Neutral Citation: [2015] IEHC 719

THE HIGH COURT

JUDICIAL REVIEW

[2012 No. 146 J.R.]

BETWEEN

N. P.I. (Nigeria)

(a minor suing by her mother and next friend F.J)

APPLICANT

AND

THE REFUGEE APPEALS TRIBUNAL,

THE MINISTER FOR JUSTICE AND EQUALITY,

ATTORNEY GENERAL

IRELAND

RESPONDENTS

JUDGMENT of Mr. Justice Eagar delivered on the 19th day of November, 2015

1. This is a telescoped hearing seeking an order of *certiorari* in respect of a decision of the Refugee Appeals Tribunal ("the Tribunal") to affirm the decision of the Refugee Applications Commissioner ("the Commissioner") that the applicant not be declared a refugee.

2. The relief sought are as follows:

> a. An order of *certiorari* by way of an application for judicial review quashing the decision of the first named respondent to affirm the decision of the Commissioner in respect of the applicant and notified to the mother of the said applicant no earlier than 15th January, 2012,
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> b. An order of certiorari by way of an application for judicial review quashing the decision of the respondent Minister to refuse, pursuant to section 17 of the Refugee Act, 1996 (as amended) ("the Act of 1996"), denying the applicant refugee status and notified to the mother of the said applicant no earlier than 18th February, 2012,
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> c. A declaration that the time limit imposed by section 5 of the Illegal Immigrants (Trafficking) Act, 2000 ("the Act of 2000"), in circumstances where EU rights are asserted, is not in compliance with the principles of equivalence and effectiveness,
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> d. If necessary, an extension of time herein,
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> e. If necessary, an injunction prohibiting the second named respondent from further processing or determination of the applicant's claim or proceeding with his proposal to make a deportation order in respect of the applicant pending the determination of the within proceedings.

Ground upon which relief is sought

3. The grounds upon which relief is sought are:

> a. The Tribunal erred in law and in fact by confining the fears of the applicant solely to 'fears regarding one person'. The 'one person' is a person of influence and motivation to harm the applicant and her mother.
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> b. The Tribunal erred in law and in fact in finding that "she [the applicant's mother] is very scant in relation to his [the applicant's father] personal details."
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> c. The Tribunal erred in law in having regard to the lateness of applying for asylum without having regard to previous attempts to apply.
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> d. The Tribunal erred in law in applying an incorrect test or demand that the father of the applicant "is in Nigeria, at present."
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> e. The Tribunal erred in law and in fact in finding that "there is no evidence to suggest that this one man [the applicant's father] wants to persecute the applicant."
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> f. The Tribunal erred in law in failing to consider and weigh in the balance the documentation submitted by letter dated 9th December, 2011, following the oral hearing.
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> g. The Tribunal erred in law in finding that state protection would be available to the applicant without making any

assessment of the adequacy of such protection in practical terms and in light of the particular circumstances pertaining to the applicant and her mother, and the evidence of previous threats from the father of the applicant and the likelihood of his ability to achieve his desires.

h. The Tribunal erred in law in finding that internal relocation was available to the applicant without making an assessment of the feasibility of such relocation in the light of the applicant's particular circumstances, including her tender age, gender and family background.

i. The decision of the Tribunal contains an error on the fact of the record in recording an incorrect date of birth for the applicant.

j. The Tribunal erred in law in taking into account matters irrelevant to it's determinations and / or failed to take into account relevant considerations.

k. The Tribunal erred in law in failing to lawfully speculate on the likelihood of the exposure of the applicant to persecutory risk on *refoulement* to Nigeria.

l. The Tribunal wholly ignored the provisions of the UN Convention on the Rights of the Child and the Charter of Fundamental Rights and Freedoms.

m. Pursuant to the European Union law principle of effectiveness, time, for the purposes of the limitation period provided under section 5 of the Act of 2000, is not in compliance with the principles of equivalence and effectiveness.

4. The statement of grounds was grounded in the affidavit of the applicant, "N.P.I", sworn on the 23rd February, 2012. The applicant avers that she is the mother and next friend of the applicant, who was born in the State, to Nigerian parents, on the 5th November, 2008. She refers to how she originally sought to apply for asylum on behalf of her daughter when she was aged three months. To this effect an asylum application was made and accepted by the Commissioner on behalf of her daughter. The Commissioner subsequently notified her that her daughter's application for asylum status was refused.

