

**THE HIGH COURT  
JUDICIAL REVIEW**

2005 No. 1006 JR

BETWEEN

RAZA YAGHOobi TAMREEN

APPLICANT

AND

**THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM AND  
DENIS LINEHAN SITTING AS THE REFUGEE APPEALS TRIBUNAL**

RESPONDENTS

**Judgment of Mr. Justice Herbert delivered on the 23rd day of January 2007**

1. The unspecific and non-particularised general complaint that the decision of the Member of the Refugee Appeals Tribunal is not a full, balanced and unbiased (in the sense of partisan and lacking impartiality) consideration of the facts in evidence before him, in my judgment would not be sufficient to satisfy the onus imposed by s. 5(2)(b) of the Illegal Immigrants (Trafficking) Act, 2000 (as amended) on the Applicant. However this application for leave to seek judicial review also makes four specific criticisms of the decision of the Member of the Refugee Appeals Tribunal which I summarise as follows:-

"1. The Member of the Refugee Appeals Tribunal had regard to an irrelevant consideration in reaching his decision, namely, that the Applicant had not been discriminated against economically as a result of his changing from Islam to Christianity, when the Applicant had not made a case that he had been persecuted in this manner.

2. The Member of the Refugee Appeals Tribunal, in reaching his decision, failed to take relevant considerations into account by disregarding or having insufficient regard to the country of origin information submitted by the Applicant with regard to the position of those perceived as apostates from Islam (particularly those considered to be engaging in proselytising in Iran).

3. The Member of the Refugee Appeals Tribunal selectively cited from ss. 6.65 and 6.6 of a British Home Office Report of April 2005, in order to reach a conclusion that there is no objective basis for any subjective fear that the Applicant might have of persecution for apostasy or proselytising in Iran, when the full text of those sections does not support such a conclusion.

4. The finding of the Member of the Refugee Appeals Tribunal in his decision that the Applicant will not be at risk in Iran of persecution on grounds of religion is premised specifically upon an acceptance by the Member of the Refugee Appeals Tribunal that the Applicant should practise his Christianity exclusively in private and should not in any manner seek to publicly promote Christianity and, this amounts to a countenancing of a gross infringement and denial of the Applicant's fundamental human right to freedom of religious expression.

2. Section 5(2)(b) of the Illegal Immigrants (Trafficking) Act, 2000, (as amended) requires this court to be satisfied that there are substantial grounds for contending that the decision of the Member of the Refugee Appeals Tribunal is invalid or ought to be quashed. In the Matter of the Reference to it by the President of Ireland of the terms of *the Illegal Immigrants (Trafficking) Bill, 1999* [2000] 2 I.R. 360, the Supreme Court held that "substantial" in this context means reasonable, arguable and weighty and not merely trivial or tenuous.

3. As to the first specific ground, I am satisfied that an error of fact, even a single error of fact, if sufficiently material, so that a determination must inevitably be entirely dependent upon it or, which is likely to have been so significantly influenced by that finding of fact that an impartial and reasonably intelligent reader could not be satisfied, as a matter of probability, that it was not so influenced, is sufficient to vitiate that entire decision.

4. I do not consider that there was any such error in the instant case on this first specific ground. In considering whether the Applicant had established a well founded fear of persecution resulting from his change of religion, the Member of the Refugee Appeals Tribunal in his decision points to the fact that the Applicant had admitted that he had lived in an affluent area of Tehran and had not, up to the time of his leaving Iran, suffered economically as a result of his recently embraced Christian beliefs. In my judgment, this is an accurate and pertinent observation even though not necessarily conclusive of the issue. I am satisfied that it was something which the Member of the Refugee Appeals Tribunal was entitled to take into account in reaching his decision. The court is therefore not satisfied that there are substantial grounds for contending that the decision of the Member of the Refugee Appeals Tribunal is invalid or ought to be quashed on this ground.

