Neutral Citation [2015] IEHC 331

THE HIGH COURT

JUDICIAL REVIEW

[2011 No. 378 J.R.]

BETWEEN

M.O.S.H (PAKISTAN)

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Robert Eagar delivered on the 21st day of May 2015

1. On the 27th March 2015 this Court gave judgment on an application for judicial review and quashed the decision of the first named respondent to affirm the recommendation of the Refugee Applications Commissioner and made an order remitting the appeal of the applicant for a determination *de novo* by a separate member of the Refugee Appeals Tribunal.

2. The respondent now applies under s. 5(3)(a) of the Illegal Immigrants (Trafficking) Act 2000 for a certificate of leave to appeal to the Court of Appeal on the basis that the judgment "involves a point of law of exceptional public importance" and that " it is desirable in the public interest that such an appeal be taken". The criteria to be applied by this Court in ruling on the application for a certificate under s. 5(3)(a) are not in dispute.

3. Following from the decisions of Cooke J. in *I.R. v. The Minister for Justice Equality and Law Reform & Refugee Appeals Tribunal* [2009] IEHC 510 and the decision of Clarke J. in *Arklow Holidays v. An Bord Pleanala* [2007] 4 I.R. 112 I say the following principles appear to apply:-

> 1) The case must raise a point of law of exceptional public importance.
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> 2) The area of law involved must be uncertain such that it is in the common good that the uncertainty be resolved for the benefit of future cases.
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> 3) That it is desirable in the public interest that an appeal should be taken to the Court of Appeal.
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> 4) The uncertainty as to the point of law must be genuine and not merely a difficulty in predicting the outcome of the applicant's arguments.
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> 5) The point of law must arise out of the court's decision and not merely out of some discussion at the hearing.
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> 6) The requirements of exceptional public importance and the desirability of an appeal in the public interest are cumulative requirements.
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> 7) The importance of the point must be public in nature and must therefore transcend well beyond the individual facts and the parties of a given case.
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> 8) The requirement that the court be satisfied that it is desirable in the public interest that an appeal should be taken to the Court of Appeal is a separate and independent requirement from the requirement that the point of law is one of exceptional importance. On that basis even if it can be argued that the law in a particular area is uncertain the court may not on the basis, *inter alia*, of time or costs consider that it is an appropriate case to certify the case to the Court of Appeal.
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> 9) I have considered the written submissions and oral submissions of counsel for the respondent and counsel for the applicant.

4. The Court in this case followed the reasoning of MacEochaidh J. in *R.O. (an infant suing her mother and next friend A.O.) v. Minister for Justice Equality and Law Reform and Margaret Leavey (sitting as the Refugee Appeals Tribunal)* [2012] IEHC 573. MacEochaidh J. followed the decision of Herbert J. in *Keagnene v. Minister for Justice Equality and Law Reform* [2007] IEHC 17. No application for a certificate was made in R.O. (supra)

5. The respondents now request that the Court would certify a question as one involving a point of law of exceptional public importance such that it is desirable in the public interest that an appeal should lie:

> *"Whether the interpretation of a rationality of the Honourable court in relation to the assessment of credibility accords with the test decided by the Supreme Court in the State (Keegan) v. Stardust Victims Compensation Tribunal [1986] I.R. 642 and subsequently by other High Court cases"*

6. Counsel on behalf of the respondents quoted from Cooke J. in *I.R. v Minister for Justice Equality and Law Reform* [2009] IEHC 353 and the tests which are suggested by Cooke J. Counsel also pointed to the decision of MacEochaidh J. in R.O. (supra) again reviewing the case law setting our further principles which the court considered might be used in assessing the adequacy of credibility findings in asylum cases. Counsel on behalf of the applicant indicated that the applicant did not regard the question of one of exceptional public importance or necessary for the Court of Appeal in the public interest. They argued that in effect what is in question is the application of the reasonableness principle and all the principles outlined in *I.R.* All that happened in this case was the application of standard administrative law principles including the principle of rationality and reasonableness.

7. The Court also notes the subsequent decision of Barr J. in *C.C.A v. Minister for Justice Equality and Law Reform* [2014] IEHC 569 where Barr J. adopts the principles outlined by MacEochaidh J. in *R.O.* No application was made in that case to Barr J. seeking a

certificate of appeal.

8. Cooke J. in I.R. (supra) in setting out the principles sets out:-

> *"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."*

9. In Cooke J.'s decision in *I.R* the learned judge refused to grant a certificate of appeal to the respondent in respect of his decision in the original case. He noted that the contested decision of the Tribunal turned entirely on the issue of credibility of the personal history which the applicant had recounted as the basis of his claim to fear of persecution if returned to Belarus. It appears that the role of the judicial review judge in these cases is to consider whether:-

> a) An applicant has not been afforded fair procedures
>
> b) The decision-making body has acted unreasonably
>
> c) The decision-making body has acted in excess of jurisdiction

10. It is in my view settled law that in the words of Denham J. (as she was then) in *Stefan v. Minister for Justice Equality and Law Reform* [2001] 4 I.R. 203:-

> *"Certiorari may be granted where the decision maker acted in breach of their procedures."*

11. Henchy J. in *State (Keegan) v. Stardust Compensation Tribunal* also notes:-

> *"I would myself consider that the test of unreasonableness or irrationality in judicial review lies in considering whether the impugned decision plainly and unambiguously flies in the face of fundamental reason and common sense. If it does, then the decision-maker should be held to have acted ultra vires, for the necessarily implied constitutional limitation of jurisdiction in all decision-making which affects rights or duties requires, inter alia , that the decision-maker must not flagrantly reject or disregard fundamental reason or common sense in reaching his decision.".*

12. This Court is accordingly satisfied that no novel point of law is contained in the judgment of this Court. The application for a certificate is accordingly refused.