

**THE HIGH COURT
JUDICIAL REVIEW**

[2011 No. 50 J.R.]

BETWEEN

S.N. (PAKISTAN)

APPLICANT

AND

**THE REFUGEE APPEALS TRIBUNAL (CONSTITUTED OF DENNIS LINEHAN TRIBUNAL MEMBER) AND THE MINISTER FOR JUSTICE
AND LAW REFORM**

RESPONDENTS

JUDGMENT of Mr. Justice Eagar delivered on the 2nd December, 2014

1. This is an application for leave to seek judicial review seeking to quash the decision of the first named respondent in his capacity as a member of Refugee Appeals Tribunal made on 17th December, 2010, and communicated by letter dated 7th January, 2011.

2. The grounds of this application are set out in the statement required to ground the application for judicial review and the reliefs sought include:-

(1) An order of *certiorari* quashing the decision of the first named respondent sitting as Dennis Linehan dated 17th day of December, 2010, that the applicant failed to establish a well founded fear of persecution as defined under s. 2 of the Refugee Act 1996 (as amended).

(2) A declaration that the procedures for the determination of asylum applications provided for in the Refugee Act 1996 (as amended) and the European Communities (Eligibility for Protection) Regulations 2006, failed to comply with the minimum standards prescribed by Council Directive 2005/85/EC of 1st December, 2005, by depriving the applicant of an effective remedy against the first determination of the application as required by Article 39 of the Directive.

3. The grounds upon which the relief was sought was that the first named respondent in refusing the application for refugee status was ultra vires, irrational, in breach of fair procedures, natural and constitutional justice and failed to take into account relevant considerations and/or took into account irrelevant considerations when considering the credibility of the applicant in the following particulars:-

(a) Failing to have any or any adequate regard to the country of origin information as submitted by the applicant and the country of origin information generally available.

(b) Failing to have regard to the full extent and nature of the applicant's application for refugee status and the evidence provided by the applicant in support thereof.

(c) Failing to have regard to the documentation supporting the applicant's application to the Office of the Refugee Applications Commissioner.

(d) Relying on conjecture and speculation and/or applying a standard of reasonableness incompatible with the cultural and human rights differences between the State and Pakistan, in particular by applying an assumption that on completion of a first information report (FIR) that the Pakistani police would be obliged to investigate the crime.

(e) Making adverse findings that were unfair and/or unreasonable.

(f) Failing to give sufficient consideration to the substance of the prosecution claimed.

(g) Failing to give substantially the benefit of the doubt to the applicant.

(h) Failing to consider the applicant's circumstances and credibility from a culturally specific context.

(i) Failing to reach a decision on credibility which was proportionate in all the circumstances.

(j) Determining that there is "some form of protection" available to the applicant without considering would such protection be available to a member of a minority religion which the applicant is, and which view is supported by country of origin information.

(k) In determining that the applicant could internally relocate in circumstances where he has already attempted to relocate in the areas identified by the Tribunal and has already found himself unable to relocate to those regions.

(l) Determining that the fact that the applicant was not killed when he was detained by Lashkar-e-Jhangvi is a valid basis to disbelieve the applicant is in danger of his life. If the applicant was killed he would not be in the State at present and the effect of this determination is illogical as it excludes from consideration any fear arising from a past risk of being killed.

(m) Determining that, notwithstanding the applicant was only in Turkey for a few hours, that he could have applied for asylum there.

4. Objection was taken by the respondent to the grounds set out by the applicant and in particular that a large number of assertions made are in the guise of particulars, but these are allegations and suffer from a lack of adequate particularisation and were excessively general.

5. At Ground (a), the applicant claimed that the first named respondent failed to have any or any adequate regard to the country of origin information as submitted by the applicant and/or the country of origin information generally available. Counsel for the respondent made the point that it was not clear from this ground as pleaded in what respect the first named respondent's decision was rendered unlawful because of a failure to consider country of origin information or as to how this undermines the credibility findings and the complaint is excessively general. Further, at Ground (b) the respondent states that the applicant's claim that the first named respondent failed to have regard to the full extent and nature of the applicant's application for refugee status and the evidence provided by the applicant in support thereof complains that the applicant does not state what evidence was overlooked nor, indeed, does he point in this regard to any evidence supporting the claim that evidence was overlooked.

6. I am satisfied to consider that the applicant in appealing against the decision is seeking to judicially review the decision of the first named respondent and I would consider same generally, noting the respondent's complaints of the statement of grounds contained in her written submissions.

