Neutral Citation: [2015] IEHC 646

THE HIGH COURT

JUDICIAL REVIEW

[2011/724 JR]

BETWEEN

G. O.

PLAINTIFF

AND

MINISTER FOR JUSTICE AND EQUALITY, THE REFUGEE APPLICATIONS COMMISSIONER IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

EX TEMPORE JUDGMENT of Mr. Justice Mac Eochaidh delivered on the 7th day of October, 2015.

1. In these telescoped proceedings the applicant seeks leave and final orders to set aside the decision of the Refugee Applications Commissioner. The applicant says he is a national of Nigeria born on the 3rd March, 1972. He arrived in the State on the 12th May, 2011, and made an application for asylum on the 30th May, 2011. In a s. 13(1) report dated the 4th July, 2011, the Commissioner recommended that the applicant not be given a declaration for refugee status. It is that decision which is the subject of these proceedings today.

2. The Superior Courts have given detailed guidance on the circumstances in which it is appropriate to review decisions of the Refugee Applications Commissioner and the principles which apply to such reviews were recently set out in a decision of this Court entitled *P.D. v. Minister for Justice and Law Reform* [2015] I.E.H.C. 111 where I said that the following principles applied to such reviews:-

> "1. The High Court is entitled to grant *certiorari* or other public remedy in respect of a decision of the Refugee Applications Commissioner where an error as to jurisdiction is identified.
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> 2. The significance of the error will determine whether the court may exercise its discretion to grant judicial review.
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> 3. Not all errors as to jurisdiction attract judicial review.
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> 4. The court must carefully consider the nature of the error in deciding whether the interests of justice require the first instance decision to be quashed and taken again rather than the error being the subject of an appeal to the Refugee Appeals Tribunal.
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> 5. The court should bear in mind the extent of the Refugee Appeals Tribunal's capacity to provide a remedy and reverse the error. (The nature of appeals to the RAT has recently been fully described by Charleton J. in the Supreme Court in M.A.R.A..)"

3. I should say in passing that it is clear from the decision of the Supreme Court in *M.A.R.A. (Nigeria) (an infant) v. Minister for Justice, Equality and Law Reform* [2014] I.E.S.C. 71 that there is no question of law or no question of fact that the Refugee Appeals Tribunal can be precluded from deciding, that it is a comprehensive *de novo* consideration of the application for refugee status and it is difficult to imagine circumstances where an actual prejudice would result in a decision being taken by the R.A.T. in respect of an application rather than the decision being taken at first instance. However, it is fully acknowledged that the statute grants the court jurisdiction to review and quash, if necessary, decisions of first instance of decision makers in cases such as these. The cases where the courts have quashed decisions of the R.A.C. involved, for example, in *Stefan v. Minister for Justice Equality and Law Reform* [2001] 4 I.R. 203 where critical evidence in relation to a very important part of the applicant's case was never considered by the decision maker because it was never translated. The consideration of the applicant's claim was fundamentally flawed and incomplete and unfair and the Supreme Court set the decision aside.

4. In the decision of O'Malley J in *M.A.B. v. Refugee Applications Commissioner* [2014] I.E.H.C. 64 three errors of jurisdiction were identified including one error where it was alleged that a particular and identified part of a core claim necessary to any fair determination of the case was not determined by the decision maker. I emphasis that the fact which had not been determined was particularised and identified and this was found to be one of three errors of jurisdiction which beset that particular decision. In the decision of this court in *P.D. (supra)* a significant part of the applicant's case was never decided, was not even alluded to by the decision maker in the consideration of the claim and, therefore, the decision was set aside on that basis.

5. The reason I refer to these cases is to illustrate the type of case where the court will intervene and quash a decision at first instance. The error must be very serious, of profound consequence and one which goes deeply into the jurisdiction of the decision maker indicating that a profound unfairness has taken place at first instance.

6. In this case a number of complaints are sought to be addressed and the first category of complaint that is addressed relates to the manner in which credibility findings were made. The exact credibility findings made by the decision maker are as follows:-

> "When assessing the applicant's claim, the following points are considered relevant:
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> • The applicant claims he was approached and asked to assemble weapons in Bukuru, Nigeria on 7 November, 2010. The applicant claims he reported these individuals to the police commander in Bukuru. The applicant has not provided this Office with any evidence of this incident in Bukuru, such as a police report.

