

**THE HIGH COURT
JUDICIAL REVIEW**

[2022] IEHC 244
[Record 2020/586/JR]

BETWEEN

M.I.A.

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Ms. Justice Bolger delivered on the 27th day of April, 2022

Introduction

1. In these proceedings the applicant seeks to impugn the decision of the respondent of 29 June 2020 that the applicant should not be given a declaration of refugee status or a declaration of entitlement to subsidiary protection within the State.
2. The applicant summarises the issues succinctly in his legal submissions as follows:
 - (i) 'Whether the First Name Respondent (hereafter "the Tribunal") erred in law in its assessment of [the] Applicant's credibility by making material findings in respect of same that are irrational in a legal sense at paragraphs 4.3.10 and/or 4.3.12 and/or 4.3.17.'
 - (ii) 'Whether the Tribunal erred in law by not carrying out an assessment of the Applicant's claim in accordance with its function and duty under the International Protection Act, 2015.'

Whilst the applicant identified three of the respondent's findings, he withdrew his challenge to the findings at 4.3.10 and focused solely on the findings made at para. 4.3.12 (the 'hospital document issue') and para. 4.3.17 (the 'father issue').

The applicant's challenges

3. The applicant contends that as his appeal to the respondent was a full de novo appeal, the respondent was obliged to consider a hospital document which he furnished after the s.39 decision. The applicant contends that the respondent fell into an error of law in its assessment of the document and/or its failure to give it any consideration on the stated basis that forged documents from Pakistan are "commonplace".
4. The applicant criticises the respondent for having made an irrational material finding that the applicant's failure to mention his father's presence at the incident grounding his claim was inconsistent with an earlier claim he had made.

The respondent's response

5. The respondent stands over its findings on credibility and urges the court to read the decision as a whole in accordance with the I.R. principles (from the decision of Cooke J in *I.R. v. Minister for Justice Equality and Law Reform* [2009] IEHC 510, [2015] 4 I.R. 144). The respondent identifies eight concerns on credibility in its decision, only two of which

are challenged by the applicant. The respondent contends that the six unchallenged concerns outweigh any error that may have occurred (which error is denied by the respondent) and relies on the decision of the Court of Appeal in *B.W. (Nigeria) v. Refugee Appeals Tribunal* [2017] IECA 296. The respondent contends that the two challenged concerns (the hospital document and the father issue) followed a detailed consideration of the documentation and evidence and that reasons for those concerns and for the respondent's findings on credibility are set out in the decision. The respondent cites the five questions formulated by MacEochaidh J. in *R.O. v. Minister for Justice and Equality* [2012] IEHC 573 which it says are all answered in the affirmative in this case.

Background

6. The Applicant is a national of Pakistan, born on 5 July 1982. He applied for international protection in this State under the Refugee Act, 1996 on 5 April 2016, and submitted a completed application questionnaire dated 1 April 2016, which was received by the Office of the Refugee Applications Commissioner (the predecessor in title to the International Protection Office) on the 20 April 2016. By virtue of the International Protection Act, 2015 coming into force on the 30 December 2016, he was obliged to complete a further Application for International Protection Questionnaire, which was completed on 11 October 2018 and received by the International Protection Office on 15 October 2018.
7. In the questionnaire the applicant referred to a family dispute in which he claimed he had been threatened by his cousin, that his cousin would kill him if he returned to Pakistan and that his cousin had tried to kill him. He was asked if he had documentation and he replied that he had education documentation which he would obtain. He made no reference to medical documentation at that time.
8. The applicant's section 35 interview took place on 29 March 2019 during which he described being attacked and injured by his cousin for which he was treated in hospital. He said he explained the situation to his father after the alleged attack. He was asked if he had a report from the hospital or photographs of his injuries and he said he did not because he did not have a phone at that time.
9. A recommendation was made refusing the applicant refugee status or subsidiary protection.
10. On 15 August 2019 the applicant submitted a notice of appeal to the Tribunal against the recommendation that he should not be given a refugee declaration or a subsidiary protection declaration. The applicant furnished a letter from the hospital dated 8 September 2019 and explained the delay in furnishing the document as due to having only recently received it from his brother-in-law.
11. The applicant's appeal was heard by the Tribunal on 5 December 2019, with the assistance of an Urdu interpreter. At the Tribunal hearing the applicant mentioned for the first time that his father was present at a heated discussion he had had with his cousin the day before his alleged assault.

