

REHMAN SABIR, PETITIONER, VS. DEPARTMENT OF JUSTICE-REFUGEES AND STATELESS PERSONS PROTECTION UNIT (DOJ-RSPPU), RESPONDENT.

G.R. No. 249387. March 08, 2023

Ponente: ZALAMEDA, J.

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ZALAMEDA, J.:

Before the Court is a Motion for Partial Reconsideration[1] (Motion) dated 27 December 2022 filed by petitioner Rehman Sabir (petitioner) praying for the partial reconsideration of the Court's Decision dated 02 August 2022 which ruled:

WHEREFORE, the petition is hereby PARTLY GRANTED. Accordingly, the Decision dated 31 January 2019 and Resolution dated 10 September 2019 of the Court of Appeals in CA-G.R. SP No. 153799 are REVERSED and SET ASIDE. The case is remanded to the Department of Justice – Refugees and Stateless Persons Protection Unit for further proceedings in accordance with the guidelines stated in this Decision.[2]

Petitioner ultimately claims that he should be declared a bona fide refugee.[3] Petitioner avers that his fear of religious persecution is well-founded since he has proved his claim of religious persecution through forced conversion to Islam and threat to his life which is validated by the country of origin information (COI) on the Christian persecution in Pakistan.[4] In support thereof, petitioner argues that: (1) the protection officer of the Department of Justice (DOJ) – Refugees and Stateless Persons Protection Unit (RSPPU) did not act in accordance with the shared duty to ascertain and evaluate relevant facts, and instead, focused on a tangential issue: the non-prosecution of petitioner for blasphemy;[5] and (2) the protection officer had forsaken his duty to collect COI regarding Christian persecution in Pakistan to the prejudice of petitioner.[6]

We find no cogent reason to reconsider our initial ruling.

At the outset, the Court notes that the DOJ issued DOJ Circular No. 024, series of 2022 entitled, "Strengthening the Refugees and Stateless Persons Protection Unit, Enhancing the Rules for Refugee and Stateless Status Determination, and for Other Purposes" (2022 Circular), which expressly repealed DOJ Circular No. 058, series of 2012 (2012 Circular). The 2022 Circular was deposited with the Office of the National Administrative Register (ONAR) on 01 July 2022 and published in the Philippine Daily Inquirer on 04 August 2022.[7] It took effect on 19 August 2022,[8] or shortly after the promulgation of the assailed Decision.

The 2022 Circular institutes several significant changes in the status determination procedure. The Circular aims to establish "a fair, efficient and non-adversarial procedure" to facilitate status determination and institutionalize mechanisms for assisting Persons of Concern (POC), such as, but not limited to, asylum seekers, refugees, stateless applicants, and stateless persons.[9]

Specifically, the 2022 Circular expressly acknowledges the application of the principle of non-refoulement in the determination procedure.[10] Said principle prohibits States from returning refugees and asylum seekers in any

manner whatsoever to countries or territories in which their lives or freedom may be threatened.[11] The Circular also recognizes that, pursuant to customary international law, the principle of non-refoulement may apply to other individuals whose lives or freedoms may be threatened.[12]

Moreover, the 2022 Circular enumerates the specific rights enjoyed by POC[13] and Applicants,[14] or those who submitted Applications for status determination. While the rights of POC were not enumerated in the 2012 Circular, the 2022 Circular now confirms that POC enjoy several rights, including access to socio-economic and other public services.[15]

With respect to Applicants, the 2012 Circular previously stated that they have the right to legal counsel and to the services of an interpreter, if necessary.[16] They shall not be denied access to the United Nations High Commissioner for Refugees (UNHCR).[17] In contrast, the 2022 Circular has a more exhaustive list of an Applicant's rights, thus:

SECTION 4. Rights of an Applicant. - From the time of the filing of the Application, until the finality of the decision on the Application, the Applicant shall have the following rights:

- To legal counsel;
- To be informed and have access to the procedure;
- To the extent possible, to have his or her interview conducted in a private, secure, and appropriate location, and in a confidential manner;
- To participate in the procedure in a language and manner they understand and to have access to the services of an interpreter, if necessary;
- To have access to the UNHCR; and
- To have protection from any forcible return in any manner whatsoever, to a country where he or she may face persecution on account of his or her race, religion, nationality, membership of a particular social group or political opinion.[18]

Notably, the 2022 Circular streamlines the application procedure. It provides for two (2) kinds of status determination processes – regular[19] and accelerated.[20] Even the regular procedure is faster and more accessible than that provided in the 2012 Circular. The interview may also be conducted remotely through videoconference.[21] Significantly, the RSPPU must now render its decision on the Application within ninety (90) days from the date of the last interview by the protection officer.[22] No such period was stated in the 2012 Circular.[23] If a request for reconsideration is filed, the decision or resolution on the reconsideration shall be issued by the RSPPU within sixty (60) days from the receipt of the letter or motion or from the date of last re-interview, if conducted.[24] The 2012 Circular did not provide for a similar period.

Regardless of the procedure observed, a decision or resolution of the RSPPU denying an Application or a request for reconsideration is now appealable to the Office of the President.[25] Previously, the 2012 Circular only stated that the Applicant may seek a judicial review of the decision or resolution on the request for reconsideration.[26]

The 2022 Circular also recognizes that RSPPU may review and assess, *motu proprio*, the status of a refugee or stateless person under circumstances that may have come to its attention, including information from any interested person, that justifies a re-examination or re-assessment for the cancellation, revocation, or cessation of such status, after observance of due process of law, and within ninety (90) days: (i) from receipt of the application or further justification, if necessary, for cancellation, revocation or cessation of refugee or stateless status from the refugee or stateless person; or (ii) from the submission of the refugee or stateless person of his or her explanation

on why his or her status shall not be cancelled, revoked, or ceased, or upon lapse of the period given to the refugee or stateless person to submit his or her explanation, which shall not be less than fifteen (15) days, as provided in the 2022 Circular.[27]

Going to the provision most pertinent to this case, the 2022 Circular expounds on the burden of proof in status determination proceedings. Section 3, Rule IV thereof provides:

SECTION 3. Burden of Proof. - The burden of proof in a claim to refugee or stateless status, in principle, rests on the Applicant. However, the duty to ascertain and evaluate all the relevant facts is a shared and collaborative burden between the Applicant and the Protection Officer.

The Applicant has an obligation to provide, as accurate and full, an account of his or her claim as is reasonably possible and provide any relevant evidence in support of his or her claim, as may be reasonably available and possible to provide.

The Protection Officer shares the duty to ascertain and evaluate all the relevant facts of the case.

The finding that the Applicant is a refugee is warranted where he or she has met the definition of the refugee under this Circular.

The finding that the Applicant is stateless is warranted where it is established to a reasonable degree that he or she is not considered a national by any State under the operation of its laws. This involves the examination of the nationality laws of the country with which the Applicant has a relevant link (by birth, descent, marriage, adoption or habitual residence).

Notably, the provision closely follows the principles and language used in the UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection (UNHCR Handbook), which We also relied upon in the assailed Decision, thus:

195. The relevant facts of the individual case will have to be furnished in the first place by the applicant himself. It will then be up to the person charged with determining his status (the examiner) to assess the validity of any evidence and the credibility of the applicant's statements.

196. It is a general legal principle that the burden of proof lies on the person submitting a claim. Often, however, an applicant may not be able to support his [or her] statements by documentary or other proof, and cases in which an applicant can provide evidence of all his [or her] statements will be the exception rather than the rule. In most cases a person fleeing from prosecution will have arrived with the barest necessities and very frequently even without personal documents. Thus, while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application. Even such independent research may not, however, always be successful and there may also be statements that are not susceptible of proof. In such cases, if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt.[28] (Emphasis supplied.)

