

THE HIGH COURT

JUDICIAL REVIEW

[2009 No. 856 J.R.]

IN THE MATTER OF THE REFUGEE ACT 1996 (AS AMENDED) AND IN THE MATTER OF THE IMMIGRATION ACT 1999 AND IN THE MATTER OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000 AND IN THE MATTER OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS ACT 2003, SECTION 3(1)

BETWEEN

S.E. (A MINOR SUING BY HIS MOTHER AND NEXT FRIEND A. E.)

APPLICANT

AND

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

RESPONDENTS

AND

HUMAN RIGHTS COMMISSION

NOTICE PARTY

JUDGMENT of Mr. Justice McDermott delivered the 2nd day of May, 2014

1. The child applicant was born in Limerick on 27th January, 2006. His mother is a failed asylum seeker and the subject of a deportation order. She and her husband left Nigeria and arrived in Ireland on 10th May, 2001. Her husband is of the Diala caste (Igbo) while she is of the Osu caste. Following the birth of the child applicant, his mother applied for a declaration of refugee status on his behalf on 14th November, 2006.

2. The child's mother completed the questionnaire and stated at question 29 that she feared that her child's life would be in danger and he would face persecution and discrimination because she was of the Osu caste and was viewed by the Igbo as a lower class of person. His father was Igbo and his family considered their relationship as an abomination to the extent that they might try to kill the child. She feared that he would be treated as a slave or worthless human being and that he would be bullied and subjected to verbal and physical abuse.

3. The case was also made that the child's mother was suffering from a significant mental illness which required continuing treatment and might affect her ability to give the child proper support and care if returned to Nigeria.

4. A medical report from the SPIRASI Centre for the Care of Survivors of Torture was submitted concerning the mother's history. In that report, the mother's account of her treatment at the hands of her husband's family is outlined which was clearly, if true, upsetting and distressing for her. She was allegedly held captive for two days during a family funeral by her in laws who for some reason blamed her for the deaths of two family members. There were further incidents of threats from the family while she was working in Lagos.

5. There is also a full description of a separate incident when she was allegedly raped and beaten by a number of young men as a result of which she was hospitalised. She reported that matter to the police. The medical report described two large depressed scars on her buttocks consistent with puncture wounds inflicted by nails during the course of that attack and other scars consistent with the wounds described by her which were inflicted in the same assault.

6. On arrival in Ireland, she suffered an acute stress reaction and was treated for major depressive illness with psychotic features. She suffered flashbacks, impaired memory, insomnia and feelings of worthlessness and isolation which she believed were a direct consequence of these events and the accumulated results of her lifelong experience of discrimination as an Osu in Nigeria.

7. The child's mother also attended for the s. 11 interview on his behalf on 30th November, 2006.

The Section 13(1) Report

8. This report, dated 7th December, 2006, recommended that the child applicant should not be declared a refugee. The report noted that the claim was made because her husband's family was Igbo and if they discovered the existence of their child, the infant's life would be at risk. It also considered the claim that the child would be discriminated against in Nigeria because he is regarded as Osu.

9. It was noted that the child applicant's mother claimed that they could not live in another part of Nigeria to avoid harm from the grandparents because she believed that they would be found. The report concludes that given the localised nature of the child applicant's claim, there was no objective reason why the child could not live in another part of Nigeria and avoid the husband's family. In addition, it was noted that the family did not know about S.E.'s birth as there was no communication between the parents and the family in Nigeria and it was thought improbable that he would be located by them if he returned.

10. The report also assessed the danger of discrimination against the child as an Osu. The child's mother accepted that people would not know he was Osu unless they knew the family or if her husband's people were to discover where they lived. In addition, the country of origin information indicated that the Osu caste system had been abolished in a number of areas in Nigeria. It continued to be a problem in areas in which the Igbo predominated but not in other areas.

11. The mother's application for refugee status had been refused by a decision of the Refugee Appeals Tribunal. The child applicant's case was based on his mother's which was thought to further undermine her contention that her son had a well founded fear of persecution in Nigeria.

12. It was concluded that an examination of the applicant's case on its own terms failed to demonstrate a well founded fear of persecution for a Convention reason.

13. Reference was made to the decision of the Refugee Appeals Tribunal in the mother's case in the body of the s. 13(1) report. Though the decision was said to have been included as an appendix to the report, the appendix, in fact, included only a copy of the letter to the child's mother giving notice of the Tribunal decision and did not include a copy of the Tribunal decision itself.

