THE HIGH COURT

JUDICIAL REVIEW

[2018 No. 386 J.R.]

BETWEEN

M.S.R. (PAKISTAN)

APPLICANT

AND

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

RESPONDENTS

[2018 No. 437 J.R.]

BETWEEN

M.S.

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AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 26th day of November, 2018

1. The applicants are a husband and wife from Pakistan. The husband claimed persecution in Pakistan dating back to 2000, arising from an alleged land dispute. When I asked Mr. Eamonn Dornan B.L. for the husband about this he claimed that the applicant was not relying on it but rather on later events, although when I pointed out that this original alleged attack seemed to be central to a number of grounds he then changed position and said he was relying on it. However, the husband nonetheless remained in Pakistan for a further seven years after this alleged persecution. The father in law, described by the tribunal member as the husband's "*bête noire*", is supposed to have "*a great and sinister influence over the locality and even its police*" according to the tribunal member, but at the same time has been unable to win the 20 year old court case arising out of this land dispute.

2. The husband moved to the U.K. on a student visa on 25th December, 2007. He returned to Pakistan in 2009 and claimed he married the wife in secret, although the wife had been promised as a fiancé to her cousin. It was, the tribunal member said, "*just good fortune that caused her said cousin to be delayed in returning from his work in Dubai to claim her as his bride … that seems entirely too unwieldy and unlikely ever to have been conceived or followed through".* The applicants claim a second wave of persecution as a result of the alleged marriage.

3. The husband returned to the U.K. to arrange for the wife's, visa which was obtained in February, 2011. On 10th March, 2011 the wife travelled to the U.K. She claimed she was shot at on the way to the airport in an implausible tale described by the tribunal member as "*a dramatic account she was somehow spotted and tracked down by her antagonists within one day of her fleeing her home town*." She claimed she did not know who had fired on her. The husband claimed persecution in the form of receiving threatening telephone calls. It is claimed that the wife's father filed a first information report (FIR) claiming that the wife had been abducted and it is further claimed that the husband's father was detained as a result. The husband's permission to remain in the U.K. expired in March, 2012 but he remained illegally in that country until May, 2015. At that point the applicants travelled to Ireland and first conceived of the notion of applying for asylum one month later.

4. On 13th October, 2017 their protection claims were rejected by the IPO. Those decisions were appealed to the IPAT on 8th November, 2017 and the appeals were dismissed in decisions of 23rd April, 2018. The tribunal member did not accept the FIR as genuine and also rejected purported newspaper articles having regard to their provenance, considering it implausible that pristine copies would have been retained for four years by a friend. A medical report regarding a scar on the husband's leg was not of value because it was not necessarily caused by the attack claimed. The applicant's accounts were rejected as incoherent and implausible, and adverse inferences were drawn from their failure to apply for asylum in the U.K., reinforced by the fact that the applicants had had the benefit of the legal advice.

5. I granted leave on 11th June, 2018, the primary relief being *certiorari* of the IPAT decisions. Statements of opposition were delivered on 15th November, 2018. I have received helpful submissions from Mr. Dornan for the husband, Mr. Paul O'Shea B.L. for the wife and Ms. Eva Humphreys B.L. for the respondents.

Husband's case

Ground 1(1): rejection of the FIR

6. Overall the submission made under this heading misunderstands what was before the tribunal. The tribunal had two documents:

> (a) a photocopy of what purported to be an FIR with a stamp on it. The stamp did not purport to certify the copy as correct. The applicants have not actually averred that the stamp was placed on the photocopy as opposed to on the document copied, so their point under this heading fails in *limine*. While they cannot make the point, even if they could the stamp does not purport to certify the accuracy of the document.
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> (b) The tribunal also has a certified translation of the photocopy, stamped by the translator. The tribunal was not rejecting the correctness of the translation but rather the reliability of the photocopy document being translated.

