Neutral Citation Number: [2010] IEHC 357

THE HIGH COURT

2008 1023 JR

BETWEEN

FGW and SS (a minor suing by her mother and next friend FGW)

APPLICANTS

AND

THE REFUGEE APPEALS TRIBUNAL AND THE MINISTER FOR

JUSTICE EQUALITY AND LAW REFORM

RESPONDENTS

Judgment of Mr. Justice John Edwards delivered the 7th day of October, 2010

Introduction
This is an application for leave to apply for an order of *certiorari* and other reliefs by way of judicial review, with a view to quashing a decision of the Refugee Appeals Tribunal dated the 31st of July, 2008 affirming the earlier decision of the Refugee Applications Commissioner recommending that the first named applicant (and the second named minor applicant, a dependent covered by the first named applicant's application) should not be declared to be a refugee.

The Court would like to thank the parties in this matter for their very helpful submissions, both written and oral. I have decided that both Ms W and her daughter should be granted the leave that they seek because I am satisfied that they have demonstrated substantial grounds under the specific headings that I will deal with shortly.

Facts
The essential facts of the matter are as set out in the decision of the Refugee Appeals Tribunal dated the 31st of July 2008. There is no contention but that the circumstances of the case are fairly set out by the Tribunal Member. The tribunal member summarised the position as follows:

> "FG told me she is from Liberia. Her daughter S who forms part of her Application was born in Ivory Coast. She was first married in Liberia when she was eighteen years of age and had one son R with her then husband Tony. Tony was killed by rebels on the 24th December 1989. They had been together for seven years. FG went to Monrovia to be with her parents but discovered that they had been killed. She then went to VOA (Voluntary Organisation Africa) where she stayed in a camp with her sister and son. She remained there for some months. She thinks it was in and about a year but she is not certain. Life was not good in the camp and she decided to go to Danena. En route she was raped by three people. She stayed in the bush in the bamboo and was helped by a man to leave there. She went to his house in Gabat. FG married this man and lived with him for thirteen years. He was Muslim and she was Christian. This man had two other wives. FG had three children with her husband, S who is here in Ireland and another daughter and another son both of whom are with her husband. Unhappy differences arose in the course of the marriage and FG was beaten by her husband. Her husband also disliked the eldest daughter S as he was uncertain as to her parentage. She also had difficulties with her husband's other wives. In March 2006 her husband indicated to FG that he wanted to have her daughter B circumcised, a fight broke out and FG hit her husband's other wife on the head with a bottle, she thinks she may have killed her, however she has no proof that that is what occurred. She ran away with her daughter S and went to Ajemi in Ivory Coast. She worked for six months as a prostitute and was helped by a customer Harry Brown who assisted her in coming to Ireland. She is fearful that her husband will kill her should she be returned to the Ivory Coast and she has no family left in Liberia. She is also fearful that her husband will kill her daughter."

For the avoidance of doubt the Court wishes to emphasise that it is cogniscent that this is but a summary and a distillation of the facts. All parties may rest assured that the Court has had due regard to all of the documents submitted to it, including, but not limited to, the contents of the interview notes with the first named applicant, the first named applicant's Notice of Appeal against the s.13 report of the RAC, the first named applicant's affidavit sworn on the 4th of September 2008 and the more detailed summary of the facts set out in the Outline Submissions on behalf of the Applicants dated 3 September 2010 and filed in the present proceedings.

The decision of the RAT
In dealing with the applicant's claim, the Tribunal Member analysed it in the following way, saying:

> **"6. <u>ANALYSIS OF THE APPLICANT'S CLAIM</u>**
>
> The Applicant may well have fears of returning to Liberia and the Ivory Coast however what the Tribunal has to decide is that if she has such fears are they well founded fears based on proper Convention grounds. In assessing any application the Tribunal must have regard to the credibility and the coherence of the account given by the Applicant.
>
> It is the Applicant's core claim that she suffered brutality at the hands of her second husband and his two wives and as a result had to flee for her life and safety together with her daughter S.
>
> The Applicant submitted a SPIRASI report which indicates that the Applicant had physical and psychological complaints. On her arrival in Ireland she had experienced recurrent abdominal pains and heavy menstrual periods and the Applicant gave an account that these problems began when she was working as a prostitute in Ivory Coast. She has since had a hysterectomy for uterine fibroids and has headaches. She also has difficulties sleeping and suffers stress. Her physical examination revealed a 2 cm scar on her left hand and a 3 cm scar on her left elbow. The Applicant gave an account that these injuries arose as a result of being attacked by her husband during a family dispute. I have taken the Applicant's mental state into account in the consideration of the testimony she gave to the Tribunal.

The Applicant told the Tribunal that she married her first husband when she was eighteen. She did not know when they were married. Her first husband was killed on the 24th December 1989. The Applicant told the Tribunal her son was eight years old when his father died and that she and her husband had been together for some seven years. The Applicant told the Tribunal that she last saw her son R nine years ago in 1998. The Applicant had given an account of being in a refugee camp together with her sister and R for the best part of a year. She put this time frame as being between 1990/1991. The Applicant was insistent that she had not seen her son for a nine year period. It was put to the Applicant that on her own account she had also not seen him since she left the camp and he went with her sister to live. It would in effect be a period of some seventeen years since last she could have seen him on that account. The Applicant could not assist the Tribunal in clarifying this aspect of her claim.

The Applicant handed into the Tribunal an email sent on the 11th April 2008 from Pastor A.D. who is married to the Applicant's sister. The email is to the effect that on Monday morning the 31st March 2008 the body of the Applicant's son was discovered on the beach in Bomi County: -

> "It was on Monday morning the 31st mrch 2008 at the our of 6;45 a.m. after our usuall morning devotion that I received a call from a friend in Robertsport, Bomi county, who told me that a body was founded on the beach that I should come and see but to my most surprise it was the body of innocent R laying on the beach, what a pity, his two eyes plugged the private parts extracted, I believed they used him for ritual purpose. I wouldn't have had you informed but how can that be? R is your borned son so ther is no way that I can con ceall this from you so please take heart God will your tears away".

Even allowing for any psychological upset or sorrow, the Applicant displayed no emotion and was seriously evasive as to whom the email had been sent. The Applicant has no other proof as to the death of her son and the Tribunal has great reservations as to the veracity of the claim being made by the Applicant regarding her son's unfortunate demise in the circumstances as outlined in the email produced by her at the hearing.

For some thirteen years the Applicant lived with her second husband in the Ivory Coast. She had three children with this man and the Applicant maintains her husband did not like her first daughter S as he was not certain as to her parentage. In March 2006 the Applicant's husband informed her that he wished to circumcise their nine year old daughter B, he had no interest in having her eldest daughter S circumcised. A fight broke out between the Applicant's husband and his other wives. A fracas ensued and the Applicant ran away with her eldest daughter S. Given that it was her daughter B who was most at risk and harm the Applicant was asked why she left without taking this daughter with her. The Applicant then told the Tribunal she was locked in a room and she was unable to get to her. Notwithstanding that the Applicant claimed to have been fearful for her daughter B she met a lady who paid her bus fare to Ajemi where the Applicant met another woman and she worked there for some six months as a prostitute. A customer, a Mr. Harry Brown, helped her leave on account of her daughter S.

The Applicant left Ivory Coast and travelled on a passport which was not her own. At no point of immigration in any country she passed through did she present the passport, the agent held all documentation. The Applicant's account in this regard runs contrary to the known facts that exist at all international points of immigration and the Applicant's account in this regard is simply not capable of being believed.