12. By decision dated 29 June 2020, the Tribunal affirmed the recommendation that the applicant should not be given a refugee declaration or a subsidiary protection declaration. The Tribunal identified eight separate concerns about the applicant's credibility, two of which are now challenged by the applicant; (i) issues arising from the hospital document and (ii) from his account of his dealings with his father.

13. In relation to the hospital document the decision states at para. 4.3.12 and 4.3.13:

"However, the assessment of the credibility of that document must have regard to when it was submitted. It was not submitted until after the s.39 report had issued and was submitted prior to the Tribunal hearing. The only explanation offered was that he had only received it from his brother recently. However, this ignores the fact that he was expressly asked in the s.35 interview if he had a report from the hospital or photos of his injuries but noted only that he didn't have a phone at the time; he did not note that he could get a medical report but rather attempted to explain why he was unable to submit any corroborative documents. While he also previously stated that he had lost documentation, that does not explain why he did not say in his s.35 interview that he would be able to get a report from the hospital in question. It also ignores the fact that in his initial refugee questionnaire he stated that "I have got copies of educational documents only. I have asked my family to send me. They will send me and I will provide you" (refugee questionnaire, p.7 q.20). Not only does this not refer to the possibility of getting medical documents, it specifically notes that the Appellant only has educational documents".

14. Paragraph 4.3.14 of the decision states the Tribunal must have regard to the Country of Origin Information (COI) in respect of false documentation in asylum claims. The decision quotes the Australian Department of Foreign Affairs and Trade Country Information Report of 20 February 2019, as referred to in the UK Policy and Information Note:

"document fraud is widespread for forms of documentation not issued by a competent central authority. Types of documents historically found to be fraudulent in Pakistan include, but are not limited to, documents regarding academic qualifications such as degrees and transcripts, bank statements, agreements, references, and ownership deeds... FIRs use standard forms with the relevant information written in by hand, and are relatively simple to counterfeit. Reports exist of police accepting bribes to verify fraudulent FIRs".

At paragraph 4.3.15 the decision states that while this COI, solely of itself, does not cast doubt on the credibility of the medical letter submitted from Jalal Pur Jattan Hospital, it is a matter which must be considered when assessing the credibility of a claim that already has credibility concerns, in particular where the letter was only submitted after the s. 39 report. It noted that the appellant was unable to provide any reports or hospital documentation to support his claim.

15. In relation to the applicant's dealings with his father, the decision states that the appellant has been vague and non-specific in respect of the incidents in Pakistan. The decision highlights that the applicant did not mention in his section 8 interview, his questionnaires or his section 35 interview that his father was in Pakistan when the first threats were made to the applicant by his cousin. It was at the Tribunal hearing, for the first time, that the appellant mentioned his father was also present. His explanation for this was that his father was on vacation in Pakistan at the time. In his section 35 interview, he stated that "I spoke with my other brothers and we tried to build another home on that land" and that later, after mentioning the alleged incident outside the courthouse, "[t]he whole story I told my father and then he decide that I should leave the country" (s. 35, p. 8, q. 32). The decision says that these accounts are inconsistent with the applicant's earlier claim and that the applicant's explanation, that his father was on vacation, did not explain why he said in the section 35 hearing that he explained the whole situation to his father after the alleged attack. According to the decision, the appellant would not have needed to explain "the whole story" to his father if his father was in Pakistan when the appellant's uncle first raised any issue in respect of the land.
16. Further into the decision at 4.3.45 and 4.3.46 the respondent sets out eight separate concerns it had in relation to the applicant's credibility and identifies why these concerns exist. Two of the concerns, being the subject of this appeal, merit quotation:

"Secondly, the Appellant has been inconsistent in respect of why he did not have documentation from Pakistan in respect of his injuries and only submitted medical document from Pakistan after the s. 39 report had issued, in particular where he earlier stated that he only had educational documentation that he could send from Pakistan, even allowing for the fact English is a second language. This also undermines the credibility of his claim. Thirdly, the Appellant has been inconsistent in respect of where his father was at the time of the issues the Appellant allegedly suffered in Pakistan; it is not consistent to say that his father was there when the issues first arose and then to say in his s. 35 interview that he told his father the "whole story" before his father advised him to leave Pakistan. This also undermines the credibility of his claim, even allowing for the fact English is a second language".
17. The decision concludes, on the benefit of the doubt, that while it might have been appropriate to say that the appellant's general credibility had been established if there were one or two minor inconsistencies or credibility issues, in this case there were several issues going to the core of the appellant's claim. Even making allowance for the fact that English is his second language and for the inconsistencies which can arise in a credible claim, as noted in the UNHCR handbook, the appellant's general credibility cannot be said to have been established. Accordingly the decision concluded that it was not appropriate to give the appellant's claim the benefit of the doubt.
18. The Tribunal therefore concluded that the applicant's claim was not credible.

The hospital document

19. The applicant criticises the respondent for failing to consider the content of the document, for disregarding it by reference to when it was submitted and for rejecting the document on the basis that forged documents are commonplace in Pakistan.
20. I do not consider these criticisms represent a fair analysis of the respondent's treatment of this document. The respondent's conclusion about the applicant's inconsistencies *vis-à-vis* the hospital document was by reference to *when* he furnished it, set against the backdrop of what he had said in his questionnaire when he was asked about the existence of any documentation. The respondent set out its concerns and why it had those concerns. The respondent also had regard to COI documentation in respect of false documents in Pakistan, which it said at para. 4.3.15 must be considered when assessing the credibility of a claim that already has credibility concerns.
21. The respondent has urged on the court the need to read its decision on credibility as a whole, in accordance with the I.R. principles and in particular the eighth principle thereof which states that

"when subjected to judicial review, a decision on credibility must be read as a whole and the court should be wary of attempts to deconstruct an overall conclusion by subjecting its individual parts to isolated examination in disregard of the cumulative impression made upon the decision maker especially where the conclusion takes particular account of the demeanour and reaction of an applicant when testifying in person".
22. If the two concerns the subject of the applicant's challenge are flawed, the respondent relies on the decision of the Court of Appeal in *C.W. v. Refugee Appeals Tribunal & Ors.* [2017] IEHC 296 in arguing that any flaw or error is overwhelmed by the other six correct concerns identified by the respondent which the applicant does not challenge.

"However, even where there is a single fact, which is incorrect, within a decision as to credibility reached on a cumulative basis, or where the decision maker has failed to take into account some material fact, or where no opportunity was provided to the applicant to comment upon some matter of material concern to the decision maker upon which in part the adverse credibility finding was based that may not of itself be sufficient to justify setting aside the overall decision as to credibility/ It may be that the flawed fact is simply overwhelmed by the other correct facts such that the decision remains tenably sustained when read in the round, and therefore ought not to be quashed".
23. The respondent's main concern *vis-à-vis* the hospital document was the timing of its submission. That, combined with the applicant's answers in his questionnaire to the effect that he had no documentation other than education documentation which he would obtain, led the respondent to question the applicant's credibility. That does not mean that the document was not adequately considered because it was furnished at a late stage. Therefore I do not consider the issues raised by the applicant in relation to the full *de*

novo appeal to which he is entitled (as per Charleton J in *M.A.R.A. (Nigeria) (infant) v. Minister for Justice and Equality & Ors.* [2015] IR 561) to be of assistance to him.

