Neutral Citation: [2014] IEHC 598

THE HIGH COURT

JUDICIAL REVIEW

[2010 No. 1134 J.R.]

BETWEEN

I.O. (NIGERIA)

APPLICANT

AND

THE MINISTER FOR JUSTICE AND LAW REFORM AND EAMONN CAHILL SITTING AS THE REFUGEE APPEALS TRIBUNAL, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Mr. Justice Robert Eagar delivered on the 9th day of December, 2014

1. This is an telescoped hearing of an application for an order of *certiorari* quashing the decision of the second named respondent and the grounds upon which relief was sought were:-

> (a) The Refugee Appeals Tribunal erred in law and fact and in breach of fair procedures in failing to have regard for its obligations pursuant to the European Communities (Eligibility for Protection) Regulations 2006, which gave effect to the EU Council Directive 2004/83/EC .
>
> (b) No proper regard had been had to the material put forward by the applicant at her appeal. No weighing or balancing of the information before the Tribunal took place.
>
> (c) The decision making process was not conducted in compliance with the provisions of the Procedures Directive in that the Country of Origin Information utilised by the decision maker in arriving at the decision was not up to date.
>
> (d) The process by which the applicant's credibility was assessed was flawed and not in accordance with the terms of the UNHCR Handbook or the Procedures Directive and Qualification Directive.
>
> (f) No proper looking forward test was carried out.

2. The applicant swore an affidavit on the 6th August 2010. An ASY1 Form was completed by the applicant on the 3rd September 2008. The applicant was interviewed on the 24th January 2009 by the Refugee Applications Commissioner and on the 27th January 2009 the Refugee Applications Commissioner indicated that she was satisfied that the applicant had failed to establish a well founded fear of persecution as required by s. 2 of the Refugee Act 1996. She also considered that the applicant had failed to establish that her two children named as dependents in the report would have a well founded fear of persecution. This applicant appealed to the second named respondent and the hearing took place on the 3rd June 2010. The applicant gave evidence at the Tribunal and she told the respondent that she grew up in Owerrii but she subsequently married a man who came from a village in Imo State. After her marriage she relocated to Abuja where she lived with her husband and children. She said that in April 2008 the applicant, her husband and her children went to her husband's village where he was informed by the elders that he had been chosen to be the new chief priest. He had been a convert to Christianity and was a Pentecostal Minister. He would not agree to the election because as a Christian he found that the ritual practices which included human sacrifice were contrary to his religious beliefs. The applicant claimed that if a village leader dies people are killed to appease the Gods. The skulls of these people are buried with them. After he received the news from the elders he told the applicant that she should leave the village and return to Abuja. He promised to get into contact with her and he subsequently did so when he made a phone call. He would not tell the applicant where he could be found in case she should tell the elders. He contacted her later, also by phone, and told her that the elders wanted her to go to the village. He agreed that she should return to the village because he believed it might be possible to reach some form of a compromise. When the applicant went back to Umudibia, the elders wanted to know where her husband could be found. She told them that she did not know and the elders then detained herself and her children in a room. The door was locked and the applicant and her children were flogged with sticks and ropes three or four times a day. This confinement lasted up to 8 weeks. The elders had also taken her mobile home so it was not possible for the applicant to contact her husband or others who might be able to help. However a village friend of her husband P.O managed to enter the premises at night. He unlocked the door and helped the applicant and her family to escape. It was claimed that her husband had asked P.O to assist his wife and children. The escape happened at about midnight. P.O drove the family to Lagos and the applicant remained there for the month of July until the following August. P.O made regular visits to see her but he had no news of her husband. While she was in Lagos the applicant was introduced to a European missionary known as Mr. B who agreed to discuss the problems with the elders in Umudibia. Mr B went to the village and on his return he merely said the applicant and her family should look for an alternative and leave Nigeria immediately. He said that she should ask no questions and it would be wise for her to concentrate on saving the lives of herself and her family. Mr B took photographs for passport purposes and in two weeks he returned to tell her she would be safe in Ireland. The applicant took flight from Lagos Airport which took her to Italy. After a long pause she said she could not remember but she thought then that the flight had landed at Milan Airport. She then took another flight and on the 29th August she was taken to Shannon Airport where she immediately applied for asylum. The applicant produced a Nigerian newspaper entitled "New Nigerian February 16th 2009". According to the article the applicant's husband is alleged to be on the run to avoid possible initiation into a social fraternity and subsequent confirmation of the priesthood of the local deity.

