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Judgment: approved by the Court for handing down
(subject to editorial corrections)

Delivered: **25/11/2002**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION
(CROWN SIDE)

IN THE MATTER OF AN APPLICATION BY ALI REZA RAZEGHI FOR JUDICIAL REVIEW AND IN THE MATTER OF A DECISION BY THE IMMIGRATION APPEAL TRIBUNAL

COGHLIN J

[1] The applicant in these proceedings seeks judicial review of a decision by Mr P R Moulden, Vice President of the Immigration Appeal Tribunal, dated 4 February 2002 refusing the applicant leave to appeal from a determination by an Adjudicator to the Immigration Appeal Tribunal. For the purposes of the hearing before me the applicant was represented by Mr Stockman while Mr O'Reilly appeared on behalf of the respondent, the Secretary of State for the Home Department ("the Department"). I am grateful not only to both counsel for the clarity and economy of their submissions but also to the applicant's solicitors, the Law Centre of Northern Ireland, for their careful and comprehensive preparation of the bundles comprising the case papers and relevant authorities.

The Factual Background

[2] The applicant was born on 23 September 1963 in what is now the Islamic Republic of Iran and, until 10 March 2000 he was living with his family in the town of Karag where he worked as a self-employed lorry driver and mechanic.

[3] On 10 March 2000 the applicant left Iran and claims to have been smuggled by car over the mountains into Turkey where he was hidden in a house in Istanbul until 20 March. The applicant alleges that he then travelled in a succession of lorries to the United Kingdom where he claimed asylum on 19 April 2000. After initially being moved to Gloucester in accordance with the Asylum-Seekers Support System the applicant travelled to Belfast where he has since resided.

[4] The applicant's application for asylum was refused by the Department on 24 July 2001 and on 29 July 2001 the applicant was served with directions for his removal to Iran. The applicant appealed against this decision relying upon relevant provisions of the 1951 Convention Relating to the Status of Refugees ("the Refugee Convention") and the European Convention on Human Rights and Fundamental Freedoms ("the ECHR").

[5] On 31 January 2002 the Adjudicator dismissed the applicant's appeal and by notice dated 20 February 2002 the applicant sought leave to appeal from the decision of the Adjudicator to the Immigration Appeal Tribunal. Such leave was refused on 4 February 2002 and it is this decision which the applicant has impugned by bringing these proceedings.

The Relevant Statutory and Convention Provisions

[6] Article 1(A)(2) of the Refugee Convention provides that the term "refugee" shall apply to any person who:

> "Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[7] Article 3 of the ECHR provides that:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

[8] Leave to appeal to the Immigration Appeal Tribunal is governed by Rule 18(7) of the Immigration and Asylum Appeals (Procedure) Rules 2000 which provides that:

> "(7) Leave to appeal shall be granted only where –
>
> > *(a)* The Tribunal is satisfied that the appeal will have a real prospect of success; or

> *(b)* There is some other compelling reason why the appeal should be heard."

[9] Both parties accepted that the Adjudicator had been correct in specifying the standard of proof as being whether the applicant was able to demonstrate that there were substantial grounds for believing that he faced a real risk of being persecuted for a 1951 Convention reason if he returned to his own country and/or that there were substantial grounds for believing that he faced a real risk of being subjected to torture, inhuman or degrading treatment or punishment contrary to Article 3 of the ECHR.

The Current Relevant Conditions in Iran

[10] Again, it was accepted by both parties that these had been appropriately described by the Adjudicator at paragraphs 22-29 of his decision dated 31 January 2002 and that these included, inter alia:

> "Iran is an Islamic republic run by a disunited band of senior clerics. Open opposition to the Iranian Constitution's principles of Islamic clerical supremacy is not tolerated. Most independent organisations have either been banned, co-opted by the regime or are moribund. … Inside Iran militant political opponents are either executed or given long prison terms, particularly members of the Mojahedin-e Khalq (MEK). … A law passed in November 1995 criminalised dissent and applied sentences of imprisonment or in extreme case the death penalty to offences such as `attempts against the security of the state' … Insults against high ranking Iranian officials, against the memory of Imam Khomeini, and against the Leader of the Islamic Republic, carry the threat of execution if they fall under the blasphemy category, or sentences to an imprisonment term between 6 months and 5 years. Thousands of Iranians are currently in prison for their political beliefs. Several agencies are responsible for internal repression, including the Ministry of Intelligence and Security, the Ministry of Interior, the Ministry of Information, the Revolutionary Guards and assorted volunteer groups. Iran's human rights record is poor and arbitrary repression, intimidation, torture, flogging, arrest, detention and execution are all used against political opponents and criminals. There is a climate of