5. A notice of appeal was submitted to the Tribunal by letter dated the 24th October, 2011. Following her daughter's oral hearing on the 29th November, 2011, further documents were submitted to the Tribunal by letter dated the 9th December, 2011.

6. "N.P.I" was notified by letter dated 12th January, 2012, and received on or about the 16th January 2012, that the Tribunal had affirmed the decision of the Commissioner.

7. She was notified by letter dated 15th February, 2012, and received on or about the 20th February, 2012, that the Minister for Justice and Equality ("the Minister") refused a grant of refugee status to her daughter.

Applicant's claim to the Refugee Appeals Tribunal
8. The hearing of the Tribunal took place on the 29th November, 2011. The report notes that applicant's claim is based on the appeal contained in the Form 1 notice of appeal, supporting documentary evidence and the submissions outlined at the oral hearing.

9. In respect of the applicant's claim the report pursuant to section 16(2)(a) of the Act of 1996 notes that the applicant is an Irish born child, aged three at the time of hearing, accordingly her mother and next friend gave evidence on her behalf.

10. Her mother applied for asylum when the applicant was two months old (sometime in January or February 2009) but the authorities refused to accept the application on the basis that the child's father was working in the Nigerian Embassy.

11. In June or July of 2011, the applicant's mother received a letter from the Department of Justice and Equality indicating that she should return and apply for refugee status once again.

12. The applicant's mother stated that the father of the applicant did not want to be her father. She said that he threatened the applicant's mother. She said that he gave her money to have an abortion. She said he got angry when she did not do so. The applicant's mother said that the applicant's father called the baby "a bastard". The applicant's mother went on to say that he refused her request for money.

13. The applicant's mother then alleges that "P.I." started calling her. At this stage she went to the Department of Social Protection and decided to take "P.I." to court seeking an order of maintenance. An order of €25.00 (later increased to €40.00) was duly granted. The applicant's mother said that she was subjected to threats at the hands of "P.I's" friends. The next time she apprised the Judge of her problem/situation the Judge revoked his guardianship.

14. While resident in a hostel the applicant's mother received a telephone call from an individual in the immigration office of a garda station telling her to attend there. At the garda station she was asked if she knew "P.I.". She was informed that "P.I" and his girlfriend had made allegations against her to the gardai, to the effect that she was out of the country in Germany, Holland and Austria.

15. "P.I." had telephoned the HSE as the applicant had ringworm in her hair. "P.I." alleged to the HSE that the mother had attacked her daughter with a knife. The gardaí attended upon the hostel where the mother was residing with the child, in the process of which she had explained that the applicant did indeed have ringworm, however the other allegation was deemed unfounded by the investigating gardaí.

16. A letter was written by the applicant's mother to the Nigerian Embassy calling on "P.I." to "leave her alone". The applicant proceeded to contact the Ambassador, the result of which was that "P.I." was sacked ("P.I." and the applicant's mother had initially met in the Embassy).

17. At some stage in 2009, in the early hours of the morning, the applicant's mother received a call from "P.I's" friends. They threatened her to the effect that "they knew someone in Moyross and that they would send that person to kill her." She said that four gardai came and that "she was safe as security was there."

18. Since 2009 there has been no further problems of this nature however the applicant's father blames the applicant's mother for losing his job in the Embassy and the applicant's mother said that there is a court order that the applicant's father is not allowed to

go to the hostel where the applicant and her daughter live

19. The applicant's mother purchased a new mobile phone to prevent him contacting her.

20. She expressed her fear of returning to Nigeria, with her daughter owing to her fear of "P.I." She is unaware as to where he is living and only sees him in court.

21. The applicant's mother said he did tell her that he had family in the Nigerian Embassy and in Nigeria.

22. Despite the conflict outlined above the applicant's mother states that "P.I." is the registered father of the applicant, and he did not object to being so. He took a DNA test on the 6th December, 2008.

Analysis of the applicant's claim

23. The applicant's mother advances two cases on behalf of her daughter. The first is based on her having the same fears for her daughter as she herself has, in that she is scared of a man called (P.A."). The second fear relates to what the applicant's father, "P.I." may do to her.