Thus, the 2022 Circular did not modify the substance of the counterpart provision in the 2012 Circular. It only threshed out the concept of shared burden of proof. As such, the guidelines in the assailed Decision remain relevant and applicable even with the issuance of the 2022 Circular.[29]

As the Court elucidated in Our Decision, Applicants must provide accurate, full, and credible account or proof in support of his or her claim. They must also submit relevant pieces of evidence reasonably available. However, the protection officer should assume a more active role in ascertaining the truth.[30] Clearly then, the guidelines in the Decision are consistent and aligned with the requirements in the 2022 Circular.

In this regard, We stress that the 2022 Circular applies to all cases which are pending with the RSPPU.[31] We also note that procedural laws may be given retroactive effect to actions pending and undetermined at the time of their passage, there being no vested rights in rules of procedure. Amendments to procedural rules are procedural or remedial in character as they do not create new or remove vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing.[32] Thus, the 2022 Circular should control subsequent proceedings in this case.

Refugee applications should be determined on the basis of their merits

While the protection officer failed to exercise its shared duty to ascertain the allegations and claims of petitioner, this does not automatically mean that petitioner's application should be granted. It should be evaluated on the basis of its merits.

Indeed, the peculiar concept of shared burden of proof is used in refugee determination proceedings in view of the special circumstances surrounding such cases. In Our Decision, We elucidated on the concept of shared and collaborative burden, and the reason thereof, in this wise:

The shared and collaborative burden means that the protection officer, who is a DOJ-RSPPU officer, should actively assist and help the applicant clarify his or her claims and allegations in support of the application. This assistance could be in the form of helping elucidate the claims of the applicant, requesting the Department of Foreign Affairs (DFA) to contact foreign States, providing the applicant with translation services, and extending assistance in gathering evidence in support of the application, among others. The shared burden of proof is in recognition of the possibility that some applicants may have left their country in haste, and as such, may not have any evidence to prove their claims. Moreover, there may be other factors which may hinder applicants from fully discussing their allegations, including language barriers and personality differences. In these cases, the protection officer is expected to assist and help the applicant clarify his or her account.

Meanwhile, the applicant must provide accurate, full, and credible account or proof in support of his or her claim. The applicant must also submit relevant evidence reasonably available. After all, the substantive basis for the application will come from the applicant.[33]

The 2022 Circular maintained the shared and collaborative burden and, for clarity, delineated the respective duties of the applicant and the protection officer, i.e., the applicant has, in principle, the burden of proof and the correlative duty to provide accurate and full account of his or her claim, with relevant evidence thereof, as is reasonably available and possible, while the protection officer has the duty to ascertain and evaluate all the relevant facts of the case. This delineated duties thoughtfully applied the basic rule in evidence that the burden of proof lies with claimant[34] in the context of a refugee determination case, giving due regard to the circumstances under which a refugee status application is usually made.

Verily, this shared and collaborative burden as provided in the rules and interpreted in the Decision cannot be taken to mean that the Court should automatically grant an application for refugee status in cases where the protection officer fails its duty under the rules, as petitioner would have Us do.

To be clear, the Court consciously did not make a factual determination on whether petitioner met the definition of a refugee but merely recognized that "the DOJ-RSPPU fell short of its duty to have a shared and collaborative burden with petitioner." [35] This is in due consideration of the very nature of the duty of the protection officer now clearly enunciated in the 2022 Circular, i.e., to ascertain and evaluate all the relevant facts. As will be discussed below, the failure of the protection officer to discharge its duty left the Court bereft of factual basis to

give a definitive ruling on petitioner's application.

The determination of the relevant facts cannot be done by the Court without a re--examination by the DOJ-RSPPU following the principles discussed and guidelines laid out in the Court's Decision

To reiterate, as a matter of procedure, the UNHCR Handbook provides two stages in the determination of refugee status: (1) the determination of the relevant facts of the case; and (2) the application of the facts ascertained to the definition of refugee under the 1951 Refugee Convention and the 1967 Protocol.[36]

This two-step process necessitates the assessment of the credibility of the claims and allegations of the applicant, as well as the evidence and documents presented in support of the application. The protection officer should make the assessment while assisting the applicant in clarifying and explaining his or her claims as may be required. The facts ascertained should then be measured against the definition of a refugee under the 1951 Refugee Convention, 1967 Protocol, and the 2022 Circular.