7. It is submitted that the tribunal erred in rejecting the FIR on the basis that it was a photocopy and had no authenticable identifying mark, as found by the tribunal at para. 4.6 of the husband's decision. There has been a lot of confusion about this document, for which the applicants are entirely responsible by making inaccurate statements to both the IPAT and indeed the court. The s. 39 report says that the applicant "*submitted a copy of an FIR … this document is a photocopy and bears no authenticable identifying mark*". The husband's notice of appeal to the IPAT states that "*an original FIR was submitted*". This was an inaccurate statement. Indeed, it was jettisoned by the applicant's lawyers when the matter came before the court. The husband's solicitor's affidavit at para. 7 says "*the FIR with translation which was furnished is a certified copy bearing a stamp from the police. Needless to say, the original version will be retained by the police*". While that statement repudiates the previous inaccuracy in the applicants' position before the tribunal, it is itself inaccurate because the document furnished is *not* a certified copy of the original. The only certification is that the translation is certified to be a correct translation of the document translated, which itself is a copy. There is nothing to certify that the copy document is a true copy of the original. Even the alleged police stamp does not purport to certify that the copy FIR is the same as the original.

8. I adjourned the hearing briefly to allow the respondents to examine the document to see if there was a clear answer to this but that did not move matters forward much. That was an informal attempt by me to clarify matters but certainly does not amount to a concession on the part of the respondents either way. Fundamentally, the responsibility is that of the applicants to lay the evidential foundation for any point, which under this heading they simply have not done.

9. There is no error in the tribunal's decision unless one wants to read that decision in a distorted manner so as to produce such an error. The decision must mean that the tribunal member had not been convinced that the stamp was actually on the photocopied document as opposed to on the underlying document which was copied, or even if it was, that it was not an "*authentifiable identifying mark*". The latter interpretation is also reasonable because the stamp is quite unsophisticated. Mr. O'Shea submits that "*the more obvious explanation*" is that the decision-maker did not notice the stamp. That is a far-fetched conclusion given that this issue was a specific ground of appeal. To uphold that submission would be to assume the decision-maker ignored the material submitted. The onus is on the applicants to demonstrate this, which has not been done.

10. In written and oral submissions, counsel attempted to make some sort of an argument that the documents should have been investigated by that tribunal. That submission is totally without substance: see *T.T. (Zimbabwe) v. Refugee Appeals Tribunal* [2017] IEHC 750 [2017] 10 JIC 3105 (Unreported, High Court, 31st October, 2017). But neither applicant has pleaded this point anyway, so I do not need to consider it further. A decision-maker is perfectly entitled to say that the reliability of a document has not been made out: see *K.M. (Pakistan) v. International Protection Appeals Tribunal* [2018] IEHC 510 [2018] 7 JIC 1005 (Unreported, High Court, 10th July, 2018). Here, the tribunal said that the documents were "*either unconvincing or of no help either way*". That was a perfectly legitimate finding.

11. The tedious argument was made that because a document is not expressly rejected it must therefore be accepted as overcoming all problems with incredibility of a story: see paras. 38 of the husband's submissions, para. 29 of the wife's submissions. That unfortunately is not the law. Nor does it even arise here where the documents were held to be unconvincing. The applicants' case is a severe and illustrative instance of improper compartmentalisation of decision-making. It assumes that the reliability of documents can be determined in a vacuum. They cannot. The tribunal considered all the elements of the claim before coming to its conclusions.

12. Mr. Dornan, finally under this heading, made a convoluted argument based on s. 28(7) of the International Protection Act 2015 but that has no relevance to his client. It only applies where an applicant's general credibility is established, which is not the case here.

Ground 1(2): error in rejecting newspapers
13. It is submitted that the tribunal acted unreasonably in rejecting as inauthentic newspaper reports on the basis that the husband's friend "*would keep two pristine copies of a newspaper for four years with no reasonable explanation*". That is a perfectly valid approach by the tribunal and no error has been demonstrated under this heading.

Ground 1(3): alleged unfair rejection of a medical report
14. The applicants complain that the tribunal unfairly treated a medical report in relation to a scar suffered by the husband as having no probative value. No unfairness has been shown. The finding that the report was of no probative value is perfectly reasonable. The scar might or might not have been caused by the events complained of. As the tribunal member said *"it might be consistent with such an attack but so might a plethora of other things."* I dealt with this situation in *C.M. v. International Protection Appeals Tribunal* [2018] IEHC 35 [2018] 1 JIC 2304 (Unreported, High Court, 23rd January, 2018). A medical report of such an equivocal nature does little to advance an applicant's claim of persecution.

