

THE HIGH COURT

JUDICIAL REVIEW

2008 919 JR

IN THE MATTER OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000, SECTION 5 AND IN THE MATTER OF THE REFUGEE ACT 1996 (AS AMENDED)

BETWEEN

MAGIDA IDREES

APPLICANT

AND

REFUGEE APPEALS TRIBUNAL AND

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENTS

JUDGMENT of Ms. Justice Irvine delivered on the 19th day of October, 2010

1. The applicant in these proceedings is a citizen of Sudan, who applied for refugee status in this jurisdiction on 30th March, 2007. She seeks leave to apply for judicial review in respect of the decision of the first named respondent dated 29th May, 2008, which refused her application and which decision was notified to her by letter dated 27th June, 2008.

2. The present proceedings were instituted on 28th June, 2008, outside the fourteen day period provided for in s. 5(2)(a) of the Illegal Immigrants (Trafficking) Act 2000, but it is submitted on her behalf that there are good and sufficient reasons for the court to extend that time to permit the applicant avail of the reliefs sought.

3. The applicant's claim for refugee status was based upon her alleged activities associated with the Sudanese Republican Party (SRP), a minority political/religious group neither recognised nor tolerated by the government and also her association with the Women's Charity Association (WCA), an organisation set up to assist the poor but which she alleges she used as a cover to permit her garner support for the SRP. She maintained that she was arrested in 2001, 2002 and 2003 for short periods during which she was tortured and assaulted but later released having given assurances that she would not participate in anti-government activities. She finally maintained that in February 2007 government forces came to her house looking for her son, who was a student in Khartoum University, and that she was taken into custody to force her to reveal his whereabouts. She alleged that she was tortured and starved for three days before she became ill at which stage she was taken to Omdurman Hospital where she had previously worked as a radiographer. Notwithstanding the fact that her room was guarded, she maintained that a colleague who was a good friend of hers and who worked in the hospital came into her room late one night and exchanged clothes with her thus permitting her to escape. Thereafter, she received assistance from a third party to flee the country and subsequently arrived in this jurisdiction on 29th March, 2007.

4. The applicant lodged her appeal against the decision of the Office of the Refugee Applications Commissioner (ORAC) recommending that she not be granted refugee status on 3rd December, 2007 and enclosed therewith country of origin information including reports from the UN appointed special rapporteur on the human rights situation in Sudan.

5. The first named respondent delivered a lengthy and detailed decision dated 29th May, 2008. The applicant now seeks leave to apply for an order of certiorari quashing that decision for the reasons set out at para. E of the statement required to ground the application for judicial review. The grounds set out at E(iii), (iv), and (xi), (xiv) and (xvi) were not pursued. Both the applicant and the respondent delivered helpful written submissions which were very much in keeping with the oral submissions made to the court in the course of the hearing before this Court on 29th September, 2010.

Summary of the Applicant's Argument

6. The applicant argued that it is manifestly clear from the decision of the Tribunal Member that he did not consider the applicant's account of her persecution in the context of the country of origin documentation which was submitted with the notice of appeal. In particular, counsel relied upon the finding of the Tribunal Member at para. H of his decision where he stated under the heading "Analysis of the Applicant's Claim" as follows:-

"H. The COI appended to the form 1 as regards the persecution of nationals in Sudan deals with events in Darfur. The applicant has not made the case that she from Darfur."

7. The applicant argued that as a matter of fact, the country of origin documentation dealt with the position of persecution generally in Sudan and not simply in Darfur. Various extracts from the country of origin documentation were relied upon and opened to the court. Further, counsel argued that having regard to the content of the country of origin documentation that it was material relevant to the credibility of the applicant's story and in particular to her description of her repeated persecution and release and was further consistent with the circumstances in which she was taken into custody for the final time in February 2007.

8. Counsel for the applicant submitted that having regard to the decisions of Finlay Geoghegan J. in *A.M.T. v. Refugee Appeals Tribunal* [2004] 2 I.R. 604, and the decision of Clarke J. in *Imafu v. Minister for Justice, Equality and Law Reform* [2005] IEHC 182 that the decision of the first named respondent was accordingly flawed for a want of fair procedures and that he had established substantial grounds to contend that the decision of the first named respondent should accordingly be quashed and declared null and void.

9. The second argument raised by counsel for the applicant was that the first named respondent, in coming to his conclusions as to the applicant's credibility, relied upon a material factual error in concluding that he did not find her account that she had not been fed for three days whilst detained in hospital to be credible.

