[2020] IEHC 157

THE HIGH COURT
JUDICIAL REVIEW

[2019 No. 712 J.R.]

BETWEEN

L.H. (ALGERIA)

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 4th day of March, 2020

1. The applicant comes from Algeria, where his parents, and seven of his eight siblings, live. One brother lives in Ireland. The applicant worked in a commercial concern in his home country and was professionally qualified in a role that the International Protection Appeals Tribunal refers to as "*robust and challenging*".

2. It is accepted that his employer (and other connected persons) engaged in fraudulent practices and misappropriation. The applicant left Algeria to go to France on holidays in July, 2017, a trip that came after a certain amount of history of European travel during the previous three years. While he was away from home, he claims that he learned that he was being accused of misappropriation by his employer. He did not contact the employer in order to protest his innocence, despite his many years of service.

3. The credibility of this core aspect of his account was rejected by the tribunal. The tribunal member did not accept that the applicant would not have appreciated that failure to respond to such an allegation would have reinforced an impression of guilt. The applicant said that his employer telephoned him and he did not take the call (s. 35 interview, Q. 61). The tribunal was fully entitled to find that such conduct does not make sense and undermines the applicant's claim.

4. The claim that the applicant fell under suspicion was also considered not to be credible anyway given the applicant's lack of access to the monies alleged to have been misappropriated.

5. The applicant did not claim asylum in France, but instead came to Ireland from France on a visitor's visa, ostensibly to visit his brother. He failed to return and applied for international protection in the State on 20th November, 2017. On 24th April, 2019 the International Protection Office rejected that claim.

6. The applicant appealed to the International Protection Appeals Tribunal on 16th May, 2019 and an oral hearing took place on 17th July, 2019. Ms. Elena Hernandez, Solicitor, on behalf of the Legal Aid Board, appeared for the applicant. On 19th August, 2019 the tribunal rejected the appeal.

7. The present proceedings were filed on 9th October, 2019 the primary relief sought being *certiorari* of the tribunal decision. I granted leave on 14th October, 2019 and also extended time for the bringing of the application having regard to the intervention of the

long vacation and a change of solicitors from the Legal Aid Board. While the respondents took issue with that in the statement of opposition, they have, sensibly, not pursued that objection.

8. The statement of opposition was delivered on 21st November, 2019 and I have now received helpful submissions from Ms. Rosario Boyle S.C. (with Ms. Aoife McMahon B.L.) for the applicant and from Ms. Catherine Duggan B.L. for the respondents.

Ground 1: complaint that the tribunal should not have had regard to the applicant's failure to engage with alleged actor of persecution.

9. Ground 1 complains that "*in circumstances where it was accepted as credible that the applicant's employer engaged in unethical and fraudulent practices the first respondent erred in law and/or acted unreasonably in making a negative credibility finding against the applicant on the basis that the applicant failed to engage with the actor of persecution he feared namely his employer to explain the position. If it was accepted as credible that he feared his employer he could not be expected to engage with him. His failure to engage with him could not be used as a basis to reject the credibility of the applicant's claim that he feared his employer*".

10. Such a ground is an attempt to create some entirely new substantive rule of law out of nothing. The argument made by the applicant here is essentially to say that if I claim a fear of harm from X, my failure to have contact with X cannot be even taken into account in assessing whether my claim is true, and to do so is a fundamental error of law requiring the decision to be quashed. While that is a convenient heads-I-win, tails-you-lose rule from an applicant's point of view, it has no legal basis. It is the role of the tribunal to assess *all* of the facts and circumstances: that is clear from both art. 4(1) and (3) of the qualification directive 2004/83/EC and s. 28(2) and (4) of the International Protection Act 2015. Whether or not the applicant contacts the person from whom he says he fears harm, or whether or not he entertains that person's attempts to make contact, is a part of the facts and circumstances of the case and cannot be arbitrarily disregarded. Having regard to such a matter is not an error of law, fatal or otherwise.

Ground 2: alleged failure by the tribunal to provide reasons why the applicant would not be subject to harm in the context of a claim of unethical practices.

11. This ground contends as follows: "*The first respondent erred in law and/or acted unreasonably in accepting as credible that the applicant's employer engaged in unethical and fraudulent practices and that he had bribed and blackmailed a tax official in the past, yet failing to provide reasons as to why there was no risk that the applicant would be subject to similar treatment in the future"*.

