THE HIGH COURT

JUDICIAL REVIEW

[2018 No. 923 J.R.]

BETWEEN

F.A.R. (BANGLADESH)

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 28th day of June, 2019

1. The applicant is a national of Bangladesh, born in 1993. He claimed political persecution in his home country at the hands of the Awami League (AL). He has uncles living in the UK and was granted a student visa for that country in August, 2013. He left Bangladesh on 2nd September, 2013. He has produced a translated copy of a charge sheet against him from his home country, which appears to involve what is described as "*Primary Information*", dated 23rd September, 2013.

2. He claims that further persecution and harassment of himself and his family occurred following his departure. His UK visa was then extended but the college where he was studying lost its approved status and he left the UK before his permission expired. He arrived in the State on 17th December, 2015 and claimed asylum. Following the commencement of the International Protection Act 2015 he submitted a questionnaire in support of a subsidiary protection application. His protection applications and application for permission to remain were rejected by the International Protection Office and he then appealed to the International Protection Appeals Tribunal. On 8th October, 2018 the tribunal rejected his appeal. That was notified to the applicant on 15th October, 2018 and the present proceedings seeking *certiorari* of the tribunal decision were filed on 7th November, 2018. I granted leave on 12th November, 2018 and a statement of opposition was delivered on 2nd April, 2019. I am grateful to both Mr. Garry O'Halloran B.L. for the applicant and Ms. Grace Mulherin B.L. for the respondents for their assistance.

Ground 1: lack of consideration of claim

3. Ground 1 alleges that "*The IPAT, in its decision/reasoning, has failed to consider and/or determine the Applicant's claim of fear that as a person subject to false charges against him as evidenced by charge sheet dated 23 September 2013, he is exposed to persecution and/or serious harm if returned to Bangladesh. Alternatively, insofar as the IPAT considered this aspect, the reasoning is unclear*". As this case essentially turns on errors of one sort or another it is probably worth making the point that the charge sheet does not appear to be dated 23rd September, 2013 as alleged in the ground. The date opposite the words "*charge sheet number 32*" is 11th February, 2014. The date 23rd September, 2013 appears opposite the words "*Primary Information no…. 30*" which might on the face of it suggest the date of the complaint as opposed to the date of the charge sheet.

4. Turning to the substance of the ground, the reasoning of the tribunal is not unclear. The risk of persecution or serious harm is to be assessed by reference to facts accepted by the decision-maker, not by reference to those rejected. The rejection of the credibility of the applicant's account was the first step and the assessment of the risk of persecution or serious harm took place in the light of that. That is the correct and lawful procedure, but of course in the circumstances of the present case that is a separate question from whether the credibility was correctly rejected.

Grounds 2 to 4 and 7: errors of fact

5. Grounds 2 to 4 in the original statement of grounds and a new ground 7 in the amended statement of grounds allege a number of errors. I should also note that the second and third sentences of ground 4 were removed by amendment and liberty was given to file an amended statement of grounds, also adding an additional ground without objection from the State.

6. The first complaint is that para. 2.8 of the tribunal decision refers to the date of travel to the UK as September, 2013 not 2nd September, 2013. That is not an error and certainly not one that warrants relief by way of judicial review. The member must be taken to have been aware of the details of the applicant's account.

7. Paragraph 2.9 of the decision says the applicant's date of arrival in Ireland was 17th November, 2015 but the ASY 1 form says it was 17th December, 2015. Both parties agree that the latter date appears to be the correct date. That was not specifically pleaded originally but as noted above I allowed an amendment to that effect.

8. There is then an issue in the decision as to the date of the charge sheet. In para. 2.11 the tribunal says that the charge sheet was dated 23rd September, 2015. However as noted above it seems from the face of the document that that should be 11th February, 2014 with the information having been laid on 23rd September, 2013. In paras. 2.13 and 4.19 the tribunal says the charge sheet is dated 23rd September, 2012 and again the correct reference would seem to be the 11th February, 2014.

9. There is a further issue with para. 4.19 of the decision where the tribunal member states that there was no date for the incident in the charge sheet. If that is an error, it is not one that the tribunal member can be blamed for because the tribunal dealt with the document as it was submitted and the translated version does not contain such a date. While Mr. O'Halloran contends in the pleadings that the original version of the document did contain a date, and therefore essentially that the document was not properly translated, that strictly speaking is not a ground for judicial review because the tribunal dealt with the translation that was actually submitted. However given the nature of the order that is going to be made in this case the applicant will have an opportunity to put in a further proper translation if he is minded to do so. Mr. O'Halloran informed me that his instructions were that the translation actually submitted to the tribunal was one done for a fee by the Bangladeshi police force itself.