24. In relation to the first fear, the applicant's case rests wholly on that of her mother's. The Tribunal has already had the opportunity of hearing the applicant's mother in this respect. In this regard, the Tribunal found, that the applicant's mother had no case and that she did not fall within the definition of a refugee as set out in section 2 of the Act of 1996. Credibility issues arose in the mother's failed case in which it was found that she could avail of adequate state protection.

25. Given that the applicant's mother failed to adduce any new evidence pertaining to "P.A.", and her fears for her daughter in this respect, it was clear to the Tribunal that this part of the applicant's claim is wholly reliant upon her mother's claim. As both claims are interlinked inextricably, and as the claim of "F.J." failed, the applicant's similar claim, relating to "P.A." similarly failed before the Tribunal.

26. The second part of the applicant's claim relates to her fears regarding one individual, her father. The applicant's mother does not know where he lives and is very scant as to his personal details. The Tribunal asked the solicitors for the applicant to submit any new information, in this regard and despite their best efforts, nothing new in relation to "P.I's" whereabouts came to light.

27. The applicant's mother details the fact that "P.I." never wanted a child and that he advocated that she have an abortion. She claims that he made false allegations against her, as a mother, and she states that some of his friends threatened her in 2009.

28. However, notwithstanding all of the above, "P.A." took a DNA test and did not object to putting his name down on the applicant's birth certificate as her father.

29. The applicant's mother asserted her belief that "P.A." had family who worked in the airport in Lagos and that they may "cause trouble for her", upon her return.

30. There is no evidence before the Tribunal suggestive that "P.I" lives in Nigeria. In fact, all the evidence pointed towards the fact that he lives in Ireland. There have been court cases in relation to family law proceedings at which the applicant's mother met him several times.

31. As the applicant is an Irish born child, there is no evidence of past persecution in Nigeria. The pertinent question before the Tribunal was whether she would face persecution, from this non-State agent ("P.A."), if she travelled to Nigeria with her mother. In this regard, the Tribunal member notes that "It must be remembered that there is no evidence, before me, to show that "P.A." is in Nigeria, at present". The Tribunal member goes on to consider that even if he were in Nigeria, there is no evidence to suggest that "P.A." wants to persecute the applicant. The Tribunal member notes that if she believed the applicant's mother in her assertion that "this man does not want anything to do with the applicant", it was consequentially seem bizarre if he tried to single her out in a country with a population amounting to over 140 million people, in circumstance where, it would be entirely possible to distance himself from his daughter and her mother.

32. The Tribunal member noted that there could not be said to be persecution if there is adequate state protection, relating to the alleged fear in the country of origin. A British and Danish Fact Finding Mission was exhibited, entitled, Report on Human Rights Issues in Nigeria. The report states that, "the British High Commission (BHC) added that individuals who experience problems, threats or ill-treatment from non-state agents (for example militia groups, secret cults and societies) are able to take their case to the Nigerian Police Force (NPF)". The report goes on to state that a senior representative of the Inspector General of the Nigerian Police (IGP) explained that the NPF is a federal force. Nigerian law requires the NPF to investigate all complaints made to them. It notes that if a person makes a complaint to the divisional police, and he or she is not satisfied with the response or action of the NPF then the case can be appealed to the area commanders. It states that is a person is still not satisfied then they may proceed with the matter to the State Police Headquarters.

33. The Tribunal report notes that the applicant's mother has not provided one scintilla of evidence to demonstrate how both she and her daughter would be unable to access adequate state protection from "P.A." and his family. The Tribunal member makes reference to the fact that "Nigeria is a democratic country with a police force and judicial institutions to detect and punish crimes. In the circumstances, there is simply no clear and compelling evidence of a lack of state protection in this case." The Tribunal member continued that "In circumstances, where there is no clear evidence of a lack of state protection, there is, in effect, no persecution."

