

## THE HIGH COURT

## JUDICIAL REVIEW

[2018 No. 853 J.R.]

BETWEEN

A.H.M.K. (BANGLADESH) AND J.A.

APPLICANTS

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 June, 2019**

1. The applicants are a married couple from Bangladesh. The husband was born in 1982 and claimed to be a political activist with the Bangladesh Nationalist Party (BNP). He claimed that he was the victim of adverse incidents in 2008 at the hands of a rival political party, the Awami League, and that on that basis he left Bangladesh in 2009. He went to the UK on a student visa and in that jurisdiction studied and worked part-time for a number of years. He became a member of the UK student wing of the BNP and says that he held the position of general secretary of the student union. Notwithstanding the claim of persecution in Bangladesh, he returned to Bangladesh in 2010, 2012 (or possibly 2013 depending on how one reads matters) and 2014. He claims that on each occasion he was subjected to further similar persecution including two false criminal charges made against him in 2014.

2. The applicants married in January, 2014 and the wife claims that due to her association with the husband she was forced to leave Bangladesh, which she did on 31st March, 2014 when she came to the UK. She claimed that she received telephone threats to the effect that the husband would be assassinated by reason of his involvement with the BNP and she believed that she was herself liable to be kidnapped due to her involvement with her husband. On 18th August, 2015 the applicants moved to the State and applied for international protection. The husband claimed that his parents were forced to flee their family home in December, 2016 due to threats from the Awami League and he also claimed that he was informed by a BNP colleague that his name was on an assassination list in Bangladesh.

3. The applicants' asylum applications were refused by the Refugee Applications Commissioner and they appealed that refusal to the Refugee Appeals Tribunal. On the commencement of the International Protection Act 2015 on 31st December, 2016 they completed subsidiary protection applications which were then refused by the International Protection Office. They appealed those refusals to the International Protection Appeals Tribunal, which heard the appeals on 5th July, 2018. The husband was notified by letter dated 21st September, 2018 that the tribunal had rejected his appeal and the wife was notified likewise by letter dated 11th October, 2018. The IPAT decisions are dated 20th September, 2018 on 9th October, 2018 respectively.

4. The proceedings were filed on 18th October, 2018 and, while the respondents raised a time issue in written submissions, that sensibly has not been pursued. Leave was granted on 5th November, 2018, the primary relief sought being *certiorari* of the IPAT decisions. The motion seeking substantive relief was made returnable for 19th November, 2018 and a statement of opposition was filed on 5th April, 2019. I have now received helpful submissions from Mr. Garry O'Halloran B.L. for the applicants and from Ms. Eva Humphreys B.L. for the respondents. Grounds 1, 2, 4 and 5 are not being pursued. That leaves ground 3.

**Alleged irrationality of the decision**

5. Ground 3 contends that there was alleged irrationality in concluding that the applicant is not exposed to persecution of serious harm: "*The conclusion that the first named Applicant as a political activist is not exposed to persecution or serious harm at the hands of Awami League activists is irrational.*"

6. A claim of irrationality is not an invitation to the court to disagree with the finding of the decision-maker. It requires the court to consider that the conclusion was not open to a reasonable decision-maker or that there exists some other related flaw warranting relief by way of judicial review: see *The State (Keegan) v. Stardust Victims Compensation Tribunal* [1986] I.R. 642, *O'Keeffe v. An Bord Pleanála* [1993] 1 I.R. 39, *Meadows v. Minister for Justice, Equality and Law Reform* [2010] IESC 3 [2010] 2 I.R. 701.