Ground 2(1): alleged failure to address the core claim
15. The applicants submit that the adverse credibility findings are unlawful for unfairness or unreasonableness because they do not impact on the substantive basis of the claim and are incidental to the core claim. That point does not in fact arise in this case because the tribunal member considered the core claim and considered that the applicants were incredible. No unfairness as pleaded has been shown and indeed there has been no real attempt to show an unfairness under this heading. Rather the allegation of unfairness is one that has simply been sprinkled into all of the grounds without adding much to the applicant's case.

16. But more fundamentally, there is no obligation to address credibility exclusively by reference to the core claim. Where a person tells a cock-and-bull story on matters capable of rational assessment, that in itself is relevant to the assessment of a "*core claim*" that is not directly verifiable. Any other approach would be to create a one-way ratchet system whereby demonstrated lies are to be disregarded and an unverifiable subjective account must be accepted. The tribunal acted perfectly reasonably in rejecting the credibility of the applicants' accounts, having regard to all of the circumstances, including matters that the applicants would categorise as not being part of the "*core claim*". There is no legal obligation whatsoever to exclusively or primarily focus on the "*core claim*" or to evaluate it separately from a holistic view of all of the evidence – indeed it would be unlawful to so compartmentalise; and stepping outside the improperly closed box of asylum logic for a moment, we do not do artificially compartmentalise an account in real life where assessment of credibility in any other context falls to be considered.

Ground 2(2): unfairness and speculation
17. It is submitted that the tribunal engaged in unfairness, conjecture or speculation regarding various elements of the story. The tedious repetition of the claim of unfairness under this heading adds nothing to the case. Drawing adverse inferences is not speculation. Speculation is to act in a way which is unharnessed from the evidence. Here the tribunal member saw and heard the applicants, engaged in a rational assessment of the evidence and drew adverse inferences. Legitimate adverse inferences are not to be conflated with impermissible speculation. The latter has certainly not been demonstrated here.

Ground 2(3): failure to apply for asylum in the U.K.
18. The applicants contended that the tribunal acted unfairly in finding that a failure to apply for asylum in the U.K. means that the husband's actions are "*emphatically not the actions of a person who has feared for his life and limb*", and likewise for the wife. Such a finding is not unfair and nor is there any inappropriate conjecture. Failure to apply for asylum until after the U.K. visa ran out and after the applicants moved to Ireland is unfortunately a strikingly obvious problem about the account of persecution offered. The applicants got legal advice in the U.K. and did not apply for asylum following such advice. It is perfectly reasonable to draw an inference that the applicants did not put forward a genuine story of persecution to their lawyers at that stage. As the tribunal member said, quite legitimately, "*actions speak louder than words*", citing *Ensign Tankers (Leasing) Ltd. v. Stokes (H.M. Inspector of Taxes)* [1992] BTC 110 *per* Lord Templeman and *D.K. v. Refugee Appeals Tribunal* [2006] IEHC 132 [2006] 3 I.R. 368 at 370 *per* Herbert J.

Ground 2(4): dismissing the applicants' explanations
19. It is contended that the tribunal acted unfairly or unreasonably in dismissing the applicants' explanations. This amounts to little more than an assertion of a legal entitlement to win one's case. The applicants' explanations were considered but not accepted. Not accepting them is neither unfair nor unreasonable.

Ground 3: error in assessment of country information
20. It is contended that the tribunal erred in assessment of the facts and circumstances and in particular that country information confirms that it is common among police to accept bribes and register false complaints. It is suggested that the decision does not make any reference to or assessment of this aspect. The fundamental problem with this submission is that there is no obligation on the decision-maker to engage in narrative discussion of an applicant's points. The decision states that all matters submitted were considered and the applicants have not demonstrated otherwise: see *G.K. v. Minister for Justice, Equality and Law Reform* [2002] 2 I.R. 418 [2002] 1 I.L.R.M. 401 *per* Hardiman J. A further fundamental problem with this ground is that just because something could have happened, according to country information, does not mean that it did happen.

