NEUTRAL CITATION: [2012] IEHC 568

THE HIGH COURT

JUDICIAL REVIEW

Record No. 2008 / 1357 J.R.

Between:/

M. L. T. T. (CAMEROON)

APPLICANT

-AND-

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM AND THE REFUGEE APPEALS TRIBUNAL (DENIS LINEHAN)

RESPONDENTS

JUDGMENT OF MS JUSTICE M. CLARK, delivered the 27th day of June 2012

1. By decision dated the 3rd October 2008 the Refugee Appeals Tribunal (RAT) recommended that the applicant should not be granted refugee status. The applicant now seeks leave to apply for an order of *certiorari* quashing that decision together with ancillary reliefs. In this case the applicant's arguments centre upon the application of a forward-looking assessment of risk. The leave application was heard on 24th April 2012. Mr John Stanley BL appeared for the applicant and Mr David Conlan Smyth BL appeared for the respondents.

2. These proceedings issued some six weeks after the expiry of the time limits set out ins. 5(2) (a) of the Illegal Immigrants (Trafficking) Act 2000. However having regard to the cogent explanation given by the applicant's solicitor the Court is satisfied that there is good and sufficient reason to grant an extension of time.

Background

3. The applicant's claim is that he is a national of Cameroon. He is now 35 and arrived in Ireland on 21st December 2006 at age 29 and applied for asylum at the offices of the Refugee Applications Commissioner on the same date. His claim for asylum was based on the following narrative. While a student in Douala University in the 2004 / 2006 period he formed a student organisation called MDDEC of which he was president. He was involved in a demonstration protesting against poor student conditions towards the end of April 2005. The authorities suppressed the demonstration and several students were killed, others were arrested and female students were raped. He himself was arrested and detained in very poor conditions during which time he was frequently beaten and he believes that he was poisoned while in prison. He was released on an extracted promise to eschew student politics and signed a written agreement to that effect.

4. He missed sitting the next year's exams but otherwise he had no problems until November 2006 when he once again became involved in organising a student march to honour two students who had been shot dead at another university in Cameroon. Those students at the University of Buea had demonstrated against the addition of extra candidates to the list of those who had passed the entrance exam to enter the School of Medicine. The applicant organised a march to remember those dead students and to seek the unconditional release of other students who had been arrested. A university professor who was also the Dean warned the applicant that a new arrest by the authorities was imminent. At the same time he received several SMS messages with death threats. He felt forced to leave his neighbourhood and go into hiding. He left his two children and his partner behind and travelled to Ireland by plane with a priest from his mother's parish who made all travel arrangements and who brought him to the ORAC to claim asylum.

5. At interview before the ORAC he claimed that while in prison he was visited from time to time by a man in a mask who had a knife which he used to inflict injury. There was some shifting in his evidence on whether he sought medical attention and why he was unusually old for attending university. Similarly there were inconsistencies in his asserted poverty and his being a father of two children attending university. Having claimed he never worked, he then said that he sold cigarettes to support his partner and children. There were other credibility issues and the ORAC made a negative recommendation in the s. 13 report. This decision was appealed to the Refugee Appeal Tribunal (RAT) which decided on the 3rd October 2008 to affirm the recommendation made by the ORAC. The applicant was advised by letter dated 7th October 2008 that the appeal had been refused. The applicant challenges the validity of this refusal.

6. The Tribunal Member appeared to accept that the applicant was a student, that the human rights situation in Cameroon is far from satisfactory and that the government did not tolerate anti government activities especially by students. He made no comment on the previous numerous negative credibility findings and approached the appeal on the basis of accepting at face value the new documents produced at the appeal which included a SPIRASI report and what seems to the Court to be a very detailed and genuine looking hospital record of medical treatment following his release from custody in 2005. The Tribunal Member accepted that a SPIRASI report found scarring on the applicant's right upper arm and right upper thigh. He next considered whether the detention and ill treatment in custody could amount to persecution. He found that the Jaw supported his view that such ill treatment did not amount to persecution. His only credibility finding related to the claim that a university professor could be in possession of information relating to his intended arrest and that he was targeted by the authorities after 18 months without any problems.

The Submissions

7. The essence of the applicant's argument is that the Tribunal Member failed to correctly apply a forward-looking test and relied instead on negative credibility findings about very limited aspects of the applicant's narrative. He should have taken those aspects of his narrative which were believed and gone on to assess whether the applicant has a well-founded fear of persecution in the future if returned to Cameroon. In other words he should have considered- by reference to COI- whether people in a similar position to the applicant face persecution. The applicant relied primarily on the decision of Peart J. in *Da Silveira v. Refugee Appeals Tribunal & Ors* [2004] IEHC 436, and also on the Australian High Court in *Minister for Immigration and Ethnic Affairs v. Guo Wei Rong* (1997) 144 ALR 567 and *Minister for Immigration and Multicultural Affairs v. Haji Ibrahim* [2000] HCA 55; the Court of Appeal in *Noune v. Secretary of State for the Home Department* [2000] EWCA Civ 306; the Federal Court of Canada in *Rodolfo Guerrero Pacifador v. Canada (Minister of Citizenship and Immigration)* (2003) FC 1462; New Zealand RSAA *Refugee Appeal No. 300/92 RE MSM* of 1st March 1994;

Cooke J. in *S.B.E. v. Refugee Appeals Tribunal and Another* [2010] IEHC 133 and Hogan J. in *F.O.O. (Nigeria) v. Refugee Appeals Tribunal* [2012] IEHC 46.

