

THE HIGH COURT

2007 931 J.R.

BETWEEN

E. N.

APPLICANT

AND

THE REFUGEE APPEALS TRIBUNAL AND THE MINISTER FOR
JUSTICE EQUALITY AND LAW REFORM

RESPONDENTS

Judgment of Mr. Justice John Edwards delivered 28th day of October, 2008

1. The applicant in this case, is an Iranian citizen who arrived in this country on 31st December, 2003. He made an immediate application for asylum and was issued with an ASY 1 Form. He subsequently completed and submitted an application for refugee status questionnaire on 6th January, 2004. As he has an extremely limited command of the English language, the said questionnaire was completed in Farsi and then it was translated into English. The grounds on which the applicant sought asylum was that he had a well-founded fear that he would be persecuted on account of his political opinions if returned to Iran. Specifically, he claimed to be a supporter of a group called Saltnat Talab Mashroteh, which advocates the reestablishment of the Persian monarchy and, in particular, the installation of Reza Pahlavi (son of the late Shah) as Shah. He claims that both his father and brother held similar views and that they were arrested and executed in the year 1369, according to the Iranian calendar. This approximates to the year 1990 in our calendar. The applicant claims that he, himself, was politically active prior to leaving Iran and specifically had been engaged in distributing leaflets advocating the reestablishment of the monarchy. The applicant's claim was considered in due course by the Refugee Applications Commissioner who was not satisfied that the applicant had established a well-founded fear of persecution as defined under s. 2 of the Refugee Act 1996 (as amended). Accordingly, the Commissioner recommended in a report, pursuant to s. 13(1) of the Refugee Act 1996 (as amended), that the applicant should not be declared a refugee. The s. 13(1) report was issued on 27th September, 2004, and the recommendation of the Refugee Applications Commissioner was communicated to the applicant by a letter dated 20th October, 2004. The applicant lodged an appeal against the decision of the Refugee Applications Commissioner to the Refugee Appeals Tribunal. The applicant was represented by a solicitor and his appeal proceeded on 19th January, 2005. Prior to the hearing on that date, the applicant's solicitor had submitted and lodged with the Tribunal a number of documents including medical reports, a Death Certificate in respect of the applicant's brother, together with a translation and certain country of origin information. Moreover, subsequent to the hearing but before the Tribunal issued its decision, the said solicitor forwarded further country of origin information to the Tribunal. The Refugee Appeals Tribunal upheld the decision of the Refugee Applications Commissioner and the evidence before me is that on an unspecified date in February 2005, the applicant was notified of the Tribunal's negative decision. The applicant then sought leave to challenge the decision of the Refugee Appeals Tribunal by way of judicial review and was successful in obtaining leave in that regard. Those proceedings were settled before they came on for full hearing. As part of the settlement, the decision of the Refugee Appeals Tribunal was quashed on consent and the applicant's claim was remitted to the Tribunal for a fresh adjudication by a different Tribunal member. This took place on 17th May, 2007. By a letter of 16th May, sent by fax and also delivered by hand, the applicant's solicitors forwarded further country of origin information to the Tribunal. He also sent in a copy of the medical reports which he had submitted previously and made certain submissions in his letter relating to the deteriorating human rights situation in Iran following the success of Mahmoud Ahmadinejad in the Presidential elections. He further clarified the matter in relation to a translation error with respect to the death of the applicant's father and brother. At the appeal hearing, the applicant's solicitor, by way of submission to the Tribunal, outlined that a separate and distinct element of his fear of being sent back to Iran was that he would be persecuted by virtue of his status, if refouled, as a failed asylum seeker. The Tribunal was prepared to entertain this submission and indicated that the applicant would be at liberty within a period of fourteen days from the date of the hearing to submit further documentation relating to that aspect of the matter. Following the hearing, the applicant's solicitor wrote to the Tribunal within the fourteen-day period by means of a letter dated 31st May, 2007. The said letter (with enclosures) was transmitted both by fax and by means of registered post. This letter enclosed yet further country of origin information, and in particular, a report relating to the issue of failed asylum seekers in Iran from the Immigration and Refugee Board of Canada. Further, the letter of 31st May sought to address two specific matters which had arisen in the course of the appeal hearing and which were perceived to be causing the Tribunal some concern. The first concerned the fact that the applicant had only submitted a copy of his identity documentation and not the original. The document in question was his Iranian military identity card. As the Tribunal was clearly concerned to see the original document, the applicant's solicitor enclosed the original document with his letter of 31st May, together with the envelope in which the document in question had been forwarded to the applicant. The second issue which had arisen at the appeal hearing, and about which the Tribunal was perceived to be concerned, was an apparent discrepancy between the documentation submitted by the applicant in support of his contention that his father had been executed, and the documentation submitted by him in support of his contention that his brother also had been executed. The applicant had claimed that both his father and his brother were executed on the same day, in the same place, and for the same reasons, yet the document confirming his father's death specified the cause of death as a heart attack, whereas the document confirming his brother's death specified execution. Although the applicant had put forward an explanation for this apparent discrepancy at the appeal hearing, the applicant's solicitor thought it prudent to also enclose with his letter of 31st May, a number of photographs of the tombstones that have since been erected over the graves of the applicant's father and brother, together with English translations of the inscriptions thereon. These translations indicate that the applicant's father and brother are recorded as dying on the same date on their respective tombstones.

