Neutral Citation Number: [2008] IEHC 409

THE HIGH COURT

2006 1269 JR

BETWEEN

I. H., N. H., M. H. (A MINOR, SUING BY HIS MOTHER AND NEXT FRIEND, N.H.), AND N.H. (A MINOR, SUING BY HIS MOTHER AND NEXT FRIEND, N.H.)

APPLICANTS

AND

THE REFUGEE APPEALS TRIBUNAL AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENTS

JUDGMENT OF MR JUSTICE HEDIGAN, delivered on the 16th day of December, 2008

1. The applicants are seeking leave to apply for judicial review seeking primarily an order of *certiorari* of the decision of the Refugee Appeals Tribunal (RAT) to affirm the earlier recommendation of the Office of the Refugee Applications Commissioner (ORAC) that the applicants should not be declared refugees.

Factual Background
2. The applicants are nationals of Lebanon and Sunni Muslims. The first and second named applicants are husband and wife, respectively, while the third and fourth named applicants, who are minors, are their sons. The applicants applied for asylum upon arrival in the State on 24th January, 2005. The account of events given in support of that application was as follows: while driving a van in Beirut in the course of his work on 5th January, 2004, the first named applicant accidentally knocked down a pedestrian, paralysing him from the waist down. He was later informed that the pedestrian was a 70-year old Shia Muslim who had family members who were members of Hezbollah, which he describes as a terrorist organisation made up of Shia Muslims that operates both within and outside of the democratic process. His employer told him that members of Hezbollah were intent on harming him; some members of Hezbollah visited his father's home and demanded to know where he was. Before fleeing for Ireland, the family went into hiding for 12 months at a friend's house in Jounieh, a Christian area situated a short distance outside of Beirut.

Procedural Background
3. The first and second applicants each completed an ORAC questionnaire; the children were included under their mother's application which was, in turn, based on that of her husband. The first named applicant attended for interviews in May and June, 2005; his wife attended for one interview in May, 2005. In April, 2006, individual reports were compiled in respect of each of them in compliance with section 13(1) of the *Refugee Act 1996,* as amended, wherein it was recommended that they should not be granted declarations of refugee status.

4. The first and second named applicants each submitted a Notice of Appeal to the RAT in May, 2006; the children were included in their mother's appeal as dependants. With his Notice of Appeal, the first named applicant enclosed nine country of origin information ("COI") documents relating to Hezbollah; eight of those nine COI documents were also enclosed with his wife's Notice of Appeal. An oral hearing took place in respect of each of the appeals on 27th June, 2006. A further twenty COI documents were submitted to the RAT in July, 2006. Three medical reports compiled between June and August, 2006 by Dr J. Mulroy, Dr I. Moloney, and Dr A. Doherty, respectively, were submitted in support of the first named applicant's appeal in August, 2006; Drs Moloney and Doherty are Consultant Psychiatrists with the HSE. Each report records that the first named applicant shows symptoms of depressive anxiety and post traumatic stress disorder; the third report also records that he suffers a paranoid ideation with respect to the Irish judicial system.

5. The appeals of the first and second named applicants and their sons were considered together and rejected by decision dated 11th September, 2006. The Tribunal Member accepted that the first named applicant has "a certain fear" of suffering a revenge-type killing at the hands of Hezbollah, and it is common case between the parties that the Tribunal Member did not make any negative credibility findings. He accorded weight, however, to the fact that the applicants did not seek protection from the police in Lebanon. He also noted that the applicants had not come to any harm during the time they spent in Jounieh, which he described as "a relatively short distance from where they originally lived", and on that basis he concluded that their fear was not "well-founded". He further found that the explanation given by the applicants for destroying their documentation was "not a logical one"; he therefore took account of sections 11B (a) and (e) of the *Refugee Act 1996,* as amended.

Extension of Time
6. The applicants commenced the within proceedings outside of the 14 days allowed by section 5(2) of the *Illegal Immigrants (Trafficking) Act 2000.* The first named applicant has, however, provided a reasonable explanation for the delay in his affidavit, related primarily to their difficulties in securing legal representation and their language difficulties. In the circumstances, I am satisfied that there is good and sufficient reason to extend time, and I propose to do so.

The Submissions
7. Although some thirteen grounds were set out in the applicants' statement of grounds, their primary argument may be summarised as being that the Tribunal Member failed to assess relevant evidence given in the following two respects:-

(a) Explanations given at the oral hearing for not going to the police; and

(b) Evidence that the family was living in hiding and in fear during the 12 months spent in Jounieh.