3. The applicant believed that if returned to Nigeria the elders would succeed in locating her. She said they had spies everywhere in Nigeria and many traders from the village move around the village selling palm oil. They would find her by accident. The applicant continued that special measures would be taken by the elders to find her husband and it would not be a purely casual effort. P.O had informed her on the phone since her arrival in Ireland that another member of a family that had been offered the role of Chief Priest had been killed because the Gods were angry at his refusal. The applicant said she had no confidence that the Nigerian Police would

assist her. She did not go to see them because she is satisfied that they would have been in trouble as they would have "sold me to my enemies."

4. The applicants identified the elders as belonging to a Nigerian cult known as Amadioha. The second named respondent put it to her that the Country of Origin report suggested that the police would help those who have a fear of cults and who might be engaged in criminality. The applicant did not respond to this. She said that if returned to Nigeria she does not know where to go as she is satisfied that the elders would kill herself and her children. On cross examination the applicant said that she had been detained in a small room where there was no table and a bucket was provided as a toilet. When it was suggested that Lagos with the population of 18 million people would be a safe place to relocate, the applicant said she had been told by Mr B to leave Nigeria immediately. She was very frightened and she left the country. Mr B disclosed very little information to her.

5. The second named respondent outlined the law on which he was obliged to consider the appeal. He held as follows:-

> *"The applicant never sought the protection of the Nigerian State. She had numerous opportunities to do so both in Abuja and later in Lagos. Was this failure to seek protection was justified in circumstance?"*

6. Country of Origin reports were in agreement that the Nigerian Police Force are ineffective, poorly paid and poorly trained and in common with much else that happens in the Nigeria Public Service prone to corruption. Bribe taking is apparently endemic within certain sections of the Nigeria Police Force. The second named respondent asked did that mean that in no circumstances will Nigerian citizens be held to the protection of the State where they feel they are threatened with serious human rights abuses. He said that in this case the applicant had stated that she feared the elders from her husband's village. She also stated that her husband had refused to take a role in ritualistic practices that would have required him to have partaken in the killing of people to appease the local deities. She also stated that a particular cult was active and by implication this would have involved the elders and other senior members at the village shrine.

7. The second named respondent pointed out that despite the almost endemic corruption, Nigeria is a society in which there is virtually no interference with the activities of non governmental bodies. Both Nigerian and those from overseas. NGO's (including UNHCR) had been studying the role of traditional secret societies for quite some time. At a UNHCR/Accord Seminar in Vienna 2000 Heinz Jockers made an in depth analysis of the position of traditional secret societies in Nigeria. What he wrote is that there is usually no forced recruitment into societies although pressure may be asserted on some individuals to join because of the advantages of being part of a secret society. Furthermore according to this report human sacrifices for ritualistic purposes or cannibalism happen extremely rarely if at all. The applicant exhibited the New Nigeria newspaper which contained references to the problems experienced by applicant's husband. The applicant maintained that she could be put to death at the behest of the elders and that her husband could face a similar fate. She claimed that traders from her husband's village will discover either her whereabouts or that of her husband in any part of Nigeria and that her return to the country would not be possible for herself or her children. The applicant told the Tribunal that there are a thousand people in the village. The second named respondent indicated that there were 151 million people living in Nigeria and it was utterly implausible to suggest that a couple of hundred traders at the very most would succeed in finding this applicant and her family should they be returned to Nigeria.

8. The second named respondent also said that the applicant had relied on the article in furtherance of her claim and maintained that it indicated her husband's life was at risk. However the penultimate paragraph in the article said "*the elders and town leaders believed they have their means of bringing home their runaway son and priest for the interest and future fortune of the kindred and community without the use of force*." The tenor of the argument presented by the applicant is that force would be used to dispose of her life and that of her husband and the newspaper she relied on to prove her case states that the elders and town leaders will not use physical force which contradicts the argument of the applicant.

9. The second named respondent then indicated that the applicant's claim was totally lacking credibility and is at variance with the Country of Origin Information. The benefit of the doubt should only be given when the Tribunal is satisfied as to the applicant's general credibility and concluded that the applicant was not a refugee.