10. The applicant in her affidavit states that she told the first named respondent that she had not been fed whilst detained by government forces but maintains that she did not say that she had not been fed in the hospital. Counsel submitted that the first named respondent had reached his adverse finding as to the applicant's credibility as a result of a number of cumulative findings each of which are identified in his report. There was no knowing the point at which that credibility decision was adversely determined against the applicant. In circumstances where a material mistake of fact was included amongst those considerations, this cast doubt upon the lawfulness of the decision. It was, after all, the adverse credibility finding that cast in doubt the validity of the applicant's story which he concluded was contrived thus justifying his decision that she was not to be afforded the benefit of the doubt.

11. The third substantial argument made on behalf of the applicant was that two further adverse credibility findings were made in circumstances where there are substantial grounds to contend that the first named respondent failed to consider the applicant's explanation given in relation to the issues concerned. Thus, it was submitted that the decision of the first named respondent was flawed.

12. The first of these two credibility findings relates to a conclusion reached by the first named respondent that it was not credible that the applicant was targeted because she was a member of the WCA, an organisation involved with helping the poor. Counsel submitted that the applicant in the course of the interview had explained to the first named respondent that she was not targeted because she was a member of that organisation but because she was using that organisation as cover to assist her in her work on behalf of the SRP.

13. The second adverse credibility finding made by the first named respondent relates to his conclusion that it was not credible that the applicant's brother, who was an active member of the party had only been arrested once whilst she had been arrested on four occasions. The applicant maintains that when queried on this issue she explained to the Tribunal Member that her brother had avoided coming to the attention of the authorities as he had been considerably more cautious than she in carrying out his political activities.

14. In relation to each of these findings the applicant maintains that the first named respondent failed to consider material explanations furnished by her and thus reached conclusions which are not sustainable in law.

The Respondent's Position

15. In relation to the consideration by the first named respondent of the country of origin information, it was submitted that the court should have regard to the fact that in the conclusion section of the decision, the first named respondent refers to the fact that the country of origin information was considered.

16. Counsel for the applicant also relies upon the fact that the applicant's claim was rejected for the reasons set forth at para. 6.A.1 – 9 inclusive of the Tribunal Member's decision and that accordingly the observation relied upon at para. H was one which was made "without prejudice" to the earlier findings and was therefore superfluous to the rejection of the claim.

17. Counsel referred to the decision of the first named respondent which recorded the fact that State authorities in Sudan were capable of oppressive and violent action towards political opponents thus challenging the applicant's assertion that the country of origin information was discounted. In particular, counsel referred to para. 6.A.4 of the decision where the first named respondent considered the credibility of the circumstances surrounding the applicant's arrest and alleged activities against the stated "abuse of human rights in Sudan".

18. Counsel submitted that it was clear from the decision that more of the country of origin documentation than that referred to at para. H had been considered given the reference in the decision to an extract from the United Kingdom Home Office Report on Sudan which was one of the documents appended to the notice of appeal.

19. In relation to any mistake made by the first named respondent based upon his mistaken belief that the applicant maintained that she had not been fed whilst she was in hospital, counsel again relied upon the fact that the Tribunal Member's decision was based upon those findings set out at para. 6.A.1 – 9 inclusive and that the mistake, if any, was arguably an additional and superfluous finding.

20. In relation to the applicant's complaint that the first named respondent failed to take into account a number of explanations furnished in relation to issues where her credibility was not accepted, he relied upon the appropriateness of the findings made having regard to the content of the country of origin documentation. He submitted that as the country of origin documentation showed that the SRP had not been active since 1989, that it was not incredible for the first named respondent to conclude that those involved in any associated group such as the WCA would not be targeted. He also submitted that it was not necessary for the decision maker to set out each and every matter considered in reaching his decision. As regards the alleged failure on the part of the Tribunal Member to refer to the applicant's account of why her brother had only been arrested once whilst she had been arrested on a number of occasions, he stated that this was within the range of conclusions open to the first named respondent having regard to the fact that it accepted that Sudanese State authorities were capable of oppressive and violent action towards perceived political opponents. Accordingly, he submitted that there were no grounds to argue that the first named respondent operated under any mistake or misapprehension in relation to human rights in the Sudanese State.

