THE HIGH COURT

JUDICIAL REVIEW

[2012 No. 482 J.R.]

BETWEEN

M.A.C. (PAKISTAN)

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 25th day of April, 2018

1. The applicant was born in Pakistan in 1967. He married in 1999 and has four children born between 2000 and 2007. He claims that his life was threatened as a Shia Muslim and that there was inadequate police protection available. He says he left his wife and family and fled Pakistan, arriving in Ireland on 6th March, 2008.

2. He applied for asylum, submitting what he said was evidence of persecution in the form of a first information report ("FIR") and an arrest warrant. The Refugee Applications Commissioner rejected the application, holding the applicant to be incredible, but took the view that if the applicant's case had been well-founded then it would appear that state protection would not be available to him. He appealed to the Refugee Appeals Tribunal and again was rejected primarily on credibility grounds. The state protection finding of the commissioner was not specifically disagreed with in the tribunal decision.

3. A subsidiary protection application was made, and on 18th April, 2012 was refused. A deportation order was made on 9th May, 2012. Proceedings were then issued and adjourned pending the outcome of the *M.M.* case (see *M.M. v. Minister for Justice, Equality and Law Reform* [2018] IESC 10 [2018] 1 I.L.R.M. 361) and ultimately came before me in October, 2017, when leave was granted.

4. I have received helpful submissions from Mr. Michael Conlon S.C. (with Mr. Garry O'Halloran B.L.) for the applicant and Mr. Daniel Donnelly B.L. for the respondents.

Relief sought

5. The primary relief sought is *certiorari* of the subsidiary protection refusal and the deportation order. The only grounds pressed in relation to those two reliefs are grounds 4 and 5, and the statement of opposition has been framed on that basis.

Ground 4 – alleged total reliance on tribunal and failure to consider submissions and country material

6. The Minister is entitled to have regard to rejection of an applicant's credibility in the absence of substantial grounds being advanced for doubting that rejection: see *M.M. v. Minister for Justice and Equality* [2018] IESC 10 at para. 27. Insofar as the claim is made that the subsidiary protection refusal fails to consider the submissions and country material, the decision says that such material was considered and in effect that having regard to all matters on file the application was rejected having regard to credibility. That is not a rejection of the country material as such. Absent any more specific basis for an allegation of irrationality there is no obligation to "*engage with*" an applicant's material as submitted by Mr. Conlon. As pleaded the complaint is a failure to consider the material and it seems to me in those terms the material was considered. Lack of narrative discussion does not equate to lack of consideration.

Allegation that in making the deportation order the Minister failed to rationally consider the commissioner's view that state protection was not available.

7. This point is pleaded only in relation to the deportation order, not the subsidiary protection refusal. The applicant submits that there has been a failure to address the commissioner's finding that, if the claim is well-founded, state protection is not available.

8. The respondents submit that any infirmity in relation to this issue is redundant because the applicant's claim of a risk of serious harm was rejected. Therefore, if there was a deficiency in the Minister's reasoning on the state protection issue, it had no effect on the finding that repatriation would not amount to *refoulement*: see *Bondo v. Minister for Justice and Equality* [2012] IEHC 454 (Unreported, MacEochaidh, 9th November, 2012) at para. 26, *A.M.G. (Pakistan) v. Refugee Applications Commissioner* [2014] IEHC 379 (Unreported, Barr J., 25th July, 2014), *M.O. v. Refugee Appeals Tribunal* [2015] IEHC 55 (Unreported, Noonan J., 3rd February, 2015) at para. 27, *M.N. v. Refugee Appeals Tribunal* [2015] IEHC 831 [2015] 12 JIC 2120 (Unreported, High Court, 21st December, 2015) and *T.S.S. v. Refugee Appeals Tribunal* [2016] IEHC 491 [2016] 7 JIC 2936 (Unreported, High Court, 29th July, 2016) at para. 6.

9. The application of this principle to any particular decision is, however, very fact-specific. It is not entirely clear in the context of the present decision that the issue in relation to state protection is totally redundant given the way that the considerations of s. 5 of the Refugee Act 1996 and s. 4 of the Criminal Justice (United Nations Convention against Torture) Act 2000 are worded. The s. 4 consideration is exclusively referenced back to the country information, not to credibility. The word "accordingly" in the conclusion of the s. 5 discussion seems to refer to the country information earlier in that paragraph also. Thus on the very specific facts of this case it seems that I should not conclude that the country situation was redundant and therefore there was failure to specifically address the favourable finding of the commissioner regarding state protection, applying by analogy the judgment of the Supreme Court in *Y.Y. v. Minister for Justice and Equality* [2017] IESC 61 [2018] 1 I.L.R.M. 109, *per* O'Donnell J at para. 80.

10. This problem could have been avoided in one of two ways: either

> (i). By expressly stating that the *refoulement* conclusions were based solely on the credibility rejection having had regard to the country material in coming to that credibility rejection. It is not clear why the Minister does not seem to have an algorithm to work through the various critical legal questions in the necessary logical sequence. Merely providing for headings in a decision does not really meet the needs of the situation. Alternatively:
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> (ii). By specifically referring to the view of the Refugee Applications Commissioner and providing an express reason why the Minister disagrees or why that view is compatible with a conclusion of *non-refoulment*.

11. I note that there is no challenge to any other part of the deportation order reasoning as such, for example the s. 3 criteria, art. 8 or the family life issue. Remittal of the impugned part only to the Minister does not require a fresh proposal to deport or indeed a fresh invitation for submissions. The proposal stands and has not been quashed, as does the reasoning, save for the specific element that I am going to quash for the reasons set out. All that is required then is for the Minister to make a new decision based on fresh consideration of the *refoulement* issue alone.

Order

12. Accordingly I will order:

(i). that the proceedings other than in relation to the deportation order are dismissed and

(ii). that there will be an order of *certiorari* removing for the purpose of being quashed the deportation order and that part of the deportation order analysis as relates to s. 5 of the Refugee Act 1996 and s. 4 of the Criminal Justice (United Nations Convention against Torture) Act 2000 together with a direction that the issue of *refoulement* be remitted to the Minister for reconsideration under s. 50 of the International Protection Act 2015.