

THE HIGH COURT

JUDICIAL REVIEW

[2012 473 J.R.]

BETWEEN

I.A. (PAKISTAN) AND N.I. AND A.I. (AN INFANT SUING BY HER FATHER AND NEXT FRIEND I.A.)

APPLICANTS

AND

THE MINISTER FOR JUSTICE AND EQUALITY, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 20th day of April, 2018

1. The applicants sought asylum on 19th January, 2007. That application was rejected on 15th August, 2007. They appealed to the Refugee Appeals Tribunal which refused the appeals on 8th July, 2009. They applied for subsidiary protection on 9th September, 2009 which was refused on 23rd April, 2012. Deportation orders were made, although they have been later revoked. I have heard helpful submissions from Mr. Paul O'Shea B.L. (with Ms. Sunniva McDonagh S.C.) for the applicants and Mr. Alexander Caffrey B.L. for the respondents.

Relief sought

2. The primary relief sought is *certiorari* of the subsidiary protection refusal. *Certiorari* of the deportation orders had also been sought but that no longer arises since the orders have been revoked.

3. Mr. O'Shea formally moves the legalistic points which I have rejected in *N.M. v. Minister for Justice and Equality* [2018] IEHC 186 [2018] 2 JIC 2710 (Unreported, High Court, 27th February, 2018) and *F.M. v. Minister for Justice and Equality* (Unreported, High Court, 17th April, 2018) and says that the remaining fact-specific grounds are grounds 3, 4, 7, 10, 11 and 13, which in turn resolve under three headings, which I will deal with as follows.

Delay in processing the application

4. In this case, there was a delay of two and half years in processing the subsidiary protection application. That was certainly unfortunate and should not be repeated but it does not render the decision invalid. In Case C-277/11 *M.M. v. Minister for Justice and Equality*, Advocate General Bot delivered an opinion on 26th April, 2012, which stated at paras. 113 and 114 that a delay of 21 months in a subsidiary protection decision seemed to him to be "*manifestly unreasonable*". That is agreed with by White J. in *D.M. (a minor) v. Chief Appeals Officer* [2017] IEHC 52 (Unreported, High Court, 16th February, 2017) at para. 30. I also agree, but it does not mean that the refusal is invalid as a result.

Failure to hold that the applicant had already been subject to serious harm under reg. 5(2) of the 2006 regulations

5. Mr. O'Shea criticises the finding under the heading of reg. 5(2) of the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006) as to whether the applicants had already been subject to serious harm.

6. The proposition that the applicants had been so subject was rejected because their credibility was rejected. It seems to me that that is a legitimate approach. If the applicants' account is incredible and incorrect it means that no serious harm was inflicted. That is simply a finding in fact. It is to be assumed that in coming to that conclusion all facts were considered, given that the decision says so. No narrative consideration of country material is necessary in such a case.

Failure to apply reg. 5(1)(a) of the 2006 regulations

7. Regulation 5(1) of the 2006 regulations begins by saying that: "*The following matters shall be taken into account by a protection decision-maker for the purposes of making a protection decision*". The first of those matters is "*(a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application for protection, including laws and regulations of the country of origin and the manner in which they are applied*". Where an applicant is incredible but also submits material that could possibly give rise to serious harm independently of their specific account, the decision-maker should therefore consider the country situation.

8. It is not automatic that a decision be quashed for failure to consider the country material if that would make no difference; see *R.A. v. Refugee Appeals Tribunal* [2017] IECA 297 (Unreported, Court of Appeal, 15th November, 2017) at para. 67. *R.A.* dealt with the situation where the consideration of the country material could have gone to the issue of whether the applicants' credibility should be rejected or not: see para. 40. Here there is a related problem, although slightly different from that in *R.A.*, where part of the case made is independent of the specific account, namely the risk of communal violence. The decision states on the one hand that all papers on file were considered but on the other hand that consideration of reg. 5(1)(a) is "*not applicable*". That appears to me to be somewhat contradictory.

9. By contrast with the approach taken by the Minister in this case, Hailbronner and Thym in *EU Immigration and Asylum Law*, say at p. 1136, Part D III by Judge Harald Dörig that "*the credibility of an application for international protection is assessed by looking at the facts and circumstances enumerated in art. 4(3)*". That was in the context of the recast qualification directive 2011/95/EU, but the same point must apply in relation to the original directive. It implies that, at least in general, country material is to be considered first, followed then by an assessment of credibility in the light of that material.

10. *R.A.* suggests that that may not apply if the country material would make no difference; but such a situation seems to be the exception rather than the rule. This is not a case where one can say with complete confidence that a consideration of the country material would make no difference.

11. The Minister's conclusion therefore under this particular heading seems to me to be unnecessarily blunt. It was certainly not necessary to say that reg. 5(1)(a) is not applicable. The Minister would have been entitled to say the regulation is applicable and that all such country information was taken into account but that it was concluded that the application should be rejected. The issue is not so much therefore with the conclusion itself, but with the reasoning process which seems to me in this particular instance to be

not in accordance with the directive.

Order

12. Accordingly, there will be an order of *certiorari* removing for the purpose of being quashed the subsidiary protection refusals.