

THE HIGH COURT
JUDICIAL REVIEW

[2022] IEHC 163

[2020 No. 880 JR]

BETWEEN

W. A.

APPLICANT

AND

INTERNATIONAL PROTECTION APPEALS TRIBUNAL, AND THE MINISTER

FOR JUSTICE AND EQUALITY

RESPONDENTS

JUDGMENT of Mr. Justice Charles Meenan delivered on the 21st day of March, 2022

Background

1. The applicant is a national of Egypt and a Coptic Christian. He studied law at University and trained to be a lawyer. Upon qualifying he worked in Cairo before returning to his village, M., to work as a lawyer in February 2017. He claims that in or around May 2017 a friend of his, Mahmoud, a Muslim, came to his office and told him that he wished to convert to Christianity. The applicant was aware that Christians accused of proselytizing in Egypt faced persecution. The applicant claimed that he was terrified for both himself and Mahmoud in that if he attempted to convert from Islam, even if he was not involved, as his Christian friend he would be under suspicion.

2. The applicant contacted a Coptic priest for advice. The priest met with the applicant and Mahmoud and tried to dissuade him from converting, warned him of the dangers of converting and of the lengthy study involved, which they estimated to be eighteen months.

3. Following this conversation, the applicant believed that Mahmoud had been deterred as he had not heard from him. It was not until 23 July 2017, the applicant claimed, when members of Mahmoud's family attacked the applicant and his father in their house, that he realised that Mahmoud had fled the village after leaving a note informing his family that he had converted to Christianity. The applicant maintained that he was blamed for the conversion. He also alleged that he sustained injuries to his elbow and wrist but managed to escape after neighbours intervened.

4. On 24 July 2017, the applicant stated that he travelled to Alexandria and stayed with a friend who gave him a job as a sales-person in a shop. In January 2018, the applicant claimed he saw a person from his village in the shop and was worried that he would tell Mahmoud's family where he was. The applicant took a few days off work as a precaution. The applicant claims that people in his village came to the shop the following day asking where he was. These people were, allegedly, armed. The applicant left Alexandria and travelled to Alkusus in Cairo, where his sister lived. He stayed in the basement of an apartment building owned by his brother-in-law.

5. A sister of the applicant lives in the State with her family and she invited the applicant to visit for his nieces' 18th and 21st birthdays. Having obtained a visa, the applicant travelled to the State and entered on 19 December 2018 with the intention of staying for a holiday and then returning to Egypt. After arriving and talking through the problems with his family, the applicant decided to apply for International Protection rather than returning to Egypt where he said he did not feel safe.

6. On or about 22 January 2019 the applicant applied for International Protection in the State pursuant to s. 15 of the International Protection Act 2015 ("the Act of 2015"). On or about 18 February 2019 a preliminary interview for the purposes of s.13 (2) was carried out and a questionnaire submitted. By email of 31 July 2019 the applicant's Solicitor provided to the

International Protection Office the country of origin information in support of the application. On or about 23 September 2019 the applicant underwent an interview pursuant to s.35 where he outlined the details of his claim.

7. On 25 November 2019 the International Protection Office made a recommendation pursuant to s.39 of the Act of 2015 that the applicant be given neither a refugee declaration nor a subsidiary protection declaration. On 8 January 2020 the applicant lodged a notice of appeal to the first named respondent (“the Tribunal”).

8. The appeal before the Tribunal took place on 14 October 2020.

Decision of the Tribunal

9. Having considered the evidence of the applicant, and the documentation furnished, the Tribunal reached a number of conclusions: -

- (i) The Tribunal accepted that the applicant was an Egyptian national and a Coptic Christian;
- (ii) The Tribunal found that the applicant was not a close friend of Mahmoud “*as is alleged or at all*”;
- (iii) The Tribunal found that the incident which caused the appellant’s injuries did not occur “*at the time alleged or at all*”.

Application for judicial review

10. On 30 November 2020 Burns J. granted the applicant leave to seek by way of judicial review, *inter alia*: -

“An order of *certiorari* quashing the decision of the first respondent [the Tribunal] recommending that the applicant should not be granted either refugee status or subsidiary protection dated the 21st October 2020”

Submissions of the applicant

11. In the written submissions furnished, and the submissions made to the Court, the applicant raised the following issues to be determined: -

- “(i) Did [the Tribunal] err in law and/or in fact by failing to conduct a rational analysis of the Applicant’s credibility in respect of his friend Mahmoud’s conversion from Islam to Christianity.
- (ii) Did [the Tribunal] err in fact in making a negative credibility finding on the basis of a purported inconsistency in the Applicant’s description of Hussain, the man from his village who recognised the applicant in the shop he worked in in Alexandria.
- (iii) Did [the Tribunal] err in law in failing to carry out an assessment as to whether the Applicant has a well-founded fear of returning to Egypt as a Coptic Christian.”

Principles to be applied

12. It will be seen from the issues raised by the applicant that a number of findings of fact made by the Tribunal are being challenged. As these challenges are being made in judicial review proceedings, it must be established that the findings of fact in question are irrational or unreasonable. To re-iterate the fundamental point that, in judicial review proceedings, it is not open to the Court to act as a Court of Appeal from the Tribunal, or to substitute its own views of the evidence presented for that of the Tribunal.

