[2019] IEHC 700

THE HIGH COURT

JUDICIAL REVIEW

[2018 No. 917 J.R.]

BETWEEN

N.E. (GEORGIA)

APPLICANT

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL, THE MINISTER FOR JUSTICE AND EQUALITY, THE ATTORNEY GENERAL AND IRELAND

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 21st day of October, 2019

1. Anyone who has read Orwell's *Animal Farm* (London, 1945), particularly if they did so at an impressionable age, will have their own candidate for the scene that lives most vividly in the memory. A strong contender on anybody's reading is the episode in Chapter VII where Napoleon has four pigs seized and "*called upon them to confess their crimes".* Having done so, they and other confessing animals "*were all slain on the spot".* Like Orwell's pitiless protagonist, the Department of Justice and Equality in the present case has not altogether appreciated the potential distinction between visiting stern consequences on wrongdoing that officialdom has uncovered, and humanely affording at least some credit in the case of undiscovered wrongdoing that a person voluntarily discloses themselves.

2. The applicant is a Georgian national born in that country in 1978. Her account of persecution in her home country was that she worked as a journalist with a Georgian newspaper and that as a result of that work she attracted the adverse attention of the Georgian authorities. She stated that she had been badly beaten by government agents in or around March, 2004 and continues to suffer serious injuries as a result.

3. On 7th August, 2008, she left her home country and travelled to Italy where she purchased a false Lithuanian passport. She then came to Ireland on 16th August, 2008 on that false passport. She remained in the State without seeking to regularise her status for a period of nearly seven years. As put in the applicant's submissions, *"as the years passed she eventually found the confidence to disclose her true identity and seek protection".* She applied for asylum on 18th May, 2015 under her true identity.

4. She set out details of her facial injuries, stating that her nose was broken and she had to have nose surgery and eye surgery, and that she has no sight in her left eye. She added that "*I miss my parents and my daughter [A] who was 8 when I left her*". A protection interview was scheduled for 22nd December, 2015 and she attended on that date. However, unknown to her in the meantime, notification was sent to her in order to change the date to 24th November, 2015. She states that she never received that letter. Her protection claim was deemed abandoned and was refused by the Minister, and she was so notified on 29th April, 2016. On 21st November, 2016, having sought legal advice, she requested that the notification of the interview be reissued but that was refused on 22nd November, 2016 on the grounds that the Minister's permission was required for a re-

application. On 12th December, 2016, the applicant's solicitors applied for permission to make a re-application under s. 17 of the Refugee Act 1996, and on 16th May, 2017 the International Protection Office replied stating that a new application form was required under s. 22 of the International Protection Act 2015.

5. On 12th December, 2016, the applicant made an application under s. 22 of the 2015 Act and on 9th August, 2017 that application was granted by the Minister. The applicant then attended for interview on 2nd November, 2017 with the International Protection Office and submitted a questionnaire on 22nd November, 2017. She attended an interview pursuant to s. 35 of the 2015 Act on 18th April, 2018. On 3rd May, 2018 the IPO wrote to the applicant stating that her protection claim and her application for permission to remain under s. 49 of the 2015 Act had been refused. While not an issue in the proceedings, the s. 49 decision is a particularly unimpressive document. It holds the applicant's previous false identity strongly against her but fails to acknowledge the very considerable difference between the vast majority of immigration frauds that are detected by or on behalf of the authorities and the small minority of cases where the person concerned voluntarily comes clean. No credit whatsoever is given to the applicant for having freely and voluntarily come forward.

6. On 23rd May, 2018 the applicant submitted a notice of appeal to the International Protection Appeals Tribunal and an oral hearing took place on 30th July, 2018. On 3rd October, 2018, the applicant was written to and informed that the tribunal had rejected the appeal in a decision dated 2nd October, 2018.

Procedural history

7. The applicant received the decision on 8th October, 2018 and the present proceedings were filed on 7th November, 2018. I granted leave on 12th November, 2018, the primary relief sought being an order of *certiorari* of the tribunal decision. A statement of opposition was delivered dated 4th April, 2019, and I have now received helpful submissions from Mr. Garry O'Halloran B.L. for the applicant and from Mr. Anthony Moore B.L. for the respondents.

Grounds of challenge

8. It is convenient to start with ground 2, which contends that "*The IPAT decision is further impugned by reason of its reliance on the credibility finding at para. 8 which unlawfully failed to state any reason as to why the Applicants' explanations for her earlier uncertainty about the dates of publication of her newspaper were rejected or why such uncertainty was of such import as to sunder her claim. Further and in the alternative, the IPAT irrationally elevated it's [sic] finding to centrality in the rejection of the Applicant's protection claim*".

9. When asked at question 38 how often the newspaper she worked on was published, the applicant said "*I don't know. Monday or Friday. I don't know. It is very hard working. I think it was every Monday it was published. I don't know*". At question 39 she said "*I don't know. I think it was Monday. Always my hard days were weekends. Starting the Friday. We were starting the correcting*". Country of origin information states that the

newspaper in question was published on a Monday. On any reasonable view, the applicant gave an approximately correct answer. That is a point which any reasonable decision-maker would hold to be one in her favour, especially given the lapse of time since the occurrence of the events concerned. The fact that this was held against her at para. 4.8 of the decision is simply irrational and unreasonable.

