

THE HIGH COURT
JUDICIAL REVIEW

[2010 No. 1391 J.R.]

BETWEEN

C.I.I.K (AN INFANT SUING BY HER MOTHER AND NEXT FRIEND P.K) (NIGERIA)

APPLICANT**AND**

THE MINISTER FOR JUSTICE EQUALITY AND LAW REFORM THE REFUGEE APPEALS TRIBUNAL, ATTORNEY GENERAL, IRELAND

RESPONDENTS**JUDGMENT of Mr. Justice Eagar delivered on the 11th day of February 2015**

1. This is a telescoped application for an order of *certiorari* quashing the decision of the second named Respondent to affirm the decision of the Refugee Applications Commissioner that the Applicant not be declared a refugee and seeking an order remitting the appeal of the Applicant for determination *de novo* by a separate member of the Refugee Appeals Tribunal.

2. The Applicant was born on the 3rd February 2006 in a maternity hospital in Ireland and is a citizen of Nigeria. The mother of the Applicant completed an ASY1 form on the 27th April 2008 and completed the questionnaire on the 8th May 2006. The Refugee Applications Commissioner interviewed the mother of the Applicant on the 30th June 2006 and on the 31st July 2009 the Refugee Applications Commissioner recommended that the Applicant had not established a well founded fear of persecution as required by s.2 of the Refugee Act 1996 (as amended) and should not be declared a refugee. The Applicant's mother appealed this decision and on the 2nd September 2010 the second named Respondent heard the appeal. On the 4th October 2010 the second named Respondent affirmed the recommendation of the Refugee Applications Commissioner in relation to the question of refugee status.

The Applicant's claim

3. The Applicant is a child born in Ireland but of Nigerian nationality by virtue of her parentage. She was born on the 23rd February 2006 and she is now 8 years of age. The Applicant's mother is from outside Owerri in Imo State. She is an Igbo. She married her husband in October 2000 and lived Owerri afterwards. The family tradition is that the girl is circumcised. The mother-in-law is the main one who wanted it done but she would have got someone to do it. Her own family does not do it. The pressure came from the husband's family. It is usually done a few days after birth. If it is not done it can be done a little later. When the mother-in-law saw that she would not do it that caused problems. She forcefully took the other daughter to do it. The mother took the daughter away.

4. The grandmother made many attempts to do this but it did not go ahead as the mother managed to take the older daughter away. The husband told his mother he would do it by the time they were five. She thinks he did this to get the mother-in-law to back off. The husband's attitude now because they are here in Ireland is that it would not be done but if he is in Nigeria she does not know what he would do. Her husband was a lawyer and used to represent members of the Movement for the Actualization of the Sovereign State of Biafra (MASSOB). He also became a member of MASSOB and these difficulties lead to them leaving the country. The only issue to be decided by the Tribunal was the issue of future fear regarding the Applicant in relation to forcible genital mutilation. It was put to the mother of the Applicant that her mother in law was now dead and that she had died last year. She further said it was the mother's dying wish that her children would do it. It was also put to her that she had resisted it in the case of her eldest daughter. The Country of Origin Information in relation to relocation was put to her and she said she could not. The mother had made a claim for refugee status on the basis of her membership of MASSOB and her mother's claim was found not to be credible.

The analysis by the second named Respondent

5. The second named Respondent identified that the Applicant was outside her country of origin/nationality. She satisfied the first requirement of the Convention. She then indicated that there must be genuine risk or a serious possibility or reasonable chance of persecution. She said that even if she accepted that there is genuine fear in the mind of the Applicant there has to be a valid basis for that fear and she did not accept that there was a genuine fear in the mind of the Applicant's mother on her behalf. The Applicant's claim was based on fear of FGM from her paternal family. The Applicant's mother also contended that that State authorities would take her daughter because she and her husband are fugitives. The Applicant's mother alleges that her husband's family had a wish to perform FGM on the Applicant but she is unsure of the intentions of her husband who apparently resides in Ireland. She was asked why would she remain with her husband if she feels that he would assist in harming the Applicant and she was afraid that he would sway with his family's side.