As regards the definition of the phrase "well-founded fear of being persecuted," which is the most essential phrase in the definition of a refugee, the UNHCR Handbook specifies the subjective and objective elements of the said phrase, to wit:

x x x Since fear is subjective, the determination involves a subjective element in the person applying for recognition as a refugee. Determination of refugee status will therefore primarily require an evaluation of the applicant's statements rather than a judgement on the situation prevailing in his country of origin.

38. To the element of fear – a state of mind and a subjective condition – is added the qualification "well-founded". This implies that it is not only the frame of mind of the person concerned that determines his refugee status, but that this frame of mind must be supported by an objective situation. The term "well-founded fear" therefore contains a subjective and an objective element, and in determining whether well--founded fear exists, both elements must be taken into consideration.[37] (Emphasis supplied.)

As to the subjective element, the UNHCR Handbook explains:

Due to the importance that the definition attaches to the subjective element, an assessment of credibility is indispensable where the case is not sufficiently clear from the facts on record. It will be necessary to take into account the personal and family background of the applicant, his [or her] membership of a particular racial, religious, national, social or political group, his [or her] own interpretation of his [or her] situation, and his [or her] personal experiences – in other words, everything that may serve to indicate that the predominant motive for his [or her] application is fear. x x x[38]

As regards the objective element, the UNHCR Handbook clarifies that, while not a primary objective, it is necessary to consider the conditions in the country of origin in order to assess the credibility of the applicant, thus:

[I]t is necessary to evaluate the statements made by the applicant. The competent authorities that are called upon to determine refugee status are not required to pass judgement on conditions in the applicant's country of origin. The applicant's statements cannot, however, be considered in the abstract, and must be viewed in the context of the relevant background situation. A knowledge of conditions in the applicant's country of origin – while not a primary objective – is an important element in assessing the applicant's credibility. In general, the applicant's fear should be considered well-founded if he can establish, to a reasonable degree, that his continued stay in his country of origin has become intolerable to him for the reasons stated in the definition, or would for the same reasons be intolerable if he returned there.[39] (Emphasis supplied.)

Thus, the protection officer has to assess and determine the credibility of the applicant by considering his or her statements, the evidence presented, if any, and the applicant's demeanor and responses to questions and clarifications propounded. The protection officer should also consider the objective situation in the country of origin of the applicant.

In this case, We find that the relevant facts of the application were not properly threshed out by the protection officer in order for the Court to be able to objectively assess the merits thereof. In other words, there are still questions which should have been propounded to clarify the reason for any action to the application of petitioner. As previously noted, there also appears to be a language difficulty, and there was no indication in the records that an interpreter was provided to petitioner, in order to determine the accuracy of his statements. Thus, it is difficult at this point to determine how some of the contentious statements of petitioner such as the claim of the DOJ-RSPPU that when petitioner was asked whether he was forced or compelled to convert to his religion, he replied in the negative and stated that he was being persuaded.[40] The supposed inconsistency should have been clarified if indeed that was his position given its apparent contradiction to his claim of being forced to change religion as borne out by the written application forms.

Thus, the remand of this case was ordered for the DOJ-RSPPU to discharge its duty to assist petitioner in explaining and elucidating his claims. As previously discussed, the failure of the protection officer to fulfill its shared duty of ascertaining and evaluating the factual allegations of petitioner does not merit an automatic approval of the application. The procedure in this case heavily relies on factual determination which is best discharged by the protection officer by observing the principles and guidelines discussed in this case.

