

**THE HIGH COURT
JUDICIAL REVIEW**

[2012 No 457 J.R.]

BETWEEN

S.A. (PAKISTAN)

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Ms. Justice Stewart delivered on the 12th day of January, 2016

1. This is telescoped hearing for judicial review seeking *certiorari* to quash a decision of the Refugee Appeals Tribunal dated 8th May, 2012, and remitting the appeal of the applicant for *de novo* consideration by a different tribunal member.

Background

2. The applicant is a Pakistani national born on 22nd April, 1989. He states in both his ASY1 form and questionnaire that he has one brother and four sisters, all living in Lahore, Pakistan and that his parents are also in Lahore. The applicant's stated fear of persecution is based upon the following circumstances. The applicant states that his father owned a business in Karachi and he borrowed money from the applicant's relatives. In 1988, the father's business partner took all of the money from the business and the father was then unable to repay the debt. Those creditors have been trying to recover that debt and have been subjecting the whole family to threats and the applicant fears they will kill him if he is returned to Pakistan. The applicant states that he and his father were shot at in 2009, when his father suffered a gunshot wound to the stomach. The applicant maintains that the police were informed of all incidents but failed to take satisfactory action. In October, 2009, the applicant obtained a student visa for the United Kingdom, where he studied media and public relations, and worked for twenty hours per week, as permitted by the terms of his student visa. In August, 2010, the applicant came to Ireland on a tourist visa. He stayed in Navan, Co. Meath, for five days and returned to the United Kingdom thereafter. He remained in the United Kingdom until December, 2010, when he returned to Pakistan.

3. The applicant arrived in Ireland on 24th September, 2011, and applied for asylum on 10th October, 2011. He was interviewed pursuant to s.11 of the Refugee Act 1996 (as amended) on 1st November, 2011, with said interview being translated from Urdu. By letter dated 2nd March, 2012, the Offices of the Refugee Applications Commissioner (ORAC) notified the applicant of the negative decision in respect of his claim for a grant of refugee status. The ORAC found that s.13(6)(c) applied to the applicant, namely: "the applicant, without reasonable cause, failed to make an application as soon as reasonably practicable after arrival in the State". The effect of said finding is that any appeal would be on the basis of the papers-only and, therefore, without an oral hearing. By letter dated 9th March, 2012, a form two, notice of appeal was submitted to the Refugee Appeals Tribunal (RAT) by the applicant's solicitors.

The impugned decision

4. The decision dated 8th May, 2012, sets out, under the heading 'analysis of the applicant's claim' as follows:-

"This Applicant presents with no valid identity documents, despite being given an opportunity to do so, no valid identity documents have been submitted apart from a poor quality photocopy of an ID document, and the information in relation to the Applicant's visa application, which rather importantly shows up an inconsistency in the Applicant's account. The Applicant claimed when he arrived here (at first interview) that he had no relatives, family or dependants here, however according to the documentation on file the Applicant applied for a visa on the basis of family re-unification, purportedly to visit his sister here, thus either the Applicant lied during his first interview, or lied in providing the visa application form details.

The Applicant claims that two FIRs [first instance reports to the Pakistan police] have been registered by his family, yet the Applicant cannot provide even one of these.

The Applicant provides a bundle of largely irrelevant material, including business documents, mortgage documents and so on, however he does not provide any documents to show that the Applicant had reported that they were being harassed, apart from a photocopy x-ray from the Applicant's father which shows that he was at one time shot, however this of course cannot substantiate the Applicant's account of how that gunshot wound came about. I am not going to engage in conjecture to arrive at a conclusion that this was a result of a dispute over money.

The Applicant claimed that his father left Pakistan, in fear for his life, leaving his family behind, but returned when his wife was suffering ill-health, this does not appear to me to be the action of someone who is in fear of his life or fears for his life in Pakistan. Likewise I find the actions of the Applicant in returning to Pakistan in December of 2010, despite the fact that according to his evidence he had been shot at in 2009, not to be the actions of someone who fears for their life in their country of origin.