8. The facts relied upon by the applicants in support of these contentions are set out in the grounding affidavit of the first named applicant. That affidavit is unchallenged and I proceed on the basis that the explanations and evidence set out in his affidavit were, in fact, given at the oral hearing.

(a) Failure to take account of explanation for failure to seek police protection
9. When questioned at the oral hearing as to why he did not seek protection from the police, the first named applicant explained that the police are controlled by Hezbollah, that many of the police – being Shia Muslims – belong to the Hezbollah movement, and that if he had gone to the police, he would have put his family at greater risk. It is contended that the Tribunal Member erred by failing to consider and assess that evidence in making his determination in regard to the applicants' failure to seek the protection of the police; reliance is placed in this regard on the decisions of Finlay Geoghegan J. in *Bujari v The Minister for Justice, Equality and Law Reform & Anor* [2003] IEHC 18 and *A.M.T. v The Refugee Appeals Tribunal* [2004] 2 IR 607.

10. It is further complained that the Tribunal Member incorrectly recorded the explanation given by the first named applicant in this respect. When setting out the first named applicant's evidence, the Tribunal Member stated as follows:-

> "He said that he could not expect to receive any assistance from the police because most of the police were members of the Shiah Muslim group."

11. Similarly, when setting out the second named applicant's evidence, he stated:-

> "They did not make any complaint to the police because most of the police are Shiah Muslims. She and her husband were Sunny Muslims."

12. The applicants contend that what was actually said was that most of the police belong to Hezbollah.

13. With respect to this alleged error, the respondents argue that decisions of this nature cannot be parsed and analysed to find minor flaws. It is submitted that if there is an error of fact, that error must be such as to render a decision irrational; reliance is placed on the judgment of Feeney J. in *V.P.& S.P. v The Refugee Appeals Tribunal & Anor* [2007] IEHC 1. Further or in the alternative, it is submitted that the Tribunal Member did not, in fact, err: it is submitted that by using the definite article when referring to "the Shia Muslim group", he was referring to a particular group which was already discussed in his decision, i.e. Hezbollah. It is submitted that this is borne out by the first named applicant's affidavit, in which it is stated that Hezbollah represents the interests of Shia Muslims in Lebanon. It is contended that in the first named applicant's evidence, there was an interchange between the notion of a Shia Muslim group and the Hezbollah movement.

(b) Failure to take account of evidence re: period spent in Jounieh
14. It is also contended that the Tribunal Member misunderstood or misconstrued the evidence given by the first named applicant with respect to the family's 12-month stay in Jounieh, and that he failed to have regard to that evidence. At the hearing, the first named applicant explained that the family was in hiding in Jounieh and lived in constant fear of being discovered; the children did not attend school and could not play outside, and the first named applicant could attend work for 15 nights only. It is accepted that the Tribunal Member recorded the applicants' evidence in his summary of the evidence at p.3 of his decision, but it is complained that he did not give any rational explanation or basis for his later decision, at p.15, that the applicants were safe in Jounieh and not at risk.

15. The respondents first contend that the Tribunal Member correctly identified that it is not determinative that an applicant has failed to seek out State protection; rather, it is necessary to also assess whether or not State protection might reasonably have been forthcoming if it had, in fact, been sought (see the judgment of Herbert J. in *D.K. v The Refugee Appeals Tribunal* [2006] 3 IR 368). The respondents further contend that the Tribunal Member was fully aware of the applicants' explanation, which he set out accurately at p.3 of his decision.

(c) Failure to take account of evidence re: destruction of passports
16. It is contended that in reaching the conclusion that the applicants' explanation for destroying their documentation was illogical, the Tribunal Member failed to have regard to the reasonableness of the explanation provided at the oral hearing for those actions, i.e. that the applicants were afraid that the documents would be used to immediately return the applicants to Lebanon. It is submitted that the explanation given is reasonable in the light of the medical reports in respect of the first named applicant's mental state, and it is complained that the Tribunal Member acted in breach of natural and constitutional justice by taking account of sections 11B (a) and (e) of the Act of 1996, as amended.

The Court's Assessment
17. This being a leave application to which section 5 of the *Illegal Immigrants (Trafficking) Act 2000* applies, the applicants must establish substantial grounds for the contention that the RAT decision should be quashed. As is now well established, this means that grounds must be shown that are reasonable, arguable and weighty, as opposed to trivial or tenuous.

