Neutral Citation: [2015] IEHC 237

THE HIGH COURT

JUDICIAL REVIEW

[2011 No. 152 J.R.]

BETWEEN

M.S.M.

AND

N. A. S. (A MINOR SUING BY HER MOTHER AND NEXT FRIEND M. S. M.)

APPLICANTS

AND

OLIVE BRENNAN ACTING AS THE REFUGEE APPEALS TRIBUNAL, THE MINISTER FOR JUSTICE AND LAW REFORM, ATTORNEY GENERAL, IRELAND

RESPONDENTS

AND

HUMAN RIGHTS COMMISSION

NOTICE PARTY

JUDGMENT of Ms. Justice Faherty delivered on the 27th day of March 2015

1. The present proceedings issued on the 11th February 2011 wherein the applicants sought, *inter alia*;

> (i) An order of *certiorari* by way of application for judicial review quashing the decisions of the first named respondent to affirm the recommendations of the Refugee Appeals Commissioner that the applicants not be declared to be refugees;
>
> (ii) An order of *certiorari* in respect of the determinations of the second named respondent refusing the applicants' applications for subsidiary protection.
>
> (iii) An order of *certiorari* in respect of the second named respondent's determinations of the applicants' applications under s. 3(6) of the Immigration Act 1999 (as amended); and
>
> (iv) An order of certiorari of the subsequent decisions to make deportation orders against the applicants.

2. By letter dated the 17th October 2014, the applicants' solicitor wrote to the Chief State Solicitors Office to state that the applicants would not be proceeding with their challenge to the decision of the Refugee Appeals Tribunal, and that they would restrict their challenge to the decisions made by the Minister.

3. This judgment addresses only the applicants' challenge to the Minister's decision not to grant them subsidiary protection. The applicants' challenges to the determinations regarding their applications under s.3(6) of the Immigration Act 1999, as amended and to the deportation orders made against them stand adjourned.

Background

4. The first named applicant arrived in Ireland on the 17th March 2008 and made an application for asylum on the 18th March 2008. The second named applicant is the daughter of the first named applicant and was born in this State on the 14th June 2008. An application for asylum on her behalf was commenced on the 10th July 2008.

5. The first named applicant claimed that she was a Somali national of the Bajuni ethnic group and that she lived all of her life on the island of Chula, off the coast of Somalia. She claimed that she and her family endured continuous threats over the years from members of majority clans. The applicant claimed that she and her family were attacked in 2006 and that she suffered a miscarriage as a result of a beating she received and that her brother-in-law was abducted. She claimed that in May 2007 she had an agent to whom she had paid USD 3000 and with whom she travelled to Tanzania to apply for a UK visa. This was done in an attempt to save her and her family's lives. The first named applicant was brought to Dares Salaam visa processing centre where she was fingerprinted but she maintained that the agent had supplied all the information and no one in the office had asked her questions or to confirm her name while being fingerprinted. After two days, she returned to Chula after the agent went missing without further contacting her. She claimed that in September 2007 both she and her husband were beaten in another major attack after which they left Chula for Yemen. She claimed that her mother and her three children had gone to Yemen approximately one month beforehand. According to the applicant, she remained in Yemen for approximately six months, living with her husband but apart from the rest of her family, before flying from there to Ireland in March 2008 via an unknown country, assisted by an agent and with an EU passport. The first named applicant claimed asylum based on the Convention grounds of "Race" and "Membership of a particular Social Group" and duly made a claim on similar grounds in respect of the second named applicant. The first named applicant's claim was rejected (on grounds of credibility) by the Refugee Applications Commissioner. In summary, the findings were that:

• The applicant's name and date of birth on the United Kingdom visa application for which she gave her fingerprints differs from the name and date of birth provided to the Commissioner.

• According to the UK visa application, for which the applicant provided her fingerprints, the applicant was a Tanzanian national who had a UK visa issued on her Tanzanian passport.

• The applicant had previously stated at interview that she had not left Chula before travelling to Yemen in September 2007 following the second attack.

• The applicant decided to return to Chula despite coming to no harm in Tanzania.

• The applicant never sought asylum in Yemen despite being there twice.

• The applicant never sought asylum in Tanzania.

• The applicant found it difficult to understand questions that were directly related to Chula island.