34. It is contended that if the applicant were a refugee, which it is decided she is not, it is clear that internal relocation would be a viable option for her and her mother. In the circumstances the Tribunal member is of the opinion that "this would not be unduly harsh." The Tribunal took into account para. 91 of the Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and 1967 Protocol which relates to the Status of Refugees, which states:

> *"91. The fear of being persecuted need not always extend to the whole territory of the refugee's country of nationality. Thus in ethnic clashes or in cases of grave disturbances involving civil war conditions, persecution of a specific ethnic or national group may occur in only one part of the country. In such situations, a person will not be excluded from refugee status merely because he could have sought refuge in another part of the same country, if under all the circumstances it would not have been reasonable to expect him to do so."*

35. The issue pertaining to para. 91 has already been dealt with in the 2008 decision of the applicant's mother. The applicant's

mother is a woman in her early thirties. She was self employed in Nigeria as a farmer, a hairdresser and a dancer. She is a well-travelled young woman who has previously successfully relocated within Nigeria to Lagos. It was noted that "there is no reason as to why she [the applicant's mother] could not do the same again in order to set up a new life for themselves." Nigeria is a country of thirty-six States comprising a population of over 140 million. Even if "P.A." were residing there (to which the Tribunal had no evidence to this effect), there would clearly have been options and alternatives available to the applicant and her mother.

36. The Tribunal concluded it's analysis by reciting the well established principle that a failure on the part of the applicant to satisfy one of the requisite criteria results in the failure to establish a claim for refugee status. The Tribunal was satisfied that state protection is available to the applicant, with the possibility of internal relocation being available to the applicant and her mother. On that basis the application for refugee status was refused and the decision of the Commissioner duly affirmed.

Submissions on behalf of counsel for the applicant

37. Counsel for the applicant, Michael Conlon S.C., with Garry O'Halloran B.L., reviewed the background to the applicant's case and stated that she had been born in Cork in October 2008 to Nigerian parents. Mr. Conlon S.C., proposed that as the Tribunal was considering the matter of a child there was accordingly a heightened duty of care to consider the best interests of the child.

38. Her father "P.A." was then employed in the Nigerian Embassy while her mother was a failed asylum seeker. The applicant minor was the product of a brief relationship, after which her father initially had no desire to be involved with the child (although this position later altered). The ASY 1 Form records that when she was two months pregnant "P.A." wanted "F.J." to seek an abortion. When she refused he abandoned her as "he don't want the baby". She proceeded to take "P.A." to court seeking an order of maintenance which the Court granted. At a later date this amount was increased.

39. "P.A." lost his job at the Embassy. For this he blames "F.J." and is "very angry." In her ASY 1 Form "F.J." states that "he lost his job at the Nigerian Embassy as a result he started threatening me that he will make every effort to locate me and kill me and the baby. . . he is seeking to take the baby from me and take her to Africa to kill."

40. At the section 11 interview "F.J." stated in reply that "her [the applicant's] father will harm her. He wanted me to abort the child and I refused." In response to a subsequent question she stated that "he said I make him lose the job, he will harm the child." Upon being questioned about Lagos, "F.J." replied, "If I go back to Lagos, I don't have family. They are all in Benin, I have to go back to my family" and in reply to a further line of questioning in relation to police protection she stated "The police cannot do anything. . . If you meet them, they will say they will do anything but they will not do if you do not have money, they eat bribes".

41. The section 13 report records that, "The applicant's claim is as follows: her father worked in the Nigerian Embassy in Ireland as a clerk. He did not want the applicant's mother to proceed with the pregnancy. This relationship did not last. The applicant's father underwent DNA tests and was shown to be her [the applicant's] father. The parents attempted to register her with ORAC in February 2009 but were not allowed to proceed due to the father's diplomatic status. However, problems between the parents continued and the father was fired after the mother wrote a letter to the Nigerian ambassador. A custody court case ensued between the parents in the Irish courts. The applicant's mother claims that the father has become violent towards her and has said that he will harm the child. The father has contacts in Lagos Airport and would use these to find the applicant, if she were to go to Nigeria.

42. A country report attached to the section 13 states "According to UNIFM, there are basically four scenarios for women who relocate within Nigeria in order to avoid FGM, forced marriage or domestic violence: She can approach the local church/mosque or religious establishment and seek assistance from the leadership. She can approach friends or relatives who are willing to hide her. She can approach NGO's working on women's rights. (However, these NGOs may only be known to women in these urban settlements, towns or cities where the organisations are active). She can take to the street. This is a frequent scenario for young women or women who do not have the capacity or means to do otherwise. Some of these may end up in brothels or are vulnerable to being trafficked".

