

THE HIGH COURT

JUDICIAL REVIEW

[2011/ No. 293 J.R.]

IN THE MATTER OF THE REFUGEE ACT 1996 (AS AMENDED) IN THE MATTER OF THE IMMIGRATION ACT 1999 (AS AMENDED) IN THE MATTER OF THE ILLEGAL (TRAFICKING) ACT 2000 (AS AMENDED) AND IN THE MATTER OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS ACT 2003 SECTION 3(1)

BETWEEN

B. (Nigeria)

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Ms. Justice Stewart delivered on the 15th day of January, 2015

1. This is a telescoped application for leave to seek judicial review, seeking an order of *certiorari* to quash a decision of the Refugee Appeals Tribunal dated the 15th March, 2011, and remitting the appeal of the applicants for a *de novo* consideration by a separate tribunal member.

Background

2. The applicant is a Nigerian national born on the 13th April, 1982, in Ogun State. The following is the account which she gave in support of her application. She lived alone with her father from the time he became ill in 2005 until his death on 27th March, 2009. The applicant was accused of witchcraft and was subjected to several beatings by neighbours who, it is stated, blamed her for her father's illness. As a result of one such beating the applicant states that she lost the sight in her left eye. She states that she was helped by a man who took care of her in exchange for her undertaking housework for six months, during which time she was severely beaten by that man's wife. She further states that she complained to the police but received no help. This man arranged for her flight to Ireland through an agent. She departed Nigeria on the 5th November, 2009.

3. The applicant arrived in Dublin on the 6th November, 2009, and states that she was taken, by the agent, to Belfast where she was arrested attempting to board a ferry to Scotland on the 29th November, 2009. She was detained by the United Kingdom authorities until being returned to the Irish authorities on the 14th July, 2010. She claimed asylum on that date based upon persecution in Nigeria for reasons of race and social grounds. The applicant was interviewed by the Refugee Applications Commissioner on the 29th September, 2010, and her claim was rejected by the Commissioner in a letter of the 9th November, 2010, which stated that adverse credibility findings, as well as findings in respect of internal relocation, had been made against the applicant. A notice of appeal was submitted to the Refugee Appeals Tribunal on the 22nd November, 2010, and a hearing was held on the 10th March, 2011. By letter dated the 15th March, 2011, the applicant was notified that the appeal was unsuccessful.

Impugned Decision

4. At this juncture it is worthwhile setting out the reasons for the refusal of refugee status contained in the decision of the Refugee Appeals Tribunal on the 15th March, 2011. Firstly, the tribunal member sets out a finding in relation to the applicant's credibility:

"The applicant presented as a well dressed young woman in her late twenties who spoke excellent English. It is believed that she might be a person who had reached third level education, but throughout the entire hearing she kept her responses to an absolute minimum and the manner in which she delivered her responses convinced the tribunal member that she was not a candid witness."

5. Further the tribunal member states that although she does not accept the aspect of the applicant's story in relation to the fear of persecution from her neighbours, internal relocation to a safe place within Nigeria is possible based on the country of origin information available to the tribunal. However, the tribunal member states that the issue of internal relocation does not apply, due to the tribunal's decision that the applicant was not a credible witness.

Submissions

6. Counsel for the applicant, Mr. Michael Conlon S.C., contends that the tribunal erred in law in failing to identify which elements of the applicant's claim were regarded as credible and which were not. In such circumstances, the tribunal decision lacks cogency and lacks the required basis for the second named respondent to make any further decisions in respect of the applicant insofar as the principle of *non-refoulement* remain substantially unconsidered.

7. The applicant contends that the section entitled "Analysis of the Applicant's Claim", in the decision of the RAT, can be divided into two parts, the first part dealing with the substantive claim and the second part dealing with credibility. In relation to the substantive claim in the first paragraph, counsel for the applicant referred the Court to p.112 of the booklet of pleadings and p.15 of the RAT decision. Under the heading "Analysis of the Applicant's Claim", the first paragraph, the applicant contends, is evidence that she is a member of a social group and this is backed up by country of origin information. At p.114 the tribunal states as follows:

"The Tribunal is of the view that the story told by the Applicant concerning her father's illness and death may be true, but her claim that she feared for her life from her neighbours who claim she was a witch, if there was any truth in that aspect of her story, which the Tribunal does not accept, COI makes it clear that a person can relocate to a safe place within Nigeria away from the perpetrators of threats of violence or death."

8. The applicant contends that the substantive findings are unlawful because there is not an adequate analysis of the question of potential for internal relocation. The Court was referred to two decisions of this Court, namely, *K.D. (Nigeria) v. Refugee Appeals Tribunal & anor.* [2013] IEHC 481, a decision of Ms. Justice H. Clark, and the further decision of this Court, *E.I. & ors. v. Minister for Justice Equality and Law Reform & ors.* [2014] IEHC 27, a decision of Mr. Justice MacEochaidh.

