Neutral Citation: [2014] IEHC 379

THE HIGH COURT

JUDICIAL REVIEW

[2009 No. 1329 J.R.]

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 5 OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000

BETWEEN

A.M.G. (PAKISTAN)

APPLICANT

AND

REFUGEE APPLICATIONS COMMISSIONER, REFUGEE APPEALS TRIBUNAL, THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM, IRELAND AND ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Mr. Justice Barr delivered the 25th day of July, 2014

Background

1. The applicant is a married man and is 45 years of age, having been born on 8th April, 1968. He is a well educated man, having received a BA Degree from the Punjabi University of Lahore. In June 2004, his friend, A.M., who is a member of the Taliban, invited the applicant to join that organisation. The applicant says that he refused to join the group. He says that after this refusal, he received threatening telephone calls and letters from the Taliban.

2. The applicant states that he made a report to the police concerning an incident on 14th November, 2004, in the following terms:-

> *"It is stated that I A.M, son of MA. belonging to J.G. caste and am a permanent resident of [address redacted]. I was asleep at home at about ten last night when I suddenly received a phone call. Somebody demanded money from me and I have been threatened with abduction in case money is not given to them. Before that, I have also received two letters that were written by the same people. It was written in them that I should give money or else I would be killed. After sending letters, they have now started making threatening phone calls. They have not told me their name and address yet, nor had they decided a place. I and my parents are extremely worried due to this reason. Therefore, it is requested that a case be registered against unknown people and the strictest punishment to be given to them after arresting them through the phone number.*
>
> *Signature of applicant*
>
> *Police proceedings: in the light of the information written above, a case is hereby registered against unknown people and sub inspector Muhammad Aslam has been appointed for investigation. A copy of the case is being dispatched to the office of the district police officer, Sialkot. "*

3. The applicant states that he continued to receive threatening phone calls and letters from the Taliban until January or February 2005. On 27th April, 2005, he reported another incident to the police in the following terms:-

> *"It is stated that I, A.M son of M.A., belonging to J.G. caste and am a permanent resident of [address redacted]. I left home today i.e. on 27-4-2005 to go to Sambrial City. I had covered a distance of only 1km when two masked men, who were armed, suddenly appeared in front of me, stopped me and said to me 'why don't you listen to us? Do you want to live or die? If you want to stay alive, come to the same place the day after tomorrow at the same time with 600,000 rupees. None of your family will be left alive if you report this to the police '. They snatched my mobile phone and 8,000 rupees from me as they left. Therefore, it is requested that these masked men be traced and legal action be taken.*
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> *Signature of applicant*
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> *In the light of this statement registered above, a case is hereby registered and an investigation team and a patrolling team have been sent to [address redacted] moreover a wireless message has been left for intelligence and necessary action. A copy of the case has been forwarded to the district police officer."*

4. The applicant states that on 2nd May, 2005, he was kidnapped by a number of men. His father reported the matter to the police:-

> *"It is stated that I, A.M. son of C.M.K.., belonging to J.G. caste and am a resident of [address redacted]. A little while ago I was at home when I received information that three unknown armed men had kidnapped my son, A.M. who works in a factory near [address redacted] while he was going to his duty and had taken him to some unknown place in their car. Before that, the accused had also threatened my son with abduction and murder through letters, by telephone and by personally stopping him on the way. They have also been demanding money from him against which a report has already been registered at the police station. My son has been kidnapped because the police have been careless and negligent in patrolling the area. It is requested that he be recovered immediately and the kidnappers be arrested and severely punished.*
>
> *Signed*
>
> *A case is hereby registered against receipt of the said information and patrolling teams have sent a car off the road.*

The centre and office of the district police officer and the mobile police have been informed of the incident on the wireless. "

5. The applicant was released on 10th May, 2005, after a ransom had been paid by his father. In August 2005, the applicant's father received a threatening telephone call in relation to the applicant. The applicant was also informed by friends that "*suspicious people*" were watching his home at night. The appellant fled to his father-in-law's house. He remained there until they too started to receive threatening phone calls. The applicant went first to Toba Tek Singh and he remained there for two to three weeks before going to Lahore. The applicant remained in Lahore for about two weeks and then travelled to Rawalpindi for a few days. He then returned to Daska via Lahore. By this time, the applicant's in-laws had arranged for the applicant to leave Pakistan.

