

**THE HIGH COURT
JUDICIAL REVIEW**

[2022] IEHC 115

Record No. 2021 / 201 /JR

**IN THE MATTER OF SECTION 5 OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT
2000 (AS AMENDED) and IN THE MATTER OF THE INTERNATIONAL PROTECTION ACT
2015**

BETWEEN

YD

APPLICANT

AND

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

RESPONDENTS

Judgment of Mr. Justice Cian Ferriter delivered on the 25th day of February 2022

Introduction

1. In these judicial review proceedings, the applicant seeks an order of *certiorari* quashing the decision of the first respondent (“the Tribunal”) dated 29th January, 2021 recommending that the applicant should not be granted either refugee status or subsidiary protection (the “Decision”).

Background

2. The applicant is a national of Sri Lanka, born on the 23rd November, 1987. He made a claim for international protection in this State on the 2nd February, 2018, on the basis that if returned to Sri Lanka he would face persecution based on political opinion and fear of serious harm, as a Tamil who had been under criminal investigation for alleged involvement in a terrorist bombing in Sri Lanka in 2008.
3. The applicant completed preliminary interviews pursuant to Section 13(2) of the International Protection Act, 2015 (“the 2015 Act”), with the International Protection Office (“IPO”), on the 2nd and 8th February, 2018. The applicant subsequently completed an Application for International Protection Questionnaire dated the 23rd March, 2018, in which he detailed his issues in Sri Lanka.
4. On the 30th August, 2018, the applicant attended an interview with an International Protection Officer pursuant to the provisions of Section 35 of the 2015 Act. At that interview, he gave an account of his problems in Sri Lanka and submitted documentation in support of his claim for international protection.
5. By letter dated the 30th September, 2019, the applicant was informed that the IPO recommended, pursuant to Section 39(3)(c) of the 2015 Act, that the applicant should be given neither a refugee declaration nor a subsidiary protection declaration and was given a copy of the Section 39 Report which set out the basis of the IPO’s recommendation. The Section 39 recommendation noted that the applicant’s account presented inconsistencies and credibility issues which were at the core of his claim.

6. By Notice of Appeal, dated 15th October, 2019, the applicant sought to appeal the recommendation of the IPO to the Tribunal.
7. On the 6th March, 2020, the Tribunal received further grounds and submissions on behalf of the applicant which referred to and were accompanied by the Country of Origin Information (COI) as outlined at paragraph 2.2 of the Tribunal's decision.
8. An oral hearing of the appeal was conducted by the Tribunal on the 16th September, 2020, with liberty granted to the applicant to furnish additional submissions on the discrete issue of receiving a fair trial in Sri Lanka and more generally the criminal legal process as might bear on the applicant's claim.
9. On 24th November, 2020, the Tribunal duly received supplemental submissions in support of the applicant's appeal on this basis, which made reference to and relied on the COI as outlined at para. 2.3 of the Tribunal's decision. On 9th December, 2020, the Tribunal was furnished with a decision of the UK Court of Appeal stated to be relevant to the applicant's claim.
10. The Decision then issued to the applicant on 29th January, 2021 affirming that the applicant be given neither a refugee declaration nor a subsidiary protection declaration.
11. The applicant issued these proceedings on 11th March 2021 and was granted leave to apply for judicial review on 26th April 2021.

The applicant's case

12. The applicant's case, in short, is that the Decision is vitiated by fundamental errors of fact which underpinned adverse credibility findings against him, such as to render the Decision unlawful. The applicant contends that these errors stemmed from a failure on the part of the Tribunal to appreciate the distinction which exists as a matter of Sri Lankan law between being charged for a terrorist offence and being arrested and detained in the course of a criminal investigation into a terrorist offence as a mere suspect. The applicant contends that these errors led to findings by the Tribunal which were irrational in the legal sense. He also takes issue with what he contends are other fundamental errors of fact in relation to other aspects of his account of events, in particular his departure to and return from Saudi Arabia.
13. The applicant's case is that he feared persecution if returned to Sri Lanka in circumstances where he was a suspect for the commission of a terrorist offence by Tamil separatists in June 2008 in Polgolla, Sri Lanka. His case was that he had been arrested and detained in police detention for 2 weeks in August 2008 before being brought before the High Court of Kandy on 14th August 2008 when he was released on bail pending an investigation, as provided for in Sri Lankan law. (Sri Lankan law allows for preventive detention without charge for terrorist offences.). Thereafter, he relocated to live in a camp in a Tamil region, subsequently leaving to go to Saudi Arabia (which he entered on a work visa) to avoid getting further caught up in the criminal investigation; that on his return to Sri Lanka from Saudi Arabia he was still the subject of police interest and