43. The Tribunal's primary findings are contained in three key paragraphs.

> a. Firstly, with respect to the core claim presented on behalf of the applicant, the Tribunal held, "As the applicant is an Irish born child, there is no evidence of past persecution in Nigeria. The question is whether she would face persecution, from this non-state agent, if returned to Nigeria with her mother. It must be remembered that there is no evidence, before the first named respondent, to show that "P.I." is in Nigeria, at present. Even if he were, there is no evidence to suggest that this one man wants to persecute the applicant. If we are to believe what the applicant's mother states, this man does not want anything to do with the applicant, so it would seem bizarre if he tried to seek her out in a country with a population of over 140 million, in circumstances where, it would be entirely possible to distance himself".
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> b. Secondly, with respect to state protection, the Tribunal held, "the applicant's mother has not provided one scintilla of evidence to the Tribunal to show that she and her daughter would be unable to access adequate state protection in this case, to be safe from this one man and his family. It must be remembered that Nigeria is a democratic country with a police force and judicial institutions to detect and punish crimes. In the circumstances, there is simply no clear and compelling evidence of a lack of adequate state protection in this case".
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> c. Thirdly, with respect to internal relocation, the Tribunal held, "Even if it were the case, that this applicant were a refugee, which it is decided she is not, it is clear that internal relocation would be an option for her and her mother and that this would not be unduly harsh. . . This issue has already been dealt with in the decision of the applicant's mother…"

44. Counsel argues that the finding that "there is no evidence to suggest that this one man wants to persecute the applicant" is factually inaccurate and/or is irrational, when viewed in light of her evidence detailed above. In *Rita Voga v Refugee Appeals Tribunal* (High Court, Ryan J., 6th October, 2010), it was stated "He also succeeds because of the failure to take into account the documentary material or to analyse it in any way. He could have rejected it, if he was so minded and if he had considered the material, any arguments that were made, and if he had reached a decision as to why it was unreliable. I think that the decision in this case suffers from comparison with the analysis of the case contained in the section 13 report, which does not address these questions. The basic point is that this decision cannot stand for the reasons for which leave was given because it is an unsatisfactory judgment. It is perfunctory. It does not contain a proper analysis of the case and it would be unfair if it were to stand".

45. The finding that "The applicant's mother has not provided one scintilla of evidence to the Tribunal to show that she and her daughter would be unable to access adequate state protection in this case" suffers from the same frailties detailed above. The Tribunal ignored the evidence given at the section 11 interview in response to questioning about police protection, wherein the mother stated, "The police cannot do anything…If you meet them, they will say they do anything but they will not do if you do not

have money, they eat bribes". Furthermore, the Tribunal failed to consider whether reasonable protection in practical terms would be available. In *Idiakheua v. Minister for Justice Equality and Law Reform* [2005] IEHC 150 the test relating to a finding of state protection was articulated as follows:

> *"It is at least arguable that reference to an isolated example of state protection is insufficient to justify a finding of adequate state action in just the same way that the establishment of an isolated incident where state protection failed may be insufficient to establish its inadequacy. It would appear that the true test is as to whether the country concerned provides reasonable protection in practical terms Noone v. Secretary of State for the Home Department (Unreported CA 6 December, 2000). While the existence of a law outlawing the activity which amounts to persecution is a factor the true question is as to whether that law coupled with its enforcement affords "reasonable protection in practical terms".*

Counsel argued that regard must also be had to the requirement of 'effective' protection mandated by the European Communities (Eligibility for Protection) Regulations 2006 "2006 Regulations".

46. The internal relocation finding, counsel argued, was made without any regard to the minimum requirements identified by Clark J. in *KD [Nigeria] v Refugee Appeals Tribunal* [2013] IEHC 481.

47. Counsel further cited the judgment of Mac Eochaidh J. in *E.I (a minor) & anor v Minister for Justice Equality & Law Reform & anor* [2014] IEHC 27, which affirmed *KD [Nigeria].* Mac Eochaidh J. proceeded to state there were two relevant questions he must consider in relation to internal relocation:

> *"12. It seems to me that the critical standard by which I should review this internal relocation decision is that mentioned above at number (5) by Clark J. I must enquire as to whether two questions were asked. These questions are:*
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> *(i) Is there a risk of persecution / serious harm in the proposed area of relocation? If not,*
>
> *(ii) would it be reasonable to expect the Applicant to stay in that place?"*