6. On 14th March, 2006, the applicant travelled to Ireland on a visitor's Visa. The Visa expired on 9th April, 2006. The applicant stayed on in Ireland.

7. The applicant states that in 2007, his father-in-law received another threatening phone call from the Taliban. His wife was told to divorce the applicant or she would be killed.

8. On 20th March, 2009, the applicant was stopped by the Irish immigration authorities. He applied for asylum at that time. He said that he had been thinking of applying for asylum due to a deterioration of the situation in Pakistan. He says that it was coincidence that he made the decision to apply for asylum at the same time as he came to the attention of the Irish immigration authorities.

9. In the s.13 report dated 29th September, 2009, the Refugee Applications Commissioner (hereinafter "*RAC*") came to the conclusion that the applicant had not established a well founded fear of persecution as required by s. 2 of the Refugee Act 1996 (as amended). The applicant appealed this finding to the Refugee Appeals Tribunal (hereinafter "*RAT*"). In a decision dated 2nd November, 2009, the RAT affirmed the recommendation of the RAC made in accordance with s. 13 of the Act.

10. By notice of motion dated 23rd December, 2009, the applicant sought various reliefs, including an order of *certiorari* quashing the decision of the second named respondent and an order of *mandamus* directing the respondents to readmit the applicant to the asylum process at the appeal stage before the second named respondent and to consider the appeal by way of an oral hearing.

Delay

11. In this case, the applicant delayed in instituting his proceedings seeking judicial review of the decision of the RAT. That delay was a short one and did not cause any prejudice to the respondents. In *K.B. v. Minister for Justice, Equality and Law Reform & Anor* [2013] IEHC 169, Mac Eochaidh J. had the following to say about delay:-

> *"Finally, I wish to say a word about delay in the institution of these proceedings.*
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> *The applicant received the respondents' decision on 5th February 2009, which indicates that proceedings ought to have issued by 19th February 2009. Proceedings issued on 11th March 2009, a delay of approximately 20 days. I accept that the applicant is blameless in the delay and acted in a manner consistent with a keen interest in the institution of judicial review proceedings. He contacted the Refugee Legal Service in Cork within the 14- day period for the institution of proceedings. They were unable to assist him and he then contacted a private solicitor in Dublin who did not receive the applicant's full file until 26th February 2009. Counsel was instructed and with admirable expedition, prepared an opinion within three days.*
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> *I have no hesitation in finding, in accordance with the dicta of Irvine J. in A. & Anor v. Refugee Applications Commissioner [2008] IEHC 440 that good and sufficient reasons have been advanced to extend time and I do so without hesitation.*
>
> *To this, I wish merely to add that I would be extremely reluctant to entertain an application to dismiss proceedings four years after the institution of those proceedings where the first indication of a complaint about delay is to be found in the written submissions filed in the days before the hearing. If a State respondent is keen to pursue a genuine delay point, this itself should not be delayed, and I say this having regard to the particular circumstances of failed refugee judicial review applicants who live, generally, in very difficult circumstances on a mere €19 or so a week. It would be unconscionable to permit proceedings to fail on a time point where an applicant might have endured significant hardship over many years waiting for such a simple point to be determined. There would be much merit in such time points being advanced expeditiously and by motions in limine. "*

12. In the present case, the RAT decision was delivered on 2nd November, 2009, and the notice of motion in the proceedings herein was issued on 23rd December, 2009. I have reached the conclusion that it would be unjust to find against the applicant on grounds of delay. Accordingly, I will extend the time for bringing the proceedings herein up to and including 23rd December, 2009.

