EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2020] CSIH 58
P249/19

Lord Malcolm
Lord Woolman
Lord Pentland

OPINION OF THE COURT

delivered by LORD WOOLMAN

in the petition

by

MAJDOULIN SALEH TOBASSI

Petitioner

for

JUDICIAL REVIEW

Petitioner: Winter; Drummond Miller LLP
Respondent: Pirie; Office of the Advocate General

4 September 2020

Introduction

[1] The petitioner arrived in the United Kingdom in 2017. She claimed to be a Palestinian refugee who had lived in Syria all her life. Such individuals are entitled to international protection. She sought asylum on that basis. The Home Office did not accept her account. In March 2018 it refused her application.

[2] The petitioner appealed to the First-tier Tribunal. It upheld the Home Office decision. Leave to appeal to the Upper Tribunal was refused. She then raised the present

proceedings for judicial review. Two judges at first instance have refused leave for the petition to proceed. One did so after scrutinising the papers. The other did so following an oral hearing. Each judge issued brief reasons for their decision.

[3] The case now comes before this court. In terms of section 27B(3)(c) of the Court of Session Act 1988 our task is to determine two linked questions. Does the application have real prospects of success? Is there a compelling reason for this court to hear this case? There is no suggestion that it raises an important point of principle or practice.

[4] There is a myriad of immigration cases. A small cluster provides guidance on the correct approach in 'leave to proceed' cases: *SA* v *Secretary of State for the Home Department* 2014 SC 1; *PA* v *Secretary of State for the Home Department* [2020] CSIH 34 ; and *PR (Sri Lanka)* v *Secretary of State for the Home Department* [2012] 1 WLR 73. From them we draw the following propositions:

a) This court undertakes to look at the question of new. While we may derive assistance from the views at first instance, we carry out our own scrutiny.

b) Our primary focus is on the UT decision. We only have recourse to the F-tT decision to a limited extent. We do not re-evaluate the facts.

c) The tests escalate in difficulty:

    i. a real prospect of success means less than probable, but must have substance;

    ii. a compelling reason means that something seriously untoward has happened, for example, a wholescale collapse of fair procedure.

Background

[5] The main points of the petitioner's account are as follows. Her parents fled from the Palestine territories to Syria in the late 1960s. For many years her father ran a shop in a refugee camp, where she was born in 1982. She married in 2007, gave birth to two children and was divorced in 2010. She and the children then returned to live in her parents' home.

[6] When the Syrian war broke out in 2011, the petitioner wished to flee the country with her children. Her father, however, forbade them from doing so. He died in 2014. The same year the petitioner lost all her possessions when her home was bombed. She and her children moved to live in a tent.

[7] For about three years she tried to make the necessary arrangements to leave Syria. In early 2017 she and her sister paid a people smuggler to transport them and their children out of the country. The family group travelled through Turkey to the Greek island of Kos, where they stayed for several months. The petitioner and her children then flew to the UK.

[8] At the F-tT the petitioner relied on three sources of evidence to back her account. They were (a) an authentication document, (b) an expert report, and (c) the testimony of a factual witness. We shall say a little more about each of them.

Authentication document This is a letter dated 8 December 2017 which bears the letter-head and stamp of the Palestinian Mission to the UK. It states:

> "To whom it may concern
> This is to confirm that in accordance with the Palestinian Registry Office Database, Mrs Majdoulin Saleh TOBASSI, born in Daraa – Syria, is a Palestinian citizen and registered as a refugee in the Arab Republic of Syria.
> This letter has been issued upon her request to support his *(sic)* asylum application in the UK."

Expert Report Tom Rollins describes himself as a 29 year old independent journalist and researcher. He prepared a report in which he stated that he had been "advocating around" topics related to the Syrian conflict since 2013. He added:

> "I am considered an authority on PRS [Palestinian refugees from Syria] in particular - evidenced by the fact that I have been consulted by fellow journalists and researchers, as well as international human rights groups and European embassies in the Middle East, for expert opinion on developments within Syria and developments in the Palestinian - Syrian sphere specifically."

At para 3.1 of the report, he stated that while he does not know the petitioner personally, he is of the opinion that she "has a valid claim to asylum in the UK and that her testimony, despite some inconsistencies, is true and correct to the best of her knowledge."

Factual witness Laith Nashat Al Qasim supported the petitioner's claim.

[9] The Home Office lodged a report analysing the petitioner's speech patterns.

First Tier Tribunal Judgment

[10] The F-tT judge analysed and evaluated the evidence. She made the following findings.

a. The petitioner's claim was "materially lacking in credibility". (paras 17, 24 - 30)

b. The letter from the Palestinian Mission to the UK did not vouch her claim. It was a photocopy, did not provide the original information from the Palestinian Registry Office database itself, did not disclose how her name came to be on the database, and failed to explain how it knew she was registered as a refugee in Syria. Notably it did not include her father's

name or her date of birth "which for most Arab cultures would be important aspects of her identification". (para 30)

c. Mr Rollins should be regarded as an informed advocate rather than an expert witness because he had (i) never visited Syria, (ii) not produced independent evidence that he was an authority, and (iii) worked with the Global Detention Project, which promotes the rights of people who lack citizenship. (paras 32-39)

d. Laith Nashat Al Qasim "was not credible or reliable". (paras 18 - 23)

e. The speech analysis was neutral. It did not establish whether the petitioner had lived in a Palestinian refugee camp in Syria, or elsewhere with Palestinians. (para 31)

[11] The F-tT judge concluded (para 40):

> "taking all of the evidence into consideration and in the round, I find that the appellant has not shown to the requisite standard that she is entitled to refugee status".

