[2019] IEHC 828

THE HIGH COURT
JUDICIAL REVIEW

[2019 No. 385 J.R.]

BETWEEN

A.M. (PAKISTAN)

APPLICANT

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL AND THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 19th day of November, 2019

1. The applicant claims to be a national of Pakistan, born in 1965. He successfully applied for a six-month visa for the UK in 2008 and 2009. In his original asylum claim he stated that he travelled from Pakistan to the State *via* an unknown country, but this was a falsehood.

2. He also said in interview that he never had a passport and did not know whether he had a visa. In fact, he had both a passport and a two-year visa for the UK, valid from 19th March, 2011 to 19th March, 2013. This was obtained for the stated the purpose of visiting a cousin who lived there.

3. He now says that he left Pakistan on 30th May, 2011 for the UK and stayed in Manchester for some weeks. He did not claim asylum there and asserted that this was because he had no knowledge about it (p. 11 of the s. 11 interview). However, when he arrived in Ireland on 21st or 22nd June, 2011 he immediately claimed asylum.

4. The basis of the application was that he claimed to have been attacked and threatened by relatives of a person who was accidentally killed by celebratory gunfire at a wedding in Pakistan and claimed to have been falsely accused of being responsible for that death. The original asylum claim makes no reference to those persons being members of an organisation named MQM. He introduced that element later.

5. On 26th September, 2011, a transfer order was made pursuant to the Dublin system, transferring his asylum claim to the UK. He then unlawfully went into hiding, thereby frustrating the order. On expiry of the time for transfer, his claim had to be processed in the State and he duly re-emerged for that purpose.

6. On 10th July, 2017, he applied for subsidiary protection. His asylum and subsidiary protection claims were rejected by the International Protection Office on 31st July, 2018.

7. He then appealed to the International Protection Appeals Tribunal. At the oral hearing, as recorded in the tribunal decision, the applicant declined to take the oath when giving his account and chose to affirm instead. His instructions as conveyed to me were that he was given the option and chose not to swear on the Qur'an. Obviously that is a statement of what happened rather than an explanation and does not *explain* why he did not swear that his account was true. Given that he has sworn his affidavit in the present

proceedings it does not on the face of things seem he was entitled to affirm for the purposes of the Oaths Act 1888 because he has a religious belief that does not preclude swearing. That is not a totally satisfactory situation and on one view not one that enhances the credibility of his account, although I do not make any finding on that as it was not specifically relied on by the decision-maker.

8. The tribunal rejected the appeal in a nineteen-page decision, dated 23rd May, 2019. I granted leave on 24th June, 2019, the primary relief sought in the proceedings being *certiorari* of the tribunal decision. I have now received helpful submissions from Mr. James Kane B.L. for the applicant and from Mr. Hugh McDowell B.L. for the respondents. Helpfully, Mr. Kane did not press ground 1C or ground 2 and indicated that ground 1E arose under the earlier headings of 1A and 1B which could be taken together, and 1D.

Grounds 1A and 1B

9. These grounds allege that "*The Respondent acted unreasonably, irrationally or otherwise erred in law in the manner in which it drew adverse credibility findings against the Applicant, in: a. Finding that the Applicant's evidence that* "MQM are the same as the relatives of the dead man" *was* "an element that did not previously appear in his account" *in circumstances where the Applicant had previously given this account at inter alia page 5 of the section 35 report, page 12 of the section 11 interview and question 68 of the Application for International Protection Questionnaire, b. Finding that the Applicant's account as to the second assault (ref paras 4.9 to 4.13) was inconsistent, when in fact, there was no such inconsistencies and the decision maker failed to have regard to crucial aspects of the Applicant's evidence found, in particular, on page 7 of the section 11 report and page 5 of the section 35 report."*

10. The tribunal member sets out the applicant's direct evidence at para. 2.7 where the applicant seems to have said that he "*knows from talk in the market that the family of the dead man support the MQM party at elections*". The cross-examination is then recorded on p. 5 of the decision. The tribunal member recorded that the applicant said that he did not see the attackers in the second attack. It was then put to him that at p. 9 of the s. 11 interview that he said that he did see them and later they blindfolded him. His explanation was that he did not see that it was the relatives. He then said that he saw the attackers the second time and said they were members of MQM. It was put to him that in the s. 11 interview he had said "*obviously it was them*"; that is, the relatives. His explanation was that MQM are the same as the relatives.

11. At para. 4.12 of the decision the tribunal member analyses this evidence and starts by saying that the applicant "*went on to say that he saw the people who kidnapped him and that they were members of the MQM*". This seems to correspond to p. 6 of the decision, which refers to cross-examination, although Mr. Kane's recollection (having been there) was that this was said in his direct evidence. The tribunal member said that "*that further contradicts what he had said in his direct evidence at the appeal*", that he did not see them. Mr. Kane described this as a slip by the applicant but it is really up to the fact-finder to take a view on that issue. The fact that he did so in a manner unfavourable to the applicant does not render that finding unlawful.

12. The decision-maker then refers to the applicant's explanation that MQM are the same as the relatives. He said "*that contradicts his previous explanation for inconsistency (that he did not see that they were the relatives of the dead man*)". That is fair comment by the tribunal member.