• The language analysis test which the applicant underwent concluded that she spoke a variety of Swahili found with certainty not in Somalia and with certainty found in Kenya and that she spoke the language to the level of a mother tongue speaker.

With regard to the minor applicant, the Commissioner concluded that:

• The mother had not provided any evidence of the applicant's nationality in order to substantiate her claim.

• The minor applicant's mother failed to establish that she had a well-founded fear of persecution, on this basis, it follows that there was no objective basis to the fear attributed to the applicant by her mother.

6. The Refugee Appeals Tribunal rejected (following a papers only appeal) the first named applicant's appeal on the grounds of credibility, finding that:

• The applicant had denied that she was ever issued with a passport or that she had ever had a visa to enter another country.

• The applicant was known to the United Kingdom authorities under another name, and with a different date of birth, as a Tanzanian national.

• The applicant had returned to Chula, the place she claimed to have been attacked and persecuted.

• The applicant never sought asylum in Yemen or Tanzania.

• The applicant could have obtained medical treatment in Yemen.

• The language analysis test, which was considered in light of the applicant's overall testimony, did not support her claim to be a Somali national.

• The applicant claimed she had never left the island of Chula prior to the second attack.

The Tribunal rejected the second named applicant's oral appeal on the basis that the first named applicant was known to the UK authorities under a different name and as being a Tanzanian national to whom a multi-visits visa had been issued in 2007. Furthermore, it found that her mother, the first named applicant, had lived in Yemen for six months with her children and nothing of consequence had happened to her in that time and that the Yemeni authorities provided automatic refugee status to Somalis who arrived there.

7. Following the rejection of their appeals by the Refugee Appeals Tribunal, the applicants were written to by the second named respondent and advised that the second named respondent had accepted the Tribunal's recommendations that the applicants not be afforded refugee status and both were advised that the second named respondent proposed to make deportation orders, pursuant to s. 3 of the Immigration Act, 1999 (as amended). Pursuant to the options given to them, on 26th August 2010 both applicants made application for subsidiary protection pursuant to the European Communities (Eligibility for Protection) Regulations 2006, together with an application for leave to remain under s.3(6) of the Immigration Act, 1999. The grounds of claim for subsidiary protection were largely in line with the claims for refugee status.

8. On the 1st November 2010, the Repatriation Unit of the second named respondent wrote in the following terms to the first named applicant:-

> *"I am directed by the Minister for Justice Equality and Law Reform to refer to your subsidiary protection application and your representations pursuant to Section 3 of the Immigration Act, 1999. It is noted that you claim to be a Somali national in both applications. However, information received from the UK Border Agency indicates that your fingerprints match with a visa application received by them in the name [].As part of this visa application, you provided a Tanzanian passport (Passport Number [ ]).*
>
> *As a result of the above information: in particular the fact that you are currently or were previously in possession of a Tanzanian passport and have provided no documentary evidence to prove that you are Somali, the Minister for Justice and Law Reform intends to process your application on the basis that you are a Tanzanian national.*
>
> *In the interests of fair procedures and natural justice, you are now afforded a period of 15 working days from the date of this letter to submit any observations or comments, setting out reasons as to why the Minister should process your subsidiary protection application and your representations pursuant to s. 3 of the Immigration Act, 1999, on the basis that you are a Somali national.. "*

9. On 23rd November 2010, the first named applicant's then solicitor replied, advising*, inter alia*, as follows:-

> *"Please be advised that our client instructs that after fleeing Somalia in 2007 she went to Yemen where she stayed illegally for six months. During this period her husband began to make arrangements for their travel to a safe country where they could seek asylum. As our client was pregnant and had health problems her situation was a priority. Our client instructs that she and her husband met an agent. The first issue was to obtain travel documents as it was not*

possible to apply for a visa without ID. It was not possible for them to obtain national ID from Somalia therefore she and the agent went to Tanzania where with the assistance of the agent she obtained a Tanzanian passport. Our client instructs that on foot of the Tanzanian passport, she obtained a visa to the United Kingdom. On receipt of this visa she travelled back to Yemen where she spent a few days, she then left Yemen and travelled to Ireland via a third country. Our client instructs that on arrival in Ireland the agent took the passport from her. She confirms that passport did contain her photograph but she is unsure what name was on it. She was instructed by the agent not to disclose this to the Irish Authorities.

