

**THE HIGH COURT  
JUDICIAL REVIEW**

**[2013 No. 483 JR]**

**BETWEEN**

**S.A. (PAKISTAN)**

**APPLICANT**

**AND**

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

**RESPONDENT**

**AND**

**THE HUMAN RIGHTS COMMISSION**

**NOTICE PARTY**

**JUDGMENT of Mr. Justice Eagar delivered on the 13th day of October, 2015**

1. This telescoped hearing seeks an order of *certiorari* of the decision of the first-named respondent affirming the recommendations of the Refugee Applications Commissioner (hereinafter referred to as "the Commissioner") and an order directing the appeal of the Applicant for fresh determination by separate member of the Refugee Appeals Tribunal (hereinafter referred to as "the Tribunal").

**Grounds upon which relief is sought**

2. The grounds upon which relief is sought are:

1. The Tribunal, in making credibility findings in the absence of an oral appeal, failed to provide an effective remedy to the applicant such that article 39 of Council Directive 2005/85/EC of 1st December 2005 on minimum standards in Member States for granting and withdrawing refugee status, was violated and/ or the decision, insofar as it is based on adverse credibility findings made in the absence of an oral appeal, offends natural and constitutional justice and the Constitution.
2. The finding that there is "no clear evidence to suggest that he ("F") actually tracked her down in Karachi" is irrational.
3. The finding that "the fact that this man never acted upon his threats undermines the applicant's claim" is irrational and/ or based on conjecture and/ or suggests that the Tribunal member applied an incorrect test with respect to the applicant's alleged persecution.
4. The finding in respect of travel to the UK was unrelated to the core claim of the applicant.
5. The Tribunal member failed to make any clear and express finding in respect of the core element of the applicant's claim that she was exposed to killing or honour killing as a result of her refusal to marry her cousin.
6. The finding that the applicant's claim is undermined because it "is not typical of the usual type of forced marriage which happens in Pakistan" is irrational and unreasonable and did not dispense with the obligation to make a detailed assessment of the applicant's claim.
7. The Tribunal failed to give any reason for discounting the country reports outlining the lack of state protection for gender-based violence in respect of the reversal of the provisions of the Women's Protection Act 2006 by the Federal Shariat Court.
8. The Tribunal failed to properly consider the country reports and notice of appeal when making findings in respect of credibility, state protection and/or internal relocation, and failed to make reasoned assessments when arriving at said findings.
9. The Tribunal erred in law in failing to have any or any reasonable regard to the UNHCR Handbook or Guidelines on Gender-Related Persecution and, in particular, para. 36 thereof which stipulates measures which must be borne in mind in order to ensure that gender related claims of women in particular, are properly considered in the refugee determination process.
10. In circumstances where the findings or imputed findings in respect of the availability of state protection and/ or internal relocation are unreasoned and failed to do justice to the applicant's circumstances, the Tribunal erred in law in foreclosing on speculation relating to a future persecutory risk.

3. The statement of grounds was verified by the affidavit of the applicant who averred that she was born on the 1st July, 1991 in Pakistan. She said that an arrangement was made between her family and that of a cousin to the effect that she marry her cousin. When she objected, her family supported her. However her cousin and his family refused to respect her wishes. She has been pursued and threatened with death by them. She said that such violence towards women is common in Pakistan and the State is unable or unwilling to interfere and provide protection to the victims.