Tribunal Decision

14. An oral hearing was held in respect of the child applicant's case on 11th May, 2009. The Tribunal made a decision on 18th May, 2009, notice of which was furnished by letter dated 27th July.

15. The Tribunal rejected the claim that the child applicant would be persecuted generally for being an Osu in Nigeria as "not objectively well founded". This conclusion was based on his mother's testimony and country of origin information on file which indicated that the Osu were no longer openly and verbally attacked but may suffer discrimination in marriage and in respect of "leadership issues". Though there had been severe discrimination in the past by the Igbo against the Osu, this had weakened over a period of 50 years and the main problem encountered by the Osu arose if they attempted to marry outside their group. Difficulties were encountered by the Osu in Igboland but the discrimination encountered was not deemed to be serious enough to amount to persecution. The caste system itself had been outlawed. The Tribunal noted that the applicant's mother received third level education in Nigeria and prior to meeting her husband lived in Lagos on her own and worked as a teacher and a secretary. Her brothers were also able to work in business in Nigeria and the applicant's aunt was at the time attending school.

16. It was noted that the applicant's claim was based to a large degree on his mother's claim for asylum which had been refused as indicated in the letter attached to the s. 13(1) report. The Tribunal relied upon the case of *Moyosola v. Refugee Applications Commissioner & Ors* (Unreported, High Court, Clark J., 23rd June, 2005) to the effect that if a decision maker within the refugee process came to a justified decision that a well founded fear of persecution did not exist on a parent's behalf, then that finding would equally apply in relation to the position of any minor whose claims were based precisely upon the same grounds. The Tribunal in this case determined that insofar as the applicant's claim related to his mother's, it could not be said to be well founded. It was accepted by the applicant's mother that the problems the child would experience in Nigeria were as a result of the problems which she and the child's father had experienced as a result of their relationship.

17. The Tribunal Member next considered the issue of relocation. In this instance, the source of alleged persecution emanated from a non-State actor. It was considered relevant to determine whether the child applicant and his mother had an alternative relocation option. Country of origin information indicated that discrimination against the Osu or the caste system practiced against them was largely confined to the Igbo nation in south-eastern and south central Nigeria. It was, therefore, concluded that were the applicant and his mother to live elsewhere in Nigeria, they would not be subjected to the remnants of the caste system. This was said to be evidenced by the fact that the applicant's mother was able to attend college in Anambra State without difficulty and that people from all parts of Nigeria attended this college. No one at the college knew she was Osu. She also confirmed at interview that if the applicant were to live elsewhere in Nigeria, no one would know that he was Osu. Other members of the family were able to integrate in different areas of Nigeria.

18. The applicant's mother believed that she could be found by her husband's family were she to return to any part of Nigeria. However, having regard to the fact that Nigeria had a population of over 120 million and the mother's previous history whereby she was able to live on her own in Lagos and work prior to meeting the applicant's father, it was concluded that she could relocate to a large urban centre such as Abuja/Port Harcourt outside Igbo areas to escape the attention of her in-laws. It was concluded that internal relocation would be a reasonable alternative to escape any threat from the family and any more generalised threat from the Igbo.

19. The Tribunal also considered psychiatric difficulties from which the applicant's mother suffered. It noted that in 2002, the applicant's mother was being treated for a major depressive illness with psychotic features and that in 2006, she was admitted to the acute psychiatric unit in Limerick Regional Hospital. She was currently on antidepressant medication, blood pressure tablets and painkillers which was outlined in a medical report of 7th May, 2009. Country of origin information indicated that mental healthcare was available in Nigeria. There were difficulties with the delivery of such care but treatments were available and it was reasonable to assume that the applicant's mother would obtain the assistance of her family in that respect.

The Challenge

20. The challenge to the Tribunal's decision is based on seven grounds, a number of which are referable to the consideration by the Tribunal of country of origin information.

Grounds 1(a), (b) and 2

21. It is submitted that the finding by the Tribunal that the Osu are not persecuted was based on selective appraisal of the evidence especially the country of origin information submitted on behalf of the applicant. The criticism made of the Tribunal is of the most general kind. Examination of the country of origin information and other materials considered by the Tribunal indicates that the Osu caste system exists largely in Igbo areas and is a regional phenomenon. It has not been made clear to the court either in the grounds advanced or in the written and oral submissions how it is suggested that the reliance upon the country of origin information was "selective" to the detriment of the child applicant. It is clear that the Tribunal had regard to all of the country of origin information and it was entitled to make its assessment of the material submitted in respect of the Osu caste system and other matters. The court is satisfied that no substantial ground has been established in this regard on which leave might be granted and that the decision reached in that respect could not be said to be unreasonable or irrational.

