

THE HIGH COURT

2008 1063 JR

BETWEEN/

B. A. O.

APPLICANT

AND

REFUGEE APPEALS TRIBUNAL,

MINISTER FOR JUSTICE AND EQUALITY

AND ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Mr. Justice Hogan delivered on the 11th January, 2012

1. The applicant is a twenty-one year Iraqi national of Kurdish ethnicity who arrived in the State in December, 2007 whereupon he sought asylum. The present application is for leave to apply for judicial review to quash a decision of the Refugee Appeal Tribunal of 22nd July, 2008, as refused his asylum application.

2. While the applicant initially presented with no supporting documents, his account concerning the fate of his deceased parents in Iraq does not appear to have been disputed by the Tribunal. (An Iraqi identification card was later supplied by the applicant in circumstances where he claimed that it had been sent to him by his family from Iraq.) As we shall presently seem, the case really turns on an interpretation of key facts surrounding the death of his parents.

3. The applicant's case is that his father was a high ranking member of Sadaam Hussein's Ba'ath Party. In the course of his s. 11 interview the applicant admitted that he could not provide a detailed account of his father's activities, save that his father wore a special uniform reserved for senior Ba'ath figures and that he had important security responsibilities. He also said that he had never visited his father's place of work. It must be recalled, however, that the applicant was just twelve years of age when the Ba'ath regime collapsed in April, 2003.

4. Prior to 2003 the family lived in the Khandra neighbourhood in Mosul in northern Iraq, but his father fled in the aftermath of the US-led invasion in the spring of that year. His father was very concerned about his safety and that of his family. He moved to Kirkuk, before moving back to another neighbourhood of Mosul, where the family stayed with relatives. The applicant contends that his father lived in a state of constant fear and informed his family that he was under surveillance. The applicant says that the family stays indoor most of the time during this period.

5. The applicant contends that on the eve of Ramadan in October, 2007 his parents went to the market to shop, but that they were killed following an incident in which a hand grenade was thrown at their car. Police inquiries into the incident, such as they were, came to naught. This in itself is scarcely surprising, since a Canadian report from January, 2004 quoted local police as acknowledging "that they have not solved a single crime against ex-Baathists", saying that "they will themselves become targets if they attempt to do so." The applicant then escaped to Syria with other family members before ultimately being brought to Ireland by an agent.

6. The Tribunal member concluded that the applicant had supplied insufficient evidence to show that the killings were targeted, in the sense of being a reprisal or a revenge killing by reason of the applicant's father's involvement in the Ba'ath Party:

"To clarify, there is no objective evidence that the applicant's father was killed on account of his political opinion, the applicant merely speculates that would appear to have been a random attack was, in fact, a targeted attack. I point out that there is ample evidence of ongoing strife and insecurity in the country, daily bombings, grenade attacks and shootings. [In] this context I simply cannot conclude that an attack on his parents was designed to kill them specifically. Without any independent objective evidence I would be engaging in speculation, something I am not entitled to do. I think it is important to bear in mind that this applicant and his family did not suffer any difficulties for a period of 4 years prior to leaving Iraq, the one isolated incident that he refers to cannot be verified as a targeted attack, thus the objective verification for the subjective fear is lacking."

7. The Tribunal member also observed in this context that:

"While I appreciate that the applicant's heightened fear and, indeed, his family suspicions, may have led them to the conclusion that his father was targeted, I find it somewhat surprising that if people really wanted to target the applicant's father, given that he was allegedly under surveillance, they would not have done so, or have had ample opportunity to do so between 2003 and 2007, a considerable period of time."

8. This reasoning is, however, open to two fundamental objections. First, it does not take account of the fact that the applicant's family were in hiding for much of this period and were seeking to escape from potential revenge attacks. Put bluntly, those who were minded to extract revenge upon former Ba'athists had many potential targets and it does not follow that simply because the killing of the applicant's parents took place in October, 2007 (*i.e.*, over four years from the collapse of the regime) that it could not have been a revenge attack, not least that the incident occurred on one of the rare occasions when his parents had actually ventured forth from the house where they were staying.

9. Indeed, this view is supported by country of origin information to which the Tribunal member but briefly alluded. Thus, for example, a press release issued by the UN Office for Coordination of Humanitarian Affairs from Basra on 30th July, 2007 (*i.e.*, a few months before the applicant's parents were killed) is headed "Families in south displaced as former Baathists targeted." The press release

goes on to say that the number of killings of ex-Ba'athists had surged in the previous three weeks and that local militias were planning to "exterminate over 4,000 members of the Ba'ath Party". While it might be said in response that this report merely concerned southern Iraq where the Sadaam regime was particularly detested, it gives some indication of the extent to which those who had suffered at the hands of that odious regime were determined to exact revenge on former Ba'athists, even by mid-2007.

10. This was nevertheless critical country of origin information which the Tribunal member could not justly ignore. As Cooke J. observed in his seminal judgment in *R. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 353, where an adverse finding of this kind 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."

11. This importance of adhering to this principle was especially important in the present case given the manifest relevance of this country of origin information which flatly contradicted a key assumption which the Tribunal member had made.

12. For all of these reasons the applicant has established substantial grounds for contending that this decision is unreasonable in law.

13. Second, the Tribunal member does not afford the applicant of the benefit of a doubt to which he is arguably entitled. After all, no specific finding of a lack of credibility had been made by the Tribunal member concerning the applicant's credibility. While at this stage we shall never probably know the reasons for this attack, once it is clear - as the country of origin information tends to suggest - that revenge attacks of this kind were regrettably all too common, then, as the applicant's account could well be true, there are plainly substantial grounds for contending that he should have been given the benefit of the doubt in this regard.

Conclusions

14. For the reasons stated, I would therefore grant the applicant leave to apply for judicial review pursuant to s. 5(2) of the Illegal Immigrants (Trafficking) Act 2000. I propose to discuss the precise form of the order with counsel.