History

7. S.N. swore an affidavit on 21st January, 2011, and states that he was born in Pakistan on 10th December, 1967, and came to Ireland by air and sea, travelling between 20th June, 2008 and 24th June, 2008. He said that upon arrival in the State he applied for asylum and filled out the questionnaire on 1st July, 2008. He was interviewed by the Office of the Refugee Applications Commissioner on 29th October, 2008, in the presence of an Urdu interpreter and this interview was recorded in s. 11 report format. At that interview he indicated that he was awaiting further documentation but did submit a copy of FIR and a medical report. The basis of his application for asylum was that he was born into a family of Sunni Muslims and originally practised and even funded groups within that religion. He subsequently realised that by funding those groups some of the funding would be going towards extremist groups. A friend who is a Shia Muslim encouraged him to look into that religion, which he did, and he found them to be a better group of people. When his family found out about his conversion they turned against him. He also started to preach the Shia religion to people who came to medical camps for medical help. He said that on 14th November, 2007, he was in one of these camps when it was attacked by an extremist group, Lashkar-e-Jhangvi. His home was subsequently attacked. He was in another camp in or around 23rd February, 2008, when he was attacked by them again and he was detained by them for between 15 and 20 days. He was beaten whilst in detention. He eventually escaped with the assistance of an old man who worked for this group. He then went to stay with friends in Rawalpindi. On or about 12th May, 2008, his friend's house was attacked because Lashkar-e-Jhangvi found out he was there. He fled Rawalpindi and travelled to Karachi and then decided to leave the country. He said that after the first incident he reported this to the police and they said they would find those responsible and arrest them, but they did not do anything. After the second incident, his cousin reported it to the police. He stated that they noted down the report but did not do much else. He says that he is afraid that if he is returned to Pakistan he will be subjected to the risk of persecution by this group which the authorities in Pakistan are unwilling and unable to protect him from, and that he may be killed.

8. He says that on 12th November, 2008, the Refugee Applications Commissioner rejected his claim for asylum and that he then appealed to the first named respondent. He further states that in travelling to Ireland he was only in Turkey in transit for a short period and, as such, could not apply for asylum there. Exhibited with the affidavit of the applicant was the FIR made by the applicant's brother in law to the police in the district of Faisalabad, a certificate from Shia Mosque confirming that he had converted from his religion to Shia Asna Ashri on 5th January, 2007. Further exhibited in the affidavit was a report to a police station in the Faisalabad district which sets out his history and his complaint that on 14th November, 2007 (the day he made the complaint) five or six unidentified people who belonged to Sipah-e-Sahaba attacked his camp and beat him up. They also started throwing medicines and instruments out of the camp. He complained to the police that they had severely tortured him and he received injuries to his right hand and various parts of his body. He asked that action be taken against the unidentified accused. The document also shows that the police proceedings indicated that the applicant appeared before a member of the police and submitted a written complaint along with a medical report, in which the doctor had mentioned three injuries. The document from the police goes on to say that the said complaint and the medical report as submitted show, *prima facie*, an offence punishable under Pakistani criminal law and that the FIR has been registered and a copy of the FIR was being sent to the people in charge of the investigation for further investigation. The medical report, in fact, appeared to contain images of three injuries, all of which appeared to be on the left hand and arm.

The Decision of the First Named Respondent

9. The first named respondent in his report summarised the applicant's claim and, in particular the evidence that he had given to the first named respondent. He then recited the burden of proof, the requirements of assessing credibility, the assessment of the facts and the circumstances, the standard of proof, the issue of protection under Article 2 of the European Communities (Eligibility for Protection) Regulations 2006. In his analysis of the applicant's claim he found that the applicant was from Pakistan, that he converted from Sunni to Shia, that that conversion created difficulties for him and he claimed to have been targeted by members of Sipah-e-Sahaba as well as Lashkar-e-Jhangvi. He said the State would not protect him and internal relocation was not an option for him.

10. The first named respondent made the following findings:-

A. The perpetrators of the attack in a camp on 14th November, 2007, were members of Sipah-e-Sahaba and are a well known terrorist group in Pakistan and have been banned for a number of years. He recites that the applicant had filed a First Information Report with the police on 14th November, 2007. He noted that arising from the completion of that FIR the police in Pakistan would have an obligation to investigate the crime and there is nothing to suggest that such an investigation did not take place or, indeed, that such an investigation might be ongoing. He said there is a functioning judicial process in Pakistan involving criminal and civil procedure and that there was nothing to suggest that the police were in collusion with the perpetrators of this crime. He also noted that the applicant had utilised the police system in Pakistan. He also referred to a US State Department Report on Human Rights in Pakistan which was prepared for the year 2009 but published on 11th March, 2010. That document outlined what FIR's were. It also noted that "the authorities frequently issued FIR's without supporting evidence to harass or intimidate detainees, or did not issue them when adequate evidence was provided unless the complainant paid a bribe. The first named respondent noted that there was no evidence that the police were in any way compromising the complainant. He also quoted from a report by the BBC and emphasised particularly the issue of tough policing – especially in Karachi – over the period which meant that many militants were either killed or arrested. In dealing with state protection he quoted *Horva v. The Secretary of State of the Home Department* (200 Imm. A.R. of 2005) where Lord Clyde stated:-

"No state can guarantee the safety of its citizens. And to say that the protection must be effective suggests that it must succeed in preventing attacks which is something that cannot be achieved....In my judgment there must be

in force in the country in question a criminal law which makes the violent attacks by the persecutors punishable by sentences commensurate to the gravity of the crimes. The victims as a class must not be exempt from the protection of the law."

