THE HIGH COURT

JUDICIAL REVIEW

[2018 No. 795 J.R.]

BETWEEN

D.S. (NEPAL)

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 2nd day of April, 2019

1. The applicant is a citizen of Nepal and claimed that he suffered serious harm there, first from Maoist militants and then from the police. He gave inconsistent dates for leaving Nepal, August, 2009 in his first version and later November, 2009. When claiming asylum here, his ASY1 form stated that he went to New Delhi, Dubai and France. Insofar as I could understand the applicant's counsel's instructions as conveyed to me, he is now saying that he was in India at some stage, but that the travel from Nepal to the UK was relatively direct and not *via* periods of staying in Dubai and France, which had been put forward essentially as a cover story to hide the fact that he had been in the UK. He was there on a student visa, apparently in Glasgow, and travelled from there to the State on 2nd June, 2010. He stated that "*he found that he was safe in the UK but his friends guided and advised him and stated that Ireland was better for human rights*". Geography imposes its own logic and perhaps the advice of these "*friends*" illustrates the difficulties that can arise if neighbouring immigration systems are allowed to diverge unduly. The applicant claimed asylum on 3rd June, 2010. An inquiry under art. 21 of the Dublin III regulation was made to the UK, in response to which the Irish authorities were informed that a UK visa had issued in favour of the applicant. This information led to a transfer order being signed on 6th August, 2010 and arrangements being made for the applicant's transfer to the UK on 9th August, 2010. In breach of his legal obligations, the applicant failed to present for transfer and due to this evasion he successfully frustrated the operation of the Dublin III regulation, so his claim for asylum had to be considered in Ireland. Ultimately, the present proceedings are a challenge to a protection decision which should never have been made in the State, had the processes of European and national law been allowed to function as intended and had those processes not been frustrated and interfered with by the unlawful conduct of the applicant.

2. The applicant was then invited for interview by the Refugee Applications Commissioner on 20th February, 2012. He failed to attend and accordingly his application was deemed to be withdrawn and a deportation order was made on 23rd December, 2013. Again, he failed to comply with the obligation to leave the State imposed by the deportation order.

3. The applicant's next legal move was an application for subsidiary protection, which was lodged on 26th October, 2016, a process that was approximately contemporaneous with the applicant's arrest on foot of the deportation order. He then applied for release under Article 40 of the Constitution, which I refused in *D.S. v. Member in Charge of Store Street Garda Station* [2016] IEHC 611 [2016] 11 JIC 0701 (Unreported, High Court, 7th November, 2016) and which the Court of Appeal also refused on appeal (*D.S. v. Member in Charge of Store Street Garda Station* [2016] IECA 330 (Unreported, Court of Appeal, Birmingham P., 15th November, 2016)). One of the other detainees arrested at the same time appealed the issue to the Supreme Court, which dismissed the appeal (*P.O.I. v. Governor of Cloverhill Prison* [2017] IESC 78 [2018] 1 I.L.R.M. 376) but that appeal did not involve this applicant personally. Notwithstanding the failure of the Article 40 proceedings he was released in any event, presumably because of the subsidiary protection application. Some time later, on 29th May, 2017, the deportation order was revoked in the light of that application.

4. On 29th December, 2017, the subsidiary protection claim was rejected by the International Protection Office and the applicant appealed to the International Protection Appeals Tribunal on 17th January, 2018. An oral hearing took place on 22nd May, 2018, at which Ms. Lisa McKeogh B.L. appeared for the applicant. The tribunal rejected the appeal on 23rd August, 2018.

5. The applicant was so notified on 3rd September, 2018 and filed the present proceedings seeking *certiorari* of that decision on 3rd October, 2018. I granted leave on 8th October, 2018 as well as a modest extension of time, to which the respondents are very sensibly not now taking objection.

6. A notice of opposition was filed on 11th January, 2019. A supplemental affidavit of the applicant was filed on 25th January, 2019 and at the hearing the applicant also put forward his ASY1 form, which his legal representatives have agreed to formally put on affidavit.

7. I have received helpful submissions from Mr. Garry O'Halloran B.L. for the applicant and Ms. Eva Humphreys B.L. for the respondents. Mr. O'Halloran's written submissions state at para. 19 that grounds 3 and 4 of the statement of grounds are not pursued. I therefore turn to grounds 1 and 2.

Ground 1 - reliance on previous lies by the applicant

8. Ground 1 of the statement of grounds contends that *"the IPAT erred in law in rejecting the credibility of the applicant's claim by reason of the applicant's confession of submission of untruths when originally applying for protection in 2010".*

9. At para. 4.3 onwards the tribunal noted the various credibility problems, untruths and contradictions arising in respect of various aspects of the claim. As put by Ms. Humphreys at para. 11 of her written submissions "*there was not a single inconsistency or change of story but rather a multitude over a range of aspects of the applicant's claim".*

10. The tribunal decision records that the contradictions, untruths and problems were put to the applicant at the hearing. This procedure accords with the judgment of Clarke J., as he then was, in *Idiakheua v. Minister for Justice, Equality and Law Reform* [2005] IEHC 150 (Unreported, High Court, 10th May, 2005). Indeed, no fair procedures challenge as such was made to the tribunal decision. As noted in Ms. Humphreys' submission at para. 13 "*the applicant offered reasons in respect of some inconsistencies…and in some instances he gave no response. It cannot be said that the applicant did not have the appropriate chance to explain the inconsistencies and …it is entirely a matter for the first named respondent to assess the adequacy of any such explanation."*