10. Outline submissions were prepared by counsel for the applicant and indicated as follows:-

> *"The following matters shall be taken into account by a protection decision maker for the purpose of making a protection decision –*
>
> *(a) All relevant facts as they relate to the Country of Origin at the time of taking a decision on the application for protection should be considered.*
>
> *(b) The relevant statements and documentation presented by the applicant, including information as to whether he or she may have been or may be subject to persecution or serious harm.*
>
> *(c) The individual position and personal circumstances of the applicant, including factors such as background, gender and age so as to assess whether on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm.*
>
> *(d) Whether the protection applicant's activities since leaving her country of origin were engaged in for the sole or main purpose of creating domestic conditions for applying for protection as a refugee, or as a person eligible for subsidiary protection so as to assess whether these activities will expose the applicant to persecution or serious harm if returned to that country.*

11. Counsel on behalf of the applicant quoted Article (2)(a) of the Procedures Directive, Council Directive 2005/85/EC, and urged that the minimum standards set out therein were not adhered to in its decision making process. Country of Origin Information was submitted that was supportive of the applicant's claim and while mentioned in the decision, no reason was provided for apparently rejecting this information and considering its sufficient weight to prove the applicant's case.

12. Counsel for the applicant also raised the issue of the best interests of the child, and indicated that these were not properly considered in accordance with Article 24(2) of the Charter of Fundamental Rights of the EU and it was also raised that a claim was not investigated "individually" as is required as a minimum standard and no individual assessment took place in relation to the two children.

13. Counsel on behalf of the respondents objected to the submissions made by the applicant on the basis that the grounds in the

Statement of Grounds did not specify in particular the arguments which were now being raised by the applicant. She referred to Article 84 prior to its amendment in 2011, and referred to the specification of the relief sought and the grounds upon which it was sought.

14. She cited *Keegan v. An Garda Síochána Ombudsman Commission* [2012] IESC 29. Fennelly J. cited the remarks of Costello J. that "*liberty to amend a grounding statement will be granted only in exceptional circumstances",* and also of Kearns J. (as he then was) who stated "*once leave has been granted an applicant has limited scope thereafter for arguing that an amendment should be made to the grounds permitted to be argued by a judge who granted leave to bring the proceedings*."

15. In this case no application to amend the grounds has been made and the statement of grounds was prepared prior to the amendment of O. 84 in 2011. Counsel for the respondent argued that grounds had to be identified in the Statement of Grounds and took issue with the specific grounds raised on the basis of the grounds set out in the statement of grounds.

16. I will deal with this aspect of the specified nature of the grounds later in the judgment.

17. Counsel on behalf of the applicant dealt with the applicant's evidence given at the Tribunal, the submissions made by the legal representative of the applicant and the analysis of the applicant's claim made by the second named respondent. He indicated that the Country of Origin Information contained in the analysis was out of date information relating to the year 2000, and was accordingly very old at the time of the assessment of the appeal by the second named respondent, and that the second named respondent had not taken into account later Country of Origin Information relating to 2004. Counsel cited Article 8(2) of Council Directive 2004/83/EC in that:-

> *"In examining whether a part of the Country of Origin Information is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and the personal circumstances of the applicant."*

18. Counsel argued that the subparagraph of Article 8 suggested that there was an onus on the second named respondent to get up to date information and there was a requirement to obtain up to date information. I also note at this point that where Country of Origin Information relied on particular passages they should be highlighted by counsel.

19. Counsel also argued that there was no proper consideration of the children and referred to the Charter relating to the best interests of the child. However, there was no linkage between the argument on the best interests of the child and the individual case as it is quite clear that the applicant had not sought a separate application for the children, although she has two children in Ireland who had sought appeals by the Refugee Appeals Tribunal. In the course of the evidence, whilst her children were mentioned, no specific issues were raised on behalf of the children and the applicant had signed a form consenting to have her first two children, J. and K., included under her application for asylum. Counsel for the applicant also complained of the abrupt nature of the decision of the second named respondent as follows "*the applicant's claim is totally lacking credibility*" without finding individual items of credibility to justify this.

20. Examining the decision of the second named respondent, she recites Country of Origin Information reports which are in agreement that the Nigerian Police Force are ineffective, poorly paid, poorly trained and in common with much else that happens in Nigerian Public Service, prone to corruption. Bribe-taking is apparently endemic within certain sections of the Nigerian Police Force. Does this mean that in no circumstances will Nigerian citizens be entitled to the protection of the State where they feel they are threatened with serious human rights abuses?