4. She stated that she arrived in Ireland on the 17th January, 2012 and applied for asylum.

5. The finding Commissioner recommended that the applicant should not be declared a refugee, and also recommended that section 13 (6) (b) of the Refugee Act 1996 (as amended) (hereinafter referred to as "the Act of 1996") is appropriate for the application. It is open to an applicant to challenge the finding of the Commissioner but this step was not taken in this case. The finding under section 13 (6) of the Act of 1996 related to the applicant stating at her section 8 interview and in her questionnaire that she had never travelled outside of her country of origin before. She had stated that she had never applied for a visa to enter any country previously nor had she ever been issued with a visa for any country. She initially confirmed these details at her section 11 interview. However fingerprint evidence was made available from the UK authorities evincing that the applicant is known to them under the same name, date of birth and nationality. Evidence further demonstrated that she provided the UK Border Agency with the requisite documents necessary to obtain a UK visa. The applicant failed to provide the Office of the Refugee Applications Commissioner with any of this information at either her section 8 interview, in her asylum questionnaire or at the substantive interview despite having been being given opportunities to do so. She did not proffer this information until she confronted with the UK Border Agency's fingerprint evidence. It is deemed that, under these circumstances, the applicant provided false, contradictory and misleading information in relation to her asylum application. Having regard to the above it was considered that section 13 (6) (b) of the Act of 1996 applies to the application and the Commissioner further found that the applicant had not established a well-founded fear of persecution. Messrs. Trayers & Company Solicitors filed a notice of appeal, submissions and country of origin information, which were considered by the first-named respondent. On the 12th June, 2013, the first-named respondent affirmed the recommendation of the Refugee Applications Commissioner made in accordance with section 13 of the Act of 1996.

#### **The applicant's claim - Refugee Applications Commissioner – Refugee Appeals Tribunal**

6. The first-named respondent set out the applicant's background; she claims to be a single woman from Pakistan, who was born on the 1st July, 1991. She lived in Lahore and is a Sunni Muslim. The applicant's parents wanted her to marry her cousin; however she told them that the union would be difficult given her prospective fiancé's "harsh" family coupled with his propensity to engage in drug-use. The applicant's family duly informed the family that the union could no longer take place. After this the man and his family started threatening and following her. The applicant said she moved to her cousin's house but this man followed her there. The applicant heard that her cousin lived in Karachi. She said that this lady was his cousin as well, so they were all interlinked. The applicant claims that this man and his family are still looking for her over there. The applicant said that this family think that she is disrespecting them.

7. The applicant said that her family arranged for her to travel to Ireland, accompanied by an agent. She left Pakistan on the 16th January, 2012 and arriving in Ireland the next day. She said that the agent took all her documents upon arrival. The applicant said that she had no brothers and sisters and had neither left Pakistan nor applied for a visa previously. Later on at interview it transpired that she did apply for a visa in 2009 and 2010. She also admitted to going to the UK for a few days.

8. The applicant did not possess her own passport. The agent gave her a forged passport to travel on. She said that she presented this at immigration where officials "asked her a few questions". The applicant currently lives alone in Navan, Co. Meath. She said that when she was in the airport; she met a Pakistani family who assisted her in finding accommodation. The applicant never went to the police in Pakistan in relation to her problems. The applicant said this man was quite rich and would hold sway with the police.

#### **Analysis of the applicant's claim by the Refugee Appeals Tribunal**

9. The first comment of the first-named respondent was that an applicant is not a refugee if it is clear that adequate state protection would be available to them domestically in relation to the problem complained of. Furthermore there is an obligation on the applicant to provide a clear compelling coherent account of events. The Tribunal must examine the applicant's evidence and analyse whether they fall within the definition of a refugee as set down by section 2 of the Act of 1996.

10. The first-named respondent stated that the applicant was a well-educated, 21 year old girl who appeared to be from a well-off family. It was they who paid for her trip to Ireland and who are currently supporting her in the State. The applicant claims to be afraid of one family in Pakistan due to her failure to proceed with a marriage to a particular man called "F". However it is significant that when she explained her concerns relating to "F" to her family, they agreed with her and they did not force her into the marriage. In fact, it is clear that her family supported her decision not to proceed with the marriage and furthermore they assisted her in moving away. The situation which the applicant described was not typical of the usual type of forced marriage which often happens in Pakistan where parents force children to marry notwithstanding the child's refusal. The applicant in this case did not describe a situation whereby her parents had ultimate control and dominion over her. The applicant described a set of circumstances whereby her parents listened to what she had to say and took her fears on board. Her parents assisted her and abandoned any plans which they had for her to marry "F". The applicant's evidence in this respect undermines her claim relating to a forced marriage. While the other family may have felt they were scorned and may be embarrassed as a result and resultantly threatened the applicant. It is important to note that the applicant's family were standing by and protecting her, at that juncture.

