Neutral Citation [2015] IEHC 519

THE HIGH COURT

[RECORD NO. 2011/34/JR]

BETWEEN

G. A. A.

APPLICANT

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM, THE

REFUGEE APPLICATIONS COMMISSIONER, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

EX TEMPORE JUDGMENT of Mr. Justice MacEochaidh delivered on the 16th day of July, 2015

1. In these proceedings the applicant challenges a decision of the Refugee Applications Commissioner of the 14th December, 2010. The applicant made a claim for asylum based upon her involvement with the Union of Forces of Change (the U.F.C.) in Togo and she said that on two occasions in February 2005 and in April 2010, she was arrested and suffered physical mistreatment at the hands of state forces. She also says that following a speech made by one Patrick Lawson she decided that she would leave Togo and come to Ireland.

2. Her claim for asylum was rejected on credibility grounds and these are set out in the decision.

3. The first relates to her inability to provide documentation which would establish that she was a member of the political faction. It seems to me to be a matter of some importance because during her s. 11 interview she indicated that she would provide such documentation. She did not do so before the decision of the decision-maker, and interestingly, in the five years since, she has never taken the opportunity to indicate that she has a document to prove that she was a member of that party, although she indicated during her interview that she would obtain those documents.

4. Credibility issues were also found with respect to her being arrested and imprisoned and it is said that the fact that she was arrested and maltreated is based solely on her testimony in relation to the incident in 2005 and in relation to the incident in 2010. The decision-maker notes that though she says she was beaten she has no medical evidence to confirm this. The circumstances in which she came to leave the country, arising from a visit to her home by certain persons who were not identified following a speech by one Patrick Lawson, are not so much disbelieved as not credited with circumstances which would cause a reasonable person to be fearful because, in fact, they did not do anything to her.

5. The decision-maker also expresses doubts as to the veracity of her travel narrative and in particular makes credibility findings in relation to her assertion that she had never applied for a visa to Ireland. It was put to her that she had stated in her questionnaire that she never had a passport and it was put to her that she applied for a visa and that she had been given a visa to Ireland in 2000. It was further put to her that there was a later application as well and that she did not, according to the decision-maker, give truthful evidence in respect of her application for a visa to Ireland.

6. Country of origin information in relation to the situation in Togo following May 2010 was put to her and she made a comment thereon.

7. The legal criticism made of this decision is that there is a failure to consult country of origin information and that this is a requirement of Irish and European law and that this failure constitutes an error as to jurisdiction such as to warrant intervention at this stage rather than an appeal to the Refugee Appeals Tribunal. The authority for the proposition that country of origin information must be assessed by the decision-maker is said to be found at article 4 of Council Directive 2004/83 E.C., as transposed into Irish law by article 5.1 of Statutory Instrument no. 518 of 2006 which says the following matters shall be taken into account by a protection decision-maker for the purposes of making a decision:-

> "all relevant facts as they relate to the country of origin at the time of taking a decision on the application for protection, including laws and regulations of the country of origin and the manner in which they are applied."

8. Counsel for the applicant refers to the decision of the Court of Justice of the European Union in *M.M. v. Minister for Justice, Equality and Law Reform* (C-277/11) where comments were made as to the nature of the state's duty in assessing a claim and at para. 65 the Court of Justice says:-

> "65. Under Article 4(1) of Directive 2004/83, although it is generally for the applicant to submit all elements needed to substantiate the application, the fact remains that it is the duty of the Member State to cooperate with the applicant at the stage of determining the relevant elements of that application.
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> 66. This requirement that the Member State cooperate therefore means, in practical terms, that if, for any reason whatsoever, the elements provided by an applicant for international protection are not complete, up to date or relevant, it is necessary for the Member State concerned to cooperate actively with the applicant, at that stage of the procedure, so that all the elements needed to substantiate the application may be assembled. A Member State may also be better placed than an applicant to gain access to certain types of documents.
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> 67. Moreover, the interpretation set out in the previous paragraph finds support in Article 8(2)(b) of Directive 2005/85, pursuant to which Member States are to ensure that precise and up-to-date information is obtained on the general situation prevailing in the countries of origin of applicants for asylum and, where necessary, in countries through which they have transited."

9. Mr O'Shea says that the dicta of the Court of Justice and the provisions of article 4 of Council Directive 2004/83 E.C., as transposed by article 5.1 of the relevant S.I., create a legal duty or a minimum standard which cannot be deviated from requiring the decision-maker to refer to country of origin information.