21. The Country of Origin Information quoted by the second named respondent was from a UNHCR/Accord Seminar in Vienna in 2000, and the reports states that if a person should for some reason not want to join a secret society, if there is no other candidate from this particular family, he or she might be ostracised and might also lose property or an inheritance, but would not have to fear their lives.

22. The second named respondent indicated that this information was conveyed to the applicant and she had an opportunity to comment on it and by her silence the Tribunal concluded that she did not wish to contest the assertion put to her by the tribunal member.

23. The second named respondent then identified that the applicant had exhibited a new Nigerian newspaper and the second named respondent quoted the penultimate paragraph of the article.

24. The second named respondent indicated that the newspaper she relied on to prove her case states that the elders and town leaders of the community will not use physical force which contradicts the argument of the applicant.

25. The second named respondent then points out that the applicant's claim is totally lacking in credibility, and that it is at variance with the Country of Origin Information. He also quotes the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, that the benefit of the doubt should only be given when the Tribunal is satisfied as to the applicant's general credibility.

26. Counsel for the respondent quoted from *F.P. & A.L. v. the Minister for Justice, Equality and Law Reform* and *C.B. v. the Minister for Justice, Equality and Law Reform and the Attorney General* [2002] IR and in the *F.P.* case Hardiman J. at p. 175 states:-

> *"Where an administrative decision must address only a single issue, its formulation will often be succinct. When a large number of persons apply, on individual facts, for the same relief, the nature of the authority's consideration and the form of grant or refusal may be similar or identical. An adequate statement of reasons in one case may thus be equally adequate in others. This does not diminish the statement's essential validity or convert it into a mere administrative formula."*

I would adopt the judgment of Hardiman J. in this case and apply it to the present case. I am satisfied that the second named respondent has justified his finding in his analysis. Correctly, the second named respondent did not deal with the issue of internal relocation as he had did not accept that the applicant had a well founded fear of persecution.

27. In those circumstances, the applicant has not established substantial grounds for the contention that the decision ought to be quashed. I will dismiss the application for judicial review.

28. I wish to make a number of further comments. Article 2, Schedule 1 of the Rules of the Superior Courts (Judicial Review) 2011

Regulations (S.I. 691 of 2011) with effect from 1st January, 2012. At para. 20 subpara. 3 "*It shall not be sufficient for an applicant to give as any of his grounds for the purpose of paragraphs (ii) or (iii) of subpara. (2)(a) an assertion in general terms of the grounds concerned, but the applicant should state precisely each such ground giving particulars where appropriate and identify in respect of each ground the facts or matters relied upon as supporting that ground*."

29. In all Motions and Statements of Grounds initiated before 1st January, 2012, the applicant ought to have made an application to comply with the new rules. However, I do note that the relevant Minister for Justice and Equality have failed to seek to raise the new rules on cases which were initiated prior to 1st January, 2012.

30. The court believes that this issue should be pursued by both the applicant and the respondents in these cases so that neither the respondents nor the court are surprised by novel arguments put forward by the applicants which are not based on specifics raised in the Statement of Grounds.

31. The second issue which I wish to draw the attention of practitioners in the area of asylum, immigration and citizenship is the Practice Direction HC56 – Judicial Review; Asylum, Immigration and Citizenship and, in particular, r. 19, 20 and 24.

> 1) Rule 19 "legal submissions should list with accurate citations any case law to be relied upon by reference to each ground or argument but should not contain extensive quotations."
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> 2) Rule 20 states "save for exceptional cases, outline submissions in pre-leave cases should not exceed four A4 pages and in post-leave cases should not exceed six A4 pages."
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> 3) Rule 24 states inter alia that in large volumes of Country of Origin documentation particular passages relied upon should be highlighted.

32. I accept that outline submissions in half day telescoped hearings can be up to six or, perhaps, even seven pages. I, however, have been faced with submissions extending up to twenty one pages by counsel for the respondent and up to sixteen pages by counsel for the applicant. I do not say that this is an issue for counsel in this case.

33. If this practice continues, then I will adjourn those cases so that counsel can comply with the rules.

34. In this case in general I have been disappointed that large volumes of Country of Origin documentation have not been highlighted and it does not assist the court in making a determination until the full detail of Country of Origin Information is dissected by the court, often requiring the court to read, while informative, much irrelevant matters.