Neutral Citation: [2015] IEHC 852

THE HIGH COURT

JUDICIAL REVIEW

[2013] No. 696 J.R.

BETWEEN

G. S. K.

APPLICANT

AND

BEN GARVEY SITTING AS THE REFUGEE APPEALS TRIBUNAL,

IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

EX TEMPORE JUDGMENT of Mr. Justice Colm MacEochaidh delivered on the 17th day of December, 2015.

1. This is a judgment on a telescoped application for judicial review in respect of a decision of the Refugee Appeals Tribunal which refused asylum status to the applicant. Two broad grounds of challenge have been advanced in this case. The first is that the tribunal member unlawfully refused the applicant to have a person (this being a member of the Bar who is an Assistant Professor of International Law I believe in Trinity College) in attendance with her, other than her lawyers.

2. It is said that the tribunal member misinterpreted the rule in s. 16 (14) of the Refugee Act 1996 which says that "An oral hearing under this section shall be held in private." The tribunal member indicated in accordance with the evidence of what actually happened at the hearing, which evidence I accept it having been taken by a solicitor's apprentice and I am sure under the proper guidance of the solicitor in the office, that the reason given by the tribunal member was that he had no option but to strictly apply the provision and a hearing in private meant just that: no outsiders other than those professionally required to attend. That is the first ground advanced in favour of quashing the decision

3. The second relates to the manner in which certain documentary evidence as to identity or place of origin or ethnicity, that being a polling card, was treated by the decision maker in this case.

4. With respect to the first issue I tend to agree with the applicant that an unnecessarily strict interpretation was placed upon the statutory rule as to oral hearings being in private. But usefully, and in aid of this contest, the respondent also appears to agree with this because the respondent has submitted an affidavit indicating that it has in the past permitted an applicant to have the support of a psychologist to assist in some particular way with the presentation by a person at the tribunal, but on a strict condition that that psychologist could not speak so, therefore, it was not an advocacy role. It would appear that the psychologist was there to give support to the applicant in that particular case who had become ill at an earlier hearing of the tribunal.

5. It seems to me that on a proper interpretation of the rule as to privacy some leniency should be displayed by the tribunal as to persons who may properly attend to support and/or help with the representation of an applicant. But I am not for the purposes of this application delivering a decision on the proper meaning of the rule as to privacy in the statute. I am not required to do that because even if I say that the tribunal member misinterpreted the section, I cannot detect any mischief or harm caused to the decision making process by that error, if it was an error. The reason I say this is because no proper explanation as to why it was necessary to have this particular, and I am sure highly respected academic, attend in support of the applicant.

6. It was first of all indicated that the applicant wished to have a friend in attendance because she was nervous and she had heard about difficulties some people face in the tribunal. A friend from her accommodation in Sligo could not afford to attend with her and in those circumstances her solicitor suggested that this academic would attend instead. It is a mystery as to what possible support a complete stranger could provide to this nervous applicant who wished to have to support of a friend.

7. But beyond that, when the applicant came to swear an affidavit in this case, no indication is given as to what harm was caused to the applicant by the absence of the particular person. One can readily imagine a case were an application had been made that a doctor, or a psychologist, or a person of technical expertise, or linguistic ability might attend to support the presentation of a case and that the refusal had resulted in a failure of evidence, deficiency in presentation, or other mischief which harmed or infected the decision making process.

8. No such case was made out in this case and, therefore, on the evidence it seems to me that I cannot attach any legal significance or any other consequence to the absence of the particular academic from the hearing. Thus, even if the applicant were right in advancing the particular interpretation of the statute the claim would have to fail. Therefore, I dismiss all complaints in respect of the decision of the tribunal member on the proper meaning of the rule as to privacy arising on the statute.

9. The second matter in respect of which complaint is made is the the manner in which a particular piece of documentary evidence was treated by the decision maker.

10. The background is important to this particular issue. Very significant negative credibility findings were made by the tribunal member. I find that each and every one of them has been carefully articulated, clearly explained and I can find no legal error in any of

them. It is a wholly legally and factually sustainable negative credibility finding. It is also sustained by the demeanour findings indicated by the tribunal member who is very experienced and who identified significant demeanour characteristics and presentation issues which fortify him in the view that the applicant was telling significant untruths.

