

**THE HIGH COURT
JUDICIAL REVIEW**

BETWEEN:

SKS

APPLICANT

-AND-

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

RESPONDENTS

JUDGMENT of Ms Justice Tara Burns delivered on 3 November, 2020

General

1. The Applicant is a Hindu national of Bangladesh. He came to this jurisdiction in February 2008, on a student visa which was renewed from time to time. He began working in Ireland as a graduate accountant in 2015.
2. The Applicant married a Hungarian national in April 2015. Arising from this marriage, he was granted temporary permission to remain in the jurisdiction in May 2015, followed by a residence card on 11 November 2015. On 8 December 2015, he was notified that registration of his residence card was deferred because a concern had arisen as to whether his marriage was fraudulent. On 21 December 2015, he was informed that it was proposed to revoke his permission to remain as it was suspected that the marriage was a marriage of convenience and that he had submitted false and misleading information when seeking a residence card. His permission to remain was revoked on 13 May 2016.
3. The Applicant accepts that this marriage was indeed a marriage of convenience. He avers at paragraph 22 of his affidavit that the false statements made by him regarding this marriage of convenience were "regrettable". As an aside, it is a remarkable understatement by the applicant to describe fraudulent utterances by him in support of a sham marriage of convenience as "regrettable".
4. On 18 July 2016, the Applicant was notified that it was intended to issue him with a deportation order. An examination of his file pursuant to s. 3 of the Immigration Act 1999 was conducted, which noted under the heading of "Refoulement", that he had never made an application for asylum and had not made any representations regarding the prohibition of refoulement. On 9 June 2017, a Deportation Order issued in respect of the Applicant.
5. On 21 June 2018, the Applicant made an application for International Protection claiming a fear of persecution in Bangladesh for reasons of religion and membership of a particular social group. On 27 June 2018, a s. 13(2) interview took place. The Applicant completed an Application for International Protection Questionnaire on 17 July 2018 and on 17 April 2019, a s. 35 interview of the Applicant by an IPO took place who determined on 11 May 2019 that the Applicant should not be granted protection status.

6. The Applicant appealed to the first Respondent on 27 June 2019. An oral hearing took place on 24 October 2019. The first Respondent determined that the Applicant was not entitled to refugee or subsidiary protection and affirmed the recommendation made by the IPO.
7. Leave to seek Judicial Review by way of an order of certiorari quashing the decision of the Respondent was granted by Humphreys J on 13 January 2020.

The Claim for Protection

8. The Applicant's claim for protection was based on the following asserted facts:-
9. As a child he was harassed by Muslims at school because of his Hindu religion. Arising from this, his parents decided to relocate from their village to Dhaka in 2000. After moving, he met two of the boys who used to harass him in the street. They insulted him. In 2008, because of these experiences, the Applicant's parents organised a student visa for him in Ireland.
10. The Applicant returned to Bangladesh on four occasions between 2010 – 2015. On the last visit in February 2015, himself and his father met a man they knew from their old village. The man asked why the Applicant had not gone to the village. The Applicant left Bangladesh on 21 February 2015. Subsequently, the police came to his parent's house looking for him in relation to an alleged kidnaping on 25 February 2015. A complaint of kidnaping BU's son, a former neighbour from the village, had been made against the Applicant. The Applicant asserted that BU was involved with the Jamayet Islam political party. BU demanded money from the Applicant's father in return for these charges to be dropped. The Applicant's father complained to the authorities about this blackmail, but nothing happened. Charges were preferred against the Applicant. The Applicant sent a copy of his passport stamp, which showed that he had left Bangladesh on 21 February 2015, to his father to show to the lawyer who had been engaged on his behalf. Nonetheless, the Applicant claimed that he was convicted of the kidnaping charge on 11 September 2019.
11. During the currency of the kidnaping investigation, the Applicant's parents had moved back to the village in 2016. On 30 October 2016, they were subjected to an attack by BU and others. Valuables were stolen from them. A complaint was made to the authorities, but nothing happened. On 2 February 2017, another attack took place. Again, valuables were stolen. On this occasion, the Applicant's father was assaulted and was admitted to hospital. A further complaint was made but nothing happened. On 20 January 2018, the Applicant's cousin went missing. A ransom was paid for his return, but he has not been seen since. On 2 September 2018, the Applicant's parents' house was subject to an arson attack. The Applicant's father was badly injured and required hospitalisation.
12. The Applicant's fears were stated by the first Respondent to be: *"The Applicant fears returning to Bangladesh because he will be placed in prison until he can prove he was not in the country at the time of the kidnap and then if he returns to his village his parents will suffer more as it will be presumed that he had cash as he returned from Europe."*

