THE HIGH COURT

JUDICIAL REVIEW

[2018 No. 198 J.R.]

BETWEEN

A.A. (PAKISTAN)

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 18th day of December, 2018

1. The applicant claims to have been born in Pakistan in 1989. He claims to have had problems with the Taliban and Lashkar-e-Islam (L.I.) He left Pakistan in June, 2011 for the U.K. on a student visa. The college closed in 2014 and the visa was cancelled. He says he made some sort of application to remain in the U.K. but cannot remember the outcome. He claims that the Taliban/L.I. delivered warning letters to the family home in 2012 and that his father was killed in September, 2012. He also claims that his uncle was killed. He never applied for asylum in the U.K.

2. He came to Ireland in early August, 2015 and applied to the Refugee Applications Commissioner for asylum on 4th August, 2015. That was refused on 2nd August, 2016. He appealed that refusal to the Refugee Appeals Tribunal on 10th November, 2016. Following the commencement of the International Protection Act 2015, he applied for subsidiary protection. That was refused on 21st August, 2017. On 19th September, 2017, he appealed that refusal to the International Protection Appeals Tribunal. On 29th November, 2017, written submissions were delivered by the applicant, signed by Mr. Eamonn Dornan B.L., which relied *inter alia* on the decision of the High Court in *A.O. v. Refugee Appeals Tribunal* [2015] IEHC 253 (Unreported, Barr J., 17th April, 2015), although by that stage the decision had been reversed on appeal in *A.O. v. Refugee Appeals Tribunal* [2017] IECA 51 (Unreported, Court of Appeal, 27th February, 2017), a point noted by the tribunal in its written decision.

3. On 12th December, 2017 an oral hearing took place before the tribunal. Mr. Dornan appeared for the applicant and Ms. Irene Fisher B.L. for the International Protection Office. On 29th January, 2018 the IPAT refused the appeals. Without in any way to be taken as encouraging lengthy decisions, this was an unusually detailed 50-page tribunal decision which rejected the credibility of the applicant's account in many respects. It considered that the failure to seek asylum in the U.K. undermined the claim and that the account was inconsistent. Most documents produced were held to be of limited probative value.

4. Proceedings were filed on 9th March, 2018, around two weeks out of time. The leave order does not expressly extend time but I accept the applicant's explanation for the delay in the circumstances as set out on affidavit by Ms. Cristina Stamatescu, solicitor, so I will formally do that now. On 12th March, 2018, I granted leave. The statement of opposition was delivered on 22nd October, 2018. The applicant's submissions were delivered on 19th November, 2018 and the respondent's submissions on 7th December, 2018. I have received submissions from Mr. Dornan for the applicant and Mr. Nick Reilly B.L. for the respondents.

Allegation that the tribunal erred in finding that the applicant had failed to seek protection in the U.K. and that this undermined his fears - Ground 1.

5. The applicant's basic reason for not applying for asylum in the U.K. was that the U.K. had a fast-track procedure and inferentially that Ireland, by comparison, was a soft touch. That emphasises a problem that may loom large into the future if immigration approaches here are allowed to diverge unduly from those applicable in the U.K. Geography must be taken into account in administration if distortions in the process are to be avoided. The reason for not applying for asylum in the U.K. was tactical even on the applicant's own case. The tribunal was fully entitled to consider that this failure undermined the claim.

Allegation that the tribunal erred in failing to give proper weight to the documentary evidence - Ground 2.

6. The written submissions claim that the tribunal erred in failing to direct the IPO to authenticate the documents (para. 26). That is not pleaded, so the applicant cannot succeed on that point, but in any event it is of no substance: see *T.T. (Zimbabwe) v. Minister for Justice and Equality* [2017] IEHC 750 [2017] 10 JIC 3105 (Unreported, High Court, 31st October, 2017). There is no obligation on either the IPO or the IPAT to contact bodies within the country of origin to verify individual documents generated within that country, and indeed it would not be lawful to do so given the statutory obligation to maintain confidentiality regarding the identity of protection applicants: see 2015 Act, s. 26. A protection body contacting third parties to verify documents alerts outside parties to the fact that a protection claim has been made. In passing, I should also mention that a further point about *sur place* protection that Mr. Dornan also sought to make is not pleaded.

