

THE HIGH COURT**JUDICIAL REVIEW****Record No. 2008 / 1412 J.R.****Between:/****S. I. A. (SUDAN)****APPLICANT****-AND-****THE REFUGEE APPEALS TRIBUNAL (OLIVE BRENNAN), THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM, ATTORNEY GENERAL, IRELAND AND THE HUMAN RIGHTS COMMISSION****RESPONDENTS****JUDGMENT OF MS JUSTICE M. H. CLARK, delivered on the 4th day of October 2012.**

1. The applicant who claims to be from the Darfur region of Sudan seeks leave to apply for judicial review of the decision of the Refugee Appeals Tribunal dated 30th October 2008 which upheld the negative recommendation made by the Refugee Applications Commissioner in relation to her asylum claim. The hearing took place on 19th July 2012. Mr Mark de Blacam SC with Mr Garry O'Halloran BL appeared for the applicant. Mr David Conlan Smyth BL appeared for the respondents. As the case centres on the applicant's credibility it is first necessary to outline her claim.

The Asylum Application

2. The persecution of the non-Arab tribes of Darfur by the Janjaweed militia supported by the Khartoum government is beyond question. The issue in this applicant's case was whether she is of Birqid ethnicity. In brief outline, the applicant applied for asylum at the office of the Refugee Applications Commissioner in August 2007 on the basis of her membership of the Bergud/Birqid¹ tribe of Western Darfur. She claimed persecution at the hands of the Janjaweed who, she said, attacked her village and killed her mother. She had no documentation of any kind.

3. The information she furnished in support of her claim was that she was an only child born in 1984,² had never been to school and was illiterate. She said she grew up in the village of Sirba and her only occupation was helping her mother at home. She claimed that her mother was killed in an attack on her village on 11th November 2006 when their house was burned and she herself suffered burn injuries to her legs. That attack on the village of Sirba is well reported but the applicant was unable to furnish any specific details of the event. She says she escaped with others in a lorry to El Geneina but was unable to even hazard a guess as to the distance between Sirba and El Geneina. Although her description of the town/village of Sirba and its surrounding villages was given with a degree of fluidity, it did not inspire confidence of personal knowledge of detail.

4. Following her flight from Sirba, she says she stayed with her uncle's family until forced to leave by the threats of the security forces who were seeking out her uncle, who was a political activist. Her uncle did not live with his family during any of the time she claimed to live with them. She herself had no political affiliations or knowledge of any such political organisations. The security forces found their new address after two months and started attending there in search of her uncle. When they were unable to find him they assaulted members of the family including the applicant and threatened to kill the applicant and her aunt. Her uncle's friend then told them to prepare to travel to Port Sudan.

5. The family set off in a lorry from El Geneina to Port Sudan. Her uncle was waiting for them at Port Sudan. She expected that the family would leave together but she found herself alone in the ship at Port Sudan. Her travel was arranged by her uncle and a trafficker. She knew nothing of the arrangements and was provided with no documents. She changed to a cargo ship at an unknown place and a second trafficker then travelled with her. She didn't know how long she had been travelling, maybe less than one month.

6. The applicant's credibility was found wanting by the Commissioner because of her lack of knowledge of the Birqid tribe. It was not accepted that she was from that tribe and it was concluded, quite oddly, that she had not therefore demonstrated a Convention nexus.

7. In her Notice of Appeal it was submitted that regardless of her lack knowledge of the Birqid tribe, the Commissioner apparently accepted by her knowledge of the area that the applicant is from the area of Sirba and failed to consider any of the information which she gave about the area where she lived and the attacks on her village. It was argued that the interviewer failed to ask sufficient questions to clarify the issues subsequently raised. The Commissioner's conclusion that the applicant did not present as knowledgeable was argued to be derived from conjecture and speculation and it was argued that there had been a failure to consider the lack of education and opportunity for women in Darfur. Country of origin information (COI) was furnished including a UNHCR Position Paper on Sudanese Asylum Seekers from Darfur, dated February 2006. Previous RAT decisions were also furnished.

8. The applicant was represented by counsel at the oral appeal hearing and she had the assistance of an interpreter from Arabic to English. In her decision dated 30th October 2008, the Tribunal Member approached her analysis of the claim from the basis of the credibility and coherence of the account given by the applicant. She accepted that the situation in Sudan is "*indeed dire*" and is of great concern to the international community. She identified the core claim as having two strands; first, she claimed to fear persecution at the hands of the government and Janjaweed based on her ethnicity and secondly, because of her uncle's political affiliations, she was at further risk of persecution.