13. A large quantity of documentation was submitted by the Applicant for the perusal of the IPO and the first Respondent to include documents asserted to be court documents relating to the kidnapping charge. The report of the first Respondent states that *"all of the documentation has been fully considered"*.

Decision of the first Respondent

14. The first Respondent found a number of aspects of the Applicant's claim not to be credible, namely:-

- that he was threatened while living in Bangladesh;
- that he was accused of kidnap by members of the Jamayet Islam political party;
- his "lawyer's" letters in respect of the asserted kidnapping charge;
- that his family were targeted by members of the Jamayet Islam political party.

The Applicant's claim that he was threatened while living in Bangladesh

15. The first Respondent, in assessing this part of the Applicant's claim, recited portions of the question and answer session conducted with the Applicant in the course of his s. 35 interview. The first Respondent also cited some questions which it had raised itself with the Applicant. The matter was dealt with in the following manner by the first Respondent:-

"The Presenting Officer questioned the Applicant regarding the threats he used to receive while he was in school in Radhangar village. The Applicant confirmed that those who threatened him went to different schools – the madrassa – and that they came to his school at lunchtime to seek others to pray with.

The Presenting Officer also questioned the Applicant regarding M and H, who the Applicant met in Dhaka. The Applicant confirmed that he was about nine years of age and the boys were fourteen or fifteen years old. The Presenting Officer queried how they knew where the Applicant was in Dhaka. The Applicant explained that his father returned to the village on a regular basis and that relatives and neighbours used to call to their house in Dhaka. The Applicant said that "I don't know exactly how they know where we were living in Dhaka." The Presenting Officer pointed out that the relatives and neighbours would know that the Applicant was in fear of the boys and so not disclose his whereabouts. The Applicant replied "they could get it from several sources.. if my father wants to get the post...many different sources...definitely not my parents"

The Presenting Officer asked where exactly the boys saw the Applicant. The Applicant said "fifteen minutes from my home... they saw me on the street". The Presenting Officer said there are over 10 million people living in Dhaka. In response the Applicant said "I don't know... I saw them on the street... it could be a coincidence"

The Presenting Officer asked why these boys would need to make the Applicant's life so miserable as he had never done anything to them. The Applicant replied "there is not money reason but it could be their belief." The Presenting Officer said that his claim made no sense, the boys had to travel 120 kilometres, quite a distance. The Applicant replied "Akhaura is a junction and it is not hard to get to Dhaka."

The Tribunal asked the Applicant about his response to question 62 in his application for International Protection Questionnaire where he had written: "In desperation, my parents arranged my higher study in Grafton College in 2008 and thereby I escaped the Muslim activists" The Tribunal said that this appeared to be a gross exaggeration of the situation. The Applicant replied "the fear was that I don't have many friends in the country.. not feeling security also in Dhaka...another reason why they sent me to Ireland for freedom"

The Tribunal also asked the Applicant about his brother who also lives in Ireland and whether he had come here purely to study. The Applicant replied that "also parents not feeling he secure and also higher education"

16. The first Respondent concluded that on the basis of the evidence heard, it was not credible that the Applicant was threatened while he was living in Bangladesh. Counsel for the Respondent, before this Court, submitted that the first Respondent characterised the Applicant's evidence as "grossly exaggerated". That is not quite accurate. The first Respondent characterised the Applicant's response to a specific question in the questionnaire, recited above, as a gross exaggeration of the situation.