7. The applicants' detailed written submissions at para. 29 highlight certain country information favourable to the applicants, but that is not sufficient. It is important to set the tribunal's conclusion of a lack of an objectively well-founded fear in the context of the tribunal's other findings. The wife's claim is essentially derivative by reason of her association with the husband. The tribunal accepted the husband's Bangladeshi nationality but noted that he did not refer to key aspects of his story in various interviews (para. 4.3) and that his evidence was evasive and unsatisfactory (para. 4.4). The tribunal considered it notable that he did not consider applying for asylum in the UK (para. 4.5) and noted his failure to mention at an early stage the alleged incidents in 2008 which prompted his departing from Bangladesh in the first place (para. 4.7). Thus the applicants' claim regarding initial persecution was rejected on the balance of probabilities (para. 4.8). The tribunal noted that the husband gave inconsistent dates for subsequent persecution and was unable to explain that (para. 4.12) and that his evidence in that regard is unsatisfactory (paras. 4.13 and 4.14). The inconsistencies and admissions in his evidence were held to undermine this aspect of his claim (para. 4.15). The fact that the husband continued to return to Bangladesh on a number of occasions was held to undermine the claim (para. 4.18). His evidence regarding the events of 2014 was rejected (para. 4.25) with the tribunal noting that his account had significantly changed (para. 4.27) and that his evidence was contradictory (para. 4.32). The wife's evidence was also rejected (para. 4.41). Inconsistency, omissions and contradictions in the evidence regarding other alleged incidents were set out at length in the tribunal decision, in particular paras. 4.44, 4.48, 4.51, 4.60 and 4.64.

8. The applicants' political profile, which is the target of the complaint in the present proceedings, was discussed by the tribunal member at para. 4.66 onwards. The tribunal member accepted that the husband was "*an active member of the BNP student wing*" and had "*involvement with the Irish wing of the BNP party*" (para. 4.69). At para. 4.73 she noted that the husband began by characterising his return to Bangladesh as a high-profile event and then downgraded it to "*a small thing*" when the lack of any evidence of this return being treated as a high-profile event was put to him. She held that the wife gave inconsistent and contradictory explanations regarding the husband's political activities (para. 4.80) and the conclusion was that the claim of any

significant political profile on behalf of the husband was rejected (para. 4.82), but it was accepted that he was an active member of the BNP in the UK. She rejected the specific claim of him being joint secretary of the BNP in Ireland but she appears to have accepted that he had some involvement with the Irish wing of the party.

9. Mr. O'Halloran's core complaint with the decision arises out of para. 5.9 onwards. The tribunal member noted that while there has been some politically-motivated violence, when put in the context of the country with a population of 167 million, over a seventeen-year period only 0.0029% of the population had been killed in political incidents and 0.12% injured. Mr. O'Halloran makes the reasonable point that the general population is not the appropriate comparator. Rather the question is what percentage of BNP members or activists suffer, not what percentage of the total population suffers. The only case referred to in the applicants' submissions is *R.O. v. Minister for Justice and Equality* [2012] IEHC 573 [2015] 4 I.R. 200. In oral submissions, Mr. O'Halloran said that the relevance of *R.O.* to the decision was because the decision was not based on the correct facts in the sense of being based on the correct comparator. It is possibly worth noting that the language relied on from *R.O.* requires some rewording, as I discussed in *I.E. v. Minister for Justice and Equality* [2016] IEHC 85 [2016] 2 JIC 1505 (Unreported, High Court, 15th February, 2016). However, even leaving that aside, if the tribunal member had stopped at the question of the percentage of the population overall Mr. O'Halloran might have had a point; but she also went on to refer to a range of country information. She noted that the UK Home Office report of 2018 stated that "*the number of casualties remained relatively low in proportion to the size of the aforementioned parties*". That analysis does use the correct comparator, namely members of the relevant parties rather than the population at large. A similar point arises from the US State Department country report of 2017. Separately, she also noted facts specific to these applicants, that they came from an area at some remove from the hot-spots of violence (para. 5.18). On the basis of these factors, her conclusion at para. 5.19 that the husband had no objectively well-founded fear of persecution was reasonably open to her. There is nothing to show that having ruled out the applicant as a high-profile party member there was any legal duty on the tribunal to distinguish between various degrees of low-level membership. Country information does not support the conclusion that such a micro-degree of analysis is crucial to the validity of an assessment of risk.

#### **Order**

10. The proceedings are dismissed.