It is submitted that our client is Somali as stated by her since the outset of her application for refugee status and indeed confirmed by her to her legal advisors and stipulated in his (sic) appeal. Notwithstanding that a visa application was received by the UK authorities in Tanzania in conjunction with the presentation of a Tanzanian passport on our client's behalf, it is reiterated our client is Somali and the said application and documentation referencing a Tanzanian national was effected by the applicant's agent as part of the process of her travel to Europe. COI set out hereunder outlines that incidents of fraud have been noted and actioned by the UK authorities in relation to the private sector company who acts for the UK authorities in processing visa/passport applications in East Africa ... "

10. The solicitor attached information detailing how UK visa applications were processed in Dar es Salaam, Tanzania, in particular information from the website of the British High Commission in Dar es Salaam concerning the private company (VSF Global) chosen by the UK Border Agency and the British High Commission to administer visa applications on the latter's behalf. The company's website advised that the UK Border Agency in Kenya processed visa applications submitted in Tanzania, Uganda Rwanda and the Democratic Republic of Congo. The Minister was also furnished with an extract from a newspaper, "The Mail on Sunday" (4th April 2010) which made a reference to the private company which managed visa applications for entry into the UK. The newspaper article made reference to alleged abuses of the system and stated that "*..last year, a member of the firm 's staff issuing visas for Britain in Pakistan was arrested for allegedly taking £22,000 in bribes to obtain visas for eight people..*" It went on to state, *inter alia*, as follows:

"*Two years ago the company faced a Foreign Office investigation into an alleged breach of security in its online application facility, which led to the system being shut down.*

The new services exist despite increasing concerns over 'scam ' colleges, where no courses are taught, but which last year enabled a group of alleged AI Queda terrorist plotters to get student visas to come to Britain.

Critics say that removing immigration officials from the sharp end of the visa system has been a disaster and that it is now a 'tick - box system ' open to huge abuses.... "

11. By letter dated 17th January 2011, the first named applicant was advised that the Minister had determined that she was not a person eligible for subsidiary protection. A similar decision was made in respect of the second named applicant.

12. The "*Determination of Application*" in respect of the first named applicant, which included the analysis and conclusion reached with regard to the 2006

Regulations, stated, *inter alia*, as follows:-

"..if the applicant was a Somali of Bajuni ethnicity, as she claims, it is accepted that she is a civilian. Having considered country of origin information in relation to the armed conflict currently taking place in Somalia, if it was accepted that the applicant is a Somlai of Bajuni ethnicity, as she claims, it would be accepted that the indiscriminate violence to which she may be exposed in Somalia reaches such a high level that the applicant would face a real risk of being subject to a serious and individual threat to her life or person. The applicant would therefore run a real risk of serous and individual threat by reason of indiscriminate violence in a situation of internal armed conflict.

Accordingly, having considered COI in relation to Somali, if the applicant's claim for subsidiary protection was to be taken at face value, I am of the opinion that substantial grounds have been shown for believing that the applicant would face a real risk of suffering serious harm due to "serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict" if returned to Somali. "

13. On the question of the first named applicant's nationality, the report went on to state:-

"However, it is not accepted that the applicant is a Somali national of Bajuni ethnicity. It is not accepted that she is a Somali national at all. There is evidence on file to show that the applicant comes from Tanzania. The applicant used a valid Tanzanian passport to get a UK visa. This would require the applicant to be physically present at the issuing office in Dar es Salaam, as well as provide documentation and fingerprints. This amounts to convincing documentary evidence that the applicant is from Tanzania."

14. It further stated:-

"The applicant was not accepted, by either ORAC or RAT as Somali. She applied for a UK visa as a Tanzanian citizen using a valid Tanzanian passport. According to the Linguistic Analysis Report on file, the applicant "does not speak a variety of Somali spoken in Somalia. She speaks a variety of Swahili with certainty found in Kenya" According to the Decision of the Refugee Appeals Tribunal in the applicant's case, "On the most part the Tribunal is not in a position to verify any one of the Applicant's claim, however in the instances of this applicant's claim the Tribunal has before it incontrovertible evidence to the effect that the applicant applied for and was granted a UK visa which was issued to her on the basis of a Tanzanian Passport. The name provided by the applicant, the date of birth, and of greatest concern to the Tribunal, the country of origin held on the UK data base which is totally at variance to the details given by the applicant in this jurisdiction. The language analysis report does not support the applicant's claim to be Somali. When presented with the information relating to the applicant's visa application in Dar es Salaam the explanations given by the applicant were implausible to say the least and simply not capable of being believed." The applicant is not accepted as Somali but considered to be Tanzanian.

