

**THE HIGH COURT**  
**JUDICIAL REVIEW**

[2022] IEHC 567  
[2021 No. 945 JR]

**BETWEEN**

**M.K.**

**APPLICANT**

**AND**

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

**RESPONDENTS**

**JUDGMENT of Mr. Justice Charles Meenan delivered on the 29<sup>th</sup> day of July, 2022**

**Background**

1. The applicant was born in 1990 in Pakistan and received a university education. He joined a political party named the Pakistani People's Party (the PPP) in 2009 and was an ordinary member of that party. In 2010, the applicant maintained that he was beaten up by members of the Pakistani Muslim League (the PML) and was told to stop speaking against this party. In December 2010, the applicant stated that he was knocked off his motorbike by a car being driven by a person whom he recognised as being a member of the PML. In June 2011, the applicant claimed that a person looked towards him whilst firing a gun in the air.

2. According to the applicant, in November 2011 a very serious event took place in that when the applicant was riding as a passenger on a motorbike with his cousin two people with covered faces shot at them killing the applicant's cousin. The applicant believed that he was the target and that the men were connected with the PML. He maintained that the police would not take a report of the attack and he was detained on several occasions by the police and

questioned about the death of his cousin. The applicant believes that he is a suspect in the attack as it is his belief that the PML bribed the police.

3. The following year, 2012, the applicant left Pakistan and in May 2012 stayed in the UK for eighteen months. The applicant travelled to Ireland in December 2013 and in January 2018 sought international protection. The applicant believes that he will be killed by the PML, or the police, should he return to Pakistan.

4. The applicant was interviewed by the International Protection Office pursuant to s. 13 (2) of the International Protection Act, 2015 (“the Act of 2015”). He was further interviewed pursuant to s. 35 of the Act of 2015 on 1 May 2018 and 24 September 2019. By letter, dated 11 November 2019, the International Protection Office recommended the applicant be given neither a refugee declaration nor a subsidiary protection declaration. The reasons for that recommendation are set out in a report pursuant to s. 39 of the Act of 2015, dated 8 November 2019. This was appealed to the first named respondent (“the Tribunal”) by notice of appeal, dated 29 November 2019.

5. The applicant’s appeal was heard by the Tribunal on 4 August 2021 with the assistance of an Urdu interpreter. By decision, dated 4 October 2021, the Tribunal, pursuant to s. 46 of the Act of 2015, confirmed the recommendation that the applicant be given neither a refugee declaration nor a subsidiary protection declaration.

6. The applicant seeks to judicially review the decision of the Tribunal and the Court directed that leave be on notice to the respondents.

**Legal principles to be applied**

7. In order to be granted leave the onus rests on the applicant to establish that “*substantial grounds*” exist for granting the applicant leave to seek an order of *certiorari* quashing the decision of the Tribunal of 4 October 2021.

8. Central to the case being made by the applicant is that the Tribunal erred in law in its assessment of his credibility. I refer to the oft cited decision of Cooke J. in *I.R. v. Minister for Justice and Anor* [2009] IEHC 353 where the learned judge set out ten principles that ought to be applied by a court where an applicant is seeking to judicially review a decision based on credibility. These principles are: -

1. The determination as to whether a claim to a well-founded fear of persecution is credible falls to be made under the relevant legislation and not by the Court. The High Court on judicial review must not succumb to the temptation or fall into the trap of substituting its own view for that of the primary decision makers.
2. On judicial review the function and jurisdiction of the High Court is confined to ensuring that the process by which the determination is made is legally sound and is not vitiated by any material error of law, infringement of any applicable statutory provision or of any principle of natural or constitutional justice.
3. There are two facets to the issue of credibility, one subjective and the other objective. An applicant must first show that he or she has a genuine fear of persecution for a Convention reason. The second element involves assessing whether that subjective fear is objectively justified or reasonable and thus well-founded.
4. The assessment of credibility must be made by reference to the full picture that emerges from the available evidence and information taken as a whole, when rationally analysed and fairly weighed. It must not be based on a perceived, correct instinct or gut feeling as to whether the truth is or is not being told.
5. A finding of lack of credibility must be based on correct facts, untainted by conjecture or speculation and the reasons drawn from such facts must be cogent and bear a legitimate connection to the adverse finding.

6. The reasons must relate to the substantive basis of the claim made and not to minor matters or to facts which are merely incidental in the account given.
7. Mistake as to one or even more facts will not necessarily vitiate a conclusion as to lack of credibility provided the conclusion is tenably sustained by other correct facts. Nevertheless, an adverse finding based on a single fact will not necessarily justify a denial of credibility generally to the claim.
8. 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 the applicant when testifying in person.
9. Where an adverse finding involves discounting or rejecting documentary evidence or information relied upon in support of a claim and which is *prima facie* relevant to a fact or event pertinent to a material aspect of the credibility issue, the reasons for that rejection should be stated.
10. Nevertheless, there is no general obligation in all cases to refer in a decision on credibility to every item of evidence and to every argument advanced, provided the reason stated enable the applicant as addressee, and the Court in exercise of its judicial review function, to understand the substantive basis for the conclusion on credibility and the process of analysis or evaluation by which it has been reached.

### **Consideration of application**

9. In his submissions to the Court the applicant maintains that the Tribunal in reaching its conclusion fell into error. I will consider the grounds upon which the applicant has brought these proceedings.