The Applicant is fearful that if she is returned to Ivory Coast or to Liberia her husband will kill her. He is a cult man, he has strong powers and he has a group. Her daughter will also be killed. Prior to coming to Ireland the Applicant had lived safely in the Ivory Coast for a not inconsiderable period of time without any problems. She worked as a prostitute on her own account, she left there due to financial hardship and poor living circumstances. The Applicant claimed that she left Liberia on account of the war and was unable to find her sister or son, that situation has since been remedied and she has been in contact not only with her sister but with her sister's husband who is a pastor and who informed the Applicant of the untimely demise of her son R. The civil war has now ended in Liberia and the UNHCR has begun to promote the voluntary repatriation of Liberian refugees back there. (UNHCR – Position on International Protection Needs of Asylum Seekers from Liberia). The Applicant claims she has no family in Liberia however equally it could be said the Applicant has no family here in Ireland.

At no time did the Applicant attempt to report her difficulties to the authorities. The Applicant told the Tribunal the authorities regarded family disputes as being of no consequence or importance. However it is noteworthy that the Applicant at no time reported her troubles to the authorities, nor did the Applicant avail herself of any voluntary organisations or associations who would have been in a position to assist the Applicant.

Counsel for the Applicant has indicated to the Tribunal that while the Convention is forwardly looking there is a facility whereby an Applicant can be granted refugee status on the basis of past persecution. While I have great sympathy for the plight of the Applicant, that which befell her resulted from domestic violence and abuse. Notwithstanding the Applicant's claim that she was fearful for the safety of her second daughter she in effect left and abandoned this daughter to her fate. Given the customs regarding circumcision it is highly unlikely and unbelievable that one daughter would be chosen for such a procedure and not another daughter in the same family notwithstanding the Applicant's claims of lack of interest on the part of her husband in their first daughter S who is with the Applicant here in Ireland.

7. CONCLUSION

I have considered all matters before me in particular the SPIRASI report. However the Applicant has not satisfied me at any level that she has a well founded fear of persecution on any Convention ground and that being so the Applicant is not a refugee and accordingly the decision of the Commissioner is upheld.

In coming to the above decision I have had regard to the background information supplied by the Applicant both in the Questionnaire and at Interview.

The Tribunal has considered all relevant documentation in connection with this appeal including the Notice of Appeal, country of origin information, the Applicant's Asylum Questionnaire and the replies given in response to questions by or on behalf of the Commissioner on the report made pursuant to section 13 of the Act.

Accordingly, pursuant to section 16(2) of the Act, I affirm the recommendation of the Refugee Applications Commissioner made in accordance with section 13 of the Act."

Grounds on which leave to apply for judicial review is sought
The applicants have exhibited a lengthy and detailed proposed Statement of Grounds setting out the basis on which they seek to challenge the Tribunal Member's decision. The grounds pleaded may be summarized as follows:

- The Tribunal Member misinterpreted and misapplied s. 2 of the Refugee Act 1996;

- The Tribunal Member failed to properly consider and determine whether each of the applicants respectively have a well founded fear of persecution by reason of their experiences in Liberia and the Ivory Coast, respectively;

- The Tribunal Member failed to give separate consideration to the claim of the second named applicant;

- The Tribunal Member arrived at conclusions that were unreasonable, irrational and perverse and which failed to take account of evidence submitted by the applicants and in particular a SPIRASI report;

- The Tribunal Member erred in law and/or acted ultra vires s. 2 of the Refugee Act 1996 and/or acted in breach of fair procedures and/or acted in breach of natural and constitutional justice in failing to properly consider and determine the applicants respective claims;

- The Tribunal Member failed to take account of objective country of origin information, failed to assess persecutory risk by reference to it, and selectively relied upon country of origin information;

- The Tribunal Member erred in law and breached s. 2 of the Refugee Act 1996 and/or the European Communities (Eligibility for Protection) Regulations (SI 518/2006) and/or Council Directive 2004/38/EC in the manner in which she assessed state protection;

- The Tribunal Member failed to have proper regard to and to correctly apply SI 518/2006 and/or Council Directive 2004/38/EC;

- The Tribunal Member failed to take proper account of the personal circumstances of the first named applicant in breach of Regulation 5(1)(c) of SI 518/2006;

- The Tribunal Member conducted a flawed credibility assessment by engaging in personal conjecture and speculation, by failing to put to put to the first named applicant issues on which she later made negative findings, by making findings without an evidential basis and/or without giving any or any adequate reasons, by failing to properly consider and give due weight to the first named applicant's account of events and by failing to take account of objective country of origin information;

- The Tribunal Member applied an incorrect standard of proof, an incorrect burden of proof and failed to apply a forward looking test to the application.