9. The Tribunal Member summarised the applicant's claim, including the attack on her village in November 2006 which she found was "*well documented*". She then made a considerable number of credibility findings based very largely on the applicant's complete inability to furnish any great detail of the attack or any details on distance, dates and length of time spent in travelling between Sirba

and El Geneina and El Geneina and Port Sudan. The Tribunal Member described that when the applicant had been pressed on the details of the trip on the lorry, the description given of the responses was that she basically “*did not have a clue*”. The Tribunal Member quite clearly rejected the facts provided by the applicant on the basis of her unwillingness to expand on the facts of her claim.

10. Quite apart from the travel details, the Tribunal Member had difficulty with the applicant’s description of the behaviour of the security forces when they allegedly sought out her uncle. She found the applicant’s account of those forces leaving the family alone between return visits to two different places highly improbable and implausible when set against what is known of the security forces’ brutal behaviour towards opposition supporters. She also found it implausible and unreasonable that the applicant’s uncle would have prioritised the applicant’s safety over the safety of his own family and indeed himself, given that he was being targeted by government forces.

11. Having made those findings the Tribunal Member found that it would not seem unreasonable for the applicant to have relocated elsewhere in Sudan particularly to Port Sudan where she said that nothing happened to her. She concluded:

“Having listened to the testimony of the Applicant having observed her acutely throughout the hearing, the Applicant has not satisfied me that she has a well-founded fear of persecution on any Convention grounds.”

THE COURT’S ANALYSIS

12. The applicant requires a 9-day extension of time. Of more significance, the applicant purported to swear an affidavit grounding her claim in English although she claimed illiteracy and required an Arab translator at all stages of her asylum claim. No reference was contained within that affidavit of anyone translating its contents or reading it over to her and there was no affidavit from any translator in compliance with Order 40, rule 14 RSC. The respondents sought to have the application struck out in the light of that major deficiency. The Court ruled the affidavit inadmissible and heard the application *de bene esse* in order to determine whether the merits of the case were such that it would be unfair not to consider the application.

13. The applicant’s primary complaint is that the Tribunal decision is insufficiently clear as to what aspects of her claim were accepted and which parts were not accepted, or the precise reasons for the failure of her application. Certainly, the Court is in agreement with part of that assertion. The highly unusual structure of the latter part of the contested decision, which follows the Commissioner’s key credibility findings, renders that part of the decision ambiguous and illogical. It is however beyond argument that no part of her claim was found credible except that she was from Sudan. This case therefore differs from *M.A.M.A. v. Refugee Appeals Tribunal and Ors.* [2011] IEHC 147, a decision of Cooke J. delivered on the 8th April 2011, where the matter was remitted to the same Tribunal Member to consider whether the applicant was a member of the Berti ethnic group and from Northern Darfur and whether as such member he faced possible future persecution. It is not necessary to remit the matter for analogous purposes in this case as it can clearly be inferred from the decision that the Tribunal Member did not accept the applicant’s claimed Birgid ethnicity though she accepted her Sudanese nationality. The evidence provided by the applicant, limited as it often was, must be seen as emanating not from a terrorised child but from a fully adult woman in her mid twenties who, notwithstanding illiteracy and a sheltered background, was well able to say at every opportunity that the government forces and the Janjaweed were the cause of her claim. While her reticence or inability to expand on her claim at the s. 11 interview might be partially explained by her being in a strange environment, her failure or refusal to provide any detail at her appeal hearing which took place nine months later, at a time when both she and her counsel were fully aware of the findings in the s. 13 (1) report, cannot be similarly explained away.

14. It is well established that it is for each applicant to supply all pertinent information concerning herself and her past experience in as much detail as is necessary to enable the examiner to establish the relevant facts (see UNHCR Handbook, at § 205). The threshold is not high. Could the story have happened, in the light of what we know to be objectively true about Sudan? If so, is it credible that it happened to the applicant as she describes it? The non-Arab tribes of Western Darfur are indeed persecuted. Was the applicant of the same ethnicity as those Darfuris who are targeted by the government of Sudan because of their support of independence movements? The applicant was given every opportunity to present her case and to even minimally enhance and explain her bare assertions by answering questions about herself and her own experiences to the examining officer for the Commissioner and then with the assistance of counsel to the Tribunal. She simply failed to provide coherent or plausible answers to very basic elements of her claim.