The Applicant's claim that he was accused of kidnap by members of the Jamayet Islam political party

17. In assessing this part of the Applicant's case, the first Respondent set out questions asked by it and answers given by the Applicant as follows:-

"The Tribunal questioned the Applicant regarding FS and his link to the kidnap charge. The Applicant said " he is also in the same political party and if you look at the case he is also a witness in the case" The Applicant continued " he might tell BU that I am in Bangladesh... so that if they put a charge against me I can't fly out of the airport" The Tribunal queried what was the perceived benefit of the Applicant not flying out of the country. He replied "so that they get ransom money from my father"

The Tribunal asked the Applicant about BU who the family had not seen since they left the village fifteen years before. The Applicant explained that his father returned to the village monthly to collect rent from a few houses he owned there. The Tribunal asked the Applicant why BU would have made this false charge against him. The Applicant replied "only for money extraction"

The Tribunal asked the Applicant how the police knew where to look for the Applicant as the family were living in Dhaka in 2015. The Applicant said that his

parents were in Akhaura at the time, they have a few houses there which his parents were "fixing" The Applicant confirmed "the police never came looking in Dhaka"

18. The first Respondent concluded that on the basis of the evidence heard, it was not credible that the Applicant was the subject of a kidnap charge.
19. The first Respondent then conducted an examination of the "lawyer's" letters which is set out hereunder and found that these letters were not probative of a kidnapping charge. Having regard to those findings, it then found that court documents produced by the Applicant were not probative of the kidnapping charge.
20. Having regard to the findings which it made with respect to the asserted kidnap charge, the "lawyer's" letters and the court documents, it found that it was not credible that the Applicant was falsely accused of kidnap by members of the Jamayet Islam Party.

The "lawyer's" letters

21. Three letters, allegedly from the Applicant's lawyer who represented him in respect of the asserted kidnapping charge, were considered by the first Respondent. They were dated 1 August 2018, 25 June 2019 and 3 October 2019. The first Respondent determined that these letters were not probative of the asserted kidnap charge against the Applicant *"on the basis of the content only of the three letters."*
22. The relevant portions of the letter of 1 August 2018 reads:-

"Legal Opinion

NS met with me to give a copy of the case against his son SKS...and asked for an opinion on the case. In that context, I collected a copy of the case. Opinions on this case are- on 25/2/2015 case was file by Penal Code 354/368/34 in Akhaura Thana. Case no- 09(02)/15. On 29/06/2015 date investigative officer submit charge sheet by accusing SKS. As a result, the court issued the arrest warrant. Police are searching to arrest him. Police arrested eight of nine convicts in different times. The court has issued P&A (Quick Warrant) against SKS the only fugitive in the case. In this case, SKS is likely to be jailed for lifers or 10 years with hard labor. More learned from NS that currently SKS request shelter in Ireland. I think it timely and safe step, for SKS no safe way to return to Bangladesh"

23. The first Respondent made the following negative observations regarding this letter: there was no discussion regarding the possibility of defending the charge in view of the fact that the Applicant was not in the country on the date of the alleged kidnapping; the legal opinion was only obtained after the Applicant's application for international protection was made; the date of the legal opinion was over three years after the kidnap charge was made against the Applicant.

24. The relevant portion of the letter dated 25 June 2019, which post-dated the s. 35 interview wherein the Applicant raised the issue of providing his stamped passport to his father, reads:-

"I am writing to you to let you know that you have been accused in the above mentioned case. I have already collected relevant documents of the case and sent those to you. After that, you have sent me a copy of your passport to me through your father to relieve you from the stated charge. You were not present in Bangladesh when the case was filed and your passport copy proves this fact. However, it is not possible for me to prove you innocent if you are absent from the honourable court. The court would have freed you from the accusation/charge if you were present in the court and submitted enough proof in support of your innocence. However, you didn't surrender in time and didn't urge to prove you innocent. Therefore, the court was convinced that you were associated with the crime. The court has followed relevant procedures and started to proceed the case further. The case is at the last stage now. The verdict will be announced soon. In the above mentioned case, either the verdict will be lifetime imprisonment or you will face 10 years of rigorous imprisonment.