9. The applicant stated that *K.D.* is an authority for the proposition that where adverse credibility findings are made there is no requirement for the Court to carry out a full assessment of internal relocation in accordance with reg. 7 of EC (Eligibility for Protection) Regulations 2006 (S.I. 518 of 2006). On the other hand, the decision of Mr. Justice MacEochaidh in *E.I.* is submitted as authority for the proposition that it is dependent upon whether the internal relocation finding was equivocal or unequivocal. If a decision by a tribunal member is to stand or fall on an internal relocation finding then it must be properly analysed in accordance with the regulations. This latter view was urged upon the Court.

10. In relation to the credibility findings made by the tribunal member that are set out in p.112, the applicant submitted that, firstly, they relate to peripheral matters and are not concerned with refugee issues which are at the heart of s.2 of the Convention; secondly, it is obvious that the applicant gave a considerable amount of information to the tribunal member, which is set out in pp.98-101 in the summary of her evidence; and thirdly, that in relation to some questions the answer was "I don't know". The applicant argues that the tribunal member does not seem to have allowed for the fact that that this answer may be true. The applicant's evidence was that she was doing what an agent had directed her to do. The applicant cannot be expected to know the agent's mind of her own knowledge. The tribunal member spoke a lot about demeanour and the applicant submitted that this is a dangerous road for a tribunal member to go down as there could be cultural factors between the applicant and the tribunal member. The applicant stated that the use of the word 'brazen' by the tribunal member was an inappropriate comment and that it was tantamount to showing that the tribunal member did not have an open mind when making the decision. The applicant contended that although country of origin information confirms that certain women are suspected of being witches in Nigeria, the tribunal member does not give any reasons as to why she does not accept that story advanced by the applicant. The Court was referred to *Hathaway (second edition, 2004)* where the dangers of relying on demeanour are addressed and, the applicant submitted that in this case there seemed to be an over-concentration on demeanour. The Court was referred to the decision of Mr. Justice Hogan in *F.O.O. (Nigeria) v. Refugee Appeals Tribunal & anor.* [2012] IEHC 46, a decision delivered on the 2nd December, 2012, where at para. 8 thereof he stated as follows:

"The first thing to note about the Tribunal member's decision is that one cannot readily discern the reasons given for the conclusion reached. As we have seen, the Tribunal member expressed the view that the applicant's demeanour was 'lacking in credibility' and that his evidence was 'quite unbelievable'. Passing over the fact that the description of a witnesses' demeanour as being 'lacking in credibility' is itself an uncertain expression, the truth of the matter is that an assessment of demeanour in itself can rarely be a sure ground for dismissing the cogency of a witnesses' evidence by reason of that fact alone."

11. At para. 9 he continues:

"As Atkin L.J. so memorably observed in *Lek v. Matthews* (1926) 25 Lloyds Reports 525:

"The lynx-eyed judge who can discern the truth teller from the liar by looking at him is more often found in fiction or in appellate judgments than on the bench."

12. Mr. Justice Hogan continues at para. 10:

"This is perhaps especially true in the context of asylum claims, not least that allowance will often have to be made for translation difficulties and different cultural norms in terms of the assessment of the demeanour of any witness. As Cooke J. observed in *I.R. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 353:

"In most forms of adversarial dispute the assessment of the credibility of oral testimony is one of the most difficult challenges faced by the decision-maker. The difficulty is particularly acute in asylum cases because, almost by definition, a genuine refugee will be someone who has fled home in circumstances of stress, urgency and even terror and will have arrived in a place which is wholly strange to them; whose language they do not speak and whose cultures may be incomprehensible. Inevitably, many will have fled without belongings or documentation from areas in a state of anarchy or from the regimes responsible for their persecution so that obtaining any administrative evidence of their status and even identity may be impractical, if not impossible."

13. The applicant contends that if the analysis of the applicant's credibility by the tribunal member fails then the question of internal relocation kicks in and that should fail because it did not comply with the previous decisions of *K.D.* and *E.I.* referred to above.

14. The respondents submitted that the substantive finding in this case is one of credibility. Mr. Tim O'Connor B.L. points out that at p.112 of the booklet it is made absolutely clear by the tribunal member that it is a question of credibility and it is to do with her candour. At p.112 the tribunal member stated:

"This applicant presented as a well dressed young woman in her late twenties who spoke excellent English. It is believable that she might be a person who had reached third level education, but throughout the entire hearing she kept her responses to an absolute minimum and the manner in which she delivered her responses convinced the tribunal member that she was not a candid witness. For example, when the Tribunal asked her why she thought it was necessary for an agent to travel from Nigeria to Ireland with her even though she was holding a proper Passport and Visitor's Visa her response was 'I don't know'. Or why would a virtual stranger pay for her tickets and his own, which would amount to a huge sum of money by Nigerian standards, she said 'I don't know'. She was asked about her stay in the house in Belfast and asked what she was doing all day for the time she was there. After a good while she said 'I was cleaning the house' and when asked why she was doing all the cleaning when she had already told the hearing that the man left the house in the morning, returned in the night and locked her in, and also that she saw nobody else during that time, and she was asked why she did not use the window to get out, she gave her stock reply of 'I don't know'."

