THE HIGH COURT
JUDICIAL REVIEW

[2005 No. 129 JR]

BETWEEN

THERESA NKECHI FASAKIN

APPLICANT

AND
THE REFUGEE APPEALS TRIBUNAL AND
THE MINISTER FOR JUSTICE EQUALITY AND LAW REFORM

RESPONDENTS

Judgment delivered by The Honourable Mr. Justice O'Leary on the 21st day of December, 2005.

1. The applicant seeks leave to apply by way of judicial review for the following orders:

(a) An Order of Certiorari by way of application for Judicial Review quashing the decision of the first named Respondent, dated 20th January, 2005, to refuse to recommend that the Applicant be declared to be a refugee, pursuant to section 16 of the Refugee Act 1996.

(b) A Declaration by way of application for Judicial Review that the first named Respondent erred in law and/or in fact in its determination of the Applicant's appeal dated the 20th January, 2005.

(c) An Order of Mandamus by way of application for Judicial Review requiring the first named Respondent to re-consider the Applicants appeal against the recommendation of the Refugee Applications Commissioner.

(d) An Injunction by way of application for Judicial Review restraining the second named Respondent from acting on foot of the decision of the first named Respondent dated 20th December, 2005, pending the outcome of these proceedings.

(e) An Order allowing for an extension of time within which to bring an application for the judicial review, pursuant to Section 5(2)(a) of the Illegal Immigrants (Trafficking Act), 2000.

(f) Such further or other Order as to this Honourable Court shall seem meet.

(g) An Order providing for Costs.

2. The reliefs are sought on the following grounds:

The Tribunal member, acting at all times on behalf of the first named Respondent, erred in law in refusing and/or failing to consider adequately or at all the decision to grant refugee status made by the first named Respondent in respect of the Applicant's daughter.

The Tribunal Member erred in law in failing to perform his duty of inquiry, as facilitated by the provisions of the Refugee Act, 1996, and as required by the *UNHCR Handbook on procedures and criteria for determining refugee status*. In particular, but without prejudice to the foregoing, he so erred in law in not giving proper consideration to the decision by the first named Respondent to grant the Applicant's daughter refugee status.

The Tribunal member erred in law failing to consider the experiences of members of the Applicant's family in assessing whether the Applicant had a well founded fear of persecution.

The Tribunal member erred in law in requiring the Applicant to show that she was singled out for persecution in order for her to be granted refugee status.

The Tribunal member erred in law in his application of the concept of persecution.

The Tribunal Member erred in law in failing to apply a presumption in favour of the Applicant that she had a well-founded fear of persecution arising from her experiences including past persecution suffered.

The Tribunal Member failed to apply the correct standard of proof, that is, whether there was a "reasonable possibility" that the Applicant would be persecuted in the future.

The Tribunal Member failed to give the Applicant the benefit of the doubt as required by the UNHCR Handbook on procedures and criteria for determining refugee status.

The Tribunal member failed to provide adequate reasons as to why he was not satisfied that the Applicant had a well-founded fear of persecution for a Convention reason.

The Tribunal Member failed to consider and/or apply properly or at all the Notice of Appeal filed on behalf of the Applicant.

Further, the tribunal member erred in law in failing to set aside the finding of the Refugee Applications Commissioner under section 13(6)(a), and in failing to grant the Applicant refugee status or to direct that the Applicant be re-interviewed by the Commissioner or to direct that she have a full, oral hearing before the tribunal.

The tribunal member made findings for which there was no or no adequate or proper, evidential basis.

The tribunal member acted in breach of section 16(8) of the Refugee Act, 1996.

The tribunal member relied upon country of origin information, and made findings that were based upon country of origin information, that were never put to the applicant in breach of the applicant's rights to constitutional and natural justice and to fair procedures, and in breach of the first named respondent's statutory duty.

The tribunal member took into account irrelevant considerations and/or failed to take into account relevant considerations.

The tribunal member made findings that were unreasonable and/or irrational.

The tribunal member erred in law in the principles that were applied in determining whether the applicant was a refugee within the meaning of section 2 of the Refugee Act 1996, as amended.

2. The applicant is at risk of being made the subject of a deportation order unless the second named Respondent is restrained by the injunctive relief sought at paragraph 4(d) hereof.