13. The principles to be applied in an application such as this are very well established. I refer to the oft-cited passage of the judgment of Cooke J. in *I.R. v. MJE* [2015] 4 I.R. 144: -

“... 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 ... 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.”

I further refer to the following passage in the judgment of Burns J. in *R.K. v. International Protection Appeals Tribunal, the Minister for Justice and Equality, Attorney General and Ireland* [2020] IEHC 522, where she stated: -

“23. A fact finder is not obliged to accept the evidence given. Rather, a fact finder must analyse and assess the evidence to determine whether she accepts the evidence and what

weight she attaches to it. To conduct that exercise, a fact finder should apply their knowledge of life and common sense to the evidence. In asylum cases, because a fact finder is dealing with different cultures and norms, it is necessary to take account of the different cultures and conditions in the country in question when analysing the evidence. An assessment of what one might reasonably expect in a situation, having regard to the different culture and conditions in the country in question, should be carried out so that a rational assessment of the evidence given can be engaged in.”

14. The Tribunal also applied the provisions of the UNHCR handbook, which state: -

“204. The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant’s general credibility. The applicant’s statements must be coherent and plausible, and must not run counter to generally known facts.”

Application of principles

15. The Tribunal had the benefit of directly hearing the evidence of the applicant. Thus, the Tribunal was in a position to assess the demeanour of the applicant in the giving of his evidence. It can often be the case that how a question is answered is as important as the answer itself.

16. Central to the narrative given by the applicant was his friendship with Mahmoud. The applicant maintained that his friendship with Mahmoud was of such an order that Mahmoud would discuss with him his conversion to Christianity. This was against the background of the known dangers in Egypt of a Christian assisting or promoting conversion of a Muslim to Christianity. Thus, it was not surprising that this account of the applicant was tested. The applicant stated that Mahmoud did not discuss the practical or spiritual implications of either religion.

17. The applicant stated that he introduced Mahmoud to a Coptic Christian priest and that the priest advised Mahmoud not to become a Christian due to the problems it may cause to Mahmoud and/or his family. The applicant stated that at this meeting they did not discuss the spiritual and practical implications of converting to Christianity, apart from Mahmoud being told by the Coptic priest that it would take in or about eighteen months to study the holy book in order to convert. The Tribunal stated that it found that this aspect of the applicant's narrative lacked credibility as it is unlikely that the priest involved would have dismissed Mahmoud immediately, as alleged, and would have failed to discuss any or all of the practical and/or spiritual issues and/or implications of being a Christian. It seems to me that this is a fair and rational conclusion to reach on this evidence.

18. The applicant maintained that Mahmoud was a close friend of his. However, despite this alleged close friendship, the applicant knew remarkably little. The applicant stated that Mahmoud was the owner of at least one store in Libya. However, he did not know the name of the store or what it sold and was not sure if Mahmoud owned multiple stores or not. The applicant did not "Google" Mahmoud or ask mutual friends about his whereabouts. The applicant had stated that he did not see Mahmoud after the meeting which he described with the Coptic priest. The applicant stated he could not contact Mahmoud on Facebook and that he had set up a separate fake account with a different name to see if he could make contact with him. However, he was unable to contact Mahmoud on Facebook. Taking all this evidence together, the Tribunal reached the conclusion that the applicant was not a close or good friend of Mahmoud. Again, I am of the view that this was a rational and reasonable conclusion for the Tribunal to reach based on the evidence given by the applicant.

19. The conclusion of the Tribunal on the applicant's claimed friendship with Mahmoud undermined the credibility of the narrative of the events which allegedly took place whilst he was working in a shop in Alexandria. The Tribunal found that the applicant gave conflicting

evidence concerning the visit of Hussain to the shop in Alexandria. In his s. 35 interview, the applicant had stated that Hussain was just a visitor whereas at the hearing before the Tribunal the applicant stated he was working in Alexandria. Thus, I do not believe it to be the case that this finding of the applicant's credibility could be considered to be irrational.

20. There were two further aspects of the applicant's case which undermined his credibility. Firstly, the fact that the applicant came to the State for a family event with every intention of returning to Egypt. It was only whilst in the State, and having discussed it with family members, that he decided to make his application. This is not consistent with a well-founded fear of returning to Egypt. Secondly, what medical evidence there was was not consistent with when the applicant claimed to have suffered his injury. These two matters would not, of themselves, be fatal to the applicant's credibility but, taken with the other matters referred to, serve to undermine his credibility. The Tribunal were entitled to reach the conclusions on the applicant's credibility that they did.

21. Given the Tribunal's finding on the applicant's credibility, I do not believe that the Tribunal erred in law in its assessment as to whether the applicant had a well-founded fear of returning to Egypt as a Coptic Christian.

Conclusion

22. By reason of the foregoing, I refuse the applicant the reliefs which he seeks. I will list this matter on the 5th day of April, 2022 for the purposes of dealing with costs. I should say, my provisional view is that, given that the respondents have been entirely successful in these proceedings, they are entitled to their costs (to include any reserved costs) to be adjudicated in default of agreement.