The first named respondent held that there was adequate protection in Pakistan for the particular applicant. The first named respondent said he found it difficult to accept that he would be killed if he was to return to Pakistan and that he would be a specific target of a terrorist group, such as Sipah-e-Sahaba or some other organisation. He found this difficult to accept when, according to the applicant's evidence, he was detained by Lashkar-e-Jhangvi for a period of 15 to 20 days. If a terrorist group wished to kill the applicant they had ample opportunity to do so. But, in fact, he claimed he was able to escape from that terrorist organisation when one of their security guards allegedly took pity on him and organised for him to escape. The first named respondent said the whole circumstances surrounding his alleged detention escape is somewhat incredible in the context of the claims he is now making. He said that this aspect of his claim must question the wellfoundedness of his fear and also the credibility of the claim in question. He also indicated that the applicant had travelled to Turkey on his way to the country and he could have applied for asylum there and he quoted s. 11B of the Refugee Act 1996, in assessing the overall credibility of the applicant for the purpose of the investigation which states that the Commissioner or the Tribunal may, in assessing the credibility of an applicant for the purposes of the investigation of his or her application or the determination of an appeal in respect of his or her application shall have regard to whether the applicant has provided a reasonable explanation to substantiate his or her first claim, that the State is the first safe country in which he has arrived since departing from his or her country of origin or habitual residence. He emphasises that this finding has not been his primary consideration but says that he is entitled to take it into account.

11. In *O'Keeffe v. An Bord Pleanala* [1993] I.R. 39, Finlay C.J. stated that the court may intervene to quash a decision on the grounds of unreasonableness or irrationality if:-

"1. It is fundamentally at variance with reason and common sense.

2. It is indefensible for being in the teeth of plain reason and common sense because the court is satisfied that the decision maker has breached his obligation whereby he must not flagrantly reject or disregard fundamental reason or common sense in reaching his decision."

In the 2006 European Communities (Eligibility for Protection) Regulation 2006, Regulation 9 sets out the criteria for the assessment of whether particular acts feared by an applicant could amount to persecution. The basic criteria are that "acts of persecution" must be sufficiently serious by their nature or repetition so as to constitute a severe violation of basic human rights, in particular rights from which derogation cannot be made under Article 15(2) of the ECHR, or be an accumulation of various measures including violations of human rights which is sufficiently severe so as to affect an individual in a similar manner as mentioned in s. 9(1)(a) of the 2006 Regulations.

12. In this case the applicant feared persecution from a terrorist group and sought the protection of the Pakistani authorities. He has not shown that the Pakistani authorities have not investigated his complaints and further, the first named respondent accepted that there were shortcomings within the police system in Pakistan but observed there was no system of justice or enforcement perfect within any jurisdiction. The decision of the first named respondent was that state protection was available to the applicant and this was the first named respondent's primary finding.

13. I am satisfied that the first named respondent has set out the reasons for his decision and it is not the role of this Court to seek to act as an appeal against this decision.

Internal Relocation

14. The first named respondent considered the question of internal relocation within Pakistan and he noted that Pakistan is a vast country with a population of over 170 million people. The applicant was originally from Faisalabad and then moved to Rawalpindi and then moved to Karachi where he remained for about a month. He admitted that he did not come to any harm while he was living in Karachi. He stated that there were a number of attacks on members of the Shia community while he was living in Karachi, but the first named respondent indicated that it was noteworthy that the applicant did not feel any harm during the time that he lived in Karachi. He identified Karachi and said he found it hard to accept that the applicant could not take up residence permanently in Karachi or some other similar centre of population.

Decision on Judicial Review

15. 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 of any principle of natural or constitutional justice.

16. In all the circumstances I am not satisfied that the applicant herein has established substantial grounds for challenging the decision of the first named respondent herein, and I refuse the reliefs sought in the notice of motion and statement of grounds.

17. I note the Practice Direction H56 in Asylum, Immigration and Citizenship cases. Paragraph 20 states that:-

"Save for exceptional cases outline submissions in pre-leave cases should not exceed four pages and in post leave should not exceed six A4 pages."

I note that in this case the outline submissions of the applicant ran to fourteen pages. The respondents' outline submissions were twenty one pages long.

As a result of the length of the legal submission in each case, most of which contained argument, I am not satisfied with the nature and length of the legal submissions. In future cases I will direct that the parties if they produce submissions in breach of the Practice Direction, will be required by me to provide new written submissions and, if necessary, the case will be adjourned for that purpose.