I believe that this Applicant's claim is opportunistic, I refer to the vague and rambling nature of the evidence that he provided during interview, the contradictory evidence in relation to the presence of relatives in this country, the

implausibility of his account of how he was able to travel here on a fraudulently obtained British passport without a visa on it, and furthermore travel through Abu Dhabi using those same falsified documents, the Applicant's inability to provide any reliable identity verification, and the inability of the Applicant to provide any of the documents which he claims would support his claim, such as F.I.R. reports (sic). It is an accumulation of all of these factors, that lead me to conclude that the Applicant's account is lacking in credibility, and I simply cannot afford the benefit of the doubt."

The tribunal member concludes by stating that documentation has been considered and affirms the negative recommendation of the Refugee Applications Commissioner.

Applicant's submissions

5. Counsel for the applicant, Mr. Michael Conlon, S.C., with Mr. Garry O'Halloran, B.L., submitted that because this was a papers-only hearing, the standard required is one of extreme care, as was enunciated by, *inter alia*, Clark J. in *V.M. (Kenya) v. Refugee Appeals Tribunal & ors.* [2013] IEHC 60 and endorsed by this court in, *inter alia*, *B.Y. (Nigeria) v. Refugee Appeals Tribunal & ors.* [2015] IEHC 60. The applicant submitted that this standard has not been met in the decision and set out the resume of grounds having regard to the foregoing submission.

6. The applicant submitted that a fresh credibility finding was made in the impugned decision. The finding is quoted in the applicant's submissions and at pp. 124-125 of the booklet as follows:-

"The Applicant claimed when he arrived here (at first interview) that he had no relatives, family or dependants here, however according to documentation on file the Applicant applied for a visa on the basis of family re-unification, purportedly to visit his sister here, thus either the Applicant lied during his first interview, or lied in providing the visa application form details."

Counsel submitted that this was never put to the applicant and so he was never given the opportunity to clarify the alleged inconsistency.

7. The applicant argued that explanations provided by him, at his s.11 interview, were not taken into account, particularly regarding the applicant's account of his father's motives for returning to Pakistan in 2009 and the applicant himself returning there in 2010. The applicant argued that findings made by the tribunal member were based upon conjecture and/or peripheral matters.

8. Counsel submitted that the tribunal decision fails to adequately refer to material in the applicant's evidence that was described generally as "vague and rambling", which material was "largely irrelevant" or why his account of his travel was "implausible". The applicant maintained that there was no compliance with European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006) and particularly ss.5(1) and 5(2), in that relevant facts and materials were not assessed adequately. The applicant pointed to the photocopy of the x-ray from the applicant's father that shows he was shot, and submitted that proper regard was not had to this document.

9. The applicant argued that the tribunal member failed to make any finding on the past persecution suffered by the applicant and failed to consider country of origin information and failed to perform a forward-looking test as to the likelihood of the applicant suffering future persecution by reason of his particular circumstances, as per Cooke J. in *M.A.M.A. v. Refugee Appeals Tribunal & ors.* [2011] 2 I.R. 729.

Respondent's submissions

10. Mr. Byron Wade, B.L., on behalf of the respondents, submitted extensive written submissions and expanded upon same in oral submissions before this Court regarding the applicable standard of review. Counsel stated that the respondents rejected that the standard of decision-making required of the second named respondent is one of extreme care in papers-only appeals. However, this submission is difficult to accept, particularly since in my experience, respondents in this type of proceedings have expressly accepted the standard of extreme care in papers-only appeals in every other such case before this court. Counsel submitted that the standard was that set out by the Supreme Court in *Meadows v. Minister for Justice, Equality and Law Reform & anor.* [2010] IESC 3. However, the *Meadows* case was concerned with the standard of review in judicial review proceedings before this court; nevertheless, counsel appears to apply same to a papers-only appeal of the Refugee Appeals Tribunal. For the sake of clarity, the standard of extreme care in a papers-only appeal requires the decision-maker to ensure that they carefully read all of the papers and documents. When an oral hearing takes place, an applicant has the opportunity to correct any misinterpretations or errors in the course of their evidence. When a decision is made by way of papers-only, and extreme care is not taken, errors and misinterpretation may infect the decision. Basic fairness dictates that this approach is taken by decision-makers.