13. We then come to the most contested clause of the decision, in the second half of the final sentence of para. 4.12, where the tribunal member goes on to say "*and further is an element that did not appear previously in his accounts, where the attackers are identified as the relatives of the deceased (either because he saw them, or by inference as he did not have other enemies*)". It certainly cannot be said that the tribunal member thought that the applicant had never mentioned MQM, because that is acknowledged in the decision itself at para. 4.14. The context of the final comment of the tribunal member at the end of para. 4.12 is that multiple versions of what happened were offered by the applicant. One can argue as to how many versions there were ultimately but it does not seem possible to disagree with the proposition that there were at least a number of them, possibly as many as five:

    (i). In the s. 11 interview the applicant said "*obviously it was them*", which implies that he did not have direct evidence that it was the relatives, but that he knew it was so by inference.
    (ii). In the s. 11 interview he said "*I saw them later, they blindfolded me"* which implies that he positively identified them as the relatives.
    (iii). In his direct evidence to the tribunal he said he did not see the assailants.
    (iv). In cross-examination he said he did not see it was the relatives, in other words, seemingly that he saw the assailants but could not positively identify them as relatives.
    (v). In further cross-examination he said that he saw the assailants and they were members of MQM.

14. The wording of the final half of the final sentence in para. 4.12 of the impugned decision is perhaps not an absolutely optimal model of textual drafting, but the basic point comes across loudly and clearly. The applicant has been changing his story at will as and when that story has been challenged. As far as inconsistencies are concerned, the applicant's various accounts are clearly incompatible with each other and no unlawfulness in the tribunal decision in this regard has been demonstrated. Amid the welter of alternative truths offered by the applicant it is hardly surprising that the tribunal member's account of the inconsistencies could itself be seen on one contestable interpretation as slightly opaque. The blame for that lies with the applicant and the decision certainly should not be condemned under this heading as somehow legally invalid and a nullity.

Ground 1D

15. This ground complains of the tribunal "*Assessing credibility based upon a gut feeling or an inherent implausibility or a further non-core aspect of the Applicant's account, or otherwise acting unreasonably, in that the decision maker explicitly took into account the fact that the Tribunal Member disbelieved the Applicant's account that he paid an agent to*

remove him from Pakistan, in circumstances where the Applicant had a visa to travel to the UK".

16. The allegation of gut feeling or inherent implausibility is not made out. There is no dispute about the general principle that decision-makers should not act on "gut feeling" but as Mr. McDowell correctly and succinctly submits in his written submissions, this "*is a statement of law with no application whatsoever*" in this case. The finding is based on evidence and reasons are articulated.

17. There is no obligation on a decision-maker to focus only on the so-called core aspects of the applicants account. A credibility assessment must take into account all the evidence. Insofar as Cooke J. in *I.R. v. Minister for Justice and Equality* [2009] IEHC 353 (Unreported, High Court, 24th July, 2009) said that reasons must not relate to "*minor matters or to facts which are merely incidental in the account given*", that should not be read as meaning that matters that are minor from the applicant's point of view cannot be a basis for an adverse credibility finding. It is lawful to base such a finding on a non-core aspect. I made the point in *I.E. v. Minister for Justice and Equality* [2016] IEHC 85 [2016] 2 JIC 1505 (Unreported, High Court, 15th February, 2016) that the credibility of an individual in relation to matters that are difficult to verify may be ascertained by reference to his or her credibility in relation to matters that *can* be verified, such as travel arrangements, even if you mightn't call them the "core" story. Credibility is indivisible.

18. The finding that a person who already had a valid visa for the UK did not need to pay a people smuggler (which the decision itself and the statement of grounds unacceptably calls an "agent", a sanitising, normalising term that should long ago have been decommissioned in the context of the criminal industry of smuggling of persons) to take him to the UK was rationally open to the tribunal member and was not an error at all, still less one rendering the decision invalid. On his account, the applicant does not appear to have got great value for money. He paid 13,000 LATs which was said at one stage in the papers to be over €10,000. One might ask why pay a substantial sum for something you can get for free. That remains a legitimate question. Certainly the tribunal member's scepticism was very much open to him.

Ground 1E

19. This ground contends that the decision should be condemned for "*Failing to have regard to or to advert to the Applicant's account given in the section 35 report and instead focussing on isolated aspects of the Applicant's account in arriving at credibility findings".*

20. That seems to assume that failure to discuss narratively the applicant's account is equivalent to failure to consider it. That is not so: see *per* Hardiman J. in *G.K. v. Minister for Justice. Equality and Law Reform* [2002] 2 I.R. 418 at 427. The s. 35 report is specifically referenced at para. 1.3 of the tribunal decision. The tribunal did not focus only on isolated aspects of the applicant's account but even if, counterfactually, it had done so, any decision will narratively focus on elements of the evidence that seem particularly pertinent to the decision-maker. Judges do that when giving judgment so it

would be totally hypocritical of me to criticise others for it. A decision is not unlawful merely because one chooses to call that process a focusing on isolated aspects.

Order

21. From para. 4.2 onwards, the tribunal sets out in a reasoned and detailed manner a series of problems with the applicant's evidence and outlines where aspects of his story were not corroborated, were vague or were otherwise problematic. A number of inconsistencies and omissions in the account are referenced at para. 2.9. Various inconsistencies were put to the applicant at the oral hearing and the tribunal member had the opportunity to see and hear the applicant in reply. There was ample material on which it was open to the tribunal to lawfully reject the applicant's account.

22. The application is dismissed.