking leave to challenge the refusal to revoke the deportation order and both sets of proceedings came on for hearing on the 16th day of April 2013.

7. At the hearing of the joint set of proceedings, it was agreed between the parties that the original proceedings had been superseded and, by consent, those proceedings were struck out with no order as to costs.

8. In those circumstances, the only matter which remained for determination was the applicant's challenge to the Minister's refusal to revoke the deportation order. Information contained in eleven documents describing violence against Buddhists in September/October 2012 was submitted in support of the revocation application. The case was sought to be made that Islamic Fundamentalists targeted Buddhists and that State protection was ineffective. The information indicated that the violence had reoccurred in the applicant's home town.

9. It was submitted that the information established that a particular group, which had been responsible for earlier violence against the applicant's family, was implicated in the more recent violence. Another report submitted indicated that 25,000 Muslim rioters had destroyed seven Buddhist temples as well as homes and shops. The violence was said to have been caused by images on Facebook showing a burnt Koran. Yet another report suggested that 30 Buddhist temples had been recently destroyed.

10. By decision of 20th November 2012, the Minister refused to revoke the deportation order. The 'Examination of File under Section 3(11)' accompanying the decision records the revocation application and the responses thereto. The Examination accepted that the police apparatus was defective, that steps were being taken to rectify this and that police reform was underway. It was also noted that the group said to have attacked the applicant's family had been targeted by the Government of Bangladesh and that arrests had been made. A "chief" of the group had been arrested in the applicant's home district.

11. The Examination also noted the recent attacks on Buddhists and their temples. It was also noted that the student wing of the group feared by the applicant were the subject of arrests on 30th September 2012. The Examination concludes by saying:

"Overall, having considered country of origin information, including that submitted by the applicant's legal representatives on his behalf, it is considered that the police and State security apparatus in Bangladesh, while suffering from a number of defects, is having such defects ameliorated by way of a comprehensive reform programme. Further, country of origin information referred to earlier in this consideration, indicates, *inter alia*, that in any event, the Bangladeshi State authorities have shown a willingness to combat the activities of the Jamaat-e-Islami organisation (and its offshoots), and have arrested many of their members, including in relation to one of the attacks on Buddhists temples in September,

2012. It is considered, moreover, that country of origin information, set out earlier in this consideration, indicates, *inter alia*, that it is not likely would be vulnerable to attack by the people who may wish to attack or kill the owner of the Facebook page which gave rise to recent violence in Bangladesh, simply on account of his sharing a surname with this individual.

In light of the foregoing, it is considered that State protection in Bangladesh, would be a viable option for the applicant, should he require same against those he purports to fear in that country. It is considered, moreover, that such State protection could be availed of, in order to avoid the risk of being subjected to treatment contrary to s. 5 of the Refugee Act, 1996 (as amended), and Article 3 ECHR."

The Applicant's Case

12. The first ground advanced by the applicant is that the decision not to revoke the deportation order was irrational.

13. Essentially, the applicant's complaints in this regard are based on statements contained within the country of origin information which described the deficiencies in the police. Nothing advanced by the applicant persuades me that the manner in which the respondent surveyed the country of origin information submitted by the applicant and that sourced by his own officials was irrational. There was an abundance of material within that information which permitted the respondent to conclude that the state authorities in Bangladesh are serious about combating anti-Buddhist violence and the material established that arrests have been made following attacks on the Buddhist temples in September 2012.

14. The second ground of complaint advanced is that there was a failure on the part of the respondent to consider "extensive new information" submitted by the applicant relative to the history of violent discrimination against Buddhists in Bangladesh.

15. My view is that all of the information submitted to the Minister appears to me to have been faithfully considered and relevant parts of it reproduced in the decision in suit. I can find no evidence of unfair treatment of the information, and certainly, a complaint such as that allowed by Edwards J. in *D.V.T.S. v. Minister for Justice Equality and Law Reform* [2007] IEHC 305 cannot be sustained in this case. There, in an asylum context, complaint was made that information which flatly contradicted the basis upon which an asylum refusal decision had issued ought to have been referred to by the decision maker.

16. A decision maker, whether on an asylum application or on an issue as to deportation, is required to consider all country-specific information submitted and/or researched on behalf of a decision maker. It is not necessary to reproduce or to paraphrase all such information in a decision. A decision maker is entitled to come to a view as to the state of affairs in a country based upon the information before him or her, and often, this will involve preferring one particular view over another. That is the decision maker's purpose and it is no function of this court to second-guess it. Where country information might equally support both views, the reason for preferring one view should be stated and where a set of facts is flatly contradicted, choosing one set of facts over another should also be explained. These type of sharp choices were not required of the the decision maker in this case.

17. This court could only interfere with such a decision where there was evidence of irrationality in that process and no such sustainable case has been made to me in this instance.

18. The final point pursued by the applicant in these proceedings is that the Minister, it is argued, was required to re-evaluate and investigate a claim made by the applicant in his asylum application as to the violence suffered by his family in 2009. The plea is based upon a decision of the ECJ in joined cases C-71/11 and C-99/11 *Germany v. Y & Z*, 5th September 2012. This case concerned applications for asylum and protection by Muslim Ahmadis in Germany.

19. This case examines, *inter alia*, the provisions of a Qualification Directive [Directive 2004/83/EC] and it does underscore that state authorities need to carry out individual risk assessment based on a specific evaluation of the facts and circumstances advanced in any particular asylum claim. I am at a loss to understand the connection between that case and the matters in contention in these proceedings which deal only with the legality of the revocation of a deportation order.

20. Nothing advanced on behalf of the applicant persuades me that there was any flaw in the manner in which the Minister and his officials received and answered the applicant's application for revocation of the deportation order.

21. I therefore refuse this application for leave to seek judicial review.