11. The respondents further submitted that in the instant case, credibility was the central issue and therefore, the applicant's submission that he should have been afforded the benefit of the doubt is misconceived. The respondents relied, *inter alia*, on the decision of Peart J. in *Imafu v. Refugee Appeals Tribunal & ors.* [2005] IEHC 416. The respondents submitted that the tribunal member made a clear finding on a lack of Convention nexus and therefore, if the court were to find that the credibility findings were unsound, which the respondents do not accept; these could be severed from the decision, as per Faherty J. in *J.A. v. Refugee Appeals Tribunal & ors.* [2015] IEHC 342.

12. The respondents contended that the tribunal member is not obliged to recite all evidence in the decision. The respondents submitted that the contention on the part of the applicant that the tribunal member failed to have proper regard to the items of evidence amounts to the applicant challenging the substance of the decision, rather than the procedure and process followed in making the decision. This, the respondents argued, amounts to the applicant mounting an appeal rather than a review.

13. The respondents submitted that there is no obligation for the tribunal member to engage in some form of assessment of likelihood of future persecution when the applicant's account of past persecution was held not to be credible.

Decision

14. The applicant submitted that fresh credibility findings were made at the appeal stage, without the applicant being given an opportunity to respond to same. These findings are set out at pp. 124-125 of the tribunal decision as follows:-

"This Applicant presents with no valid identity documents, despite being given an opportunity to do so, no valid identity documents have been submitted apart from a poor quality photocopy of an ID document, and the information in relation to the Applicant's visa application, which rather importantly shows up an inconsistency in the Applicant's account. The

Applicant claimed when he arrived here (at first interview) that he had no relatives, family or dependants here, however according to the documentation on file the Applicant applied for a visa on the basis of family re-unification, purportedly to visit his sister here, thus either the Applicant lied during his first interview, or lied in providing the visa application form details."

The applicant's written submissions state as follows in regard to this finding:-

"This alleged contradiction was not in the ORAC report. It was never put to the Applicant. The Applicant never had an opportunity to challenge it or to explain or clarify as necessary. That amounts to a breach of natural and constitutional justice."

15. In the applicant's ASY1 form, the applicant was asked details of his immediate family members and he gave each of their locations as Pakistan (p.15 of the booklet). In his questionnaire the applicant gave an address for his siblings as Lahore (p.25 of booklet). In the s.11 interview (p.42) the applicant is asked the following:-

"Q.10: Have you any friends or family currently living in Ireland?

A.10: A friend, male. [named].

Q.11: I see you are in private accommodation?

A.11: Yes

Q.12: How long have you been living there?

A.12: Since I arrived here."

At p. 45 the applicant is questioned at the s.11 interview regarding his visa for Ireland as follows:-

"Q.33: This was a holiday visa?

A.33: It was a visit visa.

Q.34: This information will be contained in our computer records as you did this legitimately correct?

A.34: Of course, you can check."

At p. 48 of the booklet, at the s.11 interview, the interviewer asks the following:

"Q.73: Has any of your family members ever been to Ireland before?

A.73: No."

16. The report pursuant to s.13 of the Refugee Act, 1996 (as amended) was issued to the applicant by cover letter dated 2nd March, 2012. At p. 73 of the booklet, in the report, the authorised officer states:-

"The applicant stated that he had applied for, and was issued with, an Irish short stay visa. This aspect of his testimony is accepted, according to the AVATS application on file, the applicant applied for this visa at the Irish Embassy in London. This visa was issued on the basis of family unification to afford the applicant an opportunity to visit his sister, described as a housewife, resident in Navan. (Appendix A)"

17. The form two, notice of appeal, exhibited at p.103 in the booklet, at para. 7 therein, the applicant's legal representatives state: "It is submitted that the credibility findings at para.3.3.7 [of the ORAC s.13 report] are without any reasonable basis." One of the credibility findings contained in the report relates to the applicant's application for an Irish visa for family reunification purposes. No further effort is made to address the issue. The applicant had an opportunity to address this contradiction and this court cannot accept that the applicant was not on notice of that finding. It is clearly contained in the ORAC s.13 report and the applicant had ample opportunity to explain the contradiction but, for whatever reason, did not address it at any stage.