Decision

Extension of Time

21. I am satisfied that I should grant the extension of time sought by the applicant in this case having regard to the brief period of delay involved, the reasons for that delay, the fact that the applicant changed solicitors and her lawyers processed her claim with great speed. I have also taken into account the nature of the case now made by the applicant and the strength of that case.

Country of Origin Information

22. It is now well settled law in this jurisdiction that the relevant decision maker in the scheme established by the Refugee Act 1996, when assessing the credibility of an applicant for asylum must do so in the context of a review of the country of origin information.

23. In *E.C. v. Minister for Justice, Equality and Law Reform*, (Unreported, High Court, Kelly J. 26th July, 2000), the learned trial judge considered the approach to be adopted by the decision maker when assessing the credibility of an applicant. He referred to Goodwin-Gill, *The Refugee and International Law* (Clarendon Paper Backs, Oxford), who put the matter in the following way:-

"Simply considered, there are just two issues. First, could the applicant's story have happened, or could his/her apprehension come to pass, on their own terms, given what we know from available country of origin information? Secondly, is the applicant personally believable? If the story is consistent with what is known about the country of origin, then the basis for the right inferences has been laid."

24. The aforementioned principle was subsequently adopted by Finlay Geoghegan J. in *K. v. Refugee Appeals Tribunal* [2004] IEHC 240 and in her more recent decision in *A.M.T. v. Refugee Appeals Tribunal* where she referred to the decision of the Immigration Appeal Tribunal in *Horvath v. S.S.H.D.* [1999] INLR 7 where Pearl J. stated in relation to this issue as follows:-

"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. 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."

25. At para. 6.A.1 – 9 inclusive, the first named respondent made a number of adverse credibility findings which led him to conclude that the applicant was not a member of the SRP and that he did not believe that she would be at risk of persecution if returned to Sudan.

26. On the basis of the evidence and in particular by reason of the statement made by the Tribunal Member at para. H of his decision, I am satisfied that the applicant has demonstrated substantial grounds to contend that the first named respondent may not have considered the entirety of the country of origin documentation when coming to a number of the adverse conclusions as to her credibility to be found para. 6.A. of his decision. That documentation was arguably capable of lending additional support to the strength and credibility of her claim to have a well founded fear of persecution if she were to be returned to Sudan particularly the report of the Special Rapporteur regarding the situation of human rights in Sudan, which (*inter alia*) deals with the arbitrary arrest, detention torture etc. of political groups opposed to the government, may not have been considered.

27. Given that this is a leave application I reject the respondent's submission that I can safely conclude that the first named respondent necessarily considered all of the country of origin information notwithstanding the content of para H of his decision because of the reference in his decision to the abuse of human rights in Sudan generally, his reliance upon Appendix B to the COI or his statement that he considered "all of the relevant documents".

28. The fact that the Tribunal Member in reaching the conclusion which he did at para. 6.A.4 appears to have accepted as a matter of fact that human rights abuse occurred in Sudan at the relevant time does not mean he considered the credibility of the applicant's entire story against what was known about the country of origin from the totality of the documentation submitted. Further the fact that para. H appears in that part of the decision which deals with what I consider to be findings ancillary to the substantive decision recorded at para. 6.A.1 – 9 nonetheless raises significant concerns that when reaching the conclusions set out at those paragraphs that the Tribunal Member did not go further than consider the limited documentation pertinent to the abuse of human rights in Darfur.

29. In relation to the second issue, namely, the mistake made by the first named respondent in concluding that the applicant had told him that she was not fed for the three days whilst she was in hospital, I reject the claim made on her behalf. I accept the respondent's argument as to the interpretation to be placed on the decision made by the first named respondent. I agree that the first named respondent appears to have reached his conclusions as regards the applicant's right to refugee status based upon those findings set out at para. 6.A.1 – 9 inclusive and that the other findings made were not operative findings but were included perhaps with a view to buttressing his earlier decision. Accordingly, I am not disposed to grant the applicant any relief based upon this alleged mistake of fact on the part of the first named respondent.

30. The final issue on this application relates to the assertion made by the applicant that the decision maker, in reaching the conclusions referred to at para. 6.A.1 – 9 of his decision failed to take into account her evidence in relation to two specific issues in respect of which went on to make adverse credibility findings.

31. Having considered the submissions of the parties, it is clear that the decision of the Tribunal Member was one based upon a number of individual adverse credibility findings. Any one of the adverse findings as set out at para. 6.A.1 – 9 of the decision may not have been sufficient to cause the first named respondent to conclude that the applicant would not be at risk of persecution if returned to Sudan.