There is documentary evidence on file to show that the applicant comes from Tanzania. The applicant used a valid Tanzanian passport to get a UK visa. This would require the applicant to be physically present at the issuing office in Dar es Salaam, as well as provide documentation and fingerprints. This amounts to convincing documentary evidence that

the applicant is from Tanzania."

15. Ultimately, the report concluded:-

> *"I have considered the papers on file in relation to [the first named applicant's] application for subsidiary protection and I conclude that substantial grounds have not been shown for believing that [the applicant] would face a real risk of suffering serious harm if returned to Somali, given that it is not accepted that she is Somali. "*

16. The "*Determination of Application*" which accompanied the letter sent to the second named applicant referred to the fact that neither the Refugee Applications Commissioner nor the Refugee Appeals Tribunal had accepted that the second named applicant's mother was Somali and it concluded that there was documentary evidence on file to show that the second named applicant's mother came from Tanzania and that on that basis the second named applicant was entitled to Tanzanian citizenship. Accordingly, she was refused subsidiary protection on the basis she was not Somali.

The challenge to the subsidiary protection decisions

17. Paragraphs 14-16 of the Statement of Grounds outline the challenge in the following terms:-

> *"(14)The Second Named Respondent erred in law and breached natural and constitutional justice requirements in/ailing to give any prior notification until 11th November 2010, that he was going to treat the First named and Second Named Applicant as Tanzanian nationals, when their Subsidiary Protection and Humanitarian application for leave to remain were due to be submitted and were submitted to him by mid-September 2010, in which timeframe was the statutory period for submitting such applications in respect of both for the First named and Second named applicants and had not been extended by him.*
>
> *(15)The Second Named Respondent erred in law and breached natural and constitutional justice requirements in producing no evidence, other than the First Named Applicant's fingerprints, which were illegally obtained and resulting UK Border Agency Report, with regard to his assertion the First and second Named applicants are Tanzanian nationals and in failing to provide any evidence that both the First and Second Named Applicants would be entitled to Tanzanian passports in their own names, or other travel document, or indication that the Tanzanian would accept them into Tanzania as Tanzanian nationals, and in failing to have any enquiries carried out with the Tanzanian authorities in this regard, before making his Deportation Orders, in respect of both the First and Second Named Applicants.*
>
> *(16)The Second Named Respondent erred in law and breached natural and constitutional justice requirements insofar as in relation to the First and Second Named Applicants Subsidiary Protection and Leave to Remain applications, the Second Named Respondent made no mention of, or assessment on, the corruption in relation to traffickers obtaining passports and visas for Somali nationals in Tanzania, as submitted to him in written correspondence from the RLS with supporting documentation and in this regard erred in fact in stating that "no evidence had been submitted to him that the applicants were not Tanzanian nationals. "*

18. In the course of oral submissions, ground 14 was not pursued, and counsel for the applicant confirmed, in essence, that the case being made on behalf of the applicants was encapsulated in grounds (15) and (16) above.

19. In oral argument, counsel for the applicant stated that it was fundamental that a decision had to be made as to whether the applicants were Somali nationals or not. Counsel submitted that the Minister made a finding that the first named applicant was a Tanzanian national without reference to the explanation she had tendered for being in possession of a Tanzanian passport or how she procured a visa for entry into the UK, based on that passport. The submission of 23rd November 2010 had outlined the circumstances by which the first named applicant had improperly obtained a Tanzanian passport and it was submitted that she had also provided the Minister with compelling evidence of the high degree of dissatisfaction with the system of obtaining visas for the UK, which the Minister should have taken account of in assessing whether or not the first named applicant was a Tanzanian national. Furthermore, in determining that the first named applicant had to be physically present at the issuing office in Dar es Salaam for the procurement of the visa, the Minister failed to have regard to country of origin information which suggested that this was not the case. It was argued that cogent arguments had been made on behalf of the first named applicant but were ignored by the Minister. As a consequence, the Minister's failure to take account of the explanations tendered on behalf of the first named applicant rendered the decision refusing her and the second named applicant subsidiary protection perverse, irrational and unsafe. Moreover, it was against the weight of evidence.

