

**THE HIGH COURT  
JUDICIAL REVIEW**

**[2010 No. 1175 J.R.]**

**BETWEEN**

**J. G. (ETHIOPIA)**

**APPLICANT**

**AND**

**REFUGEE APPEALS TRIBUNAL MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM ATTORNEY GENERAL IRELAND**

**RESPONDENTS**

**JUDGMENT of Ms. Justice Stewart delivered on the 4th day of February, 2015**

1. This is a telescoped hearing for judicial review seeking orders of *certiorari* to quash the decision of the Refugee Appeals Tribunal dated the 27th July, 2010, and remitting the matter for *de novo* consideration by a different tribunal member.
2. The applicant is an Ethiopian national, born on the 1st January, 1961. She is of Oromo ethnicity and states that she has been a member of the Oromo Liberation Front (OLF) since 1991.
3. The applicant gave the following account of the background to her claiming refugee status in Ireland.
4. In 1998 the applicant's home was attacked by state forces and she, along with her husband and children, was detained. Her husband has not been seen since. She claims that while she was detained she was subjected to ill-treatment by Ethiopian government troops. She was released, along with her children, after six weeks and fled to Kenya. There in December, 2000, she states, she met a prominent OLF member in exile, and returned to Ethiopia in May, 2003 to continue her involvement in the OLF. Her children remained in Kenya in the care of her brother. In January, 2008 she was again arrested and detained for a period of four months. She states that she was freed by a friend of her uncle on condition that she leave for Sudan immediately. She states she remained in Khartoum for three months and from there she fled to Ireland. The applicant states that she has an older daughter whom she had with a Liberian man before she married her husband, and that that older daughter lives in Ireland with her husband and family. The applicant applied for asylum on arrival in Ireland on the 29th July, 2008.
5. The applicant was interviewed by the Refugee Applications Commissioner (hereinafter "the Commissioner") on the 22nd April, 2009. In a decision dated 30th April, 2009, the Commissioner rejected the asylum application making adverse credibility findings against the applicant.
6. On the 17th June, 2010, a notice of appeal against the decision of the Commissioner was submitted to the Refugee Appeals Tribunal (RAT). The oral hearing took place on the 6th July, 2010, and in a decision dated the 27th July, 2010, the RAT rejected the applicant's appeal and affirmed the recommendation of the Commissioner that the applicant not be declared a refugee.

**IMPUGNED DECISION**

7. The tribunal rejected the appeal on the basis of credibility findings. The first finding was in relation to the applicant's 'evasive' responses to questions about her conditions of release from custody in 1999.
8. The second finding related to the applicant's evidence that on being arrested in January, 2008 she was asked to lead her captors to OLF fighters which the tribunal found: "is simply not capable of being believed".
9. The third finding is connected to the applicant's explanation as to why she did not apply for asylum either in Kenya or Khartoum. The applicant told the tribunal that she did not know anything of asylum in Kenya and while in Sudan she was hiding in a house. The tribunal found that given that the applicant on her own account was allegedly part of the OLF whose members had been persecuted by the Ethiopian authorities, it seemed unbelievable to the tribunal that the applicant would not be aware of the plight and the necessity on the part of members of this organisation to seek asylum outside their country of origin. The applicant's account in this regard, according to the tribunal, is "simply not capable of being believed".
10. The fourth finding was in relation to the account of her release on both occasions from detention, which the tribunal found are simply not credible. The tribunal further found: "I have had the opportunity to observe this applicant acutely throughout her hearing before the Tribunal...on the most part the applicant was hesitant and evasive."

**SUBMISSIONS**

11. Counsel for the applicant, Mr. Mark de Blacam S.C., submits that the tribunal erred in law in failing to have reasonable regard for documents in support of the applicant's claim. The applicant points to *F.O.O (Nigeria) v. Refugee Appeals Tribunal & anor.* [2012] IEHC 46 in this regard. Counsel for the respondents, Mr. Anthony Moore B.L. submits that all of the documents submitted in support of the application could not be accorded any probative value. The respondents point to *Zada v. Refugee Appeals Tribunal* [2008] IEHC 420 stating that the burden of proof rests on the applicant in this procedure.
12. The applicant further submits that the tribunal erred in law and acted in breach of fair procedures in the manner in which adverse credibility findings were arrived at. The applicant asserts that these findings were made without any reasonable consideration of the SPIRASI report, which stated that the applicant has a diagnosis of "a depressive disorder and some symptoms of Post Traumatic Stress Disorder". The respondents however assert that the medical report, i.e. the SPIRASI report, has a limited value in advancing the applicant's claim as a doctor will always take, at face value, the story as offered by their patient and the tribunal member was entitled to give whatever weight or value to the report as the tribunal member saw fit. The respondents rely on *N.R.M (DRC) v.*

