

**THE HIGH COURT
JUDICIAL REVIEW**

[2021] IEHC 787
[2020 552 JR]

BETWEEN

NAVEED HUSSAIN

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Cian Ferriter delivered on the 15th day of December 2021

Introduction

1. In these judicial review proceedings, the applicant seeks an order of *certiorari* quashing the decision of the first named respondent (“IPAT”) dated 10 June 2020 which affirmed the recommendation of the International Protection Office (“IPO”) that the applicant be given neither a declaration of refugee status nor a subsidiary protection declaration.

Background

2. The applicant is a Pakistani national from the Punjab region of Pakistan. He arrived in the State on 19 April 2015 and has lived here since. The applicant applied for permission to remain in the State as a qualifying member of an EU citizen based on his relationship with his cousin, who is an EU citizen. This application was refused on 24 May 2016, which refusal was upheld on 31 May 2017. A deportation order was made in respect of the applicant on 30 January 2018. This deportation order was revoked on 20 May 2019.
3. On 27 February 2018, the applicant applied for international protection on the grounds that he feared persecution in Pakistan by reason of his religious belief as a Shia Muslim.
4. On 26 March 2018, the applicant completed an Application for International Protection Questionnaire. In his questionnaire, he explained that he had started to construct an Imambargah on his land, and this had attracted the attention of religious extremists in the region who objected to a Shia place of worship being built. (An Imambargah is a building which functions as a mosque and a meeting place for Shia Muslims.) The applicant claimed that he had received threats once he announced the decision to build the Imambargah, and that he was attacked with gunfire at his home by a group of religious extremists.
5. On 9 January 2019, the applicant was interviewed by an authorised officer of the IPO pursuant to section 35 of the International Protection Act 2015 (“the 2015 Act”). He was interviewed a second time on 5 March 2019.
6. On 9 April 2019, the IPO recommended that the applicant not be declared a refugee or a person eligible for subsidiary protection by decision pursuant to section 39 of the 2015 Act.
7. By Notice of Appeal dated 11 October 2019, the applicant appealed the decision of the IPO to IPAT. The Notice of Appeal contained detailed grounds of appeal and legal

submissions. The Applicant's solicitor enclosed country of origin information, including the US State Department 2018 Report on International Religious Freedom: Pakistan ("the USSD 2018 Report") and the United States Commission of International Religious Freedom 2019 Annual Report: Pakistan ("the US CIRF 2019 Report"), and cited the most relevant passages of those reports in the grounds of appeal. By letter dated 5 December 2019, the applicant's solicitor furnished further supporting documentation to IPAT.

8. The applicant's appeal against the IPO's recommendation was heard by IPAT on 12 December 2019. In oral submissions made on behalf of the applicant, his counsel referred to the UNHCR report *Beyond Proof*, which deals with the reasons why an international protection applicant might legitimately delay in seeking international protection. It was submitted, based on the material contained in the *Beyond Proof* report, that many international protection applicants consider asylum as a last resort, and that a genuine reason for a delay in seeking international protection is reliance on alternative means of obtaining residency, such as EU Treaty Rights in this case. By letter dated 20 December 2019, the applicant's solicitor furnished full copies of his 2014-2019 and 2010-2015 passports and his UK visa stamps to IPAT.
9. IPAT by decision dated 10 June 2020 ("the Decision") affirmed the recommendation of the IPO that the applicant should not be granted refugee status or a subsidiary protection declaration. IPAT's decision accepted that the applicant was a Shia Muslim from Pakistan and that he was involved in the construction of an Imambargah. However, IPAT did not accept the credibility of the applicant's account that he was shot at in his home and ultimately refused his appeal on the basis of findings of lack of credibility.

Legal grounds

10. The applicant has been given leave to challenge the lawfulness of the Decision on a series of grounds including failure to take into account relevant information and considerations, reliance on material error of fact, failure to discharge its duty to give reasons, irrationality and other errors of law.
11. While the applicant advanced submissions (both in writing and orally) in respect of all of the grounds in respect of which he got leave to argue, it is fair to say that the primary focus of the applicant's oral submissions was the manner in which it was alleged that IPAT unlawfully dealt with the question of country of origin information ("COI") tendered to it on behalf of the applicant. I will accordingly consider that issue first.