The grounds on which the RAT's decision is impugned

13. The applicant challenges the RAT's decision under three mam headings. Firstly, he states that as the RAT accepted the three police reports as referred to herein, they were inconsistent in finding that the applicant lacked credibility in relation to his accounts of the kidnapping and extortion demands allegedly made of him by the Taliban. In this regard, the RAT found as follows in relation to the applicant's delay in seeking asylum in this country:-

> *"Given the serious nature of the applicant's claims, it would be reasonable to expect that the applicant would have sought asylum as soon as practicable after arriving to this State and particularly after his Visa expired. The applicant's failure to apply for asylum until March 2009, is not indicative of a person fleeing persecution and calls into question the well foundedness of the applicant's fear. Section 11B(d) of the Refugee Act 1996 (as amended) is relevant to the applicant's claim. "*

14. The applicant made the case that he feared the Taliban wanted to kill him, because he would not join that organisation. The RAT held that the applicant's stance in relation to joining the Taliban would have been known to the organisation since 2004. If it had been their intention to kill the applicant due to his refusal to join them, it was not credible that the Taliban would kidnap, threaten and monitor the applicant for such an extended period of time. The Tribunal noted that the applicant's wife and children had been able to live unharmed since his departure from Pakistan. The Tribunal noted that, according to the applicant, both of the homes where his wife and children reside were known to the Taliban. Were it the intention of the Taliban to kill the applicant, they had ample opportunity to do so. The Tribunal held that the applicant's account in this regard was not credible. The applicant maintains that in order to reach that conclusion, the RAT had to ignore the information which had been submitted in the form of police reports.

15. It was argued on behalf of the applicant that the case law establishes that the RAT must have regard to documentation submitted by an applicant. In *I.R. v. Minister for Justice, Equality and Law Reform & Anor* [2009] IEHC 353, Cooke J. set out a number of principles which should be observed when coming to a conclusion on the credibility of an applicant. He had the following to say in relation to documentary evidence at para. 11:-

> *"Where an adverse finding 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. "*

16. In *Suman Barua v. Minister for Justice, Equality and Law Reform* [2012] IEHC 456, eleven documents had been submitted in support of the applicant's claim for refugee status. Mac Eochaidh J. was critical of the way in which the decision makers had dealt with the documentation. He held that there was an obligation to give careful consideration to documents submitted on behalf of an applicant. If the documentation is to be rejected, the reason for this must be clearly stated. He stated as follows at para. 27 of his judgment:-

> *"As noted above, if documents which are prima facie corroborative of an applicant's account of relevant events are to be discounted, dismissed or rejected, or somehow found not to have corroborative effect, it is incumbent on the decision maker to explain why. There may be overwhelming reasons, unrelated to the documentation, to reject the credibility of an applicant but if this is so, then the decision maker should say that and should clearly state the basis on which documentation which seemingly supports the applicant's story is discounted, rejected or dismissed. An objective outsider, such as this court, is left guessing why the applicant's documents submitted in support of the claim did not appear to have that effect. The references in the impugned decision to the prevalence of forged and fraudulently obtained documents in Bangladesh leads one to conclude that this is what the decision makers actually believed of some or maybe all of the applicant's supporting papers. That is a matter which ought to have been put to the applicant, or at the very least, an express finding in that regard should have been made and the basis of that finding should have been stated. Documents which prima facie support the applicant's story deserve comment and this is especially so when marginal credibility findings are relied upon by a decision maker to dismiss an applicant's story and refuse protection. "*

17. In this case, the RAT had regard to the police reports when looking at the question of the adequacy of State protection. The RAT noted that the applicant had first been approached to join the Taliban in 2004. The Tribunal observed that if it had been the intention of the Taliban to kill the applicant due to his refusal to join them, it was not credible that the Taliban would have kidnapped, threatened and monitored the applicant for such an extended period of time. The Tribunal noted that while the Taliban had been unable to achieve their goal in 2004, the applicant's wife and children had been able to live unharmed between the applicant's parents' home and her own parents' home since the applicant had left Pakistan. The applicant stated that both of these locations were known to the Taliban. Had it been the intention of the Taliban to kill the applicant, they had ample opportunity to do so. The Tribunal held that the applicant's account in this regard was not credible.