7. At para. 4.9 of the decision, the tribunal lists ten pages of factors militating against the applicant's credibility. It is unnecessary to set these out here other than to emphasise that the tribunal member saw and heard the applicant and is in a much better position than the court to assess such credibility.

8. Paragraph 2.4 of the decision lists the documents supplied by the applicant. Those documents are considered and largely discounted at para. 4.3 and 4.9 (g) to (i). Paragraph 4.3 accepts the father's domicile certificate. At paragraph 4.9 (g) the member does not specifically say whether he accepts or rejects the medical certificate but says that an inconsistency in the applicant's account undermines the probative value of the document. A specific finding is unnecessary in that context but a member is entitled to regard a document as having limited value in such circumstances and does not have to expressly brand it as a fake. At para. 4.9 (h), the member says that letters submitted cannot be verified, and that the letters were found to be of limited probative value and that inconsistencies and a failure to mention matters initially undermine the probative value of such material. A similar approach is taken in relation to para. 4.9(i).

9. While that is perhaps not the most favourable approach from the applicant's point of view, it is a valid one. Where a document cannot be verified on the evidence before the tribunal it can be discounted or regarded as being of limited probative value if placed in the context of the evidence overall, especially if such evidence indicates that the applicant's account is not credible. I should

perhaps clarify that where the tribunal says that documents cannot be verified, that does not mean that they could not conceivably be verified under any circumstances. It means that they cannot be verified on the information before the tribunal.

10. I might comment in passing that there is no reason to think it would not have been open to the applicant to make his own enquiries and provide further materials with more satisfactory provenance. Insofar as the applicant produced documents or allegations well into the process rather than at the outset, that is also a factor that the tribunal is entitled to take into account.

Allegation that the tribunal erred in making adverse credibility findings -Ground 3
11. Assessment of the weight of the material before the tribunal is a matter for the decision-maker: see *C.M. (Zimbabwe) v. International Protection Appeals Tribunal* [2018] IEHC 35 [2018] 1 JIC 2304 (Unreported, High Court, 23rd January, 2018). No unlawfulness has been shown under this heading. The tribunal had a wealth of material to work on under this heading and no legal error has been demonstrated. The submissions made to some extent confuse the applicant's claims with fact. For example, Mr. Dornan posited the assertion that the uncle was killed as a fact, but that is not so. It is not accepted by the tribunal: see para. 4.9 (j). Merely because an applicant is consistent about something does not make that something the tribunal has to accept. Otherwise one would be handing out international protection merely for keeping one's story straight, whether fabricated or otherwise.

Allegation that the tribunal erred in finding that the applicant would not be at risk due to indiscriminate violence - Ground 4
12. Grant of subsidiary protection due to indiscriminate violence is a very high hurdle and means that there would be a threat to an applicant merely by reason of his or her presence in the country of origin as a civilian in the area concerned. The tribunal considered the relevant issues and applied the correct test. The finding is not unreasonable or unlawful. The tribunal took into account both country information regarding the return of the civilian population to the area and the personal circumstances of the applicant, in particular that family members had already returned to the area.

Order
13. Overall the comment of Keane J. in *E.Q. v. International Protection Appeals Tribunal* [2018] IEHC 375 (Unreported, High Court, 27th June, 2018) at para. 10 is apposite: *"this court is engaged in a review of the decision-making process and not in hearing an appeal* de novo *on the merits of the underlying claim".* The tribunal decision is perhaps not the most favourable one from the applicant's point of view but an applicant does not have a legal entitlement to a favourable decision. The outcome is a matter for the tribunal member who sees and hears the applicant, subject to acting within lawful parameters, which has been done here.

14. Accordingly, the order will be:

(i) that time be extended for the making of the application up to the date on which it was made; and

(ii) that the proceedings be dismissed.