20. With regard to the second basis upon which the Minister concluded that the first named applicant was not from Somalia; counsel referred to the contradictions between what was set out in the Linguistic Analysis Report and the Minister's conclusion that the first named applicant was Tanzanian. The Report found that the applicant spoke a variety of Swahili found "*with certainty not in: Somalia*" and "*with certainty in: Kenya*". There was no reference to Tanzania in the Report. The Minister did not take account of the Report's finding that the first named applicant spoke a variety of Swahili found "*with certainty in: Kenya*". Had he done so, he could not have concluded that the first named applicant was Tanzanian. It was contended that the findings in the Report strongly reinforced counsel's argument that the Minister's conclusion that the first named applicant came from Tanzania was unsafe.

21. It was further submitted that the first named applicant was at a disadvantage in that she was not in a position to procure an independent language analysis test.

22. Counsel posed the question as to where the applicants might be deported, were deportation to take place, in circumstances where the Refugee Appeals Tribunal had relied, in part, on a language analysis test which suggested the first named applicant came from Kenya, yet the Minister had concluded she was Tanzanian.

23. On behalf of the respondents, it was submitted that there was no cogent evidence before the Minister that there was any problem in Tanzania regarding the issuing of passports. Insofar as information had been put before the Minister on behalf of the first named applicant, this referred to a problem in Pakistan. It was submitted that there was no basis for the Minister to take a view different to the view ultimately taken.

24. With regard to the first named applicant's submission that the Minister did not address her explanation as to how she obtained a visa for the UK using a Tanzanian passport, counsel submitted that it was important to look at the history of the first named applicant's asylum process. She had sought to conceal from the asylum decision makers the fact that she had applied for a visa and, in this regard, reference was made to the first named applicant's failure to apprise the Refugee Applications Commissioner, either in

the questionnaire or at the section 11 interview, of the fact that she had obtained a UK visa based on a Tanzanian passport. This was only acknowledged on the prompting of the interviewer and after information had been obtained by the asylum decision maker from the UK authorities. Moreover, the first named applicant has not disputed that she presented in the offices of the UK authorities in Dares Salaam, Tanzania and was fingerprinted there for the purposes of obtaining a visa. In light of the first named applicant's failure to advise the asylum decision makers of the aforegoing facts, it could come as no surprise that the asylum decision-makers had concerns regarding her credibility. It was submitted that the explanation ultimately given by the first named applicant as to how she obtained a visa for the UK based on a Tanzanian passport could have been given by her by way of information in her application for asylum which was, counsel suggested, related to her core claim for asylum. Counsel argued that it is against this background that the Minister's refusal of subsidiary protection to the first named applicant on the basis that she was from Tanzania has to be assessed. It was submitted that there was no cogent evidence before the Minister to indicate that there were any irregularities in the visa application system in Tanzania and in this circumstance the Minister was not obliged to reconsider his proposed course of action i.e. to treat the first named applicant as a Tanzanian national. Had cogent evidence been furnished, there would have been a requirement on the Minister to set out, if it was to be rejected, the reasons for such rejection but here, the first named applicant had only referred to irregularities at offices in Pakistan. There was thus no obligation on the Minister to make specific reference to this aspect of the applicant's submissions. The Minister was also entitled to infer that the passport, upon which the first named applicant obtained a UK visa, was genuine, as there was no country of origin information before the Minister to suggest that there was a bogus business in Tanzania regarding the issuing of passports or visas. It was for the Minister, in his capacity as decision maker, to weigh all of the evidence and the first named applicant's explanation as to how she procured the visa and her information relating to instances of corruption in the visa application system was not so cogent as to merit a reason from the Minister as to why it was discounted. Counsel submits that this was in line with the dictum of Barr J. in *M.A.A. v. Refugee Appeals Tribunal & the Minister for Justice Equality and Law Reform* [2014] IEHC 492. Counsel submitted that the fact of the first named applicant having a Tanzanian passport and that she had been issued with a UK visa on foot thereof was one of a number of pieces of evidence that weighed with the Minister in coming to the decision arrived at. Moreover, the Minister also took account of the language analysis test which did not support the first named applicant's claim to come from Somalia. The report strongly suggested that the first named applicant spoke Swahili with certainty not found in Somalia. Counsel argued that there was no merit in the argument that the Minister was required to produce evidence that the first named applicant was a Tanzanian national: if the Minister did not believe that the first named applicant was Somalian, there was no concomitant obligation on the Minister to prove that the first named applicant was a national of another country. The onus was on the first named applicant to satisfy the Minister as to her nationality and in this regard counsel for the respondent relied on the dictum of MacEochaidh J. in *R.S. v. Refugee Appeals Tribunal and Minister for Justice Equality and Law Reform* [2014] IEHC 55