Grounds of appeal

[12] The grounds of appeal argued that the F-tT judge erred in four respects. She misapplied the law in relation to credibility. She should have accepted the authenticity of the Palestinian Mission document. She had allowed her adverse credibility finding in respect of the petitioner to sway her assessment of the other evidence. She should have accorded greater weight to Mr Rollins' report.

Refusal of leave

[13] Another judge of the F-tT refused leave to appeal, holding that the grounds "go no further than disagreement with the judge's findings".

[14] A judge of the UT also refused leave to appeal:

> "The grounds amount to nothing more than a disagreement with the findings [that the] FTT judge … was entitled to make on the evidence. Ground 1 is nonsense as all the judge did at [17] was say that he/she found the claim to be lacking in credibility, and these are the reasons why. There is nothing in ground 2 as the Judge was entitled to place little weight on the document provided for the reasons given. Ground 3 has no merit as the Judge gave numerous and sustainable reasons for rejecting the independence and expertise of the claimed expert. Ground 4 is simply a disagreement with the decision."

Petition for Judicial Review

Outer House

[15] The petition for judicial review essentially advances the same grounds of challenge, while adding that the UT's reasoning was inadequate. The papers came before Lady Carmichael. She issued the following note:

> "The petition manifestly does not comply with the requirements of section 27B(3)(c) of the Court of Session Act 1988. The Upper Tribunal considered each of the grounds put before it. Although its conclusions are stated in short form, they clearly relate to the grounds of appeal. There is nothing to suggest the sort of wholesale collapse of failed procedure that would require to be demonstrated in order to show that there was a compelling reason why the petition ought to be allowed to proceed."

[16] The petitioner requested a review. After hearing oral submissions, Lord Brailsford agreed with Lady Carmichael's analysis and conclusions. He stated that he was:

> "unable to identify any error in law in the FTT approach. The UT had considered each ground presented to it and had given its decision based upon the grounds placed before it. The issue of the adverse finding of credibility had plainly been considered and disposed of in a manner consistent with the law."

[17] Mr Winter urges this court to take a contrary view. He invites us to hold that the grounds of challenge, taken singly or collectively, justify the grant of leave to proceed. We shall examine each one in turn.

Grounds of Challenge

(a) Verification

[18] Mr Winter contends that the F-tT should have accepted the authenticity of the letter from the Palestinian Mission, because the Home Office had failed to verify it. In consequence, the UT erred in law in not allowing an appeal on this point.

[19] We disagree. The Home Office has no general duty to check documents submitted by an asylum seeker: *MA (Bangladesh)* v *Secretary of State for the Home Department* [2016] EWCA Civ 175 at para 29 per Lloyd Jones LJ. Such a duty may arise if (a) the disputed document is at the centre of the request for protection, and (b) a simple process of enquiry will conclusively resolve its authenticity and reliability. But it will always be for the judge to determine in the whole circumstances whether there is a duty of verification. (para 30).

[20] Here the F-tT judge gave detailed reasons for not accepting the authenticity of the document. She was entitled to reach that decision. It would have been odd if she had come to the contrary view. The petitioner did not submit that the Home Office had such a duty. Further, it was only one of five sources of evidence and it was uncertain whether a simple enquiry would have conclusively resolved matters.

[21] In fact there is a quirk in this case. Unknown to the tribunals, the Home Office did attempt to verify the authenticity of the document. On 26 February and 6 March 2018 it sent emails to the Palestinian Mission asking it for verification. It received no reply. In other words, any duty had been discharged. Mr McKinlay informed us that, had this been put in

issue, the Home Office would have checked its files, found the documents and produced them to the F-tT.

(b) Expert Report

[22] This argument only requires brief treatment. Mr Winter's suggestion that this is an error of law is misconceived. The F-tT gave cogent reasons for attaching little weight to Mr Rollins' opinion. That is precisely the task that a fact finder has to undertake. Expert witnesses should never act, or appear to act, as advocates: *MN* v *SSHD* 2014 SC (UKSC) 183.

(c) Assessing the evidence 'in the round'

[23] Mr Winter submits that the UT should have recognised that there had been a mistaken approach to the evidence. The F-tT had only paid lip service to the obligation to look at the evidence "in the round". It had begun by reaching a concluded view on the credibility of the petitioner. That had swayed its assessment of the rest of the evidence.

[24] We see no force in this contention. Judges are entitled to place their conclusion at the beginning of a section before they embark on the discussion: *Zoumbas* v *Secretary of State for the Home Department* 2014 SC (UKSC) 75 para 19. It is a matter of style rather than substance. Many judges choose this approach to assist readers.

(d) Did the UT give adequate reasons?

[25] Mr Winter submitted that the UT's reasoning was inadequate. In particular, it was "generalised". We reject this contention. Succinct decisions are encouraged in 'leave to appeal' cases: *Joint Presidential Guidance 2019 No.1: Permission to appeal to the UTIAC* para 44.

We are satisfied that informed readers of the UT decision would readily understand why permission was refused. It did not leave them in real and substantial doubt.

Conclusion

[26] We are now in a position to answer the two questions posed at the beginning of this Opinion.

a. We detect no legal flaw in the Upper Tribunal decision. The petition therefore has poor prospects of success.

b. There is no 'compelling reason' for the petition to proceed. There is nothing that cries out for judicial review.

[27] As the petitioner has failed to establish either limb of the test, we refuse the appeal. We shall reserve all questions as to expenses.