Although none of them were specifically abandoned, not all of the grounds pleaded were specifically addressed at the hearing before me or, indeed, in the written submissions. However, there was extensive argument and submissions concerning what seem to me to be the main planks of the applicants' respective cases, viz (i) the alleged failure to consider the first named applicant's claim of a well founded fear by reason of the risk of being raped in Liberia (ii) the alleged failure, in the purported application of regulation 5 of SI 518/2006, to take proper account of the personal circumstances of the first named applicant and (iii) the alleged failure to give separate consideration to the claim of the second named applicant. Most of the individual grounds of complaint pleaded are in reality subsumed within these three core or central complaints. It is not necessary therefore to deal with each individual ground separately but rather to do so in the context of considering the relevant core or central complaint in each instance.

The alleged failure to consider the first named applicant's claim of a well founded fear by reason of the risk of being raped in Liberia
The first named applicant has argued that the Tribunal failed to consider her claim of a well-founded fear by reason of the risk of being raped in Liberia and this is advanced as a substantial ground for contending that the decision herein is invalid.

It was further submitted that the Tribunal had before it a wealth of country of origin information demonstrating the real risk to the first named applicant of being raped with impunity in Liberia. A full list is contained in paragraph 16 of the first named applicant's affidavit sworn on the 4th of September 2008. The material referred to included but was not confined to (i) a Human Rights Watch report of January 2008, (ii) a report from the United Nations Office for the Coordination of Humanitarian Affairs - Integrated Regional Information Networks (IRIN) entitled: "*Liberia: Government, women's groups decry post-war sexual violence*", dated 15 January 2007; (iii) a report from the Internal Displacement Monitoring Centre entitled "*Liberia: Key challenge is ensuring sustainability of IDP return*" dated 3 August 2006 and (iv) an Amnesty International report, of 2004, entitled "*Liberia: No impunity for rape - a crime against humanity and a war crime*". There are extensive quotations from these documents, which the Court has duly noted, in the applicants' written submissions. It has been submitted that this material was not taken into account by the Tribunal Member, either sufficiently or at all.

Further, it was submitted on behalf of the first named applicant that having made a distinct claim for refugee status by reason of risk of rape in Liberia, the first named applicant was entitled to have it considered and determined by the Tribunal Member. It was urged that each distinct claim made by an applicant must be considered and determined in accordance with the relevant legal principles and in support of this the Court was referred to *S.I. v. Minister for Justice Equality and Law Reform and the Refugee Appeals Tribunal* [2007] IEHC 165. It was submitted that the duty to assess all aspects of an applicant's refugee status claim was also acknowledged by the High Court in *Egharevba v. Refugee Applications Commissioner* (Unreported, High Court, Clark J., 19th February 2008). In that case an argument concerning the entitlement of one of the applicants to a passport was made before the Tribunal but it was contended that the Tribunal, in reaching its determination, failed to consider that aspect of the case. The Court, granting leave on the point, stated at paragraph 66:

> "I am however concerned that the decision of the Appeals tribunal made little reference to the passport issue in Dublin which I believe could and should have been assessed before coming to a negative conclusion. "

The respondents say, in reply to these submissions, that although a claim is made at ground no 6 of the combined Notice of Appeal

filed on behalf of the applicants against the s. 13 report and recommendation of the RAC that the first named applicant feared persecution by reason of "*her membership of a particular social group comprising women and/or women in Liberia subject to sexual assault and rape and/or the threat of same and/or against which the State fails to provide protection*", the case actually made before the RAT at the oral hearing was based on the previous war in that country, the absence of any family of the first named applicant in Liberia and the fact that times are hard there. The Tribunal member had considered the case made before her and had rejected it noting that the war had now ended in Liberia, that country of origin information indicated that the UNHCR had begun to promote the voluntary repatriation of Liberian refugees back there, and that the first named applicant had in fact been in contact with her sister and her brother-in-law, who was a Pastor.