The Applicant was queried on the information made available from the UK Authorities regarding her Application for a Visitor's Visa, a copy of which is on the file and indicated that she was a married woman and that she had family in Ireland. The Tribunal asked is she was a married woman (sic) and she said 'no'. She was asked if she had family in Ireland, as stated in the Visa Application and she said 'no'. She was asked if she had friends in Ireland and the same reply 'no', also there was the same response to the query if she had family or friends in the UK. When the applicant was asked why

she was heading onto the ferry en route to the UK if she knew nobody there, she said 'I don't know'. The Tribunal told the applicant that she could not believe the answers she provided to any of the questions being put to her and reminded her that it was incumbent on an Applicant to tell the whole truth, and request her to start telling the truth. She was asked why would her Application Form for a Visitor's Visa to Ireland state she had a named husband and when she had admitted she had made the application for a Visitor's Visa, if that was not the case and she said 'I don't know, I didn't make the Application' and she refused to give any form of explanation to the questions put to her, when she had already said she travelled to Bauchi State with the Agent to get the documents. It was very clear to the Tribunal for the duration of the hearing that this applicant was only given the barest of responses or a series of 'I don't know's' to the very reasonable questions put to her by the Tribunal or the PO in their efforts to try to establish what brought this Applicant to this country, in the circumstances she claimed in the story she gave, when it would appear she had applied for and got a Visitor's Visa to visit relatives or family and at Interview and at the Hearing to deny the details she provided to the Irish Authorities in Abuja. The Applicant was not a co-operative witness. There was nothing in her story that could allow the Tribunal to give the Applicant the benefit of the doubt."

At p.114 the tribunal member continued:

"[I]n order to give the applicant the benefit of any doubt they would have to have been, as already quoted from the UNHCR Handbook at para. 204; 'general credibility' in the applicants (*sic*) evidence and also; 'The applicants (*sic*) statements must be coherent and plausible and must not run counter to generally known facts.' This cannot be said of a single aspect of the Applicant's case. The manner in which it was so exceedingly difficult to get the applicant to focus on giving any basic details to questions put to her would convince the Tribunal that her whole story from start to finish was not credible. It seemed most of the time that the applicant was, when pressed to give answers, making things fit the question or give the stock reply of 'I don't know'."

15. The tribunal member concluded that she was satisfied that the applicant gave no credible evidence of being persecuted in Nigeria on the grounds of her race, religion and membership of a particular social group, or for any other convention reason. She was satisfied that the applicant was not a refugee within the meaning of s.2 of the Act. Having been so satisfied, the issue of internal relocation in Nigeria, she found, did not apply to the tribunal's findings because the applicant was not a credible witness.

16. The respondents submit that in this case the decision-maker states unequivocally and makes a clear finding in relation to the lack of credibility on the part of the applicant. It is submitted by the respondents that the applicant in this case is asking the Court to substitute its views on credibility findings for those of the tribunal member. The respondents argue that the findings of the tribunal member were not based on the demeanour of the applicant but based on the manner in which she gave her evidence and the words she used and words not used, in relation to the visa application, in relation to whether she was married or not and in relation to contact with her family or not.

17. The respondents contended that the findings made in respect of the applicant arose out of the responses which she gave to the questions posed to her. It is further submitted that credibility findings are required by the legislation and are at the heart of asylum applications. Counsel pointed out that there is no mention of economic migration at all in the decision of the tribunal member and what you have is an unequivocal finding that the applicant is not a refugee within the meaning of the Convention.

18. This is a judicial review proceedings and it is not for this Court to substitute its own view for that of the decision-maker. What is at issue here is the process and procedure adopted by the tribunal member, whether or not the applicant's claim was analysed by the tribunal and whether or not I am satisfied that the decision was adequately reasoned.

19. It seems to be that the tribunal member has set out very clearly the basis on which she arrived at her decision. The findings on credibility are not generalised. Specific findings are made by the tribunal member, and I do not accept that the decision was made on the basis of demeanour but rather on the basis of the answers, or lack thereof, supplied by the applicant, and the monosyllabic nature of those answers on the numerous occasions outlined in the tribunal member's decision. It was open to the tribunal member to reach a determination in respect of the credibility of the applicant based on the evidence given to the tribunal. There were inconsistencies apparent between the evidence the applicant gave to the tribunal and the documentary evidence available to the tribunal, such as her reasons for coming to Ireland, the information submitted in the Visitor Visa application, whether or not she was married, and whether or not she had family in Ireland or in the UK. I do not accept that the findings on credibility are peripheral. They are central to the claim made by the applicant, which she failed to address and /or substantiate before the tribunal.

20. The tribunal member having made an unequivocal finding that the applicant's story lacked credibility and having done so, referred in passing to the prospect of internal relocation, was entitled in my view not to consider that matter further in accordance with the principles set out in *K.D.* and *E.I.* (*supra*).

21. In my opinion, these are sufficient to ground the findings made by the tribunal member. Accordingly, I refuse the applicant's request for leave to seek judicial review for the reasons set out above and am not therefore required to make any orders in respect of the substantive reliefs (this being a telescoped hearing).