6. The second named Respondent also indicated that there were two possible scenarios. One was that it was an attempt by the Applicant's mother to enhance her claim by showing that the risk of circumcision is great as there is a chance that her husband will sway and have the procedure performed. In doing this she is overlooking the fact that the convention cannot be invoked where persons willingly engage or acquiesce in what would be deemed a persecutory act. Alternatively this is entirely true which it has to be said is the more likely case scenario because if there was this risk from her husband she would not seek to remain with him in such circumstances while at the same time seeking assistance for her daughter to prevent such harm occurring. Of course the Convention invocation in relation to engaging or acquiescing in conduct could not apply to the Applicant as she is an 8 year old child.

7. At the hearing of the appeal she is saying that the husband's attitude now because they are here in Ireland is that it would not be done but if she is in Nigeria she does not know what he would do. The second named Respondent said that this was not credible evidence. When the issue of the mother-in-law being dead was raised the Applicant's mother maintained that she would have got someone else to do it and that this was an attempt to give added substance to a claim now and was not credible. The second named Respondent then recited the mother's claim and confirmed the mother's claim was found not to be credible: "As this claim is based on her claim it is not considered credible either. The FGM aspect of this claim is not deemed credible either".

Submissions

8. Counsel on behalf of the Applicant submitted that the decision challenged relies entirely on an assessment of the credibility of the claim. State protection is not considered and neither is internal relocation. Also the Tribunal Member did not assess the country of origin's report in respect of the claim and concludes simply that the claim is not true. In the case of *Z. v. Minister for Justice Equality and Law Reform* [2002] IESC 14 was cited on the issue of credibility. The decision of McGuinness J. however was dated the 1st March 2002 before the statutory change was introduced by the European Communities (Eligibility for Protection) Regulations 2006. Counsel on behalf of the Applicant cited the decision in *I.R. v. Minister for Justice Equality and Law Reform and the Refugee Appeals Tribunal* [2009] IEHC 353.

9. Counsel also cited the case of *M.A.M.A v. The Refugee Appeals Tribunal and the Minister for Justice Equality and Law Reform, Attorney General, Ireland* [2011] IEHC 147. In the case Cooke J cited the decision of Peart J. in *DaSilveira v. Refugee Appeals Tribunal* [2004] IEHC 436:-

"The task of the Tribunal is not simply to be satisfied that there is a well-founded fear of persecution arising from the past, but also that, owing to such well-founded fear for a Convention reason [the Applicant] is outside the country of nationality, and is unable or owing to such fear is unwilling to avail himself of the protection of that country. In other words, that if returned to that country he would be likely to suffer persecution in the future. It is therefore not sufficient for the adjudicator to be satisfied or not as the case may be about particular facts and details relating to past persecution. A lack of credibility on the part of the Applicant in relation to some, but not all, past events, cannot foreclose or obviate the necessity to consider whether, if returned, it is likely that the Applicant would suffer Convention persecution."

10. Counsel on behalf of the Respondent reviewed the grounds in the statement of grounds and argued that where the Applicant has been found to have been lacking in subjective credibility and not to have a well-founded fear of persecution there is no need for a decision maker to engage in pointless examination of matters such as country of origin information and State protection. She pointed out that the central credibility issue in relation to the risk of the Applicant being the subject of FGM was that the fact that the Applicant's mother continued to reside with the Applicant's father and claiming not to be sure of the father's intention in relation to acquiring the Applicant to undergo FGM.

11. I have considered the findings of credibility in accordance with the judgment of Cook J. in *I.R. v. Minister for Justice Equality and Law Reform & Ors* [2009] IEHC 353.

12. I am satisfied that the decision on credibility was one which was appropriately made by the administrative decision maker and in those circumstances I am refusing to grant the relief sought and dismiss the application for *certiorari*.