> • The applicant claims his supermarket was set on fire in Bukuru on 8 November, 2010. The applicant claims he phoned the commander in Bukuru who said he would find out who was responsible and that he would be compensated. The applicant has not provided any evidence of this incident such as a police report or even photos of the damage to his supermarket in Bukuru.
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> • The applicant was unable to name the police commander in Bukuru, stating *'I don't know his name'.* Given that the applicant had reported directly to this individual and then telephoned this individual when his supermarket was attacked, it is questionable why he was unable to provide his name.
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> • The applicant claims he relocated from Bukuru to his home in New Owerri, Imo State where he rented a property and gained employment in security at a hotel. The applicant claims armed men came to New Owerri looking for him while he was attending his uncle's funeral. It is considered unlikely that individuals could locate the applicant at a rented property after he relocated from Bukuru to New Owerri, Imo State. When this was put to the applicant he replied *"I don't know. This gives me concern. Who is giving information about me"*.
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> • The applicant claims he moved to the Military Barracks in New Owerri where he was residing for 2/3 weeks. The applicant claims he was targeted again while travelling from the Military Barracks to his place of employment in New Owerri where he was followed by a car, then received a phone call were he was threatened. Again it is considered unlikely that individuals from Bukuru could locate the applicant at a Military Barracks in New Owerri. When this was put to the applicant he replied "I don't know".
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> • The applicant claims he moved his wife to her brother's home in Lagos. The applicant was unable to provide his wife's current address in Lagos, claiming her brother had only moved there 2/3 months before his wife's arrival. The applicant claims he wife received a phone call where she was threatened and her Lagos address was stated. It is considered highly unlikely that these individuals could locate the applicant's wife in Lagos as he claims. Given the fact the applicant is not aware of his own wife's address in Lagos, it is not credible that individuals from Bukuru could become aware of her address.
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> • The applicant claims he moved to Abuja where he received a phone call where these individuals indicated that they were aware of his presence in Abuja and where his life was threatened. Again it is considered unlikely that this applicant could be located by these individuals from Bukuru following his relocation from New Owerri to Abuja. When the applicant was asked how he could be located in Abuja, he replied "I don't know".
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> • The incident that the applicant described in Bukuru appears to be a localised incident related to the religious tension in the area where he was approached by Christians and asked to assemble weapons. While the applicant may be targeted for reporting these Christians to the police in Bukuru, it is considered unlikely he would be pursued and targeted if he left Bukuru and relocated in Nigeria. The applicant's claim that he and his wife were relocated in Imo State, Lagos and Abuja are not accepted as credible. Given the size (923,000 km sq) and population (158 m) of Nigeria, it is considered unlikely he could be relocated as he claims (App. A - www.bbc.co.uk). The applicant failed to offer a reasonable explanation as to how he was located on numerous occasions across Nigeria by these Christians from Bukuru.
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> • During his Section 11 interview the applicant was questioned about Jos. While the applicant did demonstrate some knowledge about Jos including the location of the University and the train station, there were a number of questions the applicant failed to answer correctly… While it is accepted that the applicant did not actually reside in Jos itself and was residing in Bukuru on the outskirts, his failure to answer some basic questions about Jos question whether he lived in such proximity to the town.
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> • The applicant claims he left Nigeria on 19 April, 2011. The applicant claims he travelled from Nigeria to France using a false Nigerian passport, which was taken from him on his arrival in France. The applicant claims he spent 2/3 weeks in France. The applicant failed to apply for asylum in France. The applicant's explanation for this failure is not accepted as a reasonable explanation for his failure to apply for asylum in the first safe country.
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> • The applicant was asked if he ever applied for a visa for the UK or Ireland during his Section 11 interview to which he replied 'No'. Following the applicant's Section 11 interview a report was received from the UK Border Agency on 15 June, 2011 which states that this applicant applied for a student visa for the UK on 20 August, 2007 and on 16 January, 2008. The applicant was not truthful when he was asked if he ever applied for a visa for the UK in his Section 11 interview."

