

THE HIGH COURT

JUDICIAL REVIEW

[2010 No. 187 J.R.]

E. I. AND A. I. (MINORS SUING BY THEIR NEXT FRIEND I. G. M.)

APPLICANTS

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM AND MICHELLE O'GORMAN ACTING AS

THE REFUGEE APPEALS TRIBUNAL

RESPONDENTS

JUDGMENT of Mr. Justice Colm Mac Eochaidh delivered on the 30th day of January 2014

1. The minor applicants are the children of Pakistani parents born in Ireland in 2006 and 2008. The parents claimed asylum in 2005. These applications were not determined for reasons which are irrelevant to these proceedings. The Pakistani parents of the minor applicants gave evidence at the oral hearing which described their persecution fears. The claim for asylum advanced on behalf of the minor applicants is based on the circumstances of their parents.

2. The parents come from different social strata within Pakistani society. It is said that the mother is from a superior caste to the father. Her family disapproved of the relationship accordingly. The father was approached by the police, it is said, who warned him that there would be consequences if he continued the relationship. In 2003, he moved to a city 500km or 600km away but continued a clandestine relationship with the mother. In 2005, the mother's family arranged for her marriage to another man. In view of this development the mother and father married and immediately left for Ireland in fear of their lives. Country of origin information confirmed that honour killings of women take place in Pakistan.

3. The Tribunal made two adverse credibility findings in respect of the father's narrative, primarily based upon his failure to mention certain matters at first instance. The credibility findings are in somewhat equivocal terms. The language used is as follows:

"The applicant's failure to mention this event prior to the appeal hearing, which is central to the applicant's parents' account, *calls into question* the credibility of the stated claim *and undermines* the well foundedness of the applicant's stated fear [emphasis added]."

To the second matter, the Tribunal Member said:

"The applicant's father stated at the appeal hearing that his brother was tortured on 28th June 2005 as he had assisted the applicant's parents. No mention of this torture was made prior to the appeal hearing. The applicant's father's inconsistent testimony in relation to a central part of the stated account *further calls into question* the stated account and the well foundedness of the applicant's fears." [Emphasis added]

I should also add that the Tribunal Member indicated that the lack of knowledge of the parents as to the countries they traversed en route to Ireland "*calls into question* their general credibility". [emphasis added]

4. The Tribunal Member proceeded to make a reasonably elaborate internal relocation finding following what I have referred to as somewhat equivocal credibility findings. Rather than describe what was said by the Tribunal Member, I quote from her remarks in the relevant part:

"Notwithstanding the credibility issues that arise and if the applicant's parents testimony was accepted, it appears that internal relocation to escape the applicant's mother's relatives would be a viable alternative for the applicant."

5. The Tribunal Member then sets out a description of the provisions of the 'UNHCR Position Paper on Internal Relocation' and certain Canadian case law on this question. The Tribunal Member then continued:

"Pakistan's population is stated to be in and about 180 million. The applicant's mother indicates that her family is influential and she has provided lists of names of people to whom she states she is related. Apart from the applicant's parents' assertions, there is nothing to indicate that the people listed in the documents submitted at the hearing and post-hearing are relatives of the applicant's mother and that they are actively seeking the applicant's parents. The applicant's parents have no contact with their families in Pakistan and therefore the applicant's grandparents and family would be unaware of the applicant's birth. Were the applicant and her parents to return to Pakistan and live in an area where there are no family members, considering the size and population of Pakistan and the time that has elapsed since the applicant's parents came to Ireland, it is not plausible that they would located. Considering the size and population of Pakistan, the time that has elapsed since the applicant's parents came to Ireland, the applicant's parents' education, internal relocation to an urban area within Pakistan would be a viable alternative for the applicant with her parents [sic]."

6. The main issue for decision in these proceedings is whether the passage just quoted constitutes a lawful determination that internal relocation is a solution to the fear of persecution, if believed. The possibility of internal relocation was canvassed with the applicant's parents at the oral hearing. The Tribunal Member notes that "the applicant's father said that he would be found in any province in Pakistan and as he was a chef, staff would find out about his circumstances". In addition, the Tribunal reports that:

"When asked if they could move to another area of Pakistan to escape, the applicant's father said they could not. He said that his wife had studied home economics and that she had a Master's in Interior Design and that she also had a qualification in child development and food nutrition. It was put to the applicant's father that country of origin information would suggest that the family could relocate and the applicant's father disagreed."

7. With respect to the mother's testimony, the Tribunal Member reports that:

"The applicant's mother said that her family would not allow her to marry her husband as he was from a lower caste. She said that she was told that if she married her husband that her family would harm him, that she would be disowned and if they saw her they would kill her.

In reply to the Presenting Officer, the applicant's mother said she could not move elsewhere as she had relatives in different cities and she would be located. She said that if they were located that she or her husband could be killed and her children would not be adopted."

In legal submissions, the representatives of the claimants said that:

".... internal relocation was inappropriate as honour killing was practiced throughout Pakistan".