2. The Tribunal member issued her decision on 14th June, 2007. In it, she affirmed the recommendation of the Refugee Applications Commissioner made in accordance with s. 13 of the Act. The applicant now seeks leave to apply for diverse reliefs by way of judicial review, including an order of *certiorari* quashing the said decision.

3. The Tribunal member's decision runs to twenty-three pages of typed script and the critical portion thereof from the point of view of this application is the material contained in the final three pages under the headings "ANALYSIS OF THE APPLICANT'S CLAIM" and "CONCLUSION" respectively. These bear recital in full:-

ANALYSIS OF THE APPLICANT'S CLAIM

"The applicant's legal representative was afforded a fourteen-day period from the date of hearing within which to provide evidence that simply by virtue of being a failed asylum seeker simpliciter, the applicant would be in danger of persecution on the basis of political opinion if returned to Iran. No such evidence was submitted within the timeframe allotted or as of date of signing this decision.

The applicant in this case has not persuaded me that he is credible overall. I refer to Article 5.3 of the 2006 Regulations, which provide that where an Applicant does not provide documentary evidence or further proofs in support of their claim,

they are effectively obliged to satisfy the requirements set at A through E thereof. One of those is that the Applicant's general credibility has to be established. I first make the point that this Applicant has contradicted the evidence that he provided to his own legal representative; this was conceded during the hearing, although some attempt was made to put a gloss on the divergent evidence given by the Applicant by stating that he 'significantly increased' his political activity six months prior to departure. However, it is quite one thing to say that someone has 'significantly increased' political activity six months prior to departure from their country of origin, it is quite another to say that someone desisted from political activity for thirteen years, following the execution of their brother and father, and then to claim at hearing that within three weeks of the execution, that person cranked up their political activity by distributing leaflets, some 100 or so per week according to the Applicant's evidence. To clarify, the Applicant's evidence to his own legal representative, as set out in his Grounds of Appeal submitted on his behalf, is entirely at variance with that evidence that he provided at hearing. I need not reiterate what has been set out above.

I also refer to the divergent evidence given by the Applicant in relation to the account of his father and brother's deaths. The translation on the Tribunal's file in relation to the document submitted by the Applicant in support of his claim that his brother and father were executed, clearly states that the brother and father were 'executed', yet the applicant claimed at hearing that there was no reference to the 'execution' of his father because this was simply not permitted. Thus, the applicant contradicts his own documentary evidence submitted in support of his claim. The Applicant's legal representative did not have a copy of this translation, a copy was provided to him by the Tribunal. I note that it is not possible, in any event, to verify these documents provided by the Applicant. They are copies of documents that do not appear on headed notepaper, as such, they bear no official stamps; given that the Applicant has contradicted the evidence of at least one of these documents, I conclude that they are open to question.

Perhaps of the most significance, in my view, in considering this applicant's claim to be a committed Monarchist supporter, is the fact that this applicant has absolutely no comprehension or knowledge of any of the writings or teachings of Reza Pahlavi since 2003, while the Applicant had a copy of a 2003 lecture of Reza Pahlavi with him at the Tribunal hearing and states that he distributed this lecture, the Applicant himself appeared to have very little specific knowledge of what that article was about. The Applicant refers generally to democracy and to a change of government but it was apparent to me from my line of questions and his vague noncommittal answers, that this is all the Applicant can explain about Reza Pahlavi's teachings, or, indeed, about Monarchist views, namely, that change of government is needed and that democracy is required. I find it difficult to reconcile a claim, on the one hand, that a person is a committed Monarchist supporter with the fact that the same person knows almost nothing about the teachings of the Monarchist organisation, and, indeed, the widely published, freely available information about Reza Pahlavi. I do not accept the Applicant's explanations that he is simply not able to take any information in his given mental state, or that he is not concentrating because of his daughter's impending wedding, as being a reasonable one. I would expect someone who claims to be a committed Monarchist supporter to be able to express to me in a little more detailed fashion why they hold such views, other than to say they simply want democracy and a change of government. I refer, by way of example, to the information on Reza Pahlavi's website. Reza Pahlavi speaks of a lot more than democracy and change of government, for example, he makes reference to the programme of Iranian enrichment and how that is viewed by the West, he refers to the government restrictions on mass media, he refers to the importance of the media in addressing grievances and highlighting social problems. These are but some of the issues addressed by Reza Pahlavi in his various lectures, yet the Applicant could not mention any of these or indeed any of the other many issues that are addressed by him. This is inconsistent, in my view, with a claim to be a 'committed Monarchist supporter'.