warrants for his appearance in court and that he ultimately left to come to Ireland on the basis of his fear of persecution as a Tamil suspect for a terrorist offence in Sri Lanka.

14. The applicant says that he has been consistent in his case throughout the international protection process including in his s. 35 interview, in his AIPQ answers and at the oral hearing before the Tribunal. Notwithstanding this, he contends that the Tribunal incorrectly proceeded on the basis that his case was that he had been charged for that offence and then held that his case had been inconsistent in so far as he maintained at various points in the process that he had not been charged with the offence, and made adverse credibility findings on the back of these inconsistencies which led to his claim for protection being rejected.

The respondents' response

15. The respondents, for their part, contend that it was perfectly open to the Tribunal to hold that the applicant's account had been inconsistent based on his testimony to the Tribunal, as recorded in the Decision, and to determine that the applicant lacked credibility as a result of same. The core of the respondents' submission is expressed as follows in their written submissions:

"The Applicant has said that he was charged at various stages in the documents which were before the Tribunal and the Tribunal is entitled to take such, and inconsistencies relating to such, into account in coming to a decision. At 2.14 of the Decision, the Applicant's own statement in the Tribunal is recorded: "He said he was also charged because he was in support of those charged in connection with the bomb blast." It is notable that while the Applicant refers to the next sentence, this statement by the Applicant that he was charged is passed over. It is the case that the references to being charged in the Decision are based on the Applicant's own evidence as recorded at 2.14. It is further respectfully noted that the Submissions made on behalf of the Applicant recorded in the Decision at 2.17 include submissions that the Applicant was brought before a Court in relation to the bomb blast and submissions as to why the Applicant's name was not on the charge sheet. At 5.1 of the Decision, the Applicant, when questioned if he had a document showing he was charged (as he had stated at 2.14), neither denied that he had been charged nor attempted to correct this, but instead attempted to substantiate that he had been charged by submitting a document which could not be relied upon to demonstrate this."

Applicable legal principles

16. It is well-settled that an error of fact relied on to make an adverse credibility finding can warrant the grant of certiorari. In *H.R. v. Refugee Tribunal & anor* [2011] IEHC 151 Cooke J. at para. 15 expressed the view that the contested decision contained a clear and important mistake as apparent from the Tribunal member emphasising that the relevant passage related to a "fundamental piece of information". He went on to cite from the judgment in *A.M.T. v. Refugee Appeals Tribunal* [2004] 2 I.R. 607, where Finlay Geoghegan J. stated: -

"Whether one considers the legal principles applicable to the assessment of credibility in claims for refugee status or the principles of constitutional justice, I have concluded that the obligation of the Tribunal member is to assess the credibility of the applicant in relation to the story as told in evidence given by him/her. This did not happen in this case. In assessing the credibility of the applicant, the Tribunal member has included as part of his story a fact for which she had no relevant material and, further, placed reliance upon such fact in a manner adverse to the applicant in reaching a conclusion against the credibility of his story. Such error renders the decision invalid."

17. Finlay Geoghegan J nevertheless recognised that the Court's entitlement to intervene to correct errors was limited:

"...I do not wish to suggest that every error made by a tribunal member as to the evidence given will necessarily render the decision invalid. It will, obviously depend on the materiality of the error to the decision reached."