13. The applicant claimed that the tribunal erred in law and acted *ultra vires* in failing to consider and assess whether the applicant had a well-founded fear of persecution for a Convention reason and whether there was a real chance of persecution if the applicant were *refouled* to Ethiopia, particularly because of her Oromo ethnicity. The respondents argue that this ground was not pleaded and should not form part of the case as that would unfairly prejudice the respondents.

14. The applicant submits that findings regarding demeanour require special care and attention that was not provided by the tribunal. The applicant also claims that peripheral findings in regard to the travel arrangements and the applicant not having claimed asylum in countries that she had passed through before reaching Ireland unfairly undermined the applicant's claim, without the tribunal member giving reasons for such findings. The respondents on the other hand contend that these findings only form part of the overall findings regarding credibility.

## FINDINGS

15. The applicant submitted documentary evidence in relation to the OLF and in particular provided documentary evidence in relation to her specific involvement with the OLF. The first of these documents was a letter from the association of the Oromo community in Ireland dated the 30th July, 2009. It is addressed to the applicant and then recites:

"To whom it may concern

Reference: Ms J[...] G[...]

Dear Sir/Madam,

This is a correction to a letter written on the 12/06/09 which is related to Ms. J[...] G[...]. The previous letter did not bear the official seal of the community in error and we apologise for that.

Ms. J[...] G[...] is an asylum seeker from Oromia, Ethiopia. We know Ms. J[...] from the time she came to Ireland. She joined our community, Association of Oromo Community Ireland, soon on her arrival. Since then, she is an active member of Community here in Ireland. Ms. J[...] is a native Oromo; and a speaker of Oromo language of the Western Oromian accent.

We learnt from Ms. J[...] that she suffered torture, mistreatment and injustice in Ethiopia because of her political involvement. We believe that this is true, as many of the Oromo community living here in Ireland experienced the same in their country of origin.

Thus, the Association of Oromo Community in Ireland is grateful if you consider Ms. J[...]’s case of asylum application as truthful and genuine and provide her with state protection here in Ireland.

If you have any queries, please do not hesitate to contact us

Yours faithfully,

Berhanu Hundie

Secretary"

The letter, which runs to two pages, bears the seal on both pages of the Oromo Community, Ireland. This document is at p.140 and p.141 in the booklet of pleadings before the Court.

16. The next document submitted in support of the applicant's claim is at p.145 of the booklet and is a letter from the OLF, North America office, PO Box 73247, Washington, DC 20056. It is dated 15th January, 2010, and is entitled "Affidavit of Support" and runs to some 3½ pages. The letter is written by Fekadu Wakjira, who states that he was Ethiopia's ambassador in Zimbabwe during the transitional Government of 1991-1992, and head of the Oromo Relief Association, a humanitarian independent Oromo organisation from 1978 to 1991, during the former military dictatorship in Ethiopia, while in exile.

17. At para. 2 of the letter he states as follows:

"The applicant, Ms. J[...] G[...], was given political education and later became a member of the OLF until now. She was participating in the struggle like many other OLF members. My statement about her participation in the Oromo struggle for national self-determination is based on reliable OLF sources. Ms. J[...] G[...], participated in activities in support of the Oromo peoples' cause for freedom, justice and democracy. Because of this and because she holds a strong belief for the emancipation of the Oromo people, she will not be able to live in peace in the land she was born and raised."

The letter goes on that in the writer's opinion:

"...if Ms. J[...] G[...] returns to Ethiopia, she will become a target of arrest and persecution by the regime without a reliable and independent judicial system before which she can defend herself. In Ethiopia, in the current political atmosphere, the judges must be loyal to the regime."

The document then proceeds to deal with the OLF and the regime's brief human rights records, quoting from Amnesty International Report for 2003 on Ethiopia, the Society for Threatened Peoples report and Human Rights Watch. The letter from the North American Office of the OLF contains a telephone number, address, fax and web pages.