48. It is submitted that the country report attached to the section 13 report, detailed above, was wholly unconsidered by the Tribunal. In failing to consider this country report, which was, it was argued, "clearly relevant and important", the Tribunal failed to arrive at a decision compliant with regulations 5(1)(a) and (b) of the 2006 Regulations:

> *"5.(1) The following matters shall be taken into account by a protection decision-maker for the purposes of making a protection decision:*
>
> *(a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application for protection, including laws and regulations of the country of origin and the manner in which they are applied;*
>
> *(b) the relevant statements and documentation presented by the protection Applicant including information on whether he or she has been or may be subject to persecution or serious harm"*

49. Counsel further quotes from the judgment of Faherty J., in *S.K. & anor -v- The Refugee Appeals Tribunal & Ors* [2015] IEHC 176, which states:

> *"51. I am also satisfied that a mere statement in the Decision that the Tribunal Member had considered country of origin information was not an appropriate treatment of the country information relied on by the first named Applicant in aid of her appeal. In as much as it was suggested by counsel for the Respondent that the dictum of Peart J. in F. v. RAT could apply to the present case, I reject that submission in circumstances where the Tribunal Member himself did not invoke that dictum and where he stated that he had "regard" to country of origin information, albeit he did not, in the course of the Decision, allude to the nature of that regard or express a view as to the weight he afforded the information."*

Submissions on behalf of counsel for the respondent

50. Counsel on behalf of the respondent, Denise Brett S.C., premised her submissions by the reassertion of the well established principle that a decision must be read as whole. It is essential that the principle ground relied upon by the applicant, namely, that "the Tribunal erred in law and in fact in finding that 'there was no evidence to suggest that this one man [the applicant's father] wants to persecute the applicant", is seen not only in it's complete sentence but also in the context the paragraph and the decision as whole. Counsel submits that a limited reliance was placed on an extract of the Tribunal member's decision. This extract is found at para, 43(a) herein.

51. In relation to the infant applicant's father, "P.I.", the respondents submit that, both directly and when properly viewed in its context, the Tribunal member's conclusions in respect of him are correct, having been premised upon the evidence available to the Tribunal. Accordingly, the conclusions are legally valid. In particular, such conclusions were contextualised following the previous paragraphs which stated that, "There is no evidence before the Tribunal, to suggest that "P.I." lives in Nigeria. In fact, all the evidence points towards the fact that he lives in Ireland. There have been Court cases here and that the applicant's mother met him at some of these hearings".

52. In assessing whether or not the infant applicant might face persecution if returned to Nigeria, the conclusion of the Tribunal that she is unlikely to face such persecution from her father in Nigeria was well founded, rational in law and accords with common sense in light of the evidence of the first named respondent, particularly as the evidence pointed to "P.I." being in Ireland not Nigeria. The respondents submit that the applicant's claim herein falls on this principle ground.

53. Insofar as the applicant seeks to rely upon answers given by her mother, "F.J." in either the ASY 1 Form, questionnaire or the section 11 interview before the Commissioner as evidence to contradict the conclusions of the Tribunal member, the applicant ignores the fact that such issues were addressed, firstly in the section 13 report and thereafter by the Tribunal at appellate level.

54. It is submitted that the Tribunal member, in considering the issue of state protection consulted reputable country of origin information, such as, the British and Danish Fact Finding Mission, Reports on Human Rights Issues in Nigeria (discussed above), before concluding that the infant applicant would have access to the protection of the Nigerian State authorities (the NPF) if she was genuinely in fear of her father and his family. The approach of the Tribunal member towards, and the assessment of state protection

were made appropriately, within jurisdiction and in accordance with law.

55. Ms. Brett S.C., contends that the statements made by "F.J" relating to "P.I." amount to nothing more than speculative mere assertions. The account given by her to the Commissioner does not amount to evidence and that she further failed to furnish any corroborative support for her assertions. In the circumstances, the respondents submit the statement of the Tribunal member that "F.J." failed to proffer evidence to suggest "P.I." wanted to persecute their daughter in Nigeria or that there was an absence of state protection is both factually correct and a reasonable inference to be drawn in circumstances where the independent evidence available (including court cases in this jurisdiction, correspondence exhibited indicating the applicant's father has been residing in the State and country of origin information regarding state protection) pointed directly to the contrary. In addition, these assertions were made by "F.J.", for whom credibility issues arose in the course of her own appeal hearing in 2008.