8. Counsel on behalf of the respondents relied strongly on the undoubted discrepancies in the applicant's narrative. It was conceded that the Tribunal Member gave the applicant the benefit of the doubt and did not revisit the many credibility issues highlighted by the ORAC relating to the applicant's personal circumstances and to events in 2005. The respondents argued that even with the benefit of the doubt in relation to the ill treatment and medical treatment in 2005, the applicant could not be entitled to refugee status as he had no difficulties with the authorities for some 18 months after being released from detention and before he came to Ireland. The respondents rely on *Imafu v. Refugee Appeals Tribunal* [2005] IEHC 416 where it was held that if the credibility of an applicant's core claim is disbelieved, there is no need to embark on an artificial assessment of future risk by reference to COI.

9. The respondents further argue that the core of the applicant's claim was that in 2006 he was individually targeted for arrest and possible abduction or killing because of his student activity. However nothing in the country of origin information (COI) on Cameroon indicates that the authorities target individual student activists. The height of the COI is that the authorities have used excessive force to disperse anti-government riots and student demonstration situations. The newspaper extracts furnished by the applicant do not support the applicant's narrative. The claim is so unstateable that it would offend against the principle of utility to send the case back to the Tribunal.

The Court's Analysis

10. This case presents the Court with a predicament as Mr. Conlon Smyth on behalf of the respondent ably makes many of the comments which should have found their way into the Tribunal decision. Had such comments been made in the impugned decision, this application and the main ground relied on could not be described as a substantial ground sufficient to satisfy s. 5 of the Illegal Immigrants (Trafficking) Act 2000. However, the issue is whether- on the basis that the Tribunal Member accepted that the applicant was a student from Cameroon- the Tribunal Member should have considered whether there was any risk of persecution to him on his return and whether in view of findings which the Tribunal Member could have made, there is any utility in returning the appeal to a different Tribunal Member.

11. First, there is no doubt that it is well established as a matter of international and domestic refugee law that the test for determining whether a person is a refugee is forward-looking. In his seminal work *The Law of Refugee Status* (1991), Hathaway explains the origins and development of the definition of a refugee in the 1951 Convention. Originally, past persecution was sufficient to warrant refugee status but following discussion and agreement, the Convention was drafted so as to require either present or prospective persecution, or both. The later *Michigan Guidelines on Well Founded Fear* which were agreed by expert participants at a Colloquium on Challenges in International Refugee Law led by Professor Hathaway at the University of Michigan in 2004 state at paragraph 4 that the 1951 Convention requires *"the demonstration of "fear" understood as a forward-looking expectation of risk*". At paragraph 12 the Michigan Guidelines further state:-

> *"Even where there is a finding that an applicant's testimony is not credible, in whole or in part, the decision maker must nonetheless assess the actual risk faced by an applicant on the basis of other material evidence. In particular, the existence of a well-founded fear may be grounded in evidence that the applicant is a member of a relevant, at risk group of persons shown by credible country data or the credible testimony of other persons to face a significant risk of being persecuted. "*

12. This principle is also accepted and applied in the caselaw of this and other jurisdictions where it is consistently reiterated that the decision-maker may look to the past as a guide to what is likely to occur in the future but that the past is not determinative. In Da Silveira (cited above), Peart J. held:-

> *"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 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.*
>
> *In the context of the present case, this could mean that simply because the Tribunal, on an inference drawn from incorrect facts in relation to the rape has concluded that the applicant cannot be believed, or that her account of her escape seems somewhat far-fetched, it cannot thereby lightly or automatically discount completely her evidence of membership of the UFC and her involvement at political rallies, since that evidence is relevant on its own in relation to whether if she were returned to Togo she would suffer persecution in the future on account of her political opinion."*

13. It is equally well established that where the very core of an applicant's claim is not believed, the decision-maker is not obliged to carry out an artificial exercise and assess what might occur if a hypothetical person with the applicant's disbelieved history and characteristics were returned to the applicant's country of origin. This was the situation in *Imafu v. Refugee Appeals Tribunal & Anor* [2005] IEHC 416. However it is certainly arguable that this case is not one of the exceptional cases which equates to an Imafu type finding where the core of the applicant's claim was disbelieved.

14. It seems to this Court that in circumstances where much of what may be described as the applicant's core claim to have been a student activist in Cameroon appeared to have been accepted, the Tribunal Member ought to have gone on to ask himself whether the applicant has a well-founded fear of persecution if returned to Cameroon, in the light of the accepted past experiences and having regard to objective COI relating to previously arrested students there. It is not suggested that the Tribunal Member was bound to answer that question in the affirmative but he was nonetheless bound to give consideration to it. It is not for this Court to speculate upon the answer he would have reached or the materials he might have consulted had he gone on to assess future risk. As Cooke J. held in *I.R. v. Refugee Appeals Tribunal* [2009] IEHC 353,

> *"The determination as to whether a claim to a well-founded fear of persecution is credible falls to be made under the Refugee Act 1996 by the administrative decision-maker and not by the Court. The High Court on judicial review must not succumb to the temptation or fall into the trap of substituting its own view for that of the primary decision makers."*

Decision

15. The Court will grant leave to challenge the Tribunal decision on the sole ground that *"The Tribunal Member erred in law in failing*

to apply a forward-looking test when assessing whether the applicant has a well-founded fear of persecution".