11. The tribunal noted the point referred to in *I.E. v. Minister for Justice and Equality* [2016] IEHC 85 (Unreported, High Court, 15th February, 2016) at para. 28 that the credibility of an individual in relation to matters that are difficult or impossible to verify can, to some extent, be ascertained by reference to his or her credibility in relation to matters that *can* be verified. Given the scale of the difficulties with the applicant's evidence it was well within the jurisdiction of the tribunal to decline to regard his account as credible. There was absolutely no basis for the tribunal to apply the benefit of the doubt because that requires the establishment of an applicant's general credibility, which is not the case here. A decision-maker is entitled to give such due weight as he or she thinks appropriate to lies previously told by an applicant. The applicant's legal submission at para. 20 mischaracterises the rejection of the applicant's claim "*by reason* simpliciter *of the applicant's confession of submission of untruths when originally applying for protection*". The claim that the tribunal did not examine all of the material, relying on *R.A. v. Refugee Appeals Tribunal* [2017] IECA 297 (Unreported, Court of Appeal, 15th November, 2017), falls flat, because here the tribunal *did* examine all the material (see e.g. paras. 2.13, 2.14 and 7.3). *R.A.* was a case where the tribunal did not consult the relevant country information (see para. 69). The applicant is of course correct to say, and indeed it is not in dispute, that untrue statements by themselves are not a reason for refusal of asylum status, as set out in the UNHCR Handbook at para. 199. The Handbook goes on to say that "*it is the examiner's responsibility to evaluate such statements in the light of all the circumstances of the case*". But that is what the tribunal did here. This was not a knee-jerk rejection on the basis that "you have lied so you are out". All circumstances were expressly considered, as noted above. If a decision-maker says he or she has considered something, the onus is on the applicant to show that is not so (see *per* Hardiman J. in *G.K. v. Minister for Justice, Equality and Law Reform* [2002] 2 I.R. 418 [2002] 1 I.L.R.M. 401) and that onus has not been discharged here.

Ground 2 - alleged dismissal of applicant's explanations
12. Ground 2 of the statement of grounds contends that "*the IPAT erred in law in summarily dismissing the explanations given by the applicant for inconsistencies and inaccuracies contained in the initial stages of the processing of the applicant's protection claim".*

13. The premise of the ground is incorrect. The applicant's explanations were not summarily dismissed but were considered. Not accepting the explanations is the considered and lawful judgment of the tribunal having seen and heard the applicant, not an error of law. The applicant's written submissions go on to make a further complaint of lack of reasons for rejecting the explanations (para. 21). That complaint is not pleaded so cannot succeed, but there is no merit for the complaint in any event. One could not on any stretch of the imagination call this an unreasoned decision. A decision-maker does not have to give reasons for his or her reasons (see per Munby L.J. *In Re: A. and L. (Children)* [2011] EWCA Civ. 1611 at para. 35 cited in *Walsh v. Walsh (No. 1)* [2017] IEHC 181 [2017] 2 JIC 0207 (Unreported, High Court, 2nd February, 2017) at para. 9). Reliance was placed by Mr. O'Halloran on the judgment of Finlay Geoghegan J. in *Carciu v. Minister for Justice, Equality and Law Reform* [2003] IEHC 41 (Unreported, High Court, 4th July, 2003). That was a leave judgment, not a substantive one (not that one would know that from the applicant's submissions). That was a case where part of the applicant's story was credible and in addition it was not clear from the tribunal decision what precisely the tribunal was basing its conclusion on. Neither element applies here. In that judgment, Finlay Geoghegan J. referred back to and applied her decision in *Bujari v. Minister for Justice, Equality and Law Reform* [2003] IEHC 18 (Unreported, High Court, 7th May, 2003) which she considered had set out the appropriate approach. However, *Bujari* was a case where "*on a careful consideration of the decision of the member of the tribunal herein …no reference is made at all by him to any explanation given to him at the oral hearing by the applicant for the material difference in the facts as stated in the initial interview and at the oral hearing*". Nothing remotely like that happened here. The procedure set out in *Carciu* and *Bujari* was precisely what *did* happen in this case:

(i). The inconsistencies and problems were identified.

(ii). Those issues were specifically put to the applicant.

(iii). The applicant was given an opportunity to give explanations or answers. Indeed, as far as country material was concerned the applicant was also given ten days following the hearing to provide further submissions, an opportunity which he did not take up.

(iv). The explanations and answers were considered by the decision-maker

(v). All other relevant material, including country information, was also considered.

(vi). Following that process, it is primarily a matter for the decision-maker to attribute weight to the various elements before him or her. As put by Birmingham J. in *M.E. v. Refugee Appeals Tribunal* [2008] IEHC 192 (Unreported, High Court, 27th June, 2008) at para. 27: "*The assessment of whether a particular piece of evidence is of probative value, or the extent to which it is of probative value, is quintessentially a matter for the Tribunal Member*."

14. Finally, as far as the unpleaded compliant about reasons is concerned, Finlay Geoghegan J. in her judgment in Carciu adds, unhelpfully for the applicant in this case, that "*I would add that it does not appear to me that there is an obligation to give reasons such as is contended for by the applicant".*

Order
15. Accordingly, I will:

(i). note that there is no challenge by the respondents to the extension of time granted at the *ex parte* stage; and

(ii). order that the proceedings be dismissed.