7. The applicant says that the credibility findings individually and cumulatively are irrational. I have not been able to find any irrationality in any of the individualised bullet points that are set out above. I am not of the view that the errors, if they are errors, in the manner in which evidence was assessed and conclusions were reached constitute errors which fly in the face of common sense or offend reason. The applicant is fully entitled to disagree with the conclusions. He is entitled to say that he believes they are in error, but in order for him to say that they should be set aside at this stage, he must establish that they are cumulatively or even that one of them is irrational. This high threshold has not been reached in the complaints made about each of the credibility findings made in this case by the decision maker.

8. I note that I follow the advice of Cooke J. *I.R. v. Minister for Justice, Equality and Law Reform* [2009] I.E.H.C. 353 when he says at para 11:-

> "When subjected to judicial review, a decision on credibility must be read as a whole and the Court should be wary of attempts to deconstruct an overall conclusion by subjecting its individual parts to isolated examination in disregard of the cumulative impression made upon the decision-maker especially where the conclusion takes particular account of the demeanour and reaction of an applicant when testifying in person"

It is therefore inappropriate to deconstruct the findings and I read the decision in this case as one which comprehensively rejects the credibility of the applicant by reference to each of the matters identified in the various bullet points quoted at para. 6 above and by reference to the cumulative effect of all of the misgivings and doubts that the decision maker identifies concerning various aspects of the evidence.

9. I have no doubt in my mind that whilst maybe one of the doubts or the misgivings might not have been sufficient to persuade the decision maker to reject the credibility of the applicant in its entirety; it is clear to me that what the decision maker has done is to address in a fair way all of the doubts he has about various aspects of the applicant's evidence and to say that that he rejects the

credibility on this basis, and in my view that is a perfectly lawful and correct approach and I cannot find any irrationality in any of it.

10. The second complaint made in respect of the findings is that there is a failure to decide the core claim. In making this complaint, the applicant never identifies what is claimed to be the core claim. The phrase "core claim" is one which I think is susceptible to misuse because in every single refugee application a minimum number of elements must be established and not one of them is more important than the other and if one of them is rejected the whole claim falls and it is sufficient for the decision maker to decide the case based on the rejection of one, and one only, of the multiple elements that are required to be established in order for a person to be a refugee. In other words, there is no rule of law that says there must be a decision on each fact alleged to be true by an applicant.

11. But where it is said that there is a failure to address the core claim, the least an applicant should do is say and define what the core claim is and that simply never happened in this case. Was it the core claim that the supermarket was burnt? Was it the core claim that Christians asked the applicant to assist with obtaining guns? Was it the core claim that the applicant went to the police? Was it the core claim that the police breached confidence and told persons that the applicant had gone to them? None of this is set out and it is not said to the court which, if any of these, was not decided and why such a complaint leads to an error of jurisdiction by the applicant.

12. Therefore I reject that complaint in this case.

13. Moving away from the complaints in respect of the findings of fact and the rejection of credibility in the manner in which the claim was addressed, the applicant says that there was a failure to consult country of origin information in this case. As a matter of fact, as is clear from the exhibits, country of origin information was addressed by the decision maker. The country of origin information which is exhibited was not supplied by the applicant; it was produced by the decision maker, sourced by the decision maker, exhibited by the decision maker and, I am entitled to say, considered by the decision maker. It is unsustainable for the applicant to say that it was never considered though it is exhibited and clearly is on the file.

