THE HIGH COURT

JUDICIAL REVIEW

[2018 No. 259 J.R.]

BETWEEN

J.H. (ALBANIA)

APPLICANT

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL, THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 14th day of December, 2018

1. The applicant was born in 1997 in Albania and claims a risk of serious harm on the grounds of a blood feud. He claims his uncle and cousin were killed in the alleged feud. He arrived in the State on 2nd October, 2014 and applied for asylum on 3rd October, 2014, aged 17. On 30th April, 2015 the Refugee Applications Commissioner recommended that asylum should be refused. The credibility of the claim was rejected. The Refugee Appeals Tribunal dismissed an appeal on 21st November, 2016 on grounds of internal relocation, although credibility was accepted. The applicant then applied for subsidiary protection. On 28th April, 2016 he was asked in an interview about obtaining a death certificate for the cousin. No such certificate was produced. The IPO recommended refusal of the subsidiary protection application on 3rd October, 2017 on the grounds that the account was credible but that internal protection was available. He appealed to the International Protection Appeals Tribunal. On 20th December, 2017 the IPAT sent certain country of origin information to the applicant, including an article published on 4th August, 2008 by the OSCE entitled "*Albania finalises computerisation of civil status data, starts issuing printed civil status certificates".* The article makes reference to an investment of €2.5 million funding on computerisation of the Albanian civil registry which, in the opinion of the tribunal as set out in its decision later, would have rendered the accessing of death certificates reasonably possible.

2. Mr. Colm O'Dwyer S.C. (with Mr. Shannon Haynes B.L.) for the applicant gave me the benefit of a number of his comments on the appeal hearing which were not in any way founded on the evidence. He suggested that the tribunal member did not make clear why this material was being sent although the applicant does not aver that he did not understand from this material that the availability of death certificates would be an issue. Mr. O'Dwyer also said it was "*hard to react*" to this issue at the hearing. That is not pleaded or averred to, and nor does it strike me as particularly credible or plausible. I do not accept either of those rationalisations for a moment, but even if they had some validity, the applicant could have sought permission to revert to the tribunal after the hearing with further information about the death certificate issue. While Mr. O'Dwyer sought to make a fair procedures argument in oral submissions that is simply not contained anywhere on the pleadings and is therefore not a point that is open to him.

3. The applicant says he asked his mother to get death certificates but she was not in a position to do so as she was not a blood relative (see p. 10 of the tribunal decision). He said that he did not ask his uncles to obtain the certificates. This was not explained, and nor did the applicant or his lawyers ask for an opportunity to make such material available at a later date (see p. 11 of the tribunal decision).

4. An oral hearing took place on 23rd January, 2018. Mr. Peter O'Sullivan B.L. appeared for the applicant. In a decision of 9th March, 2018, subsidiary protection was refused by the tribunal and the applicant's credibility was rejected at that point. I granted leave on 9th April, 2018, the primary relief being *certiorari* of the tribunal decision. I have received submissions from Mr. O'Dwyer, as mentioned, for the applicant and Ms. Diane Duggan B.L. for the respondents.

Ground 1 - Error in holding that there was no impediment to procuring death certificates for the cousin and uncle
5. Complaint is made that country information does not indicate that death certificates dated 2003 and 2006 in the city of Fier would be readily available. That is a trite and unduly specific reading of the country material. That material indicates a significant investment in civil registration and that "*identity documents in line with international standards*" would be issued. That implies that coverage of such registration is going to be comprehensive. The submissions make a semantic point that civil status certificates do not include death certificates, but a system of identity registration would not work unless information regarding death is captured also. Nothing has been produced by the applicant to demonstrate that the Albanian system does not include death registration. The tribunal's finding was open to it on the evidence.

6. As regards the attempt to make a fair procedures point, the tribunal specifically found that the applicant and his legal advisers would have fully understood the evidential value of the death certificates and were left in no doubt that this issue would arise at the appeal hearing. That is not specifically challenged, and indeed there is no fair procedures challenge at all in the statement of grounds, as noted above. All of the fair procedures points sought to be made fall outside the grounds on which leave was granted. Insofar as it was also suggested by Mr. O'Dwyer that the tribunal member does not say that he informed the applicant that the death certificate would be an issue, that is irrelevant. The member could not have been clearer that the applicant would have been aware that this point would arise as an issue. A public law body does not have to prove that it applied fair procedures – it is up to an applicant to prove that it did not. In any event, that is not a point on which relief can be granted as it also falls outside the pleadings.