3. The proceedings are supported by the following affidavits:

1. Michael Crowe solicitor for the applicant dated 8th February, 2005,

2. The applicant dated 18th February 2005,

3. Sandra Morayo Fasakin daughter of the applicant dated 18th February 2005.

4. These affidavits together with the formal pleadings and the legal submissions made have been considered by the court.

5. Factual background to application set out in affidavit:

1. The applicant was born in Nigeria in 1951,

2. She arrived in Ireland on 15th June 2004 and applied for refugee status at that time.

6. The following steps have been taken in this application:

1. On 13th July, 2004, the applicant attended for interview at the Office of the Refugee Application Commissioner when she was interviewed by Mr. Pat Lally.

2. Following that interview Mr. Lally completed a report dated 16th July, 2004, under S. 13(1) of Refugee Act 1996. This report recommended a refusal of a declaration of refugee status.

3. This report was considered and endorsed by Ms. Cecelia Lynch on 21st July 2004.

4. The report purported to hold that the application fell within S(6)(a) of the Refugee Act 1996 thereby ruling out the possibility of an oral hearing in respect of any appeal.

5. The applicant appealed the decision on 5th August, 2004.

6. The Refugee Appeal Tribunal (herein after R.A.T.) by letter dated 20th January, 2005 conveyed to the application its appeal decision reached on 9th December, 2004.

7. The judicial review of that decision was commenced out of time by a day (as calculated by the solicitor for the applicant)

Preliminary Ruling
7. The court will not allow the small delay in commencing the judicial review to impede the granting of the relief sought if otherwise justified.

Applicant's submissions
8. The applicant proposes to rely on three general points to set aside the decision of the Refugee Appeals Tribunal in the event of leave being granted.

9. The first of these relates to the decision of the Refugee Application Commissioner to conclude that this was a case to which S.13(6)(a) of the Refugee Act, 1996 applies. This decision was taken on 21st July, 2004 and conveyed to the applicant prior to her decision to appeal the Refugee Application Commissioner finding in her application which appeal was lodged on 5th August, 2004. The decision to categorise the application as falling within the ambit of s.13(6)(a) was taken (within the refugee application system) in July, 2004 and was not itself a decision on which Refugee Appeal Tribunal had to adjudicate. These proceedings commenced on 9th February, 2005. No attack on the legal validity of the decision to categorise the application as falling with s.13(6)(a) was mounted in the meantime. The application to challenge this preliminary decision has only arisen after the application has been though the next stage of the process. Naturally the application to review the status of the application, as falling within s.13(6)(a), is long past the limitation period of 14 days set out in the legislation. No good reason has been given to this court for this delay and that basis of the judicial review application falls at this preliminary stage. The attempt to legitimise the late raising of this point by referring to the failure of the Refugee Appeal Tribunal to set aside the Refugee Appeal Commissioners decision on s.13(6)(a) is rejected as the Refugee Appeal Tribunal has no such power or function.

10. The remainder of the grounds relate to the alleged failure of the deciding tribunal to fully or all take into account the full circumstances of the applicant's application. In particular it is alleged there was an alleged failure to apply the proper principles relating to the threat to the applicant by reason of her ethnic origin and her membership of that group. The decision was allegedly reached by placing undue emphasis on the absence of personal danger to which the applicant. By so doing the dangers of her group membership were not give appropriate weight. The court has reviewed all the available evidence and is satisfied that the decision arrived at is consistent with a reasonable view of the evidence available. It could not be said to be an unreasonable interpretation of the evidence available.

11. One further discrete point is made on behalf of the applicant. This is the failure of the Refugee Appeal Tribunal to consider the terms of the decision of one of its own members made on 12th May, 2003, in the case of the applicant's daughter. Evidence from

family members other than the applicant could be relevant in the event that a particular family was the subject of persecution. Similarly evidence of ethnic persecution can be persuasive though not yet personal to the applicant. However*, the decision* of a body in a particular case is neither evidence in an other case nor does it create a binding authority for future cases. Each case must be considered on its own merits. Imagine the outrage there would be if an application was refused because the applicant's daughter had previously been refused. It is also noted in this case that as part of the appeal process the applicant quoted the terms of the decision made granting the applicant's daughter refugee status. In the view of this court, the Refugee Appeal Tribunal in its decision correctly stated the law when it held that it could not be influenced by the decision in the daughter's case.

12. If the court granted leave in this case it would be sanctioning a judicial review of the decision of the Refugee Appeal Tribunal which could only be changed by substituting a courts judgment on the facts for that of the deciding body. Such a process would convert the High Court into an appeal court from the Refugee Appeal Tribunal. That is not the function of judicial review.

13. The application is refused.