18. The applicant further submitted two documents from the European Regional Office of the OLF which are set out at pp.136-139 of the booklet of pleadings and comprises of two affidavits from A. Gammadaa of the OLF Regional Office Europe. The first is dated the 19th April, 2009, and the second is dated the 24th June, 2009. The latter document contained on p.136, at the fourth paragraph thereof states as follows:

"This is therefore confirmation that Mrs. J[...] G[...] has continued her political activities as an active member of the OLF even after she arrived in Ireland and applied for political asylum."

This documentary evidence is *prime facie* capable of establishing that the applicant is a member of the Oromo ethnic group and that she has in the past been an active member of the OLF.

19. In addition to this, there was a considerable amount of country of origin information submitted to the Commissioner and the tribunal in respect of Ethiopia. In particular the applicant refers to documentation from the UK Border Agency and the Operational Guidance Note at p.186 onwards of the booklet, which the applicant submitted, comprises of authoritative country of origin information confirming the situation within Ethiopia and is consistent with the case made by the applicant.

20. The second important category of documentation which was put forward by the applicant was the SPIRASI report contained at p.155 that recounts the applicant's history, which is consistent with the history given by the applicant to the tribunal, the results of the physical examination and the results of the mental state examination. At p.160 the examining doctor stated:

"I feel that Ms G[...] has a diagnosis of a depressive disorder and some symptoms of Post Traumatic Stress Disorder.

The diagnosis of a moderate level of depression in Ms G[...]’s case has been satisfied by the fact that:

(a) she is suffering from depressed mood, loss of interest in enjoyment, reduced energy leading to increased fatigability and diminished activity;

(b) she has a bleak and pessimistic view of the present and future and a deduction in self confidence and self esteem;

(c) she has somatic syndrome features having special clinical significance which indicated moderate to ever (*sic*) depressive disorder.

These depressive symptoms, in her case, include reduction in emotional activity to normal pleasurable surroundings, for example her place if (*sic*) residence in Ireland and social circle. Also initial insomnia, early morning waking, reduced motivation and marked reduction in her interests."

The report concludes on p.161, *inter alia*:

"In my professional opinion, Ms G[...]’s symptoms and findings on physical and mental examination today, are consistent with the history she gives of her experiences of beatings and torture while in detention in Ethiopia.

In my opinion, Ms G[...] presents with physical scars, which are quite consistent with her allegations of beatings and torture she received at the hands of the Ethiopian authorities.

In my opinion, Ms G[...] presents with a depressive disorder, which has developed after her experiences of beatings and torture as outlined above, and which require further professional treatment."

21. With regard to the analysis of the applicant's claim by the tribunal member which commences at p.217 of the booklet, the tribunal member found: "The applicant was evasive to say the least." Further the tribunal found: "It seems to the Tribunal to be highly implausible that her captors would want the applicant to physically take them to where fighters were allegedly located, the applicants account in this regard is simply not capable of being believed."

22. At p.15 of the report, second paragraph, p.219 of the booklet, in relation to the applicant's claims to be associated with the OLF and the documentation and letters submitted in that regard the tribunal found that: "[t]he letters give no indication of when the Applicant joined the OLF or what she actually did in this organisation." This is factually incorrect as is set out in the passage from the North American office, cited above.

23. In relation to the SPIRASI report submitted on behalf of the applicant, the tribunal member was not satisfied with the applicant's overall account but did not give any reasoned decision for ignoring the SPIRASI findings. The tribunal member criticised the applicant for not having identity documents and further criticised the applicant for not seeking asylum in Kenya and/or Sudan. On that basis the tribunal member stated the applicant's story was unbelievable. The tribunal member stated that the applicant's account in relation to her release from detention was simply not credible and further stated that she had an opportunity to observe acutely the applicant, and found the applicant to be hesitant, evasive and not forthcoming.