Applicable legal principles

12. In order to set the applicant's submissions in their appropriate legal context, it is necessary to briefly refer to a number of principles established by the authorities. While there was no dispute as to the applicable legal principles, there was a sharp dispute as to the appropriate application of those principles to the facts of this case.
13. The applicant laid emphasis on the seminal decision of Edwards J. (when in the High Court) in *DVTS v. Minister for Justice* [2008] 3 IR 476 ("*DVTS*"). That decision is authority for the proposition that IPAT when deciding to prefer one piece of COI over another, where there is conflict in the information between different sources of COI, was obliged to

engage in a rational analysis of the conflict and to justify the preferment of one view in the COI over another on the basis of that analysis.

14. The applicant in his submissions also laid emphasis on the following passage at paragraph 33 of the judgment of Edwards J. in *DVTS* (at 492):

"I further note, and it is of assistance to me, that in Kramarenko v. Refugee Appeals Tribunal, the High Court (Finlay Geoghegan J.) approved the decision of Mr. David Pannick Q.C. (sitting as Deputy Judge of the High Court) in R v. Immigration Appeals Tribunal ex parte, Sardar Ahmed [1999] I.N.L.R. 473, that in turn adopted the finding of Pearl J. in Horvath v. Secretary of State for the Home Department [1999] I.N.L.R. 7 to the following effect:

'It is our view that credibility findings can only really be made on the basis of a complete understanding of the entire picture. It is our view that one cannot assess a claim without placing that claim into the context of the background information of the country of origin. In other words the probative value of the evidence must be evaluated in the light of what is known about the conditions in the claimant's country of origin' "

15. In *Imafu v Minister for Justice Equality & Law Reform and Others* [2005] IEHC 182 (Clarke J. (as he then was)) ("*Imafu*") it was held that, if the core claim of an applicant for protection was disbelieved, the Tribunal does not have an obligation to go on and conduct what would then be a wholly artificial analysis of whether there was a well-founded fear of persecution.
16. These principles are reflected in the ten-point summary of the applicable principles, synthesised by Cooke J. in the case of *IR v Minister for Justice* [2015] 4 IR 144 ("*IR*") from the authorities to that point (including *DVTS* and *Imafu*). It is worth setting out those ten points in their entirety given the emphasis laid on them by counsel for the respondents.

"[10] So far as relevant to the issues dealt with in this judgment it seems to the court that the following principles might be said to emerge from that case law as a guide to the manner in which evidence going to credibility ought to be treated and the review of conclusions on credibility to be carried out:-

- 1) *the determination as to whether a claim to a well founded fear of persecution is credible falls to be made under the Refugee Act 1996 by the administrative decision maker 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) *a 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 an 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; and*
- 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 reasons 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."*

17. As we shall see, counsel for the respondents submitted that this was an “*Imafu*”-type case i.e. one in which the applicant’s core account of his grounds of feared persecution was rejected as lacking in credibility; counsel for the applicant submitted that it was not and that accordingly, the Tribunal was obliged to conduct a “*DVTS*”-type analysis i.e. where there was a conflict in the available COI material, the Tribunal was obliged to justify its preference for the COI material relied upon by it in arriving at its decision over the other COI material before it.

The Tribunal’s Decision

18. The Tribunal accepted that the applicant was a national of Pakistan (paragraph 3.1); that he was a Shia Muslim from Gujjar Khan in Punjab in Pakistan (paragraph 4.2.1); and that the applicant was involved in the construction of an Imambargah in Pakistan (paragraph 4.3).
19. The Tribunal noted (at paragraph 4.7) that “*the country of origin information before the Tribunal indicates that sectarian violence directed against Shia Muslims occurs in Pakistan. This supports the appellant’s narrative.*” The Tribunal referenced the US CIRF 2019 report on Pakistan in that regard (at paragraph 4.5 of its decision) and also a European Asylum Support Office (EASO) COI report on Pakistan dated August 2017.
20. The applicant had given evidence of the fact that he was subject to threats and had been shot at due to his attempts to build an Imambargah in his home town in the Punjab region. The Tribunal rejected the applicant’s evidence as to the threats and shooting ruling (at paragraphs 4.17 and 4.18) that:

[4.17] The Tribunal is not satisfied that a coherent or consistent account has been provided by the Appellant in respect of the shooting or the events surrounding it. The Appellant stated in his questionnaire that after the shooting he stayed in his house in a depression. However, when asked at Tribunal whether he was in possession of the threatening letters he received, the Appellant replied he did not have them as he did not stay in his house after the shooting. The Appellant stated at hearing before the Tribunal that he was particularly unsafe in his village as he was the only Shia in it when the Appellant had stated in his first section 35 interview that there were fifty Shia in his village. The Appellant’s explanation in respect of the inconsistent statements made about the shooting are rejected. The Appellant stated in his questionnaire and his section 35 interview that he was indoors when the shooting occurred. This narrative changed at Tribunal hearing to a statement that he was engaged in a conversation outside of his house with the men where he was threatened and only fled indoors when the shooting began. The Tribunal would expect that the Appellant would provide a consistent account of whether he spoke to the men outside his house, whereupon he was shot at, or whether he was inside his house whilst it was shot at. These differing accounts provided by the Appellant undermine the credibility of his account.

[4.18] The Appellant’s account in respect of what group or organisation was involved in the event and who he is in fear of in Pakistan has been vague. The Appellant has

been unable to name the group threatening him or any of its members. Notwithstanding this fact, the Appellant is sure that his name is on a hit list of this unknown group”.

21. The Tribunal ruled as follows at paragraphs 4.34 to 4.37 of its decision, under the heading “Conclusion of whether the Appellant was subject to threats and was shot at due to his attempt to build an Imambargah at Pakistan”:-

[4.34] The Tribunal accepts that country of origin information demonstrates that sectarian violence against Shia occurs in Pakistan. The Tribunal also accepts that the Appellant was involved in the building of an Imambargah in Pakistan. However the Tribunal is not satisfied that the Appellant’s account of the claimed shooting incident on 10th March 2015 has been consistent or coherent. The Appellant’s account before the Tribunal was that he exited his dwelling, spoke to the men and ran back inside when he was shot at by them. The previous account by the Appellant in his section 35 Interview and questionnaire was that he was inside when the shooting occurred. No adequate explanation was provided by the Appellant as to why he provided these different accounts. The Tribunal found the Appellant’s description of the shooting by unknown people from an unknown organisation to be vague.

[4.35] The Tribunal is not satisfied that a reasonable explanation has been provided by the Appellant as to his failure to seek international protection on his arrival in the UK or for the nearly three year delay in seeking International protection after his arrival in Ireland. The delay in seeking protection undermines the credibility of the Appellant’s claimed fear of persecution. The false statement made by the Appellant at hearing as to accuracy of the translation of the letter of 11th October 2019 undermines his credibility. The Tribunal is not satisfied that the Appellant is generally credible. It is inappropriate to provide him the benefit of the doubt.

[4.36]. In circumstances where the Tribunal is not satisfied as to the general credibility of the Appellant, the Tribunal is not satisfied that statements of the Appellant in the FIR or newspaper article are supportive of the Appellant’s claimed persecution. The Tribunal does not consider the documents submitted by the Appellant to be reliable in circumstances where the Appellant is not generally credible.

[4.37]. On the balance of probabilities, the Tribunal is not satisfied that the Appellant was subject to threats and was shot at due to his attempts to build an Imambargah in Pakistan given the negative credibility findings made above. This material element of the Appellant’s claim is rejected by the Tribunal. “

22. The applicant’s fundamental point is that once the Tribunal had accepted (correctly) that COI material demonstrated that sectarian violence against Shia Muslims occurred in Pakistan and once the Tribunal had accepted that the applicant was a Shia Muslim who had been involved in the outward manifestation of his faith by the building of an Imambargah in Pakistan, it was incumbent on the Tribunal as a matter of law to

thereafter properly evaluate the COI material to determine whether the applicant faced a well-founded fear of religious persecution in the event that he was returned to Pakistan. The applicant contends that the case cannot be fairly characterised as an “*Imafu*”-type case where the core of the applicant’s claim was rejected on lack of credibility grounds. Rather, it is submitted that at the core of the applicant’s claim was the fact that he was a Shia Muslim who had publicly manifested his commitment to his minority faith by the construction of an Imambargah (being a mosque and meeting place for Shia Muslims) and that it was not lawfully appropriate for the Tribunal to simply dismiss his claim on the grounds of lack of credibility without, at that point, properly engaging with the COI material in a proper fashion, including by justifying preferment of certain COI material over other such material in accordance with *DVTS*.

23. The respondents for their part submit that the case is properly characterised as one where the Tribunal rejected the applicant’s core claim (which, it says, centred on the alleged gun attack on him) as lacking in credibility such that it was entirely open to the Tribunal to ultimately reject the applicant’s claims of well-founded fear of persecution.