12. The premise of this ground is misconceived. First of all, there is no actual finding that the employer had bribed and blackmailed a tax official in the past. Nor is there an obligation to make such a finding. Secondly, the tribunal *did* find reasons as to why the unethical and fraudulent practices of the company would not translate into harm to the applicant. Not least of those reasons was the applicant's lack of access to the money alleged to have been misappropriated. Therefore, there was no reason why he would have fallen under suspicion.

Ground 3: failure to provide reasons.

13. This ground contends "*in the alternative to ground 2 the first respondent failed to provide adequate reasons if the credibility of the material fact that the applicant's employer had bribed and blackmailed a tax official in the past was rejected. If this was the case, this should have been stated in the clearest terms*".

14. This point must be viewed in the light of the overall situation, which is that while contextual matters were accepted, such as the company's practices, the core personal elements of the applicant's claim were rejected. The precise nature of the company's practices did not need to be the subject of a specific finding and even if there was a lack of particularisation in the decision, that does not make it invalid. If, counterfactually, such an obligation exists, then the tribunal will end up having to go through an applicant's account in its many variations line-by-line and make findings on each specific mutating detail of the story. No such obligation exists and no decision-maker in any other context is expected or asked to do this. Nor does the High Court do so, and it would be hypocritical of me to pretend to discover some form of fundamental legal obligation on tribunal members to do-as-I-say-but-not-as-I-do (a point I previously made in *I.E. v. Minister for Justice and Equality* [2016] IEHC 85 (Unreported, High Court, 15th February, 2016) at para. 12).

Ground 4: alleged lack of evidence to support finding that the employer is not violent.

15. This ground contends "*the first respondent erred in law in facing his refusal decision on the finding that "there is no evidence before the Tribunal to suggest that [the applicant's employer] is a violent man". It was accepted that the applicant's employer engaged in unethical and fraudulent practices and the applicant gave evidence that his employer had bribed and blackmailed a tax official in the past. Blackmail and threats are sufficient to amount to persecution, as mental violence, within the meaning of s. 7 of the International Protection Act 2015 and Article 9 of Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted".*

16. This point does not arise because the claim of blackmail and threats was not specifically accepted by the tribunal. But even if it had been, the point may be interesting theoretically, but it ignores the actual context the tribunal is talking about. The applicant is not claiming a fear of being bribed or blackmailed, for the simple reason that his situation is not analogous to a tax official dealing with a company. The applicant is claiming a fear of physical violence from the employer. Thus, the tribunal's point makes sense in context, even if in a hypothetical scenario in another case, the academic point made by the applicant could be raised.

Ground 5: failure to appreciate the cultural context or engaging in speculation or conjecture.

17. This ground contends that "*in circumstances where it was accepted as credible that the applicant's employer engaged in unethical and fraudulent practices and that the applicant was [in a senior position] for the company and where the first respondent found that the applicant 'has presented a consistent narrative around [the single aspect of his claim in*

issue]' the first respondent erred in law in failing to appreciate the cultural context of this claim and/or engaging in conjecture and/or speculation in making the following credibility findings … "

18. After this a series of micro-criticisms of the credibility findings are set out. This whole argument is an attempt to have the court second-guess the credibility findings of the tribunal member who saw and heard the applicant and who, therefore, was in a much better position than the court to assess such credibility: see *per* Cooke J., in *I.R. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 353, [2015] 4 I.R. 144, cited with approval by the Court of Appeal in *R.A. v. Refugee Appeals Tribunal & Ors* [2017] IECA 297 (Unreported, Court of Appeal, Hogan J. (Finlay Geoghegan and Irvine JJ. concurring), 15th November, 2017).

19. The fact that the applicant gave a consistent narrative does not make his story true. A story can be consistent but false, although you would not necessarily know it from the applicant's submissions. Otherwise one would be handing out international protection merely for having a good memory, whether the story constituted truth, lies, or some mixture of the two. Having considered all the various sub-criticisms made under this heading, none of them stand up. The findings were well within the scope of what could lawfully be found by the tribunal. Making an adverse decision having assessed the evidence is not conjecture or speculation, even though it is obviously irresistibly tempting to applicants such as this one to thus characterise it.

20. Predictably, the applicant also characterises the decision as involving failure to appreciate the cultural context or proceeding on "gut feeling". Again, such criticisms are misplaced. Making an adverse decision is not to be equated with failing to appreciate the cultural context or with giving vent to gut feelings. There is no basis to say that the tribunal did not consider the cultural context. The country of origin information was considered and the decision makes that explicit.

Order

21. The application is dismissed.