18. It has been argued that the findings of the Tribunal on the applicant's credibility are inconsistent with the acceptance by the Tribunal of the genuineness of the three police reports. This is not addressed by the Tribunal. I think that this point is well made on behalf of the applicant. If the Tribunal wished to make an adverse credibility finding against the applicant, they had to deal specifically with the three police reports which corroborated the applicant's story. If they wished to ignore or disregard the police reports, there was a duty on the Tribunal to set out clearly why the documents were being disregarded. In this case, no such explanation was forthcoming. On the contrary, the reports were relied upon by the Tribunal when examining the issue of State protection.

19. I, therefore, find that the Tribunal's finding on the credibility of the applicant's story cannot stand and must be quashed.

State Protection

20. The applicant also attacked the Tribunal's decision on grounds of inadequacy of State protection. In short, he argued that the State could not protect him from execution at the hands of the Taliban. The RAT noted that three reports had been made to the police. There is no mention of the Taliban in these reports. Nor did the applicant mention the role played by his friend, in trying to have the applicant recruited to the Taliban in 2004. The Tribunal noted that the police registered the complaints made by the applicant and his father and took action on the complaints as best they could on limited information available. The Tribunal noted that there was country of origin information which showed that the Pakistani authorities were taking action to move against the terrorist threat posed by the Taliban. The Tribunal was satisfied that the Pakistani authorities take threats from the Taliban seriously.

21. The Tribunal noted that the country of origin information (hereinafter "COI") indicated that Pakistan had ordered its military to launch a full scale offensive against the leader of the Pakistani Taliban and his militant network. In the circumstances, it would appear that there was evidence on which the Tribunal could find that if the applicant had a genuine fear of persecution at the hands of the Taliban, that the Pakistani authorities would take his complaints seriously and would take action to protect him from the Taliban. The Tribunal noted that in relation to the three police reports, the authorities appeared to take all appropriate action to deal with the applicant's complaints. This was a finding that was open to the Tribunal on the evidence.

22. In the circumstances, I am of opinion that the finding that there was adequate State protection available to the applicant within Pakistan was a finding which the Tribunal was entitled to make on the basis of the evidence before it; namely the three police reports and the COI available to the Tribunal.

Internal Relocation

23. The Tribunal noted that the applicant was a well educated man, who had experience of working in Pakistan and Ireland. They held that it was reasonable to suggest that the applicant could move to another province of Pakistan away from the Punjab, where he stated that he was known to the Taliban. The Tribunal found that, considering the size and population of Pakistan, it would be unlikely that the applicant would be found by the Taliban if he relocated to another area of the country. In this regard, it should be noted that Pakistan has a population of 108m, with 9m living in the city of Karachi.

24. It should be noted that when the applicant moved out of his house, he was able to move to other areas in the province of Punjab, without interference from the Taliban. In particular, he spent a reasonable amount of time in Lahore without any contact from the Taliban. In argument, it was pointed out by counsel for the respondents, that the applicant did not make speeches or otherwise come to public attention. Accordingly, it will be easier for him to relocate within Pakistan in safety.

25. In *DDA (Nigeria) v. Minister for Justice, Equality and Law Reform & Anor* [2012] IEHC 308, the applicant faced persecution on ethnic grounds. This was found to be credible. The Tribunal looked at internal relocation. The applicant claimed that he would be

found even in Lagos, which had a population of 12m people. There was specific COI which showed that given the structure of Nigerian society, it would be impossible for him to find work without the help of family or people of his own ethnic grouping. The Tribunal Member when referring to the COI available merely stated: "*There is little to support him in the country of origin information from Nigeria in this regard*". The court held that this was a response which was inadequate because the basis for it was by no means clear. Cooke J. stated at pp. 11 and 12 of his judgment:-

> *"The phrase used concedes that there is some support even though it is only 'little'. But what is that support? Is it the ACCORD/UNHCR report or some other source researched by the Tribunal member, or both? The applicant had said he would be found and killed no matter where he went and ground 7 gave information as to why this should be so and ought to be accepted. Simply to say by way of reply that there 'is little support' for his contention is, in the judgment of the Court, a failure of rational aqjudication on an appeal ground. It may be that the Tribunal member considered that the picture of extended family support and social networks given in the Ground 7 quotation would have no application in the case of a mature male adult who had carried on a business and had occupied the position of village chief The difficulty is that the explanation for impliedly rejecting the ground has not been stated. It follows that the applicant is entitled to have the decision quashed on that basis."*