I pray for you to remain safe and healthy"

25. The first Respondent made the following negative observations regarding this letter: that the letter was dated over four years after the alleged kidnapping; there was no reference to any attempt being made by the lawyer to produce the passport stamp before the trial court; the reference to "*proof in support of your innocence*" does not indicate what other evidence there was in terms of establishing the Applicant's innocence. The first Respondent also commented that the underlined portion of the letter overstated the effect of having the passport stamped prior to the alleged kidnapping date.
26. The relevant portion of the letter dated 3 October 2019 reads:-

"Mr SKS, take my love and greetings. I have already collected and given the duplicate copy of your case to your father NS, as he came to see me. Recently, your father is physical ill. So, your mother TRS came to me to collect your duplicate copy of the verdict of the case. With great sorrow I am informing you that, the verdict of the case has been declared at the premises of Honourable 3rd District & Sessions Judge Court, Brahmanbaria on 11.09.2019. In the verdict of the case, the Honourable Court has convicted you under the section 364/368/34 of Penal Code. The court has sentenced you for fourteen (14) years of rigorous imprisonment. The court has also issued a conviction warrant against you. The honourable court has published notices in the newspapers to give you a chance to be present at the court and deliver your speech. Thus, the court has completed all the legal processes and declared the verdict in this case. After going through the copy of the verdict in the case, I understand that no one could definitely prove any charge against you. However, you have been absent throughout this time and thus the court thought you were associated with the described incident in this case. So, the court has

sentenced the highest punishment against you according to the section of the case. So, the police of Bangladesh are searching for you in order to arrest you. You can be present in court within 60 (sixty) days of the declaration of the verdict and appeal to the high court. As you were absent in the lower court, I believe the high court will also sustain the verdict of the lower court which was issued against you. So, I think it is safe & logical for you to stay in the country of human rights, Ireland”

27. The first Respondent made the following negative observations regarding the letter: no reference is made to the closing date for making an appeal, nor what would be required by the High Court to enable the Applicant appeal the conviction; the final sentence is not one which one would expect a defence lawyer to write to their client.
28. Arising from these considerations, the first Respondent was of the view that these letters were not probative of the Applicant being charged and convicted of the asserted kidnapping charge.

The Applicant's family was targeted by members of the Jamayet Islam political party

29. The first Respondent dealt with the Applicant's claim that his family were targeted by members of the Jamayet Islam political party in the following manner:-

“The tribunal asked the Applicant why his parents moved back to the village in 2016 when BU had caused so much trouble. The Applicant replied “there was no physical attack before 2016 so although they were spending some money on local religious programmes my parents went to Akhaura because it was so expensive to live in Dhaka, rent and living costs.” The Applicant continued “[my father] also had high blood pressure and diabetes,, my brother was looking after the business but not doing so well so had to stop.”

The Tribunal confirmed with the Applicant that BU lived two to three houses away from the family house in the village. The Tribunal commented that it was difficult to believe that his parents would return to the village, to the stress which could affect his father's health, over a cost issue. The Applicant replied “also land from grandfather... there is an emotional issue as well.”

The Tribunal asked the Applicant why after two attacks on the family home his parents stayed in the village. The Applicant replied “they can't move in Dhaka because of the costs ... my father was in the 1971 Liberation War so he want his rights in the country... I don't want to be the reason my parents suffer.”

The Tribunal asked the Applicant how he was the reason that his parents suffered. He replied “they supported me till I was fifteen and did not pay so they suffer.”

The Tribunal questioned the Applicant regarding the 2017 incident at the family home in the village when the deeds of the family home were taken. The Applicant confirmed that “house deed never returned” and that “nothing happened” regarding the deeds.

The Tribunal asked the Applicant about the many documents he had submitted and in particular about the complaints his father made regarding the demands for money that he had received. The Applicant said that he did not have these "because maybe I misplaced or lost them ... I couldn't ask to get them again.. I didn't want to make more trouble ... everything he got in the police station he had not have a good experience."

The Tribunal questioned the Applicant regarding the kidnap of his cousin in 2018 and how it was possible to link this to the BU. The Applicant said that "my parents talk to my uncle and he pay ransom to the same group ... my uncle made a general complaint to the police with no names." The Tribunal asked how it was possible to link the kidnap to BU. The Applicant replied "I don't know exactly know."