11. The applicant's entire claim is based on the fact that she was scared of her cousin, "F", and his family. Although she claims they threatened her, evidence pertaining to these threats is scant and lacks detail. At question 30 of the interview the applicant stated that "F", and his family started following and threatening her. She did not state when this occurred or how often. The applicant refers to the fact that the threats were serious yet she gives no detail as to their substance. The absence of detail in this respect is unhelpful and does not bolster the applicant's claim.

12. At question 31 of the applicant's interview she claimed that she moved to Karachi and that "F" followed her there. However at question 48 the applicant claims that "F" was calling her cousin, threatening her not to shelter the applicant for long. There is a direct contradiction in the applicant's story in this respect. On the one hand she claims that "F" followed her to Karachi, yet on the other hand she claims that "F" was merely calling their mutual cousin. There is no clear evidence before the first-named respondent to suggest "F" actually tracked her down in Karachi. The applicant had produced no documentation as to her identity and section 11 (B) of the Act of 1996 applies duly here. It provides that the Commissioner or the Tribunal, in assessing the credibility of an applicant for the purpose of the investigation of his or her application or determination of an appeal in respect of his or her application, shall have regard to the following:

"Whether the Applicant possesses identity documents, and if not, that he or she has provided a reasonable explanation for the absence of such documents."

13. The first-named respondent then proceeded to deal with the issue of the criminal law in Pakistan and commented that "Pakistan remains a heavily patriarchal society and levels of domestic violence continue to be high".

14. The first-named respondent made the point that in the case of *S.N. and H.M. (Divorced Women – risk on return) (Pakistan)* CG [2004] CCG UKIAT 283. The Tribunal held S.N. and H.M. that the question of internal flight requires careful consideration and depends on the factual matrix of each particular case. The general questions which the adjudicator should ask themselves in cases relating to

internal flight options for women are:

- (a) "Has the claimant shown a real risk or reasonable likelihood of continuing hostility from her husband (or former husband) or his family members, such as to raise a real risk of serious harm in her former home area?"
- (b) If yes, has she shown that she would have no effective protection in her home area against such a risk, including protection available from the Pakistani state, from her own family members or from her current partner or his family?
- (c) If yes, with such a risk and lack of protection extend to any other part of Pakistan to which she could reasonably be expected to go, having regard to the available state support, shelters, crisis centres and family members or friends in other parts of Pakistan?"

13. Examining the present case in the light of *S.N.* and *H.N.* the Tribunal found that the applicant's evidence in relation to the risk from F. and his family was scant and lacked detail. The fact that he did not phone her personally in her cousin's home undermines the claim of continuing fear.

14. In relation to the second question proposed in the *S.N.* and *H.N.*, it is highly significant that the applicant never once tried to access state protection in her own country in relation to the harm which she fears. She claimed she did not go to police because "F" was wealthy and he told her that "this would not be a good idea". The applicant never gave the State in question a chance to respond to the form of harm which she feared. The Tribunal notes, however, that there is a Rough World report from 2011 on file which states that gender based violence was committed with impunity as the police were reluctant to register and investigate complaints. Notwithstanding this, it is quite clear, when assessing this component of the test, that the applicant was able to access assistance and protection from her own family. Her parents supported her both personally financially, sending her to Karachi, for instance. The first-named respondent found that the applicant in this case would not be at risk at return. The first-named respondent said that when making her assessment she had given due weight to the fact that the applicant would be able to receive protection from her family, that she came from a well-off family who could financially support her, that she was well-educated and lives in an urban as opposed to a rural area. The Applicant never sought out state protection and she has not demonstrated to the Tribunal in a reasonably objective manner that this would not have been a viable option for her. When the Tribunal examined this case in a holistic manner, the evidence did not suggest that the applicant met the refugee criteria mandated by section 2 of the Act of 1996.