10. A final alleged error in the decision is at para. 4.27, which states that the applicant was in the UK from 2012 to 2015 but that should have been 2013 to 2015.

11. The errors in the wording of the tribunal decision, while not automatically central, are nonetheless not manifestly immaterial. That

is not to say that correcting them will automatically change the result but one cannot in principle exclude the possibility that they were to some extent material. Mr. O'Halloran accepts that the legitimate remedy in these circumstances would be to remit the decision back to the tribunal member for such revisions as she thinks appropriate in the light of the judgment and that is the course I propose to take. That highlights the point that judicial review is not an all-duck-or-no-dinner exercise. The overriding objective is the doing of justice and remedies must be as subtle as that requires. That ties in with what Simon Brown J. said in *R. v. Inner South London Coroner* ex parte Kendall [1988] 1 WLR 1186 at 1194 that the jurisdiction of partial remittal is "*consistent also with this court's increasing flexibility of response and remedy in the ever developing field of judicial review*". I followed a related approach in *H.A.A. (Nigeria) v. Minister for Justice and Equality* [2018] IEHC 34 [2018] 1 JIC 2383 (Unreported, High Court, 23rd January, 2018), at para. 6 and, by referring the matter back for the provision of further reasons, in Kru*pecki v. Minister for Justice and Equality (No. 2)* [2018] IEHC 538 [2018] 10 JIC 0112 (Unreported, High Court, 1st October, 2018). I should make clear that in the present case I am not exercising, because it does not seem necessary to do so, the specific statutory jurisdiction in O.84 r. 27(4) that the court can, in addition to quashing a decision, remit the matter back for further directions, because I am not at this stage quashing the decision. What I am doing is exercising the inherent power of the High Court to grant the appropriate remedy fitted to the circumstances of the case. It doesn't appear to be necessary to quash the decision because the tribunal member, pursuant to the order being made, will be able to make whatever corrections are appropriate. That includes changing any of the conclusions if she considers that appropriate, having corrected the errors identified.

Ground 5: conjecture
12. Helpfully Mr. O'Halloran did not pursue this ground.

Ground 6: alleged irrationality in respect to internal relocation
13. Ground 6 contends that "*The IPAT finding with respect to internal relocation is irrational in circumstances where the proposed place of relocation already failed the Applicant in that the AL were aware of his presence there, is located within 2 hours of the Applicant's home, and has large numbers of AL activists there. The internal relocation finding is further impugned by reason of the failure to conduct a full assessment of the reasonableness of the finding, particularly when it is predicated on the existence of accepted risk of persecution and/or serious harm*."

14. An internal relocation finding could in principle be ring-fenced from a rejection of a claim of persecution or serious harm, but only if the internal relocation finding was based on an assumption that a claim of persecution or serious harm was correct for the sake of argument. In the present case it's not entirely possible to be completely confident that the tribunal's view of whether the applicant would be safe in the proposed place of internal relocation was entirely separate from the view the tribunal took of the credibility of the applicant. On that basis the internal relocation finding would have needed to involve further clarification from the tribunal member, which can be provided given that the matter is being referred back to her. If a tribunal member wants to reject a claim on a free-standing internal relocation ground independently of the rejection of a risk of future persecution or serious harm, the member needs to make clear that the internal relocation discussion proceeds on the assumption that the applicant's claim of future risk is taken for the purposes of the argument as factually correct. It may well be that this was the basis on which the tribunal member approached the question of internal relocation here but one cannot be entirely certain of that from the particular wording of the decision, so that point also warrants clarification by the decision-maker.

Order
15. As noted above, I allowed an amendment striking out the second and third sentences of ground 4 and adding a new ground E7. I am dismissing the judicial review insofar as is based on grounds 1 and 5 and on the remaining grounds the appropriate order is to remit the matter back to the same tribunal member for such corrections, clarifications and amendments as are appropriate in the light of the judgment. It is also agreed that two specific directions can apply. Firstly, that no further oral hearing is required unless the tribunal member decides otherwise and secondly, it is accepted by the tribunal that the applicant can if he so wishes submit an updated translation of the charge sheet for consideration by the tribunal member within six weeks from today.