24. The respondent did consider the document. It also considered the timing of its production. The respondent identified its concerns in relation to credibility and why it had those concerns. The respondent did not fail to consider the document as the applicant contends.
25. I do not consider the flaws of the type identified by O’Faherty J in *J.A. v. Refugee Appeals Tribunal* [2015] IEHC 342 can be identified in this case. Firstly, the hospital document was not central to the applicant’s case and indeed did not merit any mention in the applicant’s questionnaire or his s.35 interview. Secondly, the respondent did not make a finding that the document was falsified, fake or contrived.
26. If I am wrong in that, I am satisfied the respondent gave a sufficient basis for its findings relating to the hospital document, in accordance with its obligations as identified by MacEochaidh J in *Sunan Barua v. Minister for Justice Equality and Law Reform* [2012] IEHC 456 as follows:

“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 would seemingly supports the applicant’s story as discounted, rejected or dismissed” (at para. 27). A further analysis of the need to state reasons for a finding can be seen in *I.R. v. Minister for Justice Equality and Law Reform* [2009] IEHC 510, [2015] 4 IR 144, Cooke J stated: “Where, as here, documentary evidence of manifest relevance and of potential probative force is achieved and relied upon the Tribunal member is under a duty in law to consider it and if it is discounted or rejected as unauthentic or unreliable or otherwise lacking probative value, there is a duty to state the reasons for that finding” (at para. 31).

The father issue

27. The applicant contends that the respondent erred in law in its assessment of the applicant’s credibility and made an irrational finding at para. 4.3.17 in criticising the applicant for not having mentioned in his questionnaire or his s.35 interview that his father was in Pakistan when threats were made to him the day before the court incident.
28. The applicant’s grounds of claim assert that the respondent relied on the applicant’s failure to mention his father’s presence at the incident outside the courthouse. The applicant accepts that this was not accurate but seems to maintain a claim that the respondent’s findings were irrational. I do not accept that they were. The respondent identified why it had concerns about the applicant’s inconsistencies in his account of his father’s location at the time when the issue first arose. Whilst para. 4.3.46 does not identify what the respondent was referring to in relation to “when the issue first arose”, it is clear from the respondent’s accounts of the applicant’s evidence at the hearing that the issue first arose in December 2010 when there was a heated discussion with the applicant and his father on the day before the applicant went to the court looking for a lawyer (as

confirmed at paras. 2.7 and 2.8 of the respondent's findings). Therefore there was an evidential basis for the respondent's concerns about the applicant's account and the respondent's finding of inconsistency arising from the applicant saying the father was at the heated discussion the day before the alleged incident at the courthouse but later saying that he told his father the 'whole story' thereafter.

29. I am satisfied that the respondent provided a reason for those concerns. The respondent did not err in law in its assessment of the applicant's credibility in this regard or make an irrational finding at para. 4.3.17.
30. The respondent relies on the test formulated by MacEochaidh J in *R.O. v. The Minister for Justice and Equality* [2012] IEHC 573 and the following questions identified at paras. 21:
- (i) Are reasons intelligible in the sense that the reasons enable the reader to understand why the applicant for protection is disbelieved on a certain point and/or generally?
 - (ii) Are reasons specific, cogent and substantial?
 - (iii) Are reasons drawn from correct facts and do they bear a legitimate connection to the adverse credibility findings?
 - (iv) Do reasons relate to the substantive basis of the claim and not to minor matters?

I find that the answer to those questions, in reviewing the adequacy of the reasons given by the respondent in this case, is 'Yes' to each.

Conclusions

31. The respondent did not fail to assess the applicant's claim by failing to consider the content of the hospital documentation. The respondent did not fail to consider the hospital documentation on the stated basis that forged documentation is commonplace in Pakistan. The respondent did not err in assessing the applicant's credibility by making an irrational finding about the inconsistencies in the applicant's account of his engagement with his father.
32. The respondent's concerns about the applicant's credibility by reference to the hospital documentation and his account of his engagement with his father were set out in the decision and reasons were given for them. Even if there were flaws or errors in the respondent's concerns on those issues (which I do not find) I would consider them to be overwhelmed by the other six concerns identified by the respondent about the applicant's credibility, such that the respondent determined the applicant was not entitled to the benefit of the doubt and that the respondent did not accept his claim was credible on the balance of probability.
33. I therefore refuse the reliefs sought.

Indicative view on costs

34. My indicative view on costs is that as the appellant has not succeeded in his appeal, the respondent is entitled to costs in accordance with section 169 of the Legal Services Regulatory Act. I will list the matter for mention before me at 10am on 18 May for the parties to make any submissions, if they wish, on costs and the final orders to be made.