I also refer to the fact that this Applicant has provided no original identity documentation to support his claim to be who he says he is, or to be somewhere he is from. In the light of the above, I am not satisfied that this Applicant has provided a truthful account. I find that he is not 'generally credible' given the contradictions and divergences and gaps in his evidence. He does not persuade me even that he is someone who is a committed political supporter, let alone activist, for the reasons I have identified. In the circumstances, I cannot conclude that this Applicant suffers from a well-founded fear of persecution for the reasons he claims, or indeed for any other Convention reason.

CONCLUSION

The Tribunal has considered all relevant documentation in connection with this appeal, including the Notice of Appeal, country of origin information, the Applicant's Asylum Questionnaire and the replies given in response to questions by or on behalf of the Commissioner on the report made pursuant to section 13 of the Act.

Accordingly, pursuant to section 16(2) of the Act, I affirm the recommendation of the Refugee Applications Commissioner made in accordance with section 13 of the Act."

4. It is clear from this lengthy quotation that the Tribunal member had very serious reservations concerning the applicant's credibility and, indeed, regarded him as generally incredible. However, the applicant makes a number of complaints about the manner in which his credibility was assessed by the Tribunal. Firstly, he points out that the Tribunal member was in error in stating that he failed to provide evidence within the fourteen-day period afforded to him that the applicant would be in danger of persecution on the basis of being a "failed asylum seeker" if returned to Iran. The Tribunal member expressly states, "no such evidence was submitted with the timeframe allotted or as of date of signing this decision". It was accepted by counsel, on behalf of the respondents, that this was not so. The applicant's solicitor had submitted additional country of origin information specifically referable to this issue with his letter of 31st May, 2007. It appears (i) that the Tribunal member was not aware of this; (ii) that the Tribunal member had not read this material and (iii) that the Tribunal member was of the view that the applicant, having sought an opportunity to submit further evidence, had then failed to do so when that opportunity was afforded to him.

5. It seems to the Court that none of that can be gainsaid. These are valid criticisms. Further, complaint is made that no account was taken by the Tribunal member of the additional material submitted by the applicant's solicitor with his letter of 31st May, 2007, concerning the circumstances in which the applicant's brother and father met their respective deaths. Undoubtedly, the production of photographs of the tombstones of the father and brother showing them both as having died on the same day, was evidence capable of supporting the applicant's story, though by no means disposing of all of the controversy surrounding it. It appears that when the Tribunal member gave her decision she was unaware of this material. Alternatively, if she was aware of it, she makes no mention of it and that in itself is unsatisfactory.

6. The applicant further criticises the tribunal member for asserting incorrectly that he provided no original identity documentation to support his claim to be who he says he is, or to be from where he says he is from. The fact of the matter is that the applicant did supply original identity documentation. The applicant's solicitor sent in the original of the applicant's Iranian Military Service Card with

his letter to the Tribunal of 31st May, 2007. Further, that document clearly stated who the applicant was and where he was from, namely, from the Islamic Republic of Iran. Yet it is clear that the Tribunal was placing significant reliance on its belief that the applicant had not provided this information. In this regard, the court notes that the Tribunal was required, pursuant to s. 11B of the Refugee Act, 1996 (as amended), in assessing the credibility of the applicant, to have regard, *inter alia*, to whether the applicant possesses identity documents, and, if not, whether he or she has provided a reasonable explanation for the absence of such documents. Given that the Tribunal member was obliged to have regard to these matters, it seems to me that it was absolutely vital that the Tribunal member should familiarise herself with all relevant evidence before her relating to these matters. If, as seems to be the case, the applicant's solicitor's letter of 31st May, 2007, did not reach the Tribunal member before she issued her decision, it represents a major systems failure on the part of the Tribunal or perhaps its Secretariat. It has meant that the Tribunal member has only been in a position to consider part of the evidence in this case. On the basis that her decision was based on a negative assessment of the applicant's credibility, and that assessment was arrived at following a consideration of only part of the evidence submitted to the Tribunal, with the result that it was predicated on multiple errors of fact, all of them material and all of them of potential significance, I believe leave to apply for judicial review must be granted to the applicant. This Court is not concerned with second-guessing the judgment of the Tribunal. What this Court is concerned with is fairness and fair procedures. It is simply unfair and contrary to all notions of due process and fair procedures that only part of an applicant's evidence and part of an applicant's case is taken into account. Counsel for the respondents has not sought to dispute that there was evidence that the Tribunal member failed to take into account. However, he has argued before me that the omissions in question would not have affected the outcome of the case. Clearly, the Tribunal member had very significant concerns about the credibility of the applicant. However, her errors and omissions were multiple and all of them were material. If there had been one single error or omission the respondent might have been on stronger ground. The fact that there were errors and omissions with respect to multiple considerations taken into account by the Tribunal on the question of credibility, including one matter specifically mandated by statute, leads me to the view that this submission must be rejected. Justice must not only be done but be seen to be done.

7. I should also say that the applicant was slightly late in making his application. The circumstances in which this occurred are dealt with in his affidavit and I am satisfied that I have been provided with good reasons as to why I should extend the time and I do so.