#### **Submissions on behalf of the applicant**

15. Michael Conlon SC (with Garry O'Halloran BL) on behalf of the applicant set out the background of the application and the Tribunal decision.

16. Counsel made the following submissions:

- i. The standard commensurate with the papers only appeal is one of extreme care and this Court was referred to case law where the appeal by way of paper review was the subject of consideration. This principle is accepted by this Court.
- ii. Counsel argued that, at a minimum, the asylum applicant should know with some degree of certainty why her claim failed. In this case the applicant does know if it was due to her narrative with respect to "F". being disbelieved, or because her family are capable of protecting her from "F"., or because the Pakistani police authorities are able and willing to provide effective protection, or because she can avoid F. by moving to some unidentified location within Pakistan. The decision is irrational in the light of the country reports. The Court was referred to *B.O.B. v. The Refugee Appeals Tribunal, The Minister for Justice Equality & Law Reform, The Attorney General and Ireland* [2013] IEHC 187. In this case MacEochaidh J referred to the decision of *Meadows v. The Minister for Justice Equality & Law Reform* [2010] IESC 3 where Murray CJ. stated:

*"An administrative decision affecting the rights and obligations of persons should at least disclose the essential rationale on foot of which the decision is taken. That rationale should be patent from the terms of the decision or capable of being inferred from its terms and its context."*

*Unless that is so then the constitutional right of access to the Courts to have the legality of an administrative decision judicially reviewed could be rendered either pointless or so circumscribed as to be unacceptably ineffective."*

*In my view the decision of the Minister in the terms couched is so vague and indeed opaque that its underlying rationale cannot be properly or reasonably deduced."*

MacEochaidh J, in *B.O.B* said:

*"In view of that statement, it seems to me that a Tribunal Member should express conclusions on an applicant's claim clearly."*

- iii. The first ground related to the manner in which the Tribunal placed reliance of the host of fresh credibility findings made in the papers-only appeal and in breach of fair procedures in natural constitutional justice. Counsel referred to the judgment in *S.K. & anor. v. The Refugee Appeals Tribunal, The Minister for Justice & Law Reform, The Attorney General and Ireland* [2015] IEHC 176. in which Faherty J. stated:

*"With regard to the Tribunal Member's rationale for his finding on the Umra visa [a visa regarding a visit to Saudi Arabia for religious purposes], I am of the view that he should have afforded the first named applicant a further opportunity to engage on this issue, prior to arriving at his finding in the terms in which he did. In particular, I note that his adverse finding is infused with his own experiences as a visitor to Saudi Arabia."*

- iv. The fourth ground referred to the finding in respect of travel to the United Kingdom and counsel argued that this was a peripheral matter.

- v. The fifth ground that the Tribunal member failed to make any clear and express finding in respect of the core element of the applicant's claim – that she would be exposed to murder or honour killing as a result of her refusal to marry her cousin. Ground five relates to the manner in which the Tribunal on occasion appears to fully accept the applicant's narrative insofar as she claims a fear of honour killing and on other occasions suggest this narrative is untrue, thus failing to make an unequivocal finding in respect of a core element of the Applicant's claim.

vi. Counsel also challenges the manner in which state protection internal relocation were made. Counsel referred in this regard to *Idiakheua v. The Minister for Justice and The Refugee Appeals Tribunal* (Unreported, High Court, Clarke J, 10th May, 2005) where an application for leave that was granted in relation to state protection. Counsel also referred in relation to the internal relocation to the principle set out in *K.D. (Nigeria) v. The Refugee Appeals Tribunal* [2013] IR 448.