32. It follows that each of the individual adverse findings must be considered as having been material to the first named respondent's ultimate conclusion. Accordingly, if one or potentially two of those findings were wrong or unlawful, for whatever reason, it seems to me that the applicant must be considered to have established substantial grounds to suggest that the decision of the Tribunal Member is flawed.

33. The first finding complained of is that set out at para. 6.A.4 of the decision where the first named respondent stated as follows:-

"Taking paragraphs (ii) and (iii) above, it is not credible that the applicant, an ordinary member of the party whose task was to distribute leaflets and recruit members, who had been alleged arrested on four occasions and her brother, who was an active member of the party and would have been known to the authorities and had only been alleged arrested on one occasion (would have been released without being charged) considering the abuse of human rights in Sudan."

34. The applicant in her affidavit states that she was specifically questioned by the Tribunal Member as to how her brother had managed to avoid being arrested on more than one occasion. The only evidence given by her in relation to this issue was her statement that her brother was more cautious than she in his political activities and that this accounted for how he had managed to steer clear of the State agencies. Notwithstanding this explanation the Tribunal Member went on to make his adverse credibility finding whilst making no mention of whether he considered or rejected her evidence on the issue.

35. I am satisfied that the applicant has demonstrated substantial grounds to suggest that the Tribunal Member's finding made at para. 6.A.4 referred to above was one which was illogical or alternatively was inconsistent with a proper consideration of the applicant's evidence on the issue. It is certainly arguable that it is illogical to conclude that an active but much more cautious member of an illegal organisation is likely to be arrested more often than a less permanent but less careful member. Further, the entirely logical explanation furnished by the applicant as to why her brother was not arrested more often had to be rejected by the Tribunal Member in coming to the decision set out at 6.A.4.

36. The fact that the Tribunal Member makes no mention of the applicant's evidence in coming to what could be argued to be an

irrational conclusion leads me to conclude that the applicant has established substantial grounds to maintain that the Tribunal Member's finding is one which is illogical or is inconsistent with a proper consideration of the applicant's evidence.

37. The second finding complained of by the applicant is set out at para. 6.A.9 of the decision where the Tribunal Member concluded as follows:-

"The applicant claims that the WCA was a charitable organisation. The Tribunal Member could not find a reference to the organisation in any COI. I do not find it credible that the government would target an organisation that was helping the poor. I do not, further, find it credible that the applicant could not recollect the questions she was asked when she was allegedly detained for three days and I found her to be evasive when answering the question in cross examination (4.1(b))."

38. Once again, this adverse credibility finding made against the applicant was one of the findings which when taken cumulatively drove him to reject the applicant's alleged fear of persecution, she be returned to Sudan. Accordingly, if the Tribunal Member's decision on this issue was wrong, illogical or inconsistent with a proper consideration of the applicant's evidence then it casts in doubt upon legitimacy of the overall decision.

39. The applicant has convinced me that she has substantial grounds to suggest that the finding of the Tribunal Member set out at 6.A.9 above was one which is only consistent with the Tribunal Member having misunderstood or ignored her evidence as to the significance of the WCA to her activities on behalf of the SRP which was to the effect that she used that charitable organisation purely as a means of providing cover to permit her to distribute leaflets in relation to the SRP.

40. I accept as was stated by Peart J. in *Tabi v. Minister for Justice, Equality and Law Reform* (Unreported, High Court, 27th July, 2007) that:-

"This Court should not likely interfere with an assessment of credibility since it is quintessentially a matter for the decision maker who has the undoubted benefit of seeing and hearing at first hand the applicant give her evidence. This Court cannot substitute another view simply by a reading of words on the page and by way of the summary contained in the documents, unless an error is a clear and manifest error, without which a different decision might well have been reached."

41. The difficulty in this case is in seeking to assess whether, in coming to his decision regarding the applicant's credibility, the Tribunal Member failed to take into account an apparently logical and material explanation as to the role of the WCA in her and government activities. There are substantial grounds to suggest that the respondent's decision is not consistent with any or any proper consideration of the applicant's evidence as to the relevance of the WCA to her activities.

42. For the aforementioned reasons, I will grant the applicant leave to apply for Judicial Review to seek the relief set forth at paras. (i), (ii), (iii), (iv) and (v) of the notice of motion on the grounds set forth at para. E(x) and (xii) thereof.