

THE HIGH COURT

JUDICIAL REVIEW

[2016 No. 679 J.R.]

BETWEEN

M.Y.A.

APPLICANT

AND

REFUGEE APPLICATIONS COMMISSIONER

RESPONDENT

THE HIGH COURT

JUDICIAL REVIEW

[2016 No. 740 J.R.]

BETWEEN

M.J.

APPLICANT

AND

REFUGEE APPLICATIONS COMMISSIONER

RESPONDENT

THE HIGH COURT

JUDICIAL REVIEW

[2016 No. 706 J.R.]

BETWEEN

I.G.

APPLICANT

AND

REFUGEE APPLICATIONS COMMISSIONER

RESPONDENT

THE HIGH COURT

JUDICIAL REVIEW

[2016 No. 709 J.R.]

BETWEEN

X.G.

APPLICANT

AND

REFUGEE APPLICATIONS COMMISSIONER

RESPONDENT

THE HIGH COURT

JUDICIAL REVIEW

[2016 No. 710 J.R.]

BETWEEN

F.G.

APPLICANT

AND

REFUGEE APPLICATIONS COMMISSIONER

RESPONDENT

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 14th day of November, 2016

1. Are there substantial grounds for contending that the Refugee Applications commissioner is not entitled to delegate to a contractor the task of preparing a draft report of its investigation? That is the proposition contended for by the applicants in the present leave

applications.

2. The facts in the first application may be taken as representative of those in the other cases. The applicant came to the State from Bangladesh and applied for asylum on 11th June, 2015. He was interviewed in accordance with s. 11 of the Refugee Act 1996 by an authorised officer on 19th January, 2016. The next step is for a report of the commissioner's investigation to be prepared. What happened was that the interviewer, described as a "panel member", prepared a draft report dated 10th February, 2016, which was subsequently adopted by the commissioner on 11th May, 2016 (albeit that the second version was incorrectly also headed "draft"). On foot of the s.13 report, the commissioner recommended that the applicant should not be declared to be a refugee and this recommendation was communicated to the applicant on 3rd August, 2016.

3. The substantial grounds test applies by virtue of s. 5 of the Illegal Immigrants (Trafficking) Act 2000, and I have had regard to the law in relation to that test including *McNamara v. An Bord Pleanála* [1995] 2 I.L.R.M. 125 as approved in *In re Illegal Immigrants (Trafficking) Bill 1999* [2000] 2 I.R. 360 at 395.

4. The essential point made by Mr. Shannon Michael Haynes B.L (with Mr. Feichín McDonagh S.C.) for the applicant is that while the commissioner can delegate an interview to an authorised person such as a panel member, he cannot lawfully delegate any element of the investigation or the preparation of a draft report.

5. Mr. Haynes submits that this is contrary to s. 11(1) of the 1996 Act which confers a duty on the commissioner to investigate an application which has not been withdrawn, and a s.13(1) which requires the commissioner to prepare a report of his investigation. The language of these provisions contrasts with that of s. 11(2) which permits an authorised officer (see s. 1(1)) to carry out an interview.

6. Mr. Haynes also submits that there is no express provision for delegation along the lines of reg. 30 of the European Union (Subsidiary Protection) Regulations 2013, which applies only to subsidiary protection and not to asylum.

7. This point is without substance. The engagement of a contractor to do preparatory work, including the preparation of draft materials, documents or reports, is an entitlement as a matter of general law and does not require express statutory authorisation. Anyone can hire a contractor to provide assistance. The preparation of a draft report by a contractor is not the exercise of a statutory function. It is simply a form of assistance to the commissioner in the exercise of his statutory function. Nor is it the case that the State and its emanations can do nothing without express and explicit statutory authorisation. The somewhat outlandish point being made that the commissioner cannot seek assistance from contractors without statutory authorisation lacks substantial grounds.

8. Mr. Haynes also relies on the fact that leave in relation to this point has been granted in *M.U.R. v. Refugee Applications commissioner* [2016 No. 364 J.R.] on 18th July, 2016, and in other cases, and that there is a suggestion that a test case should be selected. However the fact that one applicant has obtained leave on a particular point is not a guarantee that the next applicant must also do so, if, upon examination, the point is found to be without merit; as this one is.

Order.

9. For the foregoing reasons I will order in each case:

(i). that the application for leave be refused;

(ii). that the matter be adjourned to enable the applicants to consider any application for leave to appeal, which if made should be on notice to the respondents; and

(iii). that the applicant serve the CSSO with a copy of this judgment in any event within 7 days.