5. As to the second specific ground, in his decision the Member of the Refugee Appeals Tribunal accepts that under the provisions of Iranian Law a national who changes from Islam to another Belief System may suffer imprisonment or even death. However, he also accepted, citing a British Home Office Report of April 2005, and a CEDOCA Mission Report of September 2002, that it was rare for criminal cases to be brought against such persons by the Iranian Authorities unless the person came to their attention through, for example, proselytising. The Member of the Refugee Appeals Tribunal then concludes in his decision that the activity admitted to by the Applicant in his own evidence, namely, discussing his religious beliefs with persons who visited his shop, could not be regarded as actively promoting the Christian Faith in Tehran and, could not be regarded as proselytising so that it was highly unlikely that the Applicant would suffer any harm if he should be returned to Iran.

6. This finding by the Member of the Refugee Appeals Tribunal, appears to me to disregard the actual evidence before the Refugee Appeals Tribunal, that the Applicant had in fact come to the attention of the Iranian Authorities. This came about through a complaint made to a Cleric or an Official of a local Mosque by the mother of young man, that the Applicant was endeavouring to persuade her son to abandon Islam and embrace Christianity. The evidence was that a complaint was made to the police who came to the Applicant's home in his absence and removed religious material, including a Bible and a Cross. As was pointed out by Counsel for the Applicant, no issue of credibility arose in this case. On the contrary, the Member of the Refugee Appeals Tribunal in the penultimate paragraph of his decision expressly states that he was impressed by the forthright evidence given by the Applicant and the supporting evidence given by Rev. Jane Galbraith.

7. I am satisfied that there are reasonable, weighty and arguable grounds for contending that the decision of the Member of the Refugee Appeals Tribunal ought to be quashed because he did not consider the country of origin information either sufficiently or at all in the context of the actual evidence before him. Having regard to the penalties actually available in Iranian Law, as accepted by the

Member of the Refugee Appeals Tribunal, I find that the submitted error, if established, could have consequences of the utmost seriousness for this Applicant. Also, having regard to all the evidence before the Refugee Appeals Tribunal, I consider that there are substantial grounds for contending that it was not properly open to the Member of the Refugee Appeals Tribunal to conclude that it was not realistic to state that the Applicant's activities could be regarded as proselytising, at least without a fully comprehensive review of the country of origin information in the correct context. There appears to me to be a reasonable, weighty and arguable case to be made, that the Member of the Refugee Appeals Tribunal inadvertently, but nonetheless erroneously, substituted his own objective view of the Applicant's religious activities for what properly should have been a consideration of the probable view of those activities likely to be taken by the Iranian Authorities in the light of the complaint and of the consequent clerical and police intervention.

8. With regard to the third specific ground, in my judgment it was not incumbent of the Member of the Refugee Appeals Tribunal to cite the entire of any particular document to which he made reference or from which he chose to quote. It is however essential that any passage so quoted should not be taken out of context and, that the quotation should be sufficiently extensive to accurately reflect what was intended by the author. The Member of the Refugee Appeals Tribunal quoted from the CEDOCA Mission to Iran 16th May to 6th July 2002, and, from ss. 6.61 and 6.65 of the British Home Office Report of April 2005.

9. In his decision the Member of the Refugee Appeals Tribunal says:-

"I now wish to refer to para. 6.65 of the BHOR on that subject [apostasy/conversion] which states as follows:"

10. Counsel for the Applicant correctly points out that the Member of the Refugee Appeals Tribunal omits the following important sentences from this citation:-

"Apostate converts who have begun preaching Christianity are likely to face execution. According to the Danish fact finding mission to Iran Report, 2002. ... The source stressed that converts often remain Muslims for official purposes."

11. It was further submitted that this quotation of s. 6.65 of the British Home Office Report by the Member of the Refugee Appeals Tribunal in isolation, - particularly in the absence of these omitted sentences, - presents a distorted and incorrect picture of the contents of this section of the Report on the subject of apostasy and proselytising in Iran.