Discussion

18. I propose to assess the applicant's case by reference to each of the alleged material errors of fact/irrational findings in the Decision as advanced in the applicant's statement of grounds and in his written and oral submissions.
19. At paragraph 5.1 of the Decision under the heading "Arrest in August 2008" it states that:
- "the core of the appellant's claim was that he was arrested in August 2008 along with his friends in connection with a bomb blast that occurred aboard a bus in Polgolla, on 6 June 2008. The Tribunal finds that the appellant's account in respect of this core element of his claim lacks credibility. He has provided unconvincing and significantly altered accounts of events in relation to his alleged arrest, detention and bail. The Tribunal has reached this conclusion for the reasons set out below"*.
20. The Tribunal then sets out three reasons in support of its finding that this "core element of his claim lacks credibility". The applicant submits that each of the reasons is vitiated by fundamental error of fact such as to render this adverse finding on credibility of a core element of the applicant's case unlawful. I will deal with the three reasons in turn.
21. In its first reason supporting this adverse credibility conclusion, the Tribunal states:
- "[I]n his evidence, the Appellant [...] said no charges were brought against him and that he was released on bail following intervention by some politicians whom his father knew and he was asked to sign in at the police station weekly. Later in the course of his testimony, the Appellant said he was taken to court after spending two weeks in police detention and that it was the court that released him on bail"*.
22. The applicant contends that this is an irrational finding in circumstances where no inconsistency is disclosed in the matters referred to by the Tribunal in this paragraph. However, I do not believe this is correct. There is an inconsistency between an assertion

that he was released on bail following intervention by politicians and an assertion that he was released on bail by the court. Accordingly, I do not see any irrationality in this finding.

23. In its second reason supporting this adverse credibility conclusion, the Tribunal states:

"[W]hen the Appellant was asked if he had any document showing he was charged in connection with the Polgolla bomb blast, the Appellant replied: "I submitted it to the IPO". At this juncture, it was submitted on behalf of the Appellant that he had furnished a document which was on the file and titled, 'MINISTRY OF DEFENCE, PUBLIC SECURITY, LAW & ORDER RECEIPT ON ARREST.' The Tribunal has examined this document which indicates details of the Appellant's arrest by the police on 14 August 2008. While the document refers to 'Court Jurisdiction: Kandy', there is nothing to suggest therein that the Appellant was charged for any offence. The Tribunal could not make such assumptions. The Tribunal finds that the documentation relied upon by the Appellant cannot be taken to corroborate his claim that he was charged in connection with that incident".

24. The applicant contends this is an irrational finding in circumstances where the applicant never contended that he had been charged for the bomb blast offence. However, the Tribunal records in this paragraph the evidence he gave in response to a question as to whether he was charged and that evidence was in support of the contention that he was charged for the offence. It cannot be the case that this finding is irrational in the circumstances.

25. Before turning to the applicant's remaining grounds, it is worth observing at this point that the applicant's case in this judicial review depended in large part on an acceptance of the premise that he consistently maintained that while he was arrested and detained for two weeks as a suspect for the bomb blast offence, he was never charged with that offence. However, the record of his evidence at the oral hearing as reflected in the Tribunal's decision does not support such consistency of account. While there was no transcript or audio recording of the applicant's evidence to the Tribunal available for assessment by the court, nor was there any affidavit sworn on behalf of the applicant which sought to assert that the Tribunal had incorrectly recorded in its Decision his evidence at the oral hearing, and in particular his evidence under cross-examination.

26. The Tribunal in its decision in fact records the applicant as saying in evidence at various points that he was charged with the offence. At paragraph 2.14 of the Decision, the applicant's evidence under cross-examination before the Tribunal is recorded as follows: *"He said he was also charged because he was in support of those charged in connection with the bomb blast."* At page 21 of the Decision, under the heading "charge sheet" in the course of an analysis of his evidence of a charge sheet document tendered in support of his claims, the applicant is quoted as giving evidence that *"they [his friends] were charged as suspects in relation to the bomb blast. I am not sure of the date. It was after they were charged that I was charged"*. While the applicant maintained in submissions on his behalf at the judicial review hearing that he had never made the case that he was

charged with the offence, the Tribunal's record of the applicant's evidence on that issue, as reflected in the Decision, appears to demonstrate real inconsistencies on the question of whether he was charged or not. It is not open to the court to gainsay the Tribunal's view of the evidence it heard in the circumstances.