Ground 2 – Alleged failure to give proper weight to evidence that the mother had made unsuccessful attempts to obtain such certificates.
7. The weight to be attributed to any piece of evidence is quintessentially a matter for the decision-maker. The tribunal did give consideration to the allegation that the mother attempted to get death certificates but placed reliance on a number of other features, such as that there was no effort to ask the uncles to get the certificates and no explanation for this, and no attempt to adjourn he proceedings to endeavour to obtain such certificates. The applicant's inertia in relation to this point is somewhat remarkable. If a computerised civil registration system is in place in another Council of Europe Member State, it should be well within the realm of the conceivable to generate a written request for such material and to record whether a reply was received. Apart from the alleged attempt to ask the mother to get the certificates, which was not appropriate as she was not a blood relative, the fact that the applicant's stance is one of complete and supine inactivity was something the tribunal was entitled to take into account. It is also perhaps not without relevance that no documentary evidence was produced to show that the mother ever did ask for the death certificates.

Ground 3 - Alleged breach of s. 28(7) of the 2015 Act
8. The applicant claims breach of s. 28(7) of the International Protection Act 2015 by the rejection of his credibility in the absence of documentary evidence. Rejecting credibility in the absence of documentary evidence is not a breach of s. 28(7). The submission made is a complete misunderstanding of that provision. Section 28(7) does not apply unless the applicant's general credibility is established. Thus the point made is inherently self-contradictory. This applicant's general credibility was not established - therefore the provision does not apply.

Ground 4 - Alleged failure to have regard to the applicant's status as an unaccompanied minor at the time international protection was sought
9. Firstly, the tribunal was aware of the applicant's status as a minor on arrival. More fundamentally, as cogently argued by Ms. Duggan in her eloquent and helpful written submissions at para. 24, "*the ground suggests that the time of the Applicant's arrival would have been his only opportunity to obtain documentary evidence*". That is not the case. The applicant's status as an unaccompanied minor at the time of the application does not in itself prevent him from seeking appropriate documentary evidence as an adult. It does not convert his application from one lacking in appropriate substantiation into one that does not require such substantiation.

Ground 5 - Alleged breach of s. 46(1)(c) of the 2015 Act
10. Under this heading the applicant complains of an alleged failure to consider the recommendation being appealed before reaching a decision on the appeal (that is, to take into account the recommendation of the IPO). The tribunal member held that he was not bound by the findings at first instance because this was a *de novo* appeal. Unfortunately for the applicant, that is an inherent feature of the system. If one gets a negative decision which includes some positive features, and if one then appeals by way of rehearing, everything is up for discussion on the appeal, including the possibility of reversal of the positive elements. That is so whether one is appealing from the District Court to the Circuit Court or any other mechanism by way of rehearing, such as from the IPO to the IPAT. It is even possible to lose favourable findings where an appeal is less than *de novo*, such as from the High Court to an appellate court. It then becomes a tactical decision as to whether to appeal a partly favourable and partly unfavourable decision. If one chooses to appeal, one cannot complain if favourable elements are displaced.

11. Anyway, the complaint as pleaded is groundless. The tribunal was clearly well aware of the IPO decision. A lack of narrative discussion is not the same as a lack of consideration. The applicant, according to Mr. O'Dwyer, approached the appeal on the basis that he was credible. That an applicant failed to anticipate the possibility of adverse findings is not a basis for relief by way of judicial review.

12. *M.A.R.A. v. Minister for Justice and Equality* [2015] 1 I.R. 561 allows for the possibility that certain findings would not be the subject of an appeal; but that means adverse findings. It is not open to an applicant to ring-fence favourable findings from being reviewed on appeal if other, adverse, findings are appealed. A consideration by the tribunal of the latter may necessitate reconsideration of the former, particularly if the applicant's credibility comes under challenge; which is what happened here.

Ground 6 - Alleged breach of s. 46(1)(b) of the 2015 Act
13. It is alleged that the tribunal failed to consider the decision of the Refugee Appeals Tribunal of 21st November, 2016. It cannot be said that it was not considered for the simple reason that it is referred to at para. 1.2 of the IPAT decision. In any event, insofar as there is a requirement to make clear why the previous decision is not being relied on, a point that is not in fact pleaded in any event, that is satisfied impliedly by reference to the discussion by the IPAT in relation to the death certificates, which included material and developments subsequent to the RAT decision.

Order
14. The proceedings are dismissed.