10. The applicant has submitted that the Tribunal erred in law in its assessment of the applicant's credibility. The applicant maintained the following finding of the Tribunal was "*irrational in the legal sense and / or in breach of natural justice and / or fair procedures*": -

"4.11 The Tribunal is not satisfied that the Appellant's account of the reasons he was targeted by the PML is coherent. According to the Appellant's account he was a low level member of the PPP. The Appellant's replies at his s35 interviews and at hearing before the Tribunal that he was targeted by PML because of his progress in the party is extremely vague. It is reasonable to expect that the Appellant could provide some level of detail as to why persons would be attempting to kill him in Pakistan. However notwithstanding the opportunities provided to him at the s35 interviews and at hearing before the Tribunal, the Appellant maintained the vague statement that persons wanted to kill him on the basis of his progress in the PPP. The Tribunal is not satisfied that the Appellant's account of why he was targeted by the PML is coherent in the circumstances."

11. The following is the relevant extract from the s. 35 interview: -

"Question: It seems odd that you would be targeted to such a degree when you were only a low level member of the Party?

Answer: Locally we were known because we were from a very good family, people in the area knew me personally young and old both. I was always involved in the social work and always helped people when they needed help. But my position did not matter but the progress I made, that made a difference."

**12.** In his submissions to the Court the applicant maintained the sole basis for this finding “*would appear to be that the Tribunal, as a starting position, manifestly does not understand why, or accept that the Applicant, as a low-level member of the PPP [---] would be so targeted. However, this starting position – that low-level members would not ordinarily be targeted by the PMC - does not appear to be supported by the COI cited by the Tribunal at para. (4.7), and which states therein that ‘journalists, teachers, students, and human rights defenders were also targeted...’ ”.*

**13.** I do not accept this submission. Firstly, the applicant’s evidence was that he was targeted by the PML not because of his position in the PPP but, rather, the progress he had made in the party. The Tribunal were entitled to the view that it was reasonable to expect the applicant to give some level of detail as to what that progress was. This answer must come from the applicant himself and I do not see how it can be provided by country-of-origin information (COI). I am of the view that the Tribunal were within jurisdiction in reaching this conclusion. I am not satisfied that this complaint of the applicant amounts to substantial grounds.

**14.** The applicant submits that the Tribunal’s finding at para. 4.14 is “*irrational in the legal sense and / or in breach of natural justice or fair procedures*”. This para. reads as follows: -

“(4.14) In the event the Appellant was present at the murder of his cousin, the Tribunal would expect the Appellant to be able to provide some documentary evidence demonstrating that these events occurred such as a police report, hospital report or death certificate, or to be able to provide some evidence of some attempt to obtain such evidence. The IPO raised a negative credibility finding on the basis of the absence of any such documents however the Appellant was not able to demonstrate to the Tribunal any genuine attempt on his part to substantiate this aspect of his claim.”

15. It seems to me that the requirement of the Tribunal for some documentary evidence to demonstrate these events occurred or some evidence of an attempt to obtain such documentation is reasonable. The Tribunal were entitled to seek documentation to verify the occurrence of an event as serious as the murder of the applicant's cousin. No documentation was forthcoming, and the Tribunal did not accept, as it was entitled to do, the reason for the absence of the documentation. Therefore, I do not believe that this amounts to a substantial ground.

16. The applicant submits that the Tribunal erred in its assessment of the applicant's credibility at para. 4.15 of its report. Para. (4.15) reads as follows: -

“(4.15) The identity of the persons he fears in Pakistan

The Appellant did not provide details of who he fears in Pakistan in his s13 interview, questionnaire, or s35 interviews other than stating that he was in fear of the PML and the Pakistani police. The Tribunal asked the Appellant why he had failed to provide such detail at any stage prior to the Tribunal hearing. The Appellant said that he was in fear of the Koker family in Lahore. The Tribunal asked the Appellant why he had not provided this information prior to the Tribunal hearing. The Appellant replied that he had not been asked.”

At para. (4.17) the Tribunal stated: -

“(4.17) The Tribunal found the Appellant's account of being subject to violent incidents in Pakistan by unknown individuals for unclear reasons to be vague. The Appellant's failure to mention that he was in fear of the Koker family until pressed as to his previously vague statements does not bolster his credibility. The Tribunal is not satisfied that the Appellant's accounts of these incidents contain the level of detail to be expected from lived events.”

17. The Tribunal is entitled to reach the view that that applicant's accounts of the various incidents lack detail. In effect, the applicant is seeking to have this Court assess the evidence that was before the Tribunal and reach a conclusion favourable to him. This cannot occur within the ambit of judicial review proceedings.

### **Conclusion**

18. By reason of the foregoing, I am satisfied that the applicant has failed to demonstrate substantial grounds for this Court to grant him leave to seek the reliefs he seeks.

19. The only other outstanding matter is the issue of costs. My preliminary view would be that as the respondents have been "*entirely successful*" they are entitled to an order for costs (including reserve costs) to be adjudicated in default of agreement. Should the applicant wish to contest this, short written submissions should be filed no later than day of 7<sup>th</sup> October, 2022. I will list the matter for mention on the day of 14<sup>th</sup> October, 2022.