24. In this regard, the Tribunal stated, at paragraph 5.3 of its decision, that:

“The core of the Appellant’s claim concerning his claimed previous persecution on the basis of his religion has been rejected by the Tribunal. The Tribunal has considered whether the Appellant will face a real chance of persecution on the basis of being a Shia Muslim in Pakistan. The Tribunal has considered all of the country of origin information and other information before the Tribunal.”

25. The Tribunal then, in the same paragraph of its decision, referenced an excerpt from the EASO August 2017 report in relation to the security situation in Pakistan.

26. The Tribunal then went on to hold, at paragraph 5.6 of its decision, as follows:

“[5.6] Adherents of Shia Islam account for approximately 25% of the population of Pakistan. The country of origin information indicates that the Shia population of Pakistan can be subject to sectarian related violence. The information indicates that the number of sectarian attacks decreased by 41% in 2016 compared to 2015. The population of Pakistan is approximately 207 million people. The country of origin information states that the majority of sectarian related violence has occurred in Balochistan and in Sindh, provinces where the Applicant has not resided. The information concerning the province where the Applicant resided in Pakistan, being Punjab, indicates that security forces have claimed to have eliminated the leadership of one of the Sunni terrorist groups who have been responsible for attacks on Shia. The Tribunal is not satisfied that the individual circumstances of the Appellant and the country of origin information indicate that the Appellant will face a real chance of persecution in Pakistan on the basis of his religion. Whilst some sectarian attacks occur against Shia in Pakistan, the Tribunal is not satisfied that they are so widespread in Punjab to amount to a real chance that the Appellant will be subject to persecution in Pakistan on the basis of his religion.”

27. As can be seen, the Tribunal relied on parts of the EASO 2017 report that indicated that the number of sectarian attacks decreased by 41% in 2016 compared to 2015; that the majority of sectarian related violence occurred in provinces where the applicant had not resided; and that the security forces had claimed to eliminate the leadership of one of the terrorist groups who had been responsible for attacks on Shia in his province of Punjab.

28. Based on these facts, the Tribunal ruled (at paragraph 5.6) that it was:

"...not satisfied that the individual circumstances of the Appellant and the country of origin information indicates that the Appellant will face a real chance of persecution in Pakistan on the basis of his religion. While some sectarian attacks occur against Shia in Pakistan, the Tribunal is not satisfied that they are so widespread in Punjab to amount to a real chance that the Appellant would be subject to persecution in Pakistan on the basis of his religion."

29. Counsel for the respondents sought to contend that this constituted an "even if..." analysis, i.e. that it was not essential to the Tribunal's reasoning in circumstances where this was an "Imafu"- type situation where the core of the applicant's claim was rejected on credibility grounds, as set out in section 4 of the Decision.

Discussion

30. In my view, the applicant's submissions are well made on the issue of a failure by the Tribunal to lawfully engage with the COI material tendered to it and in particular, that the Tribunal fell into error in failing to have proper regard to the most up to date COI material furnished to it or, at a minimum per *DVTS*, in failing to justify its preferment of the older COI material over the newer COI material particularly where that newer material (as exemplified by the contents of the 2019 US CIRF report) objectively evidenced a worsening of the position as regards sectarian violence against Shia Muslims, including Shia Muslims in the applicant's home province of Punjab.

31. The Tribunal had accepted key parts of the Applicant's case as to feared persecution (i.e. that sectarian violence against Shia Muslims occurs in Pakistan and that the Applicant was a Shia Muslim involved in the building of an Imambargah in Pakistan) and went on to consider COI material in the light of those facts to see whether his case as to feared persecution was well founded. Having embarked (correctly) on that path, it behoved the Tribunal to then properly engage with the most recent COI material which, on the face of it, was supportive of the applicant's case in feared persecution.

32. On the facts of the case here, there were three relevant COI reports before the Tribunal, being the EASO 2017 report (which referred to the state of affairs in Pakistan in 2016); and US reports of 2018 (US State Department) and 2019 (CIRF) which referred, respectively, to events in Pakistan in 2017 and 2018. The 2019 US CIRF report made clear that the US State Department had designated Pakistan as a country of particular concern as regards religious sectarian violence, as of 2018.