In rejoinder, Counsel for the applicant sought to emphasise that while the oral hearing may have focussed principally on those aspects of the first named applicant's claim identified by the respondents, there was no question of other aspects of the claim being abandoned.

Having considered all of the documents in this matter including the Notice of Appeal, the first named applicant's affidavit and the submissions of the parties, I am satisfied that the first named applicant has not just an arguable point, but has in fact demonstrated substantial grounds, for complaining that an important aspect of her case was either not considered or was not considered adequately by the Tribunal Member.

The alleged failure to take account of the personal circumstances of the first named applicant
The first named applicant accepts that the situation in Liberia has changed since the war ended. Moreover it is acknowledged that for many persons who fled Liberia, going back now will not entail having to face a well-founded fear of persecution. However, the point is also made that for some persons, who have suffered past persecution, going back to Liberia in itself will have traumatic consequences.

The first named applicant submits that Regulation 5(1)(c) of the European Communities (Eligibility for Protection) Regulations 2006 (S.1. No. 518 of 2006) is relevant to such persons. Under Regulation 5(1)(c), the personal circumstances of each applicant must be examined with a view to determining whether their personal circumstances are such that acts to which they could be exposed would amount to persecution in their case notwithstanding that the same exposure may not constitute persecution of another applicant with different personal circumstances. It is urged that the personal circumstances of the first applicant, who has suffered severe mental trauma as a result of her past persecution, place her in the category of persons alluded to by the UNHCR in their position paper herein who despite the ending of the war continue to have a well-founded fear of persecution in Liberia.

It was further urged that although the Tribunal Member had doubts about aspects of the first named applicant's account (and in particular the account of her son's death, her travel details and the likelihood of one particular daughter being singled out for FGM) the Tribunal must be taken to have accepted all other aspects of her account. Moreover, it was submitted that the Tribunal clearly believed the key elements of the first named applicant's claim as the Tribunal it's sympathy for her plight.

It was urged that although the Tribunal accepted that the first applicant had already been subject to persecution it failed to accord that past persecution the status it warranted under Regulation 5(2).

Regulation 5(2) specifies that:

> "The fact that a protection applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, shall be regarded as a serious indication of the applicant's well founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated, but compelling reasons arising out of previous persecution or serious harm alone may nevertheless warrant a determination that the applicant is eligible for protection."

The first named applicant further contends that the Tribunal failed to assess whether there were compelling reasons arising from the past persecution suffered by her which would warrant a determination of refugee status pursuant to the last clause of Regulation 5(2). It was also contended that no regard was had to the fact that past persecution alone can give rise to compelling reasons which sufficient to justify a determination that an applicant is entitled to asylum. The first named applicant submits that there is no obligation to demonstrate that the threat is likely to occur again. Moreover, Regulation 5(2) applies both to consideration of refugee status applications by the Refugee Applications Commissioner and by the Refugee Appeals Tribunal, and to consideration of subsidiary protection applications by the Minister for Justice.

The Court was referred to the case of *M.S.T. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 529 in which the meaning of the last clause of Regulation 5(2) was considered. Although that case concerned a judicial review challenge to a decision refusing subsidiary protection, the first named applicant submits that the interpretation given to the provision in *M.S.T*. must apply also to refugee status determination. At para. 29, p. 14 of the judgment in *M.S.T*., the additional wording at the end of the provision was described as a "counter-exception" to the effect "that, even if there is no reason for considering that the previous serious harm will now be repeated, the historic serious harm may be such that the fact of its occurrence alone can give rise to compelling reasons for recognising eligibility."

It has been submitted on behalf of the first named applicant that the trauma of an incident might be enough to justify the granting of protection even where there was an actual doubt as to the likelihood of repetition. In seeking to apply that notion to the instant case, she contends that the trauma which she has suffered has had such a severe effect on her as to create compelling reasons as to why she should be granted refugee status, notwithstanding any doubts harboured by the Tribunal concerning the likelihood of repetition.

