[2018] IEHC 276

THE HIGH COURT

JUDICIAL REVIEW

[2011 No. 1052 J.R.]

BETWEEN

A.Q. (PAKISTAN)

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 19th day of April, 2018

1. The applicant applied for asylum in 2005. That application was rejected in February, 2006. A deportation order was made on 21st September, 2011 following a refusal of a subsidiary protection application on 15th July, 2011. The applicant was deported on 24th November, 2011.

2. I have heard helpful submissions from Mr. Ian Whelan B.L. for the applicant and Mr. Anthony Moore B.L. for the respondent.

Relief sought

3. The only substantive relief sought is *certiorari* of the subsidiary protection refusal and the deportation order. The only challenge to the latter order is that the subsidiary protection decision was flawed. The statement of grounds involves a modest 37 separate grounds. Mr. Whelan formally moved the legalistic points which I previously rejected in *N.M. v. Minister for Justice and Equality* [2018] IEHC 186 [2018] 2 JIC 2710 (Unreported, High Court, 27th February, 2018) and *F.M. v. Minister for Justice and Equality* (Unreported, High Court, 17th April, 2018), decisions that I follow here. That leaves two fact-specific complaints which I will now address.

Ground 3 – analysis of internal relocation

4. Internal relocation only arises as a critical issue if there is a risk of serious harm. This is dealt with by reg. 7 of the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006) which in turn reflects art. 8 of the qualification directive 2004/83/EC. The thrust of the decision is that the applicant is not at risk in Pakistan and that his account is not credible. There is passing reference to him being free to relocate at p. 21 of the decision. That reference is possibly not the most pertinent. It would be for the best if any question of the internal protection alternative would be separately considered by explicit reference to art. 8 of the directive.

5. However, even assuming in favour of the applicant that the internal relocation analysis is not sustainable, that does not contaminate the overall decision taken in the round. Mr. Whelan relies on the judgment of MacEochaidh J. in *M.A. v. Minister for Justice and Equality* [2015] IEHC 287 (Unreported, High Court, 6th May, 2015) at para. 27 that "*In* E.I. [*v. Minister for Justice, Equality and Law Reform* [2014] IEHC 27 (Unreported, High Court, 30th January, 2014)], *I stated the view that every internal relocation appraisal was required to be conducted in accordance with these basis (sic) rules even where the decision maker was redundantly deciding internal relocation having found that an applicant did not have a well founded fear of persecution … or of serious harm*". If this means that any consideration of internal relocation should comply with art. 8 of the qualification directive then I see no major problem with that approach. If however it means that a consideration of internal relocation that is not so compliant is fatal to the validity of an otherwise appropriate decision that is based on an independent ground then respectfully one must take the view that such an interpretation does not seem to be sustainable. That interpretation of the judgment cannot be good law if it means that an error in an *obiter* aspect means that the main thrust of a decision that is otherwise valid would have to be quashed. Rather I would follow the approach of Cooke J. in *S.B.E. v. Minister for Justice and Equality* [2010] IEHC 133 (Unreported, High Court, 25th February, 2010) at para. 19 that where credibility is rejected "*the issue of internal relocation is irrelevant unless that primary finding is shown to be defective*". Reading the decision as a whole, it is based on other grounds. The applicant's credibility is rejected, state protection is available and the applicant was found not to be at risk of harm. Any alleged infirmity in the internal relocation option is not fatal to the decision.

Ground 35 – failure to deal appropriately with the issue of past persecution

6. Mr. Whelan relies on the judgment in *S.N. v. Minister for Justice and Equality* (Unreported, High Court, 20th March, 2018) but that was a case where there was a finding of past persecution or serious harm. If there is no such finding there is no obligation to go on to consider whether past harm could give rise to risk of future harm under reg. 5(2) of the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006). Here there is no such finding. The Minister says that the "*applicant's claim above*" may constitute serious harm but that there are credibility issues with that claim. That is not a finding of past serious harm, quite the reverse; it is a rejection of the applicant's account. Therefore further consideration under reg. 5(2) of the 2006 regulations does not arise.

Order

7. The application is dismissed.