26. In *WMM v. RAT & Anor* [2009] IEHC 492, the applicant had suffered years of sexual abuse at the hands of her father and his friends. The Tribunal held that the applicant could have availed of internal relocation within Nigeria to the city of Port Harcourt. This was never put to the applicant. She was a very vulnerable person who, it was suggested, should relocate to a dangerous city. In the present case, the applicant is a mature, well educated man. He could not be regarded as a vulnerable person. There was no evidence that he would be traceable if he moved elsewhere in Pakistan, perhaps to the city of Karachi.

27. In *P.O. (Nigeria) v. Minister for Justice, Equality and Law Reform* [2010] IEHC 513, it was held that in relation to internal relocation it was not necessary for the respondent to build a case for internal relocation brick by brick. Ryan J. stated as follows at p. 4 of the judgment:-

> *"It is clear from the decision that the Tribunal member considered there to be numerous options open to the applicant as to where she might safely relocate, including within Delta State, where she had previously resided. This conclusion was rationally arrived at and based on the evidence that the Tribunal member had before her and it is not accordingly subject to judicial review and there are no substantial grounds to challenge the finding.*
>
> *It does seem to me that it is not sufficient for an applicant to sit back, so to speak, and demand that the Tribunal or the presenting officer or some other agency should establish a case block by block as to an alternative life that the applicant might be able to live and that, in default of establishing such a putative alternative existence, the applicant must succeed. I think that internal relocation has to be seen in a case like this, as in all other asylum cases, by reference to the particular facts. I do not take the UNHCR Guidelines, which are extremely helpful to decision makers and to courts in analysing the work of decision makers, to establish a rigid requirement that places on a decision maker in every case where internal relocation is relevant an obligation to explore in great detail the alternative life open to the applicant. In particular, it seems to me that where the threatened persecution is local and limited in area and personnel, that it may be sufficient to point out, if the evidence justifies that conclusion, that some or many or most other regions of the country in question are available to the asylum seeker for sanctuary. In the present case the applicant is protesting about a conclusion that she could have remained in Delta State, where she was able to remain for two months in safety and without any threat to her, instead of travelling all the way to Ireland and applying for asylum. I believe the Tribunal member was entitled to reach this conclusion on the basis of the information before her. Accordingly, insofar as the question of internal relocation is concerned, I am not satisfied that the applicant has established substantial grounds for challenging the Tribunal's decision. "*

28. In the present case, it was noted that when the applicant left home he stayed within the Punjab region. It was reasonable that the applicant should be required to move elsewhere in Pakistan, so as to secure his safety. I am of opinion that it was open to the Tribunal to find that the applicant could have moved elsewhere within Pakistan so as to avoid being persecuted by the Taliban.

Conclusions

29. I have reached the following conclusions in this case:-

> (a) The time for bringing the proceedings should be extended up to and including 23rd December, 2009. Accordingly, the applicant's proceedings are within time.
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> (b) The finding of the RAT that the applicant's account was not credible cannot stand, due to the fact that the Tribunal found that the three police reports were genuine. The findings that these documents were genuine, but that at the same time the applicant's story was incredible, are inconsistent findings. As there was no adverse finding in relation to the content of the police reports, nor any indication that the documents could not be relied upon, the Tribunal's finding on credibility cannot stand.
>
> (c) The findings of the Tribunal in relation to State protection are founded on evidence that was before the Tribunal. The decision in this regard is valid and should not be quashed by order of this Court.
>
> (d) The findings of the Tribunal in relation to internal relocation are founded on evidence that was before the Tribunal. There was no irrationality on the part of the Tribunal in finding that the applicant could avail of internal relocation within Pakistan so as to avoid persecution.
>
> (e) The findings on State protection and internal relocation can be severed from the findings on credibility. Accordingly, I dismiss the applicant's application for judicial review herein.