15. The applicant’s asserted illiteracy and lack of education and experience outside the home does not explain her inability to provide basic estimates of time and distance. Her story of how she came to leave Darfur involved a lorry journey from El Geneina, the most western part of Sudan, to Port Sudan on the Red Sea in the north eastern part of the country. Her claim is remarkable in the extreme for its lack of any detail notwithstanding considerable probing. The Tribunal’s frustration at the applicant’s failure to help her own case is understandable. The journey claimed is about 1700 kilometres and considerably greater than the distance between London and Rome. In addition, Sudan is a country with a war /conflict being conducted in the west, the south and the east and although oil rich, it is not a first world country. The journey through arid lands must have been fraught with danger and discomfort and have taken several days at least. It is not inconceivable that much cause for discussion and detail would have been presented by road blocks and security checks and overnight stops for rest and food. Those travelling might, perhaps, have passed in the vicinity of Khartoum or other large cities. She could have described where the travelling group of her aunt and cousins slept and ate on their long journey across the width of the largest country in Africa. She could have provided details on how the women in an Islamic country travelled with a male driver who was not related to them and whose identity was unknown to her. She provided no detail as to whether they had to carry petrol / diesel with them; how long they were in Port Sudan before her uncle appeared; whether she was in a cabin or on deck in the boat or whether she was hidden away; how she transferred to the cargo ship etc. Her answers seemed to be she did not know or did not remember; she simply volunteered no details of the journey.

16. The Court cannot ignore that the applicant had the primary burden of establishing her claim at the appeal stage. Some minimal information was required to establish the credibility of her claim even if it was confined to supplying information of the journey from Sirba to El Geneina and as to how she travelled the huge distance to Port Sudan and then to Ireland. The Tribunal findings that “*The Applicant basically did not have a clue*”; “*was unable to give any or any great detail*”; “*was unable to state*”; “*could not tell the Tribunal*”; “*cannot recall*”; “*scant to say the least*”; “*absolutely no knowledge regarding distances and places*”; “*was unable to assist the Tribunal*”; “*highly improbable and implausible*” and “*highly implausible and unreasonable*” only admit of negative credibility finding and raise the question of how someone so lacking in memory, information and knowledge in relation to her life experiences in Sudan had the wherewithal to make her way from there to Ireland and then to apply for asylum. The only logical inference is that her story was not true and therefore the claim could only be told in broad brushstrokes devoid of any detail.

17. While the Court is satisfied that the decision on credibility cannot be impugned, the Court is critical of the inconsistency in the later finding that the applicant could internally relocate in the Port Sudan area. Why would a person who was not accepted to have a

well-founded fear of persecution by reason of her ethnicity need to relocate elsewhere in Sudan, such as to Port Sudan?

18. The experience of the Court is that there is a tendency among protection decision makers to consider the availability of internal relocation even when the applicant's narrative is found implausible. In general, such abundance of caution, which emanates from the ECs (*Eligibility for Protection*) Regulations 2006 (S.I. No. 518 of 2006) and Regulation 7(1) thereof, only works if the decision maker also adds words to the effect "*Even if I am wrong about my assessment and what the applicant says could be true, then moving to another area to escape her persecutors would be an option rather than seeking international protection*" or "*even if I had not made adverse credibility findings and I accepted all that she says ...*" Without words to that effect, the exercise is illogical in a claim which has been rejected on credibility grounds. No such qualifying words were used in this case.

19. If the offending paragraph relating to internal relocation is considered in the light of the decision as a whole, it can readily be understood as one which should have contained a qualification such as mentioned above. However it did not, nor did the paragraph on the possibility of internal relocation comply with Regulation 7(2) of the 2006 Regulations which requires a consideration of general conditions prevailing in that part of the country and of the personal circumstances of the applicant.

20. When the Tribunal Member was coming to her decision in this case, the Protection Regulations had been in force for more than two years. The terms of Regulation 7 should have been well known to her. In the view of this Court, internal relocation has no logical part to play in a decision on protection if the claim is rejected on credibility grounds. If however, the decision maker wishes to go on to consider the option of internal relocation as an additional or alternative ground for refusing protection, then the decision maker must consult information on the relocation area identified and on the personal circumstances of the applicant. In the absence of such information, the availability of internal protection cannot properly be considered. Moreover, the Court considers that it is very doubtful that reliance on the factual conclusions drawn in judicial decisions relating to other applicants in other jurisdictions, such as in the *Secretary of State v. A.H. (Sudan)* [2007] 3 W.L.R. 832, would suffice as a basis of such personal assessment as is required under Regulation 7(2) of the Protection Regulations.

21. Nonetheless, in view of the extensive negative credibility findings made by the Tribunal Member in this case and in the light of the applicant's failure to comply with the rules which pertain to illiterate deponents under Order 40, rule 14 RSC, and further bearing in mind the extension of time required, the Court deems it appropriate to sever the reference to internal relocation in Port Sudan which was an ill-considered afterthought. The Court will therefore refuse the application for leave. However, the Court deems it appropriate to allow the applicant some costs in view of the legitimate ground for complaint that the Tribunal Member's reference to internal relocation clouded the reasons for rejection of the applicant's asylum claim.

¹Both spellings seem to be acceptable and in use.

²Or 1982 as stated on another occasion