18. The tribunal member's decision is one that is based upon credibility. The applicant's argued that documents were not given due consideration. The applicant pointed to the photocopy x-ray of the applicant's father which shows that he was shot. The tribunal member deals with that document as follows:-

"The Applicant provides a bundle of largely irrelevant material, including business documents, mortgage documents and so on, however he does not provide any documents to show that the Applicant had reported that they were being harassed, apart from a photocopy x-ray from the Applicant's father which shows that he was at one time shot, however this of course cannot substantiate the Applicant's account of how that gunshot wound came about. I am not going to engage in conjecture to arrive at a conclusion that this was a result of a dispute over money."

The applicant submitted that the tribunal member refused to take proper account of the document. The respondent argued that this amounted to the applicant effectively seeking to appeal the conclusions reached by the decision-maker rather than review the procedures. The probative value to be attached to evidence is a matter for the decision-maker and not a matter for this court upon judicial review proceedings. It is clear from the decision that the tribunal member had regard to the documents submitted and dealt with the documents in the decision.

19. In a recent decision of this court, *H.J.E. [Nigeria] v. Minister for Justice, Equality and Law Reform & ors.* [2015] IEHC 189, at paras. 18-21, I stated as follows:-

"18. In judicial review applications of asylum matters before the courts, it is regularly pointed out that when reviewing decisions of Refugee Appeals Tribunal that the decisions must be read as a whole. It seems to me that this is an appropriately apt comment to make in this case. In my view on reading the entire decision of the tribunal member, and not just the 'analysis' section, that it is patently clear that the applicant's story was not believed and that the reasons

for not believing him were recited in the part three of the decision.

19. It is well established that in a judicial review, the court does not embark, nor does it have any entitlement to embark, on a reassessment of credibility and substitute the court's views in respect of credibility for that of the decision-maker. In *Imafu v. Refugee Appeals Tribunal* [2005] IEHC 416 Peart J. said:

'This Court must not fall into the trap of substituting its own view on credibility for that of the Tribunal Member. The latter, just as a trial judge is at trial rather than the appellate court, in the best position to assess credibility based on the observation and demeanour of the applicant when she gives her evidence. These are essential tools in the assessment of credibility, and it is always essential to remember that what appears as the spoken word in a transcript or in a summary of evidence contained in any written decision cannot possibly convey the necessary elements for the assessment of credibility. That is what a Court will be reluctant to interfere in a credibility finding by an inferior tribunal, other than for the reason that the process by which the assessment of credibility has been made is legally flawed.'

This sentiment was echoed by Feeney J. in *Benzuzi v. Refugee Appeals Tribunal & ors.* [2007] IEHC 2 where he stated as follows:

'The adverse findings of credibility do not run counter to generally known facts and are not inconsistent with the country of origin information and are based upon a determination by the person who had the benefit of assessing the demeanour of the Applicant that his account in certain regards was neither coherent nor plausible. For this court to impose a different view or finding in relation to credibility would be for the court to fall into the trap identified by Mr. Justice Peart in *Imafu*...'

20. In the case of *Totobor (B.T.) v. Refugee Appeals Tribunal & ors.* [2011] IEHC 484 Cooke J. said at para. 6 thereof:

'It goes without saying that such assessments of credibility are the exclusive function of the decision makers in the asylum process. An application for judicial review is not an appeal. It is no function of the High Court in judicial review to reassess credibility or substitute its own evaluation of the plausibility of events.'

21. I am satisfied that on reading the decision as a whole, it is clear the basis upon which the tribunal member arrived at his decision. In light of the above I am satisfied that there is no basis for interfering with the findings made by the tribunal member and I refuse leave."

20. The above section is quite apposite to this case. The bases for the rejection of the applicant's credibility are clear from the decision. The credibility findings are central to the applicant's claim of persecution, which is not accepted. The tribunal member is required to comply with the principles laid down by Cooke J. in *I.R. v. Refugee Appeals Tribunal & ors.* [2009] IEHC 353, at para. 11, when assessing credibility. Those principles are:-

- 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."

21. In applying the foregoing principle to the tribunal decision, and notwithstanding the fact that it was a papers-only appeal, where extreme care needs to be taken by the decision-maker, I am satisfied that the decision was reached in compliance with those

guidelines. The decision-maker gave due consideration to all aspects of the applicant's claim and did not accept the core of the applicant's claim. I, therefore, find no grounds to justify the granting of leave and/or the quashing of the decision of the tribunal member.

22. I therefore refuse leave.