Wife's grounds

Ground 1: an unduly harsh reading
21. It is submitted that material put forward by the wife was read on an unduly harsh basis and that "*anything that could be rejected has been rejected*", as it is put by Mr. O'Shea. But that is not a ground for judicial review. What it means is that the independent quasi-judicial office holder who saw and heard the applicants did not believe them. A whole range of matters are rammed into ground 1 as pleaded. The next distinct one appears to be a claim of a lack of reasons, but reasons were provided. The next complaint under this heading is one of no consideration of the contents of documents and the possibility that they might have been authentic. However, only in exceptional circumstances can one say for certain that a document is unquestionably a fraud, but it is much easier and perfectly legitimate to say that the document is unconvincing. One cannot set an impossible bar for the tribunal. To require it to accept documents unless they are demonstrably fraudulent would be to legitimise fraud on a widespread basis. Mr. O'Shea pleads that the wife's claim was rejected on gut instinct and speculation. That is simply spin. The applicants were not successful. That does not mean that the rejection was unlawful. The complaint under this heading simply has not been made out.

Ground 2: failure to give weight to the applicants' evidence.
22. It is submitted that the tribunal member failed to give any probative weight to the documentary evidence furnished by the applicant. However, it is well-established that the weight to be attached to the evidence is quintessentially a matter for the decision-maker, to use a phrase employed by Birmingham J. (*M.E. v. Refugee Appeals Tribunal* [2008] IEHC 192 (Unreported, High Court, 27th July, 2008) (para. 27) and repeated in a number of subsequent cases (see *S.B. v Minister for Justice and Equality* [2010] IEHC 133 (Unreported, Cooke J., 25th February, 2010)*, C.M. (Zimbabwe) v. International Protection Appeals Tribunal* [2018] IEHC 35 [2018] 1 JIC 2304 (Unreported, High Court, 23rd January, 2018), *B.D.C. (Nigeria) v. International Protection Appeals Tribunal* [2018] IEHC 460 (Unreported, High Court, 20th July, 2018 (para. 11) and *R.S. (Ukraine) v. International Protection Appeals Tribunal* [2008] IEHC 192 [2008] 6 JIC 2704 (Unreported, High Court, 17th September, 2018)).

Ground 3: rejection of medical report
23. The wife complains that the tribunal member rejected the husband's medical report but no additional point beyond the one addressed above has been established.

Ground 4(1): failure to address the core claim
24. I have dealt above with the misconceived point that the adverse findings did not go the "*core claim*".

Ground 4(2): unfairness or conjecture
25. Again this point does not add anything to the points dealt with already above.

Ground 4(3): failure to apply for asylum
26. The wife claimed that the tribunal acted unfairly in finding that the failure to apply for asylum in the U.K. indicated that her actions were not those of someone in genuine need of international protection. Such a finding is not remotely unfair or unlawful and for the reasons discussed above, a decision-maker is certainly entitled to place weight on that important element.

Ground 5: failure to have regard to up to date country information
27. It is alleged that the tribunal erred in failing to abide by art. 4 of the qualification directive in failing to consult sufficiently relevant and up to date country information. This pleading is boilerplate and non-particularised, and no relief can be granted on such a basis. Such a pleading is contrary to O. 84 r. 20(3). In any event, no basis has been made out to show that the decision was unlawful under this heading and no specific up to date country information has been identified that was ignored and would have made a difference.

Conclusion
28. The fact that these applicants lived in the U.K. for years without claiming asylum, and only came to Ireland and asserted persecution after the visas ran out, speaks volumes, not to mention the fact that the husband lived in Pakistan for many years after the original alleged persecution. The IPAT was perfectly entitled to draw adverse inferences from such a situation. The legalistic dust-cloud thrown up on their behalf does not change that fact. The tribunal member who saw and heard these applicants and is in the best position to assess the credibility of their account rejected that account. No basis to disturb such a finding has been made out. Even Mr. O'Shea accepted that the applicants' behaviour might be typical of economic migrants, although he quibbled with the tribunal's view (an entirely reasonable one) that this was the conduct of economic migrants. The applicants have simply played fast and loose with the immigration systems of the U.K. by overstaying and of Ireland by presenting an unfounded claim that was disbelieved on all occasions.

29. One of Mr. O'Shea's more conspicuously meritless points was that to view them as economic migrants amounted to bias, but that fundamentally misunderstands the nature of a decision. A decision, opinion or judgment is a conclusion, not a starting point. The comments of the tribunal member are his considered conclusions having first fairly received and considered all of the evidence and submissions. The fact that elements of a decision-maker's conclusions are adverse does not amount to bias.

30. The applications are dismissed.