33. The 2019 US CIRF report stated, in a section headed "Key Findings" that:

"In 2018, religious freedom conditions in Pakistan generally trended negative despite the Pakistani government taking some positive steps to promote religious freedom and combat religiously motivated violence and hate speech. During the year, extremist groups and societal actors continued to discriminate against and attack religious minorities, including Hindus, Christians, Sikhs, Ahmadis, and Shi'a Muslims. The government of Pakistan failed to adequately protect these groups, and it perpetrated systematic, ongoing, egregious religious freedom violations; this occurred despite some optimism about the potential for reform under the new government of Prime Minister Imran Khan. Various political parties and leading politicians promoted intolerance against religious minorities during the lead up to the 2018 national elections. For example, the entry of extremist religious parties into the political arena during the election period led to increased threats and hate speech against religious minorities. Also, abusive enforcement of the country's strict blasphemy laws continued to result in the suppression of rights for non-Muslims, Shi'a Muslims, and Ahmadis.

Based on these particularly severe violations, USCIRF again finds in 2019 that Pakistan should be designated as a 'country of particular concern,' or CPC, under the International Religious Freedom Act (IRFA), as it has found since 2002. In November 2018, the U.S. Department of State for the first time ever designated Pakistan as a CPC. Nevertheless, the State Department immediately issued a waiver against any related sanctions on Pakistan. USCIRF recommends that the State Department redesignate Pakistan as a CPC under IRFA and lift the waiver."

34. On the next page of the 2019 US CIRF report, under the heading "Religious Topography", Shi'a Muslims are said to represent "10-15%" of the population.

35. This report also noted, elsewhere, that:

"During the reporting period, there were dozens of reports of arrests and charges for blasphemy, especially in Punjab Province where many religious minorities reside and the majority of blasphemy cases occur."

Examples of such sectarian violence in the Punjab against religious minorities are then provided.

36. The report under the heading "Targeted Sectarian Violence" references the fact that

"there are many domestically focused extremist groups operating in Pakistan. In addition to attacking government and military sites, groups such as the Pakistani Taliban (TTP) and Lashkar-e-Jhangvi (LeJ) are known to persecute religious minorities. Along with non-Muslims, these groups often target Shi'a and Sufi Muslims, which has sown deep-seated sectarian tensions in the country."

37. In my view, the applicant is correct in his submission that the Tribunal wrongly ignored this very relevant and up to date information put before it at the hearing in favour of an

earlier report, being the 2017 EASO report which painted a more benign picture obtaining as at the earlier date of 2016 in respect of the question of persecution of religious minorities such as the Shi'a Muslims like the applicant, without reasoning why the earlier report was to be preferred over the later reports. This is a breach of the principles set out in *DVTS*.

38. I have carefully considered the respondent's submission that core aspects of the applicant's case were rejected as not being credible, in particular the applicant's account of the threats and the gun attack in his home in March 2015. In my view, it cannot be fairly said on the application of the various criteria identified from the case law by Cooke J. in *IR* that it followed from the rejection of the applicant's account of the threats and gun attack that the applicant did not have a well-founded fear of persecution on account of his religious faith if returned to Pakistan. In my view, given the acceptance by the Tribunal of central aspects of the applicant's case (i.e. that he was a Shia Muslim, that there was sectarian violence in general against Shia Muslims in Pakistan and that the applicant had commenced construction of a mosque and meeting place for Shia Muslims), it behoved the Tribunal to go on and lawfully assess the COI material it was furnished with. In particular, in accordance with the principles in *DVTS*, the Tribunal was under an obligation to explain the reasons why it was preferring the EASO 2017 report over the later 2018 and 2019 US reports (and in particular the 2019 US CIRF report), in circumstances where those later reports highlighted a worsening position as regards sectarian violence against religious minorities, including Shia Muslims, in Pakistan generally and in Punjab specifically where the applicant had sought to build his Shia mosque and meeting place.
39. In my view it follows that the Tribunal's finding (at paragraph 5.7 of the Decision) that the applicant did not have a well-founded fear of persecution should he return to Pakistan was unlawfully arrived at.

Conclusion

40. In the circumstances, I will make an order of *certiorari* quashing the Tribunal's decision of 10 June 2020 and remit the matter to the Tribunal for a fresh assessment.
41. In light of the findings above, and given that I am going to grant an order of *certiorari* against the Decision and remit the matter for fresh consideration before a different Tribunal member, I will refrain from expressing a view on the other grounds of challenge as advanced by the applicant.