> impunity. …. Trials are not fair by international standards. Prison conditions are poor and torture is common …"

[11] Mr Stockman criticised the approach taken by the Adjudicator in relation to the credibility of the applicant's evidence as to his religious beliefs and political activities and, in so doing, he relied upon the decision of the Immigration Appeal Tribunal in Rajivan & Ors v Secretary of State for the Home Department [Decision No HX-62927-00 (01TH00990)]. In particular, Mr Stockman drew the attention of the court to paragraph 19 of the Rajivan decision at which the Tribunal observed:

> "The Tribunal would point out at the outset that adjudicators should take great care when using the word `implausible' as an alternative to making clear findings of credibility. It is not necessary to point out that the words have different meanings. It is however possible for several findings of implausible evidence to lead to an adverse credibility finding overall, and the Tribunal are of the view that this is what has happened in the appellant's case."

I also gave leave to amend the Order 53 statement by adding ground (i) which directly raises this court's responsibilities as a public authority in accordance with the provisions of The Human Rights Act 1998.

The Applicant's Political Activities

[12] The Applicant told the Adjudicator that his brother, Mohammed, had been a member of the Mujahaddin who had been arrested by the regime in Iran in 1981 and that he suspected that Mohammed's subsequent death in 1982 had been at the hands of the regime rather than as a casualty during the Iraq-Iran war. The applicant also stated that, in 1985, subsequent to a confrontation with the religious authorities, he had been arrested, beaten and imprisoned for approximately 9 months. The applicant further claimed that, after his release, from approximately 1989 to 1993, he became occasionally involved with a group known as JAI. On behalf of this group, the applicant distributed anti-regime leaflets in various towns. In 1993, the applicant claimed that a party, which he was attending was raided by the police, he was beaten as a result of which he sustained a broken leg and a number of other men present were arrested. He stated that, after this incident, he became more active in JAI, forming a cell with others.

[13] The Adjudicator found that JAI was, "at most" a minor group and he noted that neither party could identify a reference to it in the background

reports. The applicant's representative pointed to what was claimed to be a linked group "Nehzat Azadi" but it seems that that group is illegal but tolerated by the regime. The Adjudicator inferred that if the members or supporters of JAI had presented a problem for the regime there would have been some reference to it in the background reports.

[14] The applicant himself considered that his only relevant arrest and detention was in 1985 and the Adjudicator came to the conclusion that the death of the applicant's brother in 1982 and the applicant's arrest and detention in 1985 occurred so long ago as to be irrelevant when considering whether the applicant had demonstrated substantial grounds for believing that he faced a real risk of persecution and/or being subjected to torture, inhuman or degrading treatment during the period leading up to his departure from Iran or if he were now to return to that country. Vice President Moulden considered that it would have been "preferable" for the Adjudicator to have made it clear that the applicant was not likely to be at risk because of elements of his account occurring long before he left Iran rather than using the words, "not relevant" or "irrelevant". However, the Vice President considered that the intention was sufficiently clear.

[15] Mr Stockman criticised the approach of the Vice President, submitting that, in the absence of evidence indicating significant improvement or liberalisation of a regime, past persecution was capable of providing strong evidence of a present and future risk and he relied upon the authority of Demirkaya v Secretary of State for the Home Department [1999] Immigration App R 498. However, in Demirkaya's case the appellant had been subjected to persecution, torture, inhuman and degrading treatment during the months immediately prior to his departure from Turkey. It is clear from paragraphs 22-29 of the adjudication decision that the Adjudicator was fully aware of the present conditions in Iran and no evidence was given of any significant improvement or liberalisation since the applicant left that country. In such circumstances, subject to one point which I will deal with below, I am satisfied that it was open to the Adjudicator to come to the conclusion, on the evidence, that the death of the applicant's brother and his detention in 1985 were not sufficient to establish substantial grounds for believing that there was a real risk of persecution and ill treatment. It follows that Vice President Moulden was entitled to take the view that the intention of the Adjudicator was "sufficiently clear".