25. It was also submitted that the applicants had not opened any authority to this court that the Minister was obliged to provide evidence that the first named applicant would be accepted in Tanzania, if she were to be deported. Counsel reiterated that the burden to prove nationality is on the applicant. The applicant made the case that she was Somali and the Minister has stated that he believes the first named applicant to be Tanzanian.

26. By way of responding argument, counsel for the applicants rejected the submission that the information provided to the Minister by the applicant's solicitor was restricted to difficulties about the issuing of visas in Pakistan and submitted that the article outlined a general concern about the issuing of UK visas and passports and pointed out that VSF Global, referred to in the "Mail on Sunday" article, operated in East Africa. Counsel reiterated his argument that the crux of the applicant's case is that the Minister had no evidence on which to find that the first named applicant was Tanzanian and that the Minister did not assess either the information which the first named applicant produced in support of her claim as to how she obtained a visa to the UK or the details which she had supplied which corroborated how she could have been in possession of a Tanzanian passport.

Considerations

27. The Minister's negative decisions on the subsidiary protection applications came against the backdrop of the applicants' claims for refugee status having been rejected on credibility grounds. Both the Commissioner and the Refugee Appeals Tribunal made reference, *inter alia*, to information which had been obtained from the United Kingdom Border Agency during the currency of the asylum process, details of which had been advised to the first named applicant prior to her section 11 interview. Reference was also made in the section 13 report and the Tribunal's decision to the results of the language analysis interview which was conducted on the 17th June 2009 and in respect of which the applicant was provided with copies of the report and a CD recording of the language interview. Both the ORAC and the Tribunal weighed all of the evidence which was before them and arrived at their respective decisions. Ultimately, the Minister accepted the Tribunal's decision affirming the Commissioner's recommendations that the applicants not be declared refugees and a decision was made to refuse them refugee status. None of those decisions is now challenged before this court. The challenge made against the Minister is, *inter alia*, as a decision maker pursuant to the 2006 Regulations for the purpose of deciding whether to grant subsidiary protection to the applicants.

28. In the first instance, I am satisfied that the Minister was entitled to have regard to the information which was provided by the UK Border Agency to the asylum authorities in this jurisdiction. All of this information, to which the Minister had regard, was notified to the first named applicant, both in the course of the asylum process and in the course of the subsidiary protection process and to which latter notification the first named applicant responded by way of a detailed submission.

29. Having considered the arguments advanced by the applicant's counsel, this court is not persuaded that the Minister's reliance on the: fact that the applicant had a Tanzanian passport, and duly obtained a UK visa on that basis, has been undermined by the Minister's failure to set out the weight (whatever it might be) attached to the applicant's explanation for how she came into possession of such documents. I am not persuaded that the information which was provided to the Minister on the 23rd November 2010 reached the threshold of information or evidence which ought to have compelled the Minister to set out reasons why it did not serve to alter the view he took as regards the first named applicant's nationality. In my view, the information which had been obtained by the asylum authorities from the UK Border Agency regarding the Tanzanian passport and the UK visa was capable of sustaining a rational conclusion that the first named applicant was not a Somali national. The information provided by the applicant regarding alleged fraud in the issuing of passports and visas was not of the magnitude which would have put the Minister on inquiry as to whether the first named applicant's explanation had a possible basis in fact. While I do not necessarily agree with the respondent's submission that the newspaper article, upon which the first named applicant relied, only detailed alleged irregularities in Pakistan, the contents of the article were nevertheless not of such force as compelled the Minister to make reference thereto in the course of the decision. I accept the respondents' arguments that the information supplied by the first named applicant did not point to any difficulties in the UK visa processing system in Tanzania. Nor, incidentally, was there reference to any problem in Nairobi, Kenya, where such applications were actually processed. Insofar as Africa was mentioned in the newspaper article, it was in the context of the geographical spread of the company (VSF Global) engaged by the British High Commission and UK Border Agency, rather than to any identifiable problem with the issuing of UK visas in Dar es Salaam.