(a) Failure to take account of explanation for failure to seek police protection
18. I reject the applicants' submissions with respect to the Tribunal Member's alleged misconstruction of the evidence with respect to police protection. There is, of course, a difference between being a Shia Muslim on the one hand and a member of Hezbollah on the other. I do not accept, however, that the way in which the applicants' fear of the police was portrayed makes any difference to the thinking of the Tribunal Member. It is clear that the Tribunal Member understood that the applicants said they could not go to the police because the police were controlled by persons adverse to the applicants. It is not open to the applicants to parse the judgment. There may be minor errors but the question is whether the deciding officer understood the broad thrust of the applicant's claim. It seems to me that the Tribunal Member did, in fact, understand that the applicants were saying they could not go to the police because the police was controlled by their antagonists and would not, as a result, protect the applicants.

19. I also reject the applicants' submissions with respect to the alleged failure to take account of and consider their explanation with respect to their failure to seek out State protection. It is the view of this Court that it does not follow from the absence of an express reference to an issue that the issue was not taken into consideration. The decision has to be read holistically. It seems to me that the only inference that can be drawn from the Tribunal Member's assessment of "*State Protection*" at pp.14 - 15 of his decision is that he concluded that there was no evidence in the COI to suggest that protection might not reasonably have been forthcoming from the police in Lebanon if the applicants had sought it out, and that on that basis, the applicants' failure to seek out the protection of the police was to be given due weight. Thus, the approach of the Tribunal Member adhered fully with the approach set out by Herbert J. in *D.K. v The Refugee Appeals Tribunal* [2006] 3 IR 368.

(b) Failure to take account of relevant evidence re: period spent in Jounieh

20. The applicants' evidence with respect to their 12 months in Jounieh is recorded in full in the RAT decision. In his summary of the first named applicant's evidence at the oral hearing at p.3, the Tribunal Member recorded as follows:-

> "[H]e fled from his home with his wife and children. He claims to have spent a lot of time indoors when he left his original home. However he said that he worked at night in order to support his wife and children. He claims to have been in hiding for approximately 12 months before leaving Lebanon."

21. When setting out the evidence of the second named applicant, he stated:-

> "Whilst they relocated after the accident she felt that neither she, her husband nor her children were safe anywhere in Lebanon."

22. The Tribunal Member also clearly records that it was submitted on behalf of the applicants at the oral hearing that although they lived in relative safety when they left Beirut, the first named applicant only worked during night time hours in order to protect the safety of his family, that his children were unable to go to school, that they had a genuine fear of being killed by Hezbollah, that internal relocation was not an option and that Hezbollah were beyond the control of the police. There is no evidence that the Tribunal Member disregarded this evidence when reaching his conclusion at page 15. Indeed, I am of the view that it was open to the Tribunal Member to reach the conclusion that he did, based on the evidence that was before him: it is true that the first named applicant was able to back to work during the 12 month period spent in Jounieh, albeit only for 15 nights, and it is true that the family did not come to any harm during the period in question, albeit that they stayed indoors and that the children did not go to school. Thus, there is nothing irrational or unreasonable about the conclusions reached.

(c) Failure to take account of evidence re: destruction of passports

23. When setting out the evidence given by the first named applicant at his oral hearing, at p.3 of his decision, the Tribunal Member stated:-

> "He said that he had a valid Passport. However, when he arrived in Ireland he destroyed the Passport because he felt that if he was in possession of a Passport it would enable the authorities in this country to make arrangements for him to return to Lebanon. He was now afraid to return to Lebanon because of his fear of the Hezbollah Movement."

24. The Tribunal Member also clearly records that at the oral hearing, reference was made to a medical report submitted by Dr. J. Mulroy, and that it was accepted without contradiction that the first named applicant is suffering from anxiety and depression. It seems clear to me that the Tribunal Member had regard to the applicants' evidence with respect to the destruction of the passports and also to the first named applicant's traumatised, paranoid and depressive mental health. It also seems to me that it was open to the Tribunal Member to reach the conclusion that the applicants' explanation for destroying their passports was not a logical one; there is nothing irrational or unreasonable about that conclusion.

25. In addition, it must be borne in mind that the purpose of sections 11B (a) and (e) of the Act of 1996, as amended, is to allow decision-makers, when assessing the credibility of an applicant, to take account *inter alia* of whether an applicant has provided a reasonable explanation for the absence of identity documents and/or for destroying such documents. The fact that the Tribunal Member in the present case took account of those sub-sections cannot be said to have had any bearing on his ultimate decision, as it is common case between the parties that no negative credibility findings were, in fact, made. Thus, even if he had been found to have erred by taking account of the sub-sections, such an error would not have rendered his decision irrational such that it may have been appropriate to grant *certiorari*.

Conclusion

26. In the light of the foregoing, I am not satisfied that the applicant has established substantial grounds, and I must refuse to grant leave.