[16] According to the applicant, the event which precipitated his departure from Iran was receiving information from a friend, who had a connection with high ranking government officials, that a warrant existed for the arrest of the applicant upon the grounds that he had made unjust accusations against the Iranian government, that he had insulted Islamic leaders and that he had acted against the Islamic Republic. The Adjudicator considered that this evidence was implausible for a number of reasons;

- Notwithstanding the apparent importance and significance of this document, there was no mention of it in the applicant's original statement of 28 April 2000.

- The authorities would not have needed such a warrant had they wished to arrest the applicant.

- The Adjudicator considered that, given the applicant's history, it was extremely unlikely that he would have such a well connected friend who would be prepared to take a very considerable personal risk in passing him this information.

Mr Stockman repeated his criticism of the Adjudicator's use of the term "implausible" at paragraph 35 of his decision but, in my opinion, it is quite clear from the final sentence of that paragraph that the Adjudicator did reach a firm decision about the credibility of the applicant in relation to this warrant stating that: "I consider this to be a recent invention to bolster his claim." Again, I am satisfied that he was entitled to do so.

The Applicant's Political Beliefs

[17] The applicant's relatives on his mother's side are Zoroastrians and, while the applicant was not born into that faith, he maintained that he had converted to Zoroastrianism at the age of 20. According to the applicant's evidence "anyone could convert". Zoroastrianism is the pre-Islamic religion of Iran practised by a population of several thousand concentrated mostly in the southern cities of Yazd and Kerman. Zoroastrians are free to practice and teach their religion and have one representative in the parliament. However, the Adjudicator accepted that the Muslim penalty for apostasy was well known to be severe and the CIPU document of October 2001 recorded that, for a man, the punishment was execution while a woman would be imprisoned for life although she might be released in the event of repentance.

[18] In dealing with this aspect of the applicant's case the Adjudicator expressed the following conclusions at paragraph 31 of his determination:

> "31. I have carefully considered the appellant's evidence. As for his claim to be Zoroastrian, the point is not the Muslim penalty for apostasy, which is well known to be severe in Iranian practice, but the implausibility of the appellant's conversion to Zoroastrianism, given the background evidence indicating that they traditionally do not accept converts, did not proselytise and live mainly in Yazd and Kerman in

> the south, whereas the appellant comes from a town near Tehran in the north."

The reference to the background evidence was, specifically, to paragraph 6.50 of the CIPU document. Vice President Moulden recognised the importance of this paragraph and recorded that:

> "After assessing the country information, the Adjudicator concluded that the Applicant was not likely to have been a convert to Zoroastrianism."

[19] Mr Stockman, relying upon the Rajivan case, again criticised the use of the term "implausibility" by the Adjudicator in the absence of any specific finding as to the applicant's credibility. He also directed the attention to the court to paragraph 10 of the Adjudicator's determination which, according to Mr Stockman, seemed to suggest that little, if any, cross-examination of the applicant was directed to his religious conversion. There does not appear to be anything in the Adjudicator's determination to confirm that the applicant's attention was drawn to the specific contents of paragraph 6.50 of the CIPU document or that he was asked to respond thereto. Mr Stockman pointed out that, as might be expected, the language used in paragraph 6.50 was not absolute but employed terms such as "is concentrated in", "traditionally" etc.

[20] Mr Stockman also referred the court to the decision of the Immigration Appeal Tribunal in Rahimzadeh & Ors v Secretary of State for the Home Department [2002] UK IAT01508. This decision was published on 14 May 2002, some 2 months after the applicant's application for leave to appeal from the Adjudicator's determination was refused.

[21] In the Rahimzadeh case the appellant submitted in evidence an expert report from a Dr O'Hara relating to the situation of persons who convert from Islam to Zoroastrianism in Iran. After reading that report and taking account of the appellant's own evidence, the Immigration Appeal Tribunal stated its views at paragraph 22 as follows:

> "Having looked at the whole situation where Zoroastrianism is concerned in Iran, both in the CIPU reports and in Dr O'Hara's report, we find that we are of the opinion that, on the surface, the Zoroastrian faith does not profess to accept converts, nevertheless they do, but do not openly admit it, for political reasons, and that the situation in Iran is that anyone, such as the first appellant, who converts to Zoroastrianism, is looked upon as an apostate from Islam, and would

face persecution both under the Refugee Convention and the Human Rights Convention."