The Law

8. In a recent judgment, Clark J. reviewed various decisions dealing with the principles governing the Tribunal's decision making on internal relocation. She identified the following principles:

"The following principles can be said to apply to an assessment of the internal relocation alternative:

(i) An inquiry into the availability of internal relocation is only appropriate where a protection decision maker **accepts** that the applicant has a well founded fear of persecution for a Convention reason in his country of origin, **but** that risk is localised and does not extend to the whole of the State.

(ii) Internal relocation has **no** logical part to play in a decision if no **well founded** of persecution is accepted or if it is found that the persecution feared has no Convention nexus.

(iii) A large number of decisions refer to the relocation option notwithstanding a finding that there is **no well founded fear of persecution on credibility grounds**. In such cases, what the decision maker really means is, '*if what you say is true, which is not accepted, you have given no credible explanation for coming to Ireland instead of moving elsewhere away from the claimed danger*'. These '*even if*' findings are **not** internal relocation alternative findings requiring adherence to Regulation 7 but are part of a general examination of whether an applicant has a well founded fear of persecution."

9. Before proceeding to identify the other principles set out by Clark J., I wish to comment briefly on the above quoted passage from her judgment in *K.D. [Nigeria] v. The Refugee Appeals Tribunal* [2003] IEHC 481 (Unreported, 1st November 2013). I fully agree with the comments of Clark J. with respect to the redundancy of making internal relocation findings in situations where credibility is rejected. The practice of making negative credibility comments in asylum decisions followed by an internal relocation assessment is commonplace. It is not the function of the High Court to direct inferior Tribunals as to how they should take their decisions in future. A clearly expressed credibility finding without equivocation leading to a rejection of the applicant's claim is self-evidently a desirable outcome when justified by the evidence. However, it is understandable that decision makers often make equivocal findings in respect of credibility. In such cases, it is not surprising that such findings are then followed by an internal relocation assessment. Clark J. expressed the view that where an internal relocation finding is made, notwithstanding a rejection of credibility, that internal relocation assessment is not to be tested for compliance with the provisions of Regulation 7 of the EC (Eligibility for Protection) Regulations 2006. With the greatest respect to my learned and experienced colleague, I am not convinced that any assessment of internal relocation should escape full-blooded scrutiny in judicial review, nor am I convinced that the provisions of Regulation 7 should apply to some but not all internal relocation assessments. In any event, in my experience, most internal relocation assessments which follow negative credibility findings rarely follow clearly expressed comprehensive rejections of credibility. They are usually credibility findings such as those which appear in this case. In other words, they are equivocal. The Tribunal Member has doubts as to the credibility of the applicant but does not appear to be in a position to reject fully the applicant's narrative because of the weaknesses observed. In those circumstances, the decision maker, quite naturally, feels compelled to proceed to examine the question of internal relocation, if the facts and circumstances justify such a consideration.

10. In this case, my view is that the internal relocation assessment was required to comply with the provisions of Regulation 7 and the general legal principles which have been observed over the years governing the correct approach to such portion of the protection decision making process. Reverting to the principles addressed by Clark J. in *K.D.*, she listed the following matters:

"(4)*Localised Risk*: Where it is **accepted** that an applicant has a well-founded fear of persecution for Convention reasons but that fear is **localised** and confined to a particular area, it is relevant to consider the possibility of internal relocation as an alternative to refugee status. In such cases, Regulation 7(1) of the Protection Regulations requires the protection decision maker to identify (if only in general terms) a place or area within the country of origin where the risk of persecution does not exist and where the applicant might reasonably be expected to stay. Security from persecution or serious harm and meaningful state protection in the proposed area of relocation are key.

(5) Where there is a well-founded fear of persecution and a general area has been identified as an alternative to refugee status then the protection decision-maker must pose two questions: (i) *is there a risk of persecution / serious harm in the proposed area of relocation?* If not, (ii) *would it be reasonable to expect the applicant to stay in that place?*

(6) **Absence of Risk**: Where the persecution feared is of a general or public character such as a religious or tribal conflict or oppression by a political regime which controls a particular region or city, it will be necessary to consult appropriate up-to-date COI to determine whether the risk of persecution / harm is genuinely absent from the proposed area of relocation. In such cases the decision maker must engage in a detailed and careful enquiry as to the general circumstances prevailing on the ground in the proposed area, in accordance with Regulation 7(2).

(7) If the persecution feared emanates from private or domestic actors, such as a threat from a particular family member, **and** a Convention nexus has been established, the protection decision-maker must make an objective, common sense appraisal of the reality of whether the risk faced by the applicant could be avoided by moving elsewhere, having regard to the applicant's own evidence.

(8) **Reasonableness**: It is not enough for the protection decision-maker to determine that the risk of persecution is absent from the proposed area of relocation. He or she must go on to consider whether it would be reasonable to expect the applicant to stay in that place, having regard to his / her personal circumstances and the general conditions prevailing on the ground, in accordance with Regulation 7(2) of the Protection Regulations. The reasonableness assessment is not

concerned with assertions such as 'I won't know any one', but rather with matters of substance such as whether the applicant is old, infirm, ill, has many small children or is without family support and other real issues.