24. It is well established that findings based on demeanour of an applicant are to be treated very carefully. This is clear from the decision of Mr. Justice Hogan in the case of *F.O.O (Nigeria) v. Refugee Appeals Tribunal & ors.* [2012] IEHC 46. At paras.8-10 thereof Mr. Justice Hogan stated:

"As we have seen, the Tribunal member expressed the view that the applicant's demeanour was "lacking in credibility" and that his evidence was "quite unbelievable." Passing over the fact that the description of a witnesses' demeanour as being "lacking in credibility" is itself an uncertain expression, the truth of the matter is that an assessment of demeanour in itself can rarely be a sure ground for dismissing the cogency of a witnesses' evidence by reason of that fact alone.

As Atkin L.J. so memorably observed in *Lek v. Matthews* (1926) 25 Lloyd's Reports 525:-

'The lynx-eyed judge who can discern the truth teller from the liar by looking at him is more often found in fiction or in appellate judgments than on the bench.'

This is perhaps especially true in the context of asylum claims, not least that allowance will often have to be made for translation difficulties and different cultural norms in terms of the assessment of the demeanour of any witness. As Cooke J. observed in *I.R. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 353:-

'In most forms of adversarial dispute the assessment of the credibility of oral testimony is one of the most difficult challenges faced by the decision-maker. The difficulty is particularly acute in asylum cases because, almost by

definition, a genuine refugee will be someone who has fled home in circumstances of stress, urgency and even terror and will have arrived in a place which is wholly strange to them; whose language they do not speak and whose culture may be incomprehensible. Inevitably, many will have fled without belongings or documentation from areas in a state of anarchy or from the regimes responsible for their persecution so that obtaining any administrative evidence of their status and even identity may be impractical, if not impossible.”

25. It is well established that decision-makers have to be very careful in relation to findings on the way that a witness presents him or herself. In this case the applicant suffers depression and symptoms of post traumatic stress disorder. The Istanbul Protocol at para. 251 states as follows:

“Depressive states are almost ubiquitous among survivors of torture. In the context of evaluating the consequences of torture, it is problematic to assume that PTSD and major depressive disorder are two separate disease entities with clearly distinguishable aetiologies.”

The protocol continues at para. 252:

“The diagnosis most commonly associated with the psychological consequences of torture is PTSD. The association between torture and this diagnosis has become very strong in the minds of health providers, immigration courts and the informed lay public.”

Paragraph 253 provides:

“The DSM – IV definition of PTSD relies heavily on the presence of memory disturbances in relation to the trauma, such as intrusive memories, nightmares and the inability to recall important aspects of the trauma. The individual may be unable to recall with precision specific details of the torture events but will be able to recall the major themes of the torture experiences. For example, the victim may be able to recall being raped on several occasions but may not be able to give the exact dates, locations and details of the setting or the perpetrators.”

26. The applicant submitted, and I accept, that there is no indication from the decision of the tribunal member that any allowance was made for the fact that the tribunal member was dealing with a person who was in a strange culture and was exhibiting signs of suffering from a depressive disorder and symptoms of PTSD. In the decision of *R.A. (Uganda) v. Refugee Appeals Tribunal & anor.* (Unreported, High Court, Eagar J., 25th November, 2014) a decision of Mr. Justice Eagar, the Court quashed a decision of the RAT because of a failure to give reasons for rejecting a SPIRASI report. Mr. Justice Eagar followed the decision of Mr. Justice Gilligan in *Khazadi v. Minister for Justice* (Unreported, High Court, Gilligan J., 19th April, 2007) and Ms. Justice Clark in *J.M. (Cameroon) v. Minister for Justice, Equality & Law Reform and anor.* (Unreported, High Court, Clark J., 16th September, 2013).

27. It seems to me that the main point of complaint in this case, and which is sustained before the Court, is the manner in which the tribunal member treated the documentary evidence in relation to the applicant’s ethnicity, i.e. Oromo; her involvement in the OLF; and the manner in which the SPIRASI report was dealt with by the tribunal member. It is settled law that where there is documentary evidence which, *prima facie*, is capable of corroborating the applicant’s story, if a tribunal member is to dismiss and/or reject the applicant’s story and thereby reject the documentary evidence before the tribunal member, then reasons must be given for so rejecting.

28. It seems to me that the tribunal member did not provide any cogent or reasoned decision as to why the documentary evidence and the medical report submitted by the applicant were rejected. On that basis I propose to grant leave and to grant orders of *certiorari* quashing the decision of the RAT made on the 27th July, 2010. I will further make an order directing that the matter be remitted to the RAT for *de novo* consideration by a different tribunal member.