30. On the basis of the evidence heard, the first respondent found that it was not credible that the Applicant's family were targeted by members of the Jamayet Islam political party.
31. The Applicant submitted documentation to the first Respondent relevant to this part of his claim, namely:- testimony letters; newspaper articles relating to alleged attacks on his parent's house and the kidnapping of his cousin; medical reports and photographs relating his father's alleged injuries and complaints made by his father to the police.
32. With respect to the two testimony letters, which referred to the Applicant being convicted of kidnapping and his cousin having been abducted, the first Respondent noted that a number of identical sentences were contained in each letter. On the basis of this, and the earlier conclusions made by the first Respondent regarding the "lawyer" letters, the first Respondent found that these letters were not probative of the events claimed to have occurred.
33. With respect to newspapers articles which referred to attacks on his parent's house and the asserted kidnapping of his cousin, the Applicant was unable to give the name of the paper from where the articles emanated. In light of this inability, and the earlier conclusions made by the first Respondent regarding the "lawyer" letters, the first Respondent found that these letters were not probative of the events claimed to have occurred.
34. With respect to the medical reports relating to his father and the complaints to the police allegedly made by his father, the first Respondent found that having regard to his earlier conclusion regarding the "lawyer" letters, these documents were not probative of the events claimed to have occurred.
35. Accordingly, the first Respondent found on the basis of the evidence heard and the conclusions it had reached regarding the documentary evidence submitted by the Applicant that it was not established that the Applicant's family was targeted by members of the Jamayet Islam political party.

Grounds of Judicial Review

36. The Applicant seeks an Order of Certiorari quashing the decision of the first Respondent on the grounds that:-

- a) the first Respondent failed to give reasons for its conclusions on credibility;
- b) issues of fairness arose with respect to an internet search conducted by the first Respondent regarding the lawyer who was supposed to have acted for the Applicant in the asserted kidnapping charge;
- c) the first Respondent's conclusions regarding the lawyer's letters, submitted by the Applicant, was speculative or irrational.

Failure to give reasons for the conclusions on credibility

20. Counsel for the Applicant submitted that the first Respondent failed to give any or any adequate reasons for the conclusion that the Applicant's claim was not credible.

21. The duty to give reasons is so well established that perhaps an engagement with the essence of the duty is sometimes overlooked. In *Connelly v. An Bord Plenala* [2018] IESC 31, Clarke CJ set out, at paragraph 5.4 of the report, the purpose behind the duty to give reasons which illuminates a decision maker's duty in this regard. He stated:-

"One of the matters which administrative law requires of any decision maker is that all relevant factors are taken into account and all irrelevant factors are excluded from the consideration. It is useful, therefore, for the decision to clearly identify the factors taken into account so that an assessment can be made, if necessary, by a court in which the decision is challenged, as to whether those requirements were met. But it will be rarely sufficient simply to indicate the factors taken into account and assert, that as a result of those factors, the decision goes one way or the other. That does not enlighten any interested party as to why the decision went the way it did. It may be appropriate, and perhaps even necessary, that the decision make clear that the appropriate factors were taken into account, but it will rarely be the case that a statement to that effect will be sufficient to demonstrate the reasoning behind the conclusion to the degree necessary to meet the obligation to give reasons.

Having considered a number of cases in this area, Clarke CJ continued at paragraph 6.15 of the judgment:-

"Therefore it seems to me that it is possible to identify two separate but closely related requirements regarding the adequacy of any reasons given by a decision maker. First, any person affected by a decision is at least entitled to know in general terms why the decision was made. This requirement derives from the obligation to be fair to individuals affected by binding decisions and also contributes to transparency. Second, a person is entitled to have enough information to consider whether they can or should seek to avail of any appeal or to bring judicial review of a decision. Clearly related to this latter requirement, it also appears from

the case law that the reasons provided must be such as to allow a court hearing an appeal from or reviewing a decision to actually engage properly in such an appeal or review."

22. Dealing with a situation where the reasons for a decision are not apparent on the face of a document issuing a determination, Clarke CJ referred to the decision of Fennelly J in *Mallak v. Minister for Justice* [2012] IESC 59 wherein Fennelly J stated at paragraph 66 of the judgment:-

"The most obvious means of achieving fairness is for reasons to accompany the decision. However, it is not a matter of complying with a formal rule: the underlying objective is the attainment of fairness in the process. If the process is fair, open and transparent and the affected person has been enabled to respond to the concerns of the decision maker, there may be situations where the reasons for the decision are obvious and that effective judicial review is not precluded."