(9) The UNHCR *Guidelines on International Protection: Internal Flight or Relocation Alternative* (2003) indicate that consideration should be accorded to whether the applicant could lead a relatively normal life in the selected place of relocation without undue hardship, *in the context of the country concerned*. Unless there is objective evidence that the general circumstances prevailing in the proposed area are harsh – for example if the proposed area is the site of a conflict or a humanitarian crisis – there is in general no obligation to seek out a specific town or detailed information on economic and social conditions in the proposed location. However, if a specific objection is taken by the applicant to the location this objection must be examined.

(10) *Burden of Proof*: There is a shared burden of proof. The protection decision-maker who accepts a well-founded fear of persecution but determines that refugee status is not appropriate because internal relocation is available must conduct a careful enquiry to identify a safe relocation area, having regard to up-to-date objective evidence about that area and also to the applicant's own evidence in that regard.

(11) *Fair procedures*: As a matter of fair procedures the proposed safe area should be notified to and discussed with the applicant to establish whether he/she could reasonably be expected to stay there. The applicant is obliged to cooperate, to answer truthfully, to provide all relevant information available to him / her to determine the reasonableness of the relocation area and to provide information on any personal factors which would make it unreasonable or unduly harsh for him / her to relocate rather than being recognised as a refugee;

(12) No state is obliged to consider the internal relocation alternative even when the Convention-related persecution feared is confined to a particular part of the applicant's state. States can recognise an asylum seeker as a refugee solely on the basis the criteria under Section 2 of the Refugee Act 1996, without ever turning to the relocation alternative.

(13) The threshold to be reached before internal relocation is considered is high. The applicant would be recognised as a refugee but for the fact that he can safely relocate. The inquiry is commensurately careful."

11. The respondent has exhibited country of origin information which was relied on by the second named respondent and supplied to the Presenting Officer and the legal representatives of the applicant at the applicant's oral hearing. That country of origin information confirms the phenomenon of honour killings of women who "bring dishonour to the family". It expressly identifies the question of internal relocation and says:

"The law provides for freedom of movement within Pakistan, although the government limits this right in practice."

The respondent has also exhibited a list of family names supplied by the parents indicating persons, said to be related to the mother living in Punjab, Lahore and Islamabad.

12. It seems to me that the critical standard by which I should review this internal relocation decision is that mentioned above at number (5) by Clark J. I must enquire as to whether two questions were asked. These questions are:

- (i) Is there a risk of persecution / serious harm in the proposed area of relocation? If not,
- (ii) would it be reasonable to expect the applicant to stay in that place?

13. It would appear that the Tribunal Member rejected the mother's claim that her family lived in numerous urban locations in Pakistan. The Tribunal Member said:

"Apart from the applicant's parents' assertions there is nothing to indicate that the people listed in the documents submitted at the hearing and post-hearing are relatives of the applicant's mother and that they are actively seeking the applicant's parents."

14. My difficulty with this approach is that the absence of corroborating evidence that the listed people are relatives of the applicant's mother is not a sufficient reason to discount the possibility that the people listed are indeed her family and that they do live in many different urban areas in Pakistan. I also have a difficulty with the remark made by the Tribunal Member that there was nothing to indicate "that they are actively seeking the applicant's parents". I have not been able to find any assertion by the parents in this case that the mother's family is actively seeking her.

15. It is recalled that the mother's evidence was that her family members are spread across Pakistan. The Tribunal Member does not identify a particular place for the proposed internal relocation. No principle of law requires specificity in this regard in every case where internal relocation is proposed. Where a threat is exclusively regional in its source, it may, for example, be adequate to identify a large region located a safe distance from the source of the threat. The nature of the persecution source will indicate what level of specificity is required as to the locale of proposed internal relocation.

16. In this case, the threat is connected with a family rather than the circumstances of a particular geographical region. Having regard to the lack of weight which was attached to the list of persons who were said to live across Pakistan, and having regard to the mother's evidence that her family was located in many places, it seems to me that when the Tribunal Member found that internal relocation "to an urban area within Pakistan" was viable she thereby failed to answer the question "is there a risk of persecution/serious harm in the proposed area of relocation?". My view is that greater enquiry was required. It may well be that there is an area in Pakistan, be it urban or rural, where this family could live without the knowledge of the applicant's mother's family. It may be reasonable to expect that the parents and their children should live there. To this I add that the country of origin information indicated that there are restrictions in practice on freedom of movement in Pakistan and thus the level of enquiry necessary may have to address whether the applicants and their parents might be subject to such restriction.

17. In those circumstances, I do not propose to consider the complaints made in respect of the credibility findings in this case as I grant orders of *certiorari* quashing the decision of the Refugee Appeals Tribunal and remitting this matter for a new determination.