27. Returning to the reasons given to support the Tribunal's adverse credibility finding as to the applicant's account of the events of August 2008, the third reason set out by the Tribunal to support this adverse credibility finding is as follows:

"Furthermore, the Tribunal noted the translation of a document furnished by the appellant titled: "High Court of Kandy, officer-in-charge, Police Station, Kandy (plaintiff) v. YD (suspect)"....," Essentially, this document indicated inter-alia, that the appellant was arrested on 14 August 2008 in connection with the bomb blast at Kandy; that he was brought before a Court on the same date; that on 18 February 2009 the court issued a summons for him to appear before the court at the next "calling" dated 12 May 2014. However, the Appellant's narrative during evidence was as follows: - "There was a bomb blast in our area and there was an allegation that me and my friends were part of it. They arrested me in August 2008. They took me and kept me in an anti-terrorist cell for two weeks. No charge was brought against me. But they kept me there for two weeks. My father knew some politicians. With their help, they took me out in 2008." The Tribunal finds the Appellant's inconsistent evidence on this issue detracts from the credibility of his claim".

28. The applicant, again, maintains that this is an irrational finding in circumstances where he says there was no inconsistency in his evidence, and the document referenced by the Tribunal in this paragraph was consistent with his account of his arrest and subsequent release. However, the portion of his evidence quoted by the Tribunal recites the applicant's evidence to the effect that the police put him in a cell without any reference to court involvement and that politicians known by his father got him released from the cell, again without any reference to court involvement. On the face of it, there was a clear inconsistency as between the quoted evidence given by the applicant at the oral hearing and the document tendered in support of his account. I cannot see any irrationality in this finding in the circumstances.
29. The applicant further submitted that Tribunal erred in law in its consideration of the applicant's claim insofar as its conclusions regarding the applicant's escape to and return from Saudi Arabia were irrational in the legal sense.
30. The applicant challenges the Tribunal's remark that *"To start with, the Appellant claimed he fled to Saudi Arabia to escape persecution in his country. Yet, in his Application for International Protection Questionnaire, the Appellant indicated that the reason for his travel to Saudi Arabia was "for work"."* Counsel for the applicant accepted that the Tribunal correctly quoted what the applicant answered in the AIPQ but submitted that it ignored the fact that applicant had also said in his questionnaire that he had gone to Saudi Arabia to avoid getting pulled further into the fall out from his arrest for the bomb

blasts. While that may be so, in my view it was open to the Tribunal to point out the fact that the applicant had not in unequivocal terms stated that his reasons for travelling to Saudi Arabia were to flee persecution, as part of the Tribunal's assessment of the overall credibility of the applicant's claims.

31. The Tribunal's finding that *"it is striking that despite the serious criminal charges the Appellant claimed he was facing in his country and the fact that he was granted permit to work and live in Saudi Arabia, he decided to return to Sri Lanka in 2014,"* is similarly said to be irrational, when viewed in the context of the totality of the evidence. Again, I do not see how this comment can be said to be irrational in the legal sense. It constituted a view on the strength, or otherwise, of the applicant's case which the Tribunal was entitled to arrive at and with which this Court cannot interfere.
32. The applicant next contends that it was irrational of the Tribunal to hold, in the context of assessing his reasons for departing to Saudi Arabia and returning from there to Sri Lanka that *"when this issue was put to the Appellant in cross examination, he claimed he returned to Sri Lanka because the government there had promised amnesty for all those involved in terrorist activities and that the case against him had been cleared. However, there was nothing in the entire evidence furnished by the Appellant including COI submitted to corroborate his assertions that he had been cleared of the alleged terrorism charges against him. The Appellant did not provide a convincing explanation for returning to Sri Lanka when he did in April 2014"*.
33. The applicant contends that he never maintained that "the case against him had been cleared". He had said at his section 35 interview, that in 2014, Sri Lankans overseas were encouraged to return and that this with the support of the UN (who through its Human Rights Council adopted a resolution on reconciliation, accountability, and human rights in March, 2014) and that he was persuaded by these general pronouncements to return in his particular circumstances. As such, he maintains that the Tribunal's finding does not reflect the general thrust of his evidence on this issue, and is materially flawed.
34. As there is no transcript available of the applicant's precise evidence at the oral hearing on this matter, I am not in a position to gainsay the Tribunal's understanding of the oral evidence on this issue as reflected in the paragraph set out above. In the circumstances, I cannot conclude that the Tribunal fell into material error or otherwise reached an irrational finding on this issue.
35. The applicant next contends that the Tribunal made an irrational finding in arriving at an adverse view on the applicant's claim that *"...upon his return to Sri Lanka in 2014, police came to his house and told him his case was not closed,"* when it held that it *"finds the Appellant's explanation unconvincing and does not accept it as credible that a person in respect of whom arrest, summons and warrants had been issued for a serious crime such as terrorism would, upon being sighted by the police, simply be warned that his case was not closed, that he could be called for investigation at any time and that he must come to the police station whenever they call him."*