11. But the issue of concern relates to the manner in which the tribunal member decided the question of the polling card presented by the applicant in this case. It was central to her case that she is from a particular part of the Democratic Republic of the Congo. The particular polling card that she submitted supported that version of events. The tribunal member, against a background where the authenticity of the card had been raised, at least by way of questions at first instance, made some comments about the polling card and then said as follows:-

> *"The Tribunal is aware of the many COI [County of Origin Information] reports outlining the ease with which fake identity cards, certificates and other documents are obtained in that country. The Tribunal is asked to accept the authenticity of a document which alleges the applicant is from a particular area of DRC".*

12. The tribunal member then concludes:-

> *"The Tribunal is satisfied little weight can be attached to the document put in evidence".*

13. On one interpretation that is not a rejection of the validity or authenticity of the identity card in question. Had the decision stopped there, one could understand the decision as being one whereby the suggestion on the card that the applicant was from a particular place is undermined by all of the other negative credibility findings and in those circumstances a decision maker could lawfully decide that little weight could be attached to a document which supported the opposite conclusion.

14. However, there is a further very important finding made by the tribunal member in this case. The tribunal member says:-

> *"The Tribunal [is] satisfied from reasons already alluded to [that] the applicant is not from the area of DRC claimed".*

15. There is a very clear rejection of a cerntral part of the applicant's case that she is from a particular part of the country concerned. In so far as the decision maker rejects that the applicant is from the particular place, it is an unavoidable inference that the applicant was rejecting the authenticity of the identity card or the polling card because on its face it says she is from the particular part of the country as she claims. Therefore, there is also in this case an unavoidable and clear decision that not only does the tribunal attach little weight to the identity card, he rejects the validity or authenticity of it. If the applicant is not from the place claimed, the polling card is a forgery.

16. The significance of all of that is it becomes apparent when one considers the provision of s. 16(8) of the 1996 Act which requires that:-

> *"The Tribunal shall furnish the applicant concerned … copies of any reports, observations, or representations … furnished to the Tribunal by the Commissioner or … the High Commissioner … and an indication in writing of the nature and source of any other information relating to the appeal which has come to the notice of the Tribunal in the course of an appeal under this section."*

17. As I have indicated earlier, the decision maker in this case made express reference to the existence of country of origin information reports outlining the ease with which fake identity cards and certificates and other documents are obtained in that country.

18. I have concluded that the decision maker in this case did actually decide that the identity card was a forgery. My view is that this conclusion was reached based on the very strong general rejection of credibility and also on information contained in reports about the D.R.C. which indicated that forged/fake identification documents are common. It seems to me that the decision maker in this case, notwithstanding the extremely powerful negative credibility findings made against the applicant, was nonetheless required by virtue of s. 16(8) to furnish the applicant at an appropriate time with copies of the country of origin information reports outlining the ease with which fake identity cards etc can be obtained in that country, thereby, giving the applicant an opportunity to reply to the suggestion that the card was a forgery.

19. It seems to me that I am driven to that conclusion not just by the clear language of the statue but by the decision of Mr. Justice McDermott in the case of *O.O.C. v. M.J.E.* [2013] I.E.H.C. 278 where in rather similar circumstances the authenticity of a letter from a solicitor to a third party was questioned and was relied heavily upon by the applicant. But in the decision given by the tribunal in that case the decision maker had said "Country of origin reports indicate that forging documents in Nigeria is very easy to do, such is the level of corruption." That country of origin information was never supplied to the applicant in that case and on that basis McDermott J. felt he had no choice but to quash the decision. I am compelled to reach the same conclusion notwithstanding the strong and careful credibility findings which exist in this case against the applicant.

20. It seems to me that the rule in the statute is a rule which goes to jurisdiction. The decision maker has no choice but to share country of origin information on the question of the forged documents with the applicant, where, as in this case, it forms part of the basis of the decision making process. That it was not done vitiates this decision and therefore I quash it.