10. The tribunal member was also exercised about the applicant's uncertainty regarding the date of foundation of the newspaper (para. 4.13 of the decision). The country information states that the newspaper was founded in 1992 and when asked about the matter the applicant said at question 36 *"maybe 1996 I don't know exactly it is a very long time before it was a different name and then it started in the new name. Maybe 1998 I think it before"*. Her answer was very roughly correct and on any reasonable view that is a point in her favour. Again, the fact that her inability to state the precise year was held against her by the tribunal member is irrational and unreasonable in the circumstances.

11. Turning now to ground 1, this contends that "*The IPAT erred in law in rejecting the credibility of the Applicant without making any reasonable assessment of the … newspaper staff card when casting grave doubt, at para. 4.8, of the Applicant's claim of having worked for the said newspaper, in consequence whereof her entire claim of facing persecution and serious harm by reason of her journalistic work was sundered. In addition, the IPAT proceeded to rely on the said credibility finding to reject, at para. 4.14, the card as reliable. This card prima facie established the identity of the Applicant and provided objective support to the narrative related by the Applicant, and the IPAT findings are impugned for want of rationality and fair procedures".*

12. In rejecting the attachment of weight to the applicant's identity card, the tribunal member said that it does not contain "*the security features of, say, a passport*". But so what? Work identity documents generally don't. The Courts Service identity document issued to judges, for example, cannot be said to contain "*the security features of, say, a passport".* Should it rationally be disregarded by a decision-maker? If so, someone needs to inform the Courts Service. A test of setting the bar at the level of the security features of a passport in order for a document to be given weight is simply absurd.

13. In this context it is important to note that the identity card produced in this particular case is in a form that is not easily falsifiable. Having seen a very wide range of documents rejected by the tribunal in different cases over a number of years, I can say that the identity card produced here is very different from the sort of documents that are easy to falsify, and potentially could be produced by a home printer, that are often put forward in asylum cases and almost as often rejected. The fact that the identity card was not easily falsifiable was not in any way acknowledged by the tribunal and its decision is infirm on that ground also.

14. Independently, the expressed reason for the tribunal for the rejection was that *"in the face of the adverse credibility findings at paras. 4.8 and 4.13"* the card was being

rejected; but because, as noted above, those adverse credibility findings are irrational and perverse, the rejection of the identity card cannot stand either.

15. Ground 5 contends that the tribunal at para. 4.17 failed to afford any reason for its adverse finding arising out of the applicant's delay in claiming asylum, stating that "*the Tribunal does not accept that this is a reasonable explanation for the appellant's delay in applying for asylum and finds this to be undermining of her claim to have a fear of being persecuted and/or seriously harmed if she is returned to Georgia*". In principle, certainly, a delay in making an asylum claim is a factor, but its weight depends on the context. The typical case is where there is a long delay in claiming asylum and the claim is prompted by some independent change in the applicant's immigration situation. For example, a situation frequently arising is where a student permission granted in the UK expires, and then and only then does an applicant remember that they have been the victim of persecution. Such a claim is typically not advanced in the UK and only made on moving to Ireland. Delay in such a context could legitimately be held against an applicant. Here, however, there is no acknowledgement by the tribunal member that there was no such extrinsic factor. The applicant simply decided to come forward herself with her true identity. In such a context, delay is considerably less damning than where it is coupled with an extrinsic development. That is a distinction which the tribunal member fails to understand, or even acknowledge; and failure to do so is a departure from the correct reasoning process.

16. Ground 6 is somewhat opaquely drafted, but as argued focused on the fact that the tribunal member failed to address evidence that the applicant was a journalist for two other newspapers, [M] LLC and [H] LLC, thus bolstering her claim to have been a political journalist. While it is certainly true that, as a general proposition, any individual item of evidence submitted by an applicant does not automatically call for a narrative discussion, the rejection of the applicant's claim to have been a journalist in the circumstances of the present case *did* call for some acknowledgment of the additional evidence potentially significantly supportive of that account, an account, that for what it's worth, was not particularly problematic on its face.

Conclusion

17. Overall, the fact that the applicant outed herself despite having lived perfectly happily under a false EU identity speaks to a degree of confidence in her own case and status. It certainly reinforces the credibility of her asylum claim on any reasonable view. That was something that was not factored in at all, still less appropriately, either by the tribunal or, for what it's worth, by the Department in the s. 49 decision. Having been in Ireland for eleven years and having come forward voluntarily she is now facing deportation as a next step if her protection claim is not accepted. One wonders in passing where is the incentive for people to tell the truth under such a regime. Returning, however, to the matters that *do* arise for decision, the appropriate order will be one of *certiorari* removing for the purpose of being quashed the IPAT decision and remitting the applicant's appeal to be reconsidered by a different tribunal member.