Grounds 1(f) and (g)

22. These grounds complain about a failure to make any assessment of the alleged persecutory risk to which the applicant may be exposed because of his mother's mental health status and that the evidence in respect of the ability and availability of her family to provide appropriate medical treatment was misconstrued. The Tribunal considered the medical and psychiatric history of the applicant's mother on the basis of the oral evidence presented and the several medical reports submitted. The country of origin information concerning the treatment available to the applicant's mother in Nigeria was also considered. There was no suggestion that any discrimination would occur in the provision of mental health care to the applicant's mother on the basis of her Osu status or for any other reason by State authorities. The Tribunal considered family support which would also be available to the applicant's mother

if she returned to Nigeria from other members of her family. That was not an unreasonable approach having regard to the evidence available. The Tribunal stated that it had particular regard to the age of the applicant and the medical reports on file in relation to his mother when considering the particular issues relating to the child's interest. Once again, very little was advanced beyond the bare assertion that the medical condition of the applicant's mother was not adequately considered to support these grounds which I am not satisfied are substantial.

Grounds 3, 4, 5, 6 and 7

23. These grounds fail to identify any specific basis of complaint in respect of the Tribunal decision. They constitute a generalised assault on the decision or as in the case of ground 6, attempt to advance a ground which is unstatable in law.

24. Ground 3 contends that the Tribunal failed to perform a proper assessment of the facts in accordance with the Refugee Act 1996, or the UNHCR Handbook and/or Statutory Instrument 518 of 2006/Council Directive 2004/83/EC. There is nothing further offered in relation to this ground which has not been connected in any way to the facts of the case.

25. Grounds 4 and 5 suffer from the same generalised deficiencies claiming that the Tribunal was incapable of objective fairness and alleging that irrelevant matters were taken into account and/or relevant matters were not taken into account. Ground 7 simply alleges that the decision is unreasonable and irrational and flies in the face of commonsense in light of all the circumstances. No attempt has been made to connect these general assertions to the facts of the case. These grounds are unstatable.

26. Ground 6 embodies the *HID* and *BA* point which was rejected by the CJEU(C-175/11 judgment 31st January 2013).

Ground 1(d) and (e)

27. It is submitted that the Tribunal failed to consider the evidence of past persecution in a reasonable and proportionate manner and made no assessment of the child applicant's alleged fear of persecution at the hands of his father's family. This is clearly incorrect. This issue was at the core of the Tribunal's determination and was fully considered by it.

Ground 1(h)

28. It was submitted that the Tribunal failed to make any assessment taking account of the provisions of the United Nations Convention on the Rights of the Child. This also is incorrect. The Tribunal set out in detail the relevant principles applicable under the Convention and under the UNHCR Guidelines in respect of minors. The facts of the child applicant's case were considered with due regard to those principles. It is not clear what complaint is made about the application of these principles in the Tribunal decision. The generalised grievance expressed has not been particularised in the ground or in written and oral submissions or connected in a meaningful or relevant way to the facts of the case.

Other Issues

29. Three further issues were advanced in support of the child applicant's case which were not included in the grounds advanced in the statement of grounds. In effect, an attempt was made in the written submissions to argue three additional grounds. The first related to internal relocation. It was claimed that the Tribunal Member failed to follow the UNHCR Guidelines and case law in respect of internal relocation. Secondly, it was also contended that the reliance by the Tribunal on the previous decision made refusing the child applicant's mother asylum was unlawful when the mother's actual decision did not appear to have been before the Tribunal. The document referred to as submitted as part of an appendix to the s. 13 report was a letter of notification only. It should be noted that the Tribunal expressly stated that it had considered the child applicant's case on its own merits. Thirdly, it was submitted that the Tribunal failed to consider the provisions of Regulation 9(2)(b) of the Protection Regulations 2006. No further details were advanced as to how it was suggested that the Tribunal had erred in that regard. The court cannot embark upon consideration of grounds which have not been advanced as part of the case. No application was made to amend the grounds in this case. In any event, having regard to the complete lack of detail and particulars concerning these matters, the court is not satisfied that even if more precisely pleaded, they could have been regarded as in any way substantial.

30. The court is not satisfied that the applicant has established any substantial grounds upon which leave to apply for judicial review might be granted in this case and the application is therefore refused.