36. It seems to me that this is an attempt to challenge a view on the merits which was clearly open to the Tribunal to arrive at on the evidence before it. I cannot find any irrationality in the circumstances.
37. The final ground advanced on behalf of the applicant is that the Tribunal erred in law in its consideration of the applicant's claim insofar as it irrationally made findings in respect of his claim that *"due to fear of getting rearrested, he left his residence in Kandy in February 2015 and relocated with his family to a camp in Jaffna. The Appellant claimed that initially the camp in Jaffna offered safe refuge for him because the police could not come there to check for anyone as they had the protection of a government Minister. When it was put to the Appellant in cross examination that it was not plausible that a Minister of the government would be protecting terrorists, he replied, "Yes, the Minister actually knew that the government was framing the Tamil people as terrorists but it's not true. His [Minister] name is E. S." Again, the Tribunal does not accept it as credible that a government Minister would be shielding suspected terrorists from arrest or prosecution"*.
38. It was submitted that it was clear from the foregoing that what the applicant was stating as "not true," was that Tamil people framed by the government as terrorists are not terrorists. It was submitted that it was a distortion of the applicant's evidence to portray this as a positive assertion that the Minister in question, a Tamil, *"would be shielding suspected terrorists from arrest or prosecution."* The applicant submits that he was no more than claiming that he left his residence in Kandy in February 2015 and relocated with his family to a camp in Jaffna in the Northern Province – a province where the Tamil National Alliance were in dominance at this time, and where refuge was accordingly available.
39. While it may be that the Tribunal may not have fully picked up the nuance of the point being made by the applicant in this portion of his evidence, in so far as the Tribunal may have fallen into error on this issue, I do not see that it was such a material error as to vitiate the Tribunal's overall findings on the applicant's credibility, particularly in light of the significant number of credibility issues which the Tribunal found in respect of applicant's case as a whole.
40. In this regard, in addition to the contested findings going to lack of credibility, as addressed in this judgment to this point, the Tribunal noted a series of inconsistencies in the applicant's evidence under cross-examination, as detailed in paragraph 2.14 of the Decision. The Tribunal also identified material inconsistencies (at pages 21 and 22 of the Decision) in a charge sheet document supposedly issued by the High Court of Kandy which the applicant had tendered in support of his claims. The Tribunal also identified difficulties with a letter tendered in support of the applicant's claim from a member of parliament in Sri Lanka who was supposedly well known to the applicant (at page 22 of the Decision).
41. It is clear from an overall reading of the decision that the Tribunal identified multiple grounds for not accepting the reliability of the applicant's core claims and rejected the credibility of those claims as a result.

42. It is, of course, not for this court to substitute its view for that of the Tribunal on issues relating to the consistency and reliability of the applicant's evidence and therefore his credibility. It suffices to say that the Tribunal manifestly had grounds to support its adverse conclusions on the applicant's credibility and, for the reasons set out in detail in this judgment, the applicant is not in a position to establish such material errors of fact by the Tribunal as to lead to the conclusion that the Tribunal's overall adverse credibility findings should be quashed.

Conclusion

43. I will therefore refuse the applicant's claims for relief.