It was also submitted that material was placed before the Tribunal, in particular the SPIRASI report, which was sufficient to put the Tribunal on enquiry as to whether the last clause of Regulation 5(2) was applicable to this case. It was urged that the Tribunal failed to address whether it was so applicable, and erred in law in that regard.

In the SPIRASI report under the heading "Current Situation" it was stated:

> "Since Ms W came to Ireland, she says that she has had numerous physical and psychological complaints. She has experienced recurrent abdominal pains and heavy menstrual periods, and she says that these problems began when she was working as a prostitute in Cote d'Ivoire. She says that she was assessed by a specialist gynaecologist in Ireland and that she had a hysterectomy for uterine fibroids in May 2007 in the James Connolly Memorial Hospital in Blanchardstown. Since that time, she says that she still experiences non-specific abdominal pains. She also experiences tension type

> headaches and has non-specific aches in her arms and legs. She states that these headaches began after she witnessed the severe beating that her husband sustained immediately prior to his death. She also reports difficulty with sleeping, persistent anxiety and hyper alertness. She is currently being treated by her general practitioner for these symptoms.
>
> ……
>
> Ms. W attends her GP every two weeks with various symptoms such as headaches, abdominal pains and sleep disturbance. She is currently on medication to treat these problems."

It also states under the heading "Physical Examination":

> "Examination of Ms. W' cardiovascular and respiratory systems was normal. Abdominal examination revealed diffuse tenderness though no evidence of any localised tenderness or masses was found. She has a hysterectomy scar in the suprapubic region. She has a 2cm scar on the dorsum of her left hand just below the wrist, which she reports she sustained when she was beaten during the incident when her first husband was beaten and mortally wounded. She also has a 3cm scar in the antecubital fossa of her left elbow. This scar is consistent with the injury she reports sustaining when her second husband attacked her with a knife during a family dispute."

Under the heading "Mental State Assessment" it states:

> "Ms. W is bright and alert, although she became agitated and distressed when discussing the traumatic events of her past such as the beating that she witnessed her husband sustaining, her own sexual assault and the repeated beatings by her second husband and his two other wives. Her mood is normal and she has no evidence of any psychotic symptoms."

Finally, under the heading "Conclusion" the report states:

> "Ms. W gives a clear and consistent history of the physical and sexual assaults she experienced while living in her native country, Liberia during the ongoing war there. On physical examination, she has scars which are consistent with the injuries .that she reports sustaining. On mental state assessment, she continues to experience symptoms which are related to the traumatic experiences that she has sustained and these are being exacerbated by her ongoing separation from three of her four children. She will need ongoing psychological therapy to help her deal with these symptoms. In my professional opinion, her current symptoms and the findings on physical and mental state examination are consistent with the history that she gives of her experiences in Liberia.
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> As Ms. W is experiencing considerable psychosomatic symptoms relating to her previous trauma, I have referred her for counselling, massage and physical therapy at the Centre for the Care of Survivors of Torture."

In reply to these arguments the respondents have sought to characterise the submission that because the first named applicant was allegedly the victim of particularly atrocious past persecution she is entitled to asylum as being "incorrect in law." They say that, pursuant to the Refugee Act, 1996, the Tribunal's jurisdiction is confined to considering whether or not an applicant for asylum is a "*refugee*" within the meaning of Section 2 of the Refugee Act, 1996, as amended.

Further, the respondents contend that in any case the SPIRASI Report does not provide the necessary material for the interpretation for which the Applicants contend. In fact, it relates in the main to the first named applicant's work as a prostitute in the Ivory Coast, which on any version of events is irrelevant to her claim for asylum as her country of reference is Liberia.