12. It is clear to me that the part of s. 6.65 of the British Home Office Report of April 2005, cited by the Member of the Refugee Appeals Tribunal, is concerned with the consequences of changing from Islam to another religion, simpliciter. This accords with the subsequent conclusion of the Member of the Refugee Appeals Tribunal that it was not realistic to state that the Applicant's activities as disclosed by the evidence could be regarded as proselytising. I find that the non-cited parts of s. 6.65, which I have already set out, and the contents of ss. 6.64, 6.67 and 6.68 of the British Home Office Report, are pertinent to the position of those who, in Iran, actively display their new faith in public, in particular by proselytising. I find that ss. 6.61, 6.62 and 6.63 of the same Report, which, I am satisfied, addressed the position in Iran of Christians generally, as distinct from the particular position of persons who change from Islam to another religion which is addressed by ss. 6.64 to 6.68 inclusive, makes the same distinction between the treatment by the Iranian Authorities of Christians who merely practise their religion and instruct their own children and those, such as the members of some Evangelical Churches who proselytise Muslims. Section 6.66 of this Report notes that many individuals try to change from Islam to Christianity with a view to emigrating, considering that the opportunities of obtaining asylum in the West are thereby enhanced. However, in the instant case, the Member of the Refugee Appeals Tribunal accepted the evidence of Rev. Jane Galbraith, a Curate of the Church of Ireland in Limerick, which he sets out in his decision, that this Applicant's conversion to Christianity is genuine.

13. I am satisfied that there are reasonable, weighty and arguable grounds for contending that the decision of the Member of the Refugee Appeals Tribunal is invalid and should be set aside on this ground, by reason of the fact that he attached too much weight to s. 6.61 and the part of s. 6.65 of the British Home Office Report, of April 2005, cited by him and, did not give any or any sufficient weight to the remainder of s. 6.65 or to ss. 6.62, 6.63, 6.64, 6.67 and 6.68 of that Report, in the context of the evidence before the Refugee Appeals Tribunal of actual clerical and police action against this Applicant in Iran.

14. In dealing with the fourth specific ground, it was submitted by Counsel for the Applicant that the Member of the Refugee Appeals Tribunal had, in effect, found that there was no objective basis for this Applicant's subjective fear of persecution on grounds of religion, if returned to Iran, provided he continued to practise Christianity in private, as on the evidence he had done before he left Iran and, did nothing to actively and publicly promote the Christian Faith in Iran. Counsel argued that this was an acceptance by the Member of the Refugee Appeals Tribunal that the Applicant, if he returned to Iran, would have to submit to a denial of what Counsel described as his fundamental human right to freedom of religious expression, in the form of openly practising and proclaiming the Christian Religion. This, Counsel submitted, amounted to persecution on religious grounds, so that the recommendation of the Member of the Refugee Appeals Tribunal affirming the recommendation made by the Refugee Applications Commissioner that the Applicant had failed to establish a well founded fear of persecution as defined under s. 2 of the Refugee Act, 1996 (as amended), was invalid and was not supported by his own findings.

15. I find that no issue of alleged persecution of this Applicant by the alleged denial or penalisation by the Iranian Authorities of an exercise by him of an alleged fundamental human right to manifestly and demonstratively practise his Christianity in Iran arises on the facts of this case. There was no evidence before the Refugee Appeals Tribunal that this Applicant had ever asserted such a right. The evidence, recorded in the decision of the Member of the Refugee Appeals Tribunal, which was not challenged in this respect, is that this Applicant practised Christianity in private and within the community of his co-religionists, but was prepared to discuss Christianity with persons who came to his business premises. There was no evidence before the Refugee Appeals Tribunal of any active proselytising or evangelisation on the part of this Applicant, as distinct from an issue of perceived proselytising by him on the part of local Muslim Clerics or Mosque Officials arising from a single disputed incident and its possible consequences for the Applicant should he be returned to Iran. Having regard to the evidence, no doctrinal or moral obligation to actively and publicly promote Christianity was ever asserted by this Applicant. However interesting and even controversial the issue of whether a refusal to permit or, a penalisation of evangelisation or proselytisation, amounts to persecution on the grounds of religion may be, I find that it does not arise in the instant case. This court is not satisfied that there are substantial grounds for contending that the decision of the Member of the Refugee Appeals Tribunal is invalid or ought to be quashed on this ground.