#### **Counsel Submissions on behalf of the respondent**

17. Counsel on behalf of the respondent indicated that, in resisting the application for judicial review, the respondents rely on the applicant's lack of candour in her application for refugee status and in her conduct during the said application, such as to disentitle her to the reliefs which she seeks in the within proceedings. This is particularly so where the applicant is applying for discretionary reliefs from the Court. He quoted from a decision of *Elukanlo v. The Minister for Justice, Equality and Law Reform* [2006] IEHC 211, a decision of Dunne J. in which she said:

*"I am satisfied that an applicant for judicial review may be disentitled to relief by reason of a lack of candour during the asylum process."*

Counsel further quoted from *S.P. v. The Minister for Justice* [2012] IEHC 18:

*"[T]he Court is entitled to refuse to entertain an application for judicial review where it is satisfied that the proceeding is tainted by a lack of candour or by bad faith or that it otherwise involves an abuse of process or a misuse of the administrative procedure concerned – in this case the asylum process."*

He submitted that the Applicant had admitted to saying in her questionnaire and also in her section 11 interview that she had never left Pakistan or applied for a visa to visit another country. However, in fact she visited the United Kingdom, having applied for a visa in 2009.

18. Counsel further argued that the respondent relies on her overall lack of credibility in her application for refugee status such as to disentitle her to the reliefs she seeks in the within proceedings. An applicant for refugee status bears the onus of proof of demonstrating a reasonable degree of likelihood that he or she would be persecuted for a Convention reason if returned to his or her country and referred to section 11 (B) of the Act of 1996 and argued that, in this case, there was ample information to support her findings that the applicant lacked credibility and that state protection would be available to her in relation to the problems complained of, and that she had failed to avail of same. Counsel also argued that the reasons for the findings against the applicant on the ground of credibility are clear from the decision of the second respondent. The reasons as to why the applicant's credibility was impugned relates to the substantive basis of her claim and does not relate to incidental or peripheral matters. The core of the applicant's claim is that she will suffer persecution in Pakistan due to her refusal to enter into a marriage with her cousin. This is made clear in the decision of the second-named respondent. Counsel further argued that on judicial review, the function and jurisdiction of the High Court is confined to ensuring that the process by which the determination 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.

19. Counsel argued that the contention made by the applicant that the second-named respondent had made "a host of fresh credibility findings in her decision" was rejected.

20. Counsel also argued that internal relocation had no part to play in the decision if no well-founded fear of persecution is accepted or to sound that the persecution feared has no Convention nexus.

#### **Discussion and Decision**

21. In the decision of the second-named Respondent, the Applicant's claim is set out in some detail. Counsel for the Applicant rightly states that the standards commensurate with a papers-only appeal is one of extreme care but it appears that extreme care was given by the first-named respondent.

22. Counsel for the applicant also complains that the applicant should know with some certainty why her claim failed but I am satisfied that the second-named Respondent makes it clear that, in his own words, "looking at this case in a holistic manner the evidence does not suggest that this young woman is a refugee."

23. The applicant complains of "a host of fresh credibility findings made in a papers-only appeal." This Court agrees with counsel for the second-named respondent that the second-named respondent did not make a host of fresh credibility findings. This Court is also conscious of the obligation on the applicant to take part in the asylum claim in a manner which would entitle her to discretionary relief. It appears to this Court that that has not been the approach of the applicant.

24. In this Court's view no real attempt was made by the first named respondent to deal with internal relocation and in those circumstances this Court need not proceed to consider the issue of internal relocation.

25. The second-named respondent made it clear that she is satisfied that the Applicant has failed to establish a claim for refugee status. This Court ought not interfere with that decision.

26. As this is a telescoped application for leave this Court will refuse leave and dismiss the claim of the applicant.

*Counsel for the Applicant: Michael Conlon S.C., Garry O'Halloran B.L., instructed by Messrs. Trayers & Co solicitors*

*Counsel for the Respondent: Dermot Manning B.L. instructed by the Chief State Solicitor*