Conclusions

[22] It seems to me that it is important to recognise the context in which the Adjudicator carries out his or her task. Frequently, he or she has to determine important issues of credibility relating to practices and activities, both religious and political, conducted under the auspices of regimes which are very far removed from the parliamentary democracy that exists within the United Kingdom. Often the only materials available to assist in discharging his her duty will be the unsupported assertions of the appellant which fall to be considered in the context of documentary reports. Cases may be conducted by representatives on both sides with varying degrees of forensic ability. Many, if not most cases, are likely to depend upon issues of credibility and Parliament has entrusted the primary responsibility for carrying out this function to experienced and skilled adjudicators.

[23] However, as the Court of Appeal indicated in R v Secretary of State for the Home Department ex parte Turgut [2001] 1 All ER 719 the right not to be exposed to a real risk of ill treatment contrary to Article 3 ECHR is absolute and fundamental and, once Article 3 is engaged, the obligation on the court is to subject the relevant decision to "rigorous examination" by considering for itself the underlying factual material in order to see whether or not it compels a different conclusion.

[24] In the instant case, it seems to me that, once the criticisms directed towards the use of terms such as "implausible" and "irrelevant" have been dealt with, the real substance of the applicant's case is based upon contrasting findings of fact rather than irrationality in so far as in the Rahimzadeh case the Immigration Appeal Tribunal, having reviewed the evidence for itself, subsequently concluded that the Zoroastrian faith does accept converts but does not openly admit doing so for political reasons. The applicant argues that such a finding is contrary to paragraph 31 of the Adjudicator's determination which appears to have been the basis for his rejection of the applicant's credibility in relation to his alleged religious conversion.

[25] In my view there are significant differences between this case and the decision in Rahimzadeh not the least of which is that, by contrast with the bald assertion of conversion in this case the appellant in Rahimzadeh demonstrated a knowledge of Zoroastrianism, had taught Zoroastrianism to her pupils at school and kept religious clothing relating to Zoroastrianism at her house which was discovered by the authorities during the course of searches. Such evidence must have been relevant not only to the fact of conversion but also for the purpose of establishing that the appellant was subject to a real risk of persecution as a result of her conversion.

[26] On the other hand, in Simplex GE (Holdings) Limited v Secretary of State for the Environment & the City of St Albans District Council [1988] COD 160, a case in which the Court of Appeal accepted that a mistake had been a significant factor in a Minister's decision, Purchas LJ observed that, even if the Minister's error was not the dominant reason for the decision, it could not be excluded as insubstantial or insignificant and, at page 161, he went on to say:

> "It is not necessary for (the appellant) to show that the Minister would, or even probably would, have come to a different conclusion. He had to exclude only the contrary intention, namely that the Minister necessarily would still have made the same decision."

While Simplex was a "mistake of fact" judicial review decision, in my view the principle is relevant when the court carries out a "rigorous examination" of the underlying factual material.

[27] As I have already indicated above, as a result of the temporal sequence, the Vice President, when refusing leave to this applicant, could not have been aware of the finding of fact that was later to be made by the Immigration Appeal Tribunal in the Rahimzadeh case. However this case concerns the applicant's human rights and I bear in mind the words of Lord Hope in R v Secretary of State for The Home Department, ex parte Launder [1997] 1 WLR 839 when he said, at page 860:

> "The situation has changed since 1995 when the decisions were taken. So it is necessary first to mention the situation at that time and then to examine the situation at the present stage. Although we are concerned primarily with the reasonableness of the decisions at the time when they were taken we cannot ignore these developments, we are dealing in this case with concerns which have been expressed about human rights and the risks to the applicant's life and liberty."

[28] In Kulek v Secretary of State for the Home Department [2002] All ER (D) 185 (Oct) the Immigration Appeals Tribunal accepted, with some qualifications, that a factual decision by one tribunal might be taken into consideration by a subsequent tribunal and this approach found support in the Court of Appeal, although the latter ultimately decided the case upon rather different grounds.

[29] I have already referred to the statutory test which is whether the appeal has a real prospect of success and I note that in Rahimzadeh leave was granted on the basis that "the grounds merit further consideration". I also consider that it would be important to consider whether the differing findings of fact between this case and the Immigration Appeal Tribunal's decision in the Rahimzadeh case establishes a compelling reason why an appeal should be heard. Accordingly, I propose to grant the application for judicial review, quash the refusal of leave to appeal and remit the matter to a differently constituted tribunal.