30. The Minister did not only have evidence of the first named applicant having obtained a UK visa on the basis of a Tanzanian passport, he also had regard to the Linguistic Analysis Report commissioned during the asylum process. As with the information which had been obtained from the UK Border Agency, the weight to be attached to the language report was a matter for the Minister, as decision-maker. In so finding, I adopt the dictum of Barr J. in *M.A.A. v. RAT & Anor.* [2014] IEHC 492, as follows:

"In these circumstances, the Tribunal Member had to weigh the various pieces of evidence including the language analysis report. This was a matter for the Tribunal Member. She considered the language analysis report in the context of the entire story told by the applicant. I am not satisfied that the Tribunal erred in her assessment of the various strands of evidence in this case. The language analysis report was not conclusive of the issues for determination before the RAT. While it was a clear piece of evidence supportive of the applicant's story, it did not establish that the applicant was a Somali national. Nor did it corroborate the applicant's account of leaving home after an attack in 1998 and his various occupations since that time.

The Tribunal Member was entitled ..... to have regard to the evidence from the UK authorities in relation to the passport and the visa being valid. It was a matter for her to decide what weight should be attached to the language report. I can find no objection to the approach taken by the Tribunal Member to the evidence in this case. "

It is to be noted that in *M.A.A.*, the language report, while supportive of the story told, could not be held to have established that the applicant was a Somali national. In the present case, the language report did not support the firs1t named applicant's claim. Nevertheless, Counsel for the applicant argued that the Minister's assessment of the applicant as a person coming from Tanzania is undermined by the language analysis report because the report, although conclusively stating that the applicant spoke a variety of Swahili found "*with certainty not in Somalia",* made no reference to Tanzania. While there is a level of discord between the Minister's finding as to the nationality of the first named applicant and the location (Kenya) given in the language report, which the assessor opined matched the applicant's language, this is not, to my mind, sufficient to negate the Minister's reliance on the report as a piece of evidence which assisted him in determining whether or not the applicant was a Somali national for the purposes of the subsidiary protection decision. The report made a clear finding that the variety of Swahili spoken by the first named applicant was with certainty not found in Somalia. The summary of the findings supported the conclusion that "*[t]he person on the recording speaks Swahili to the level of a mother tongue speaker. She does not speak a variety of Somali found in Somalia. She speaks a variety of Swahili with certainty found in Kenya*. "

The arguments advanced on behalf of the first named applicant were made in the wider context that it was incumbent on the Minister, if he found that the applicant was not a Somali national, to determine her nationality. In rejecting this argument, I refer to the dictum of MacEochaidh J. in *R.S. v. Refugee Appeals Tribunal & Minister for Justice* [2014] IEHC 55, as follows:-

> *"I agree with the dicta of Cooke J cited above, to the effect that it is imperative that a finding of nationality be made as it is impossible to declare a person a refugee unless a decision maker has determined the nationality of the asylum claimant. However, this could not mean that in a case where an asserted claim as to nationality is rejected, the Tribunal Member or decision maker must then identify the nationality of the claimant. Such a finding would serve no purpose in circumstances where an asserted claim as to nationality is rejected In those circumstances, the applicant's credibility as to the very core of a claim is rejected and no further analysis of any aspect of the claim is required Therefore, I reject the argument ...that the failure to identify the nationality of the minor applicant or his mother constitutes a legal flaw in the decision making process. "*

31. In the present case, the core of the claim for the purposes of the application for subsidiary protection was on the first applicant's assertion that she was a Somali national. In my view, the first named applicant's assertion of Somali nationality having been rejected; it was not incumbent on the Minister for the purpose of the decision on subsidiary protection to produce evidence of the first named applicant's nationality. In any event, in the present case, the weight of evidence available led the Minister to a finding that she was not a Somali national. In all the circumstances of this case, the decision to refuse the applicants subsidiary protection, on the basis that they were not Somali nationals did not offend against the principle of rationality. Nor has any cogent argument been made out that the second named respondent breached fair procedures in the manner in which the applications were assessed. Accordingly, the applicants have not persuaded me that the decisions refusing subsidiary protection to the applicants should be quashed on the grounds argued.