The Court is not convinced that the first named applicant has demonstrated substantial grounds under this heading to the extent that her claim for refugee status is based upon a fear of persecution deriving from her experiences of the former war in Liberia, the absence of a family network there, or the fact that times are hard there. *Prima facie* her personal circumstances were taken into account by the Tribunal in its consideration of those matters, and in any case, as Cooke J has pointed out in the *M.S.T.* case, the Regulation 5(2) counter-exception is purely facultative and the words in question do not "give rise to a new entitlement" (to refugee status, in this instance). As the respondents have correctly stated, the Tribunal's jurisdiction is confined to considering whether or not an applicant for asylum is a "*refugee*" within the meaning of Section 2 of the Refugee Act, 1996, as amended.

However, be that as it may, this Court takes the view that in circumstances where it has already found that the first named applicant has advanced substantial grounds for contending that an important aspect of her case was either not considered or was not considered adequately by the Tribunal Member, namely that she also has a well founded fear of persecution on account of having been raped and sexually assaulted in the circumstances described by her, it follows that she must also be allowed to make the case that there was either no, or alternatively an insufficient, consideration of her personal circumstances in that particular context (i.e. the previous harm suffered by her by virtue of having been raped and sexually violated, and her present physical and mental condition to the extent that it is being affected or influenced, or may in the future be affected or influenced, on account of that harm), as required by Regulation 5. Accordingly, and to that limited extent, the Court is also satisfied that the first named applicant has made out substantial grounds for contending that there was a failure to take account of her personal circumstances as required by regulation 5.

The alleged failure to give separate consideration to the claim of the second named applicant
It was argued on behalf of the second named applicant that there was no separate consideration of her claim. The respondents do not dispute that but contend in reply that the Tribunal Member was not asked to, and in event was not required in the circumstances of the case, to give separate consideration to the second named applicant's case.

It was pointed out by the respondents that the second named applicant was just 13 years of age at the date of the application for asylum. Moreover, the first named applicant requested that the Second Named Applicant's application for asylum would be considered together with hers.

The respondents say that although the situation of the second named applicant was not considered separately it was nonetheless considered. They point out that insofar as it is contended that the situation in the Ivory Coast was not considered by the Tribunal, this is manifestly incorrect, because there is ample reference to this country throughout the analysis, and indeed at the commencement of the analysis, there is a reference to both Liberia and the Ivory Coast. The respondents say that it is clear that the alleged situation of the applicants in the Ivory Coast was not overlooked by the Tribunal.

The respondents also join issue with the claim in the written submissions filed on behalf of the applicants that the Tribunal assessed

the claim of the first named applicant only. They say that this is not correct. The Tribunal Member refers at p. 2 and p. 14 of the Decision to the fact that the claim made by the first named applicant at the hearing on behalf of both applicants was that they would both be killed by the first named applicant's second husband if they returned to the Ivory Coast. The respondents contend that this claim was clearly considered, and that it was noted that the applicants had lived safely in the Ivory Coast, and that they had not sought state protection. The respondents emphasise that no separate or independent claim was made in relation to the second named applicant, and the threat to the second named applicant arose from the same events and from the same source as in relation to the first named applicant.

With regret the Court considers that, in the particular circumstances of this case, the respondents position is flawed and based upon a *non-sequitur*. The second named applicant must be regarded as having substantial grounds for arguing that the position of the applicants could not legitimately be equated and considered as one where the first and second named applicants do not share the same country of origin. The reference country is different in each case, their legal positions are potentially different, and as a matter of logic they cannot be said to be in the same situation. For example, even though they might each face a threat from the same event or circumstance, that same event or circumstance might give rise to eligibility for refugee status in the case of one of them but not in the case of the other simply by virtue of the fact that they each have a different reference country of origin. In the Court's view the second named applicant has made out substantial grounds for arguing that her claim should have been considered separately.

Conclusion
Accordingly, having considered all aspects of this matter carefully, including Counsel's excellent submissions, and the various cases to which I was referred in the course of the arguments, I have arrived at the firm view that the applicants have established the existence of substantial grounds to challenge the decision of the Refugee Appeals Tribunal dated the 31st of July 2008, and I must therefore grant them leave to apply for judicial review. I will discuss with Counsel the exact form of the Order that requires to be drawn and perfected herein, with appropriate reference to the Applicants' proposed Statement of Grounds.