10. The extent of the duty to refer to country of origin information is one which has been commented upon by the Superior Courts in Ireland and in particular in the decision of the court in *Imafu v. Minister for Justice, Equality and Law Reform* [2005] I.E.H.C. 416 where Peart J. says as follows:-

> "The applicant refers to the judgment of Finlay Geoghegan J. in Kramarenko v. Minister for Justice, Equality and Law Reform, unreported, 2nd April 2004, in which she approved the decision of Mr David Pannick QC. (sitting as a deputy judge of the High Court) in R. v. Immigration Appeal Tribunal, ex parte Ahmed [1999] INLR 473. As noted by Clarke J. in his judgment allowing leave herein, both of these cases adopted the finding of His Honour Judge Pearl in Horvath v. Secretary of State for the Home Department [1999] INLR 7 to the following effect:
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> > 'It is our view that credibility findings can only really be made on the basis of a complete understanding of the entire picture. It is our view that one cannot assess a claim without placing that claim into the context of the background information of the country of origin information. In other words, the probative value of the evidence must be evaluated in the light of what is known about the conditions in the claimant's country of origin.'

11. Peart J. goes on to say:-

> > "I have no doubt that this is a correct and appropriate statement of principle. But one cannot at the same time that it is applicable or appropriate as an absolute standard in all cases, without exception, Cases differ, as do reasons for a finding of lack of credibility." (sic)

12. My view is that no provision of Irish law and no provision of European Union law require that there be an assessment of country of origin information in every case. That is not what European Union law requires. What European Union law requires is that all relevant facts as they relate to the country of origin at the time of taking a decision on the application for protection be assessed.

13. The first negative credibility finding made in this case seems to me to relate to a matter that could never be supported, corroborated, or helped by country of origin information; and that is: it is disbelieved that the applicant was a member of the political party in question. No assistance whatsoever could ever be obtained from general country of origin information as to whether the applicant in this case was or was not a member of the particular political party. Therefore, I find no flaw in respect of that credibility finding. It was not incumbent upon the decision-maker to use country of origin information in respect of that particular finding. Nor could country of origin information assist with the credibility findings in this case in respect of travel; or in respect of whether the applicant told a lie or not as to whether she applied for one, or two, or any other number of visas to Ireland in the past.

14. There are, however, two credibility findings which seem to me to be matters that might have been better assessed by reference to country of origin information and that is the treatment of persons who protested against state forces in 2005 and in 2010.

15. Certain circumstances are taken into account to assess the extent to which there has been a departure from the fundamental rule governing the assessment of this asylum claim. In the first instance, the applicant herself did not furnish any country of origin information with respect to the question as to how opposition forces are treated in Togo. She is not to be faulted on that but there is an obligation on her to furnish all information possible. If she cannot find any, the decision maker should be able to assist her. There may well be information which could assist with the question as to whether or not opposition forces were mistreated by government forces in Togo.

16. What the law requires is that the decision-maker takes all relevant facts as they relate to the country of origin into account. When the applicant comes to court submitting that this rule has been breached and that, therefore, the overall finding as to credibility is unlawful and the matter should be remitted to the Tribunal; it seems to me that the very least the applicant has to do is to tell the court what relevant fact was not assessed by the decision-maker. It must be borne in mind that the applicant has had five years now to consider what relevant fact has not been assessed that ought to have been assessed. It is a rather startling proposition that the applicant has waited five years rather than bringing the matter to the Refugee Appeals Tribunal to correct any mistakes as to credibility in this finding. It is also rather surprising that given the weaknesses in the applicant's case as pointed out by the O.R.A.C. decision, that the applicant didn't take the chance to strengthen her case and to put in the information which was missing from her initial asylum application; for example, her party identification papers or information demonstrating that opposition forces were mistreated.

17. My view is that the decision-maker in this case ought to have assessed or at least attempted to assess country of origin information in order to see whether a certain part of the credibility findings might be viewed in a different light if information was available which supported the claims of the applicant. However, to persuade the court that it is appropriate to intervene at this stage, it is not only incumbent upon an applicant to establish that an error of law has ocurred but that the error of law is of such seriousness to warrant intervention to quash this first instance decision. It is not possible for the court to identify whether an error of law has occurred or how serious the error was in the absence of the applicant telling the court what relevant fact relating to the country of origin was not assessed by the decision-maker. It may be there was no relevant country of origin information in existence which would have assisted with the decision in this case. If so, no error has occurred. If there was material available which demonstrated that arrests happened in 2005 and 2010, or that oppostion forces were arrested and beaten, or that one Patrick Lawson made a speech as claimed by the applicant, then the applicant should have put this material before the court for the purpose of demonstrating the material which should have been considered by the decision maker. Though five years have passed since the proceedings were initiated no information of this kind has been sourced by the applicant or her legal advisers. (Counsel sought to refer to some material published by Amnesty International at the hearing but this was not on affidavit). If such material does exist then the applicant can now submit it, along with any other new material, to the Refugee Appeals Tribunal.

18. I am refusing the application for judicial review.