14. The applicant goes further and says that there is a legal obligation on the part of a decision maker to consult relevant general and/or specific country of origin information in every single application for refugee status. He basis this claim on para 5(1) of the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006) and article 8 of Council Directive 2005/85/E.C. of 1 December, 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status O.J. L 326/13 13.12.2005 ('The Procedures Directive') and paras. 66 and 67 of the decision of the Court of Justice in *M.M. v Minster for Justice Equality and Law Reform, Ireland and Attorney General* (Case C-277/11). The applicant has failed to establish that there is a rule of law that country of origin information must be consulted in every single case. In my view the rule of law, as expressed by Peart J. in the decision of this court in *Imafu v. Refugee Appeals Tribunal* [2005] I.E.H.C. 416, is that in cases where the credibility of the applicant is fundamentally rejected the claim presented and rejected does not then have to be checked against country of origin information. No rule exists that there is an obligation on the part of a decision maker to consult relevant general and/or specific country of origin information in every single application for refugee status and therefore I reject the complaint of the applicant that there was a breach of such rule. Even if I am wrong about this, even if there is a rule that country of origin information must be consulted, my view is that country of origin information relevant to the facts of this case was indeed consulted with respect to the general conditions in Nigeria, with respect to the particular circumstances in the place where the applicant came from in Nigeria, with respect to population numbers and such matters.

15. Again in the alternative, if I am wrong about that, it seems to me that in order for an applicant to succeed in quashing a decision of the Refugee Applications Commissioner for failure to consult country of origin information, an applicant would be required to put before the court the information which should have been consulted, and which was not consulted, so that the court can evaluate the nature of the error made and the effect it might have had on the decision. Notwithstanding the fact that this case is now at least five years old, no attempt has been made of any sort to put before the court information which should have been consulted and which was not consulted.

16. I reject the complaint in respect of country of origin information.

17. The third complaint advanced in respect of illegality in this case relates to the paragraph of the decision where it is said that the decision maker following the s. 11 interview and prior to the production of the s. 13 report acquired information from the U.K. Border Agency that the applicant had twice applied for visas to the U.K.. The applicant had been asked if he had ever applied for a visa to another country and had said that he had not. It should be borne in mind that the applicant is a well educated man with at least fifteen years education and that he nonetheless answered that question, according to the decision maker, untruthfully and this is a matter which the decision maker, correctly in my view, had regard to in rejecting the credibility of the applicant.

18. The applicant claims that there was a breach of fair procedures and the *audi alteram partem* rule by reference to the failure of the decision maker to revert to the applicant with the information which contradicted an answer that he had given. My view is that the rule of natural justice did not require the decision maker to revert to the applicant to give him a chance to comment on the information which had been subsequently obtained and which was in contradiction of an answer which he had clearly given to a clearly asked question.

19. Therefore I reject this as a ground which establishes an error as to jurisdiction in this case. Lest I am wrong about that and lest this be considered an error as to jurisdiction, in my view I would not exercise discretion to permit the matter to be quashed on this basis because the applicant has comprehensively failed to make any comment whatsoever in his affidavit, in the five years since the decision was given, as to what explanation he might have offered the decision maker had the decision maker reverted to him, such explanation which might have made a difference to the particular credibility finding in question. I would exercise my discretion against allowing the relief because of that particular failure.

20. Therefore, in conclusion, I find that there has been no error as to jurisdiction of any sort in this case, much less an error grave enough to merit intervention at this stage. If there are errors as to jurisdiction and if I am wrong as a matter of law on that, I find that the quality of the mistakes or the missteps, if that is what they are, outlined are not such as to warrant intervention at this stage having regard to the availability of a full and comprehensive remedy at the Refugee Appeals Tribunal.

21. The final point I make in this judgment is that the applicant has made complaint about the restrictions which he says apply to decisions of the Refugee Applications Commissioner, that these are unfair and in breach of European Union law which requires that there be an effective remedy. The applicant claims that the restrictions which he perceives curtailed this court and perhaps granted the court discretion to refuse relief even where the court finds error are all in breach of European Union law. I reject all of these arguments. My view is that European Union law requires that there be an effective remedy against errors in first instance decisions.

European Union law does not require or does not direct Ireland to ensure that judicial review be available in respect of first instance decisions. What it requires is that we have an effective remedy, and in my opinion, Ireland has provided full comprehensive access to the Refugee Appeals Tribunal where every question of law and every question of fact and every single complaint sought to be advanced in these proceedings maybe advanced and pursued without any hindrance and, therefore, there is no interference with the effective remedy which Ireland is required to provide. That is fully available and as a result of this decision I am satisfied that the applicant will pursue the appeal, which I note has already been filed with the Refugee Appeals Tribunal. I refuse all reliefs in this case.