56. In relation to internal relocation the respondents submit that the Tribunal member addressed herself to the correct issues relevant to internal relocation and in particular, identified the successful past attempts at relocation previously made by the applicant's mother, "F.J.". In the circumstances, such conclusions are properly made, well founded and in accordance with fair procedures.

Decision and Discussion
57. The basic definition of a refugee is contained in Article 1 of the UN Convention Relating to the Status of Refugees, 1951, as amended by the 1967 Protocol, as follows:

> *"…owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."*

58. Counsel for the applicant rightly says that as the applicant is a child the first named respondent was under a heightened duty of care to consider best interests of the child.

59. The first named respondent identified that the applicant's case rests wholly on that of her mother's. Her mother's case was based on two grounds, one of which fell. However it is noted by the Court that the father's name on the birth certificate is that of "P.I.". It is also noted that he lost his job at the Embassy as a result of the actions of the applicant's mother in contacting the Embassy.

60. The first named respondent stated that there was no evidence to suggest that the father lives in Nigeria and that, in fact, all the evidence points towards the fact that he lived in Ireland. He had been at court cases here in relation to maintenance and guardianship and the applicant's mother had met him at some of these hearings.

61. Whilst the applicant relies upon grounds in effect that the decision of the Tribunal is not rational, this Court is of the view that the Tribunal quite clearly identified the evidence that there was no evidence before the Tribunal to suggest that the father lived in Nigeria. There seems to be some evidence to suggest that he had some interest in the applicant at some stage and sought guardianship which was subsequently taken away by the actions of his friends that the relationship between the applicant's mother and father was difficult but in this Court's view could not amount to persecution.

State Protection
62. The first named respondent identified that the applicant's mother had not provided any evidence to the Tribunal to show that she and her daughter would be unable to access adequate state protection and quoted from country of origin information of a British and Danish fact finding mission. She stated that there was no clear evidence of a lack of adequate state protection.

63. Counsel for the applicant cited the 2006 Regulations and pointed to section 5 which requires a protection decision maker to take into account, *inter alia*, "all relevant facts as they relate to the country of origin." In this Court's view, the first named respondent did take into account the relevant facts which were established before the first named respondent together with the country of origin information.

Internal relocation
64. As there was no decision on credibility, it was appropriate for the first named respondent to consider the question of internal relocation. Counsel on behalf of the applicant referred to the decision of Clarke J. in *K.D. (Nigeria) v. Refugee Appeals Tribunal* [2013] IEHC 481. And in that regard, Clarke J. states:

> *"Internal relocation has no logical part to play in a decision if no well-founded fear of persecution is accepted or if it is found that the persecution feared has no Convention nexus."*

This is such a case, and it seems in those circumstances that, as identified by MacEochaidh J. in *E.I. (a minor) v. anor v Minister for Justice Equality & Law Reform & Anor*. [2014] IEHC 27. MacEochaidh J. stated:

> *"12. It seems to me that the critical standard by which I should review this internal relocation decision is that mentioned above at number (5) by Clark J. I must enquire as to whether two questions were asked. These questions are:*
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> *(i) Is there a risk of persecution / serious harm in the proposed area of relocation? If not,*
>
> *(ii) would it be reasonable to expect the Applicant to stay in that place?*

65. It appears to this Court that the first named respondent, in identifying the fact that internal relocation in Nigeria was readily available to the applicant and her mother it appears that this is a reasonable decision and one which this Court could not find fault in so identifying.

Summary
66. The first named respondent found that:

> i. The evidence before the Court failed to establish a well-founded fear of being persecuted in Nigeria.
>
> ii. The first named respondent, quoting country of origin information, stated that there was no clear and compelling evidence of lack of adequate state protection.

iii. The possibility of internal relocation was open to the mother of the applicant and the minor applicant. This Court accepts the proposition of the respondents that a decision must be read as a whole, and in those circumstances this Court is of the view that the applicant's claim must fail.

67. As this is a telescoped hearing the Court will refuse leave to apply for refugee status and will dismiss the application for *certiorari*.

Counsel for the Minor Applicant: Michael Conlon S.C. with Garry O'Halloran B.L. instructed by Trayers & Company Solicitors

Counsel for the Respondent: Denise Brett S.C., instructed by the Chief State Solicitor