To reiterate, the Court laid out the following guidelines for refugee status determination proceedings in the assailed Decision which remains to be relevant and applicable notwithstanding the issuance of the 2022 Circular, to wit:

- To discharge the shared and collaborative burden between the applicant and the protection officer: (a) the applicant must provide accurate, full, and credible account or proof in support of his or her claim, and submit all relevant evidence reasonably available; and (b) the protection officer must assist and aid the applicant in explaining, clarifying, and elucidating his or her claim.
- Notwithstanding the protection officer's shared burden, it is also the duty of the protection officer to assess the credibility of the statements of the applicant and the evidence on record.
- The facts, as ascertained, should be applied to the definition of a refugee under the 1951 Refugee Convention and the 1967 Protocol, considering the subjective and objective elements of the phrase "well- founded fear." The protection officer should determine if the applicant has established, to a reasonable degree, that he or she would have been persecuted had the applicant not left his or her country of origin or would be persecuted if the applicant returns thereto.[41]

All told, the balance between the State's duty to provide protection to refugees, and its task to limit the grant thereof only to those who have satisfied the requirements would be better preserved through a remand of the instant case.

The above guidelines, together with the specific timeline and steps provided in DOJ Circular No. 024, series of 2022, should be sufficient to guide the DOJ-RSPPU in its re-examination of petitioner's application.

WHEREFORE, the motion for partial reconsideration is hereby DENIED WITH FINALITY. No further pleadings or motions shall be entertained in this case. Let entry of final judgment be issued immediately.

SO ORDERED.

Gesmundo, C.J., Leonen, S.A.J., Caguioa, Hernando, Inting, M. Lopez, Gaerlan, Rosario, J. Lopez, and Marquez, JJ., concur.

Lazaro-Javier,[*] Kho, Jr.,[*] and Singh, JJ., no part.

Dimaampao,**] J., on leave.

[*] No part due to prior participation.

**] On leave.

[1] Rollo, pp. 292-300.

[2] Id. at 258.

[3] Id. at 296.

[4] Id.

[5] Id. at 293.

[6] Id.

[7] Department of Justice Issuances, available at <<https://www.doj.gov.ph/issuances.html>> (visited 03 March 2023).

[8] See Section 3, Rule X of DOJ Circular No. 024, series of 2022.

[9] See Section 2, Rule I of DOJ Circular No. 024, series of 2022.

[10] See Section 3 (a), Rule I of DOJ Circular No. 024, series of 2022.

[11] Id.

[12] Id.

[13] See Section 5, Rule I of DOJ Circular No. 024, series of 2022.

[14] See Section 4, Rule IV of DOJ Circular No. 024, series of 2022.

[15] See Section 5, Rule I of DOJ Circular No. 024, series of 2022.

[16] See Section 10, Rule II of DOJ Circular No. 058, series of 2012.

[17] Id.

[18] See Section 4, Rule IV of DOJ Circular No. 024, series of 2022.

[19] See Rule II of DOJ Circular No. 024, series of 2022.

[20] See Rule III of DOJ Circular No. 024, series of 2022.

[21] See Section 9, Rule II of DOJ Circular No. 024, series of 2022.

[22] See Section 10, Rule II of DOJ Circular No. 024, series of 2022.

[23] See Section 12, Rule II of DOJ Circular No. 058, series of 2012.

- [24] See Section 11, Rule II of DOJ Circular No. 024, series of 2022.
- [25] See Section 1, Rule V of DOJ Circular No. 024, series of 2022.
- [26] See Section 20, Rule IV of DOJ Circular No. 058, series of 2012.
- [27] See Sections 8 and 9, Rule VII of DOJ Circular No. 024, series of 2022.
- [28] UNHCR Handbook, p. 43, pars. 195-196.
- [29] See rollo, pp. 244-246.
- [30] Id.
- [31] See Section, Rule X of DOJ Circular No. 024, series 2022.
- [32] See *Sumiran v. Spouses Damaso*, 613 Phil. 72, 78-79 (2009).
- [33] Rollo, p. 244.
- [34] 2019 Revised Rules on Evidence, Rule 131, Section 1.
- [35] Rollo, p. 255.
- [36] UNHCR Handbook, p. 17, par. 29.
- [37] UNHCR Handbook, p. 19, pars. 37-38.
- [38] UNHCR Handbook, p. 19, par. 41.
- [39] UNHCR Handbook, pp. 19-20, par. 42.
- [40] Rollo, p. 116.
- [41] *Sabir v. Department of Justice-Refugees and Stateless Persons Protection Unit*, G.R. No. 249387, 02 August 2022.

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