23. In *YY v. Minister for Justice* [2017] IESC 61, O'Donnell J., made the following remarks regarding the question of whether adequate reasons had been given for the issuance of a deportation order, at paragraph 80 of the report:-

"I consider that a court should be astute to avoid the type of over-refined scrutiny which seeks to hold civil servants preparing decisions to the more exacting standards sometimes, although not always achieved by judgements of the Superior Courts. All that is necessary is that a party, and in due course a reviewing court can genuinely understand the reasoning process."

Having analysed the reasons given in that case, O'Donnell J continued:-

"I cannot have the level of assurance that is necessary that the decision sets out a clear and reasoned path, and moreover one that was not flawed or incorrectly constrained by unjustifiable limitations of irrelevant legal considerations."

24. Applying this analysis of the law to the decision of the first Respondent regarding the Applicant's credibility: while the decision of the first Respondent in this matter does not engage in an analysis of the oral evidence, but rather recites portions of it, it cannot be said that the reasons for the decision are not discernible. It is abundantly clear that the first Respondent simply did not find the Applicant's evidence credible and specifically the evidence which is recited in the decision. A more detailed analysis of the evidence would clearly be preferable but in terms of the ultimate question as to whether it is discernible why the first respondent did not find the applicant credible, the answer is that it is so discernible: the applicant simply was not believed on *all* of the evidence which was set out in the first respondent's decision.
25. With respect to the documentary evidence, a similar complaint cannot be made regarding the reasons given. The first Respondent engaged in a detailed assessment of the

documentary evidence and provided a reasoned decision as to why such evidence was not probative of the Applicant's claim. It is also clear that the first Respondent's determinations regarding the documentary evidence was then considered by it when assessing the Applicant's credibility on whether he had been falsely accused of kidnap by members of the Jamayet Islam Political Party and whether his family were targeted by members of the Jamayet Islam Political Party.

26. Accordingly, I do not accept that there has been an inadequacy in the reasons given by the first respondent regarding its conclusions on the Applicant's credibility.

Conclusions on "Lawyer's" Letters are irrational or speculative

27. Counsel for the Applicant submits that the first Respondent's consideration of the "Lawyer's" letters, was an unfair analysis of the three letters; that the first Respondent engaged in conjecture and speculation about what one might expect to find in a professional advisory letter of this nature. Alternatively, it is submitted that the first Respondent's assessment of the three letters was irrational.
28. The first Respondent's analysis of the three letters most certainly is not irrational. None of the negative observations made by the first Respondent, which are set out above, are irrational in the sense that no reasonable decision maker analysing this material could have been of this view. All of the negative observations made by the first Respondent were open to it and are based on a reasonable assessment of the content of the letters.
29. With respect to the first Respondent engaging in speculation or conjecture about the content of the letters, I do not accept this to be the case. The letters were produced by the Applicant in support of his case. Just as with oral evidence, the fact that these letters exist, does not mean that the first Respondent must simply accept them. They are evidence in the case and as such they must be analysed by the first Respondent to determine whether they are credible, whether they can be relied upon, what weight can attach to them. In carrying out that exercise, the first Respondent, must of necessity determine what one would reasonably expect to find in a professional advisory letter of this nature. Clearly, in carrying out that task, a level of perfection cannot be required: instead the test must be what is reasonable to expect such a letter to contain having regard to the nature of the professional advice being administered.
30. None of the negative observations made by the first Respondent are too exacting, all of them are reasonable and are what one would expect to be addressed by a professional having regard to the nature of the advice being given.
31. Accordingly, I do not find any error on the part of the first Respondent in the manner it analysed the three letters from the "lawyer".

Unfair internet search for the Applicant's lawyer

32. The Applicant asserted that an internet search conducted by the first Respondent in respect of the lawyer who was supposed to have represented the Applicant at the kidnapping trial, was unfair as the search was conducted in English rather than in Bengali. At the hearing before me, counsel for the Applicant did not place too much emphasis on

this issue. This was a correct approach, as the decision of the first Respondent, while noting that such a search did not yield results, made clear that his decision regarding the letters was on the "*content only*" of the letters. Accordingly, while this issue is referred to by the first Respondent, it is ultimately not a matter which it took account of.

33. I therefore refuse the Applicant the relief sought and make an order for costs in favour of the Respondents.