This judgment is circulated in redacted form to avoid identification of the parties

Neutral Citation Number: [2007] IEHC 168

THE HIGH COURT
JUDICIAL REVIEW

[2005 No. 1123 JR]

BETWEEN

T. R. T.

APPLICANT

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

RESPONDENTS

AND
HUMAN RIGHTS COMMISSION

NOTICE PARTY

Judgment by Ms. Justice Dunne delivered on the 4th day of May 2007

Factual Background
1. The applicant herein was born in N. She states that she fled N. in fear of persecution. She stated that she was her husband's sixth wife and bore him his first son I. She said that her husband had been a member of a secret sect. Following the death of her husband, the sect wished to induct her son into the sect and she did not permit this and was threatened and assaulted as a result. She also faced threats from the other wives and children of her late husband, as her son would inherit his father's property. Her son ultimately came to Ireland in 1998 having left N. to escape persecution from the sect and his father's extended family. His application for asylum was rejected and he was deported back to N. He left N. again and went to G. He was also deported back to N. from G. Following his deportation from G. he died apparently in hospital as a result of malaria with other complications. After his death she stated that, sect members demanded his body and she refused to indicate where her son was buried. She was threatened in this regard and she states that she then fled N. She came to Ireland where her daughter resides with her husband and five children. She now resides with them. She states that she would have no protection from persecution in N. The applicant arrived in this jurisdiction on 14th September 2004.

Chronology
2. It would be useful at this point to set out the chronology of events in respect of the applicant.

14th September 2004	Arrived in Ireland. Claimed asylum. Informed that her application would be prioritised.
24th September 2004	Questionnaire completed.
13th October 2004	Interview.
19th October 2004	Section 13 report completed on behalf of the Refugee Applications Commissioner.
23rd October 2004	Applicant received notification that the Refugee Applications Commissioner was recommending that she should not be declared to be a refugee.
27th October 2004	Notice of appeal dated 26th October 2004 was submitted to the Refugee Appeals Tribunal.
10th November 2004	Decision of Tribunal made.
28th November 2004	The applicant received notification of the decision of the Tribunal.
10th December 2004	The first named respondent indicated his refusal to make a declaration of refugee status and that he intended to make a deportation order. Submissions were sought for leave to remain.
22nd December 2004	Submissions made on behalf of the applicant.
6th September 2005	Deportation order made.
25th September 2005	Applicant received notification of making of deportation order.
10th October 2005	Notice of motion issued seeking leave to apply for judicial review in respect of the decisions of the second named respondent and the third named respondent and the first named respondent.

3. It will be immediately apparent that two issues called to be considered at the outset. The first of these issues is the entitlement to challenge the decisions of the Refugee Applications Commissioner and the Refugee Appeals Tribunal. The second issue that arises is the need to apply for an extension of time to challenge the decisions of the Refugee Applications Commissioner and the Refugee Appeals Tribunal. In the case of the former an extension of time of almost of twelve months is required and in the case of the Refugee Appeals Tribunal, the extension of time required is in the order of eleven months approximately. It is also the case that a short extension of time is required for the challenge in relation to the decision of the first named respondent herein. However it is not necessary for me to consider that question at this point in time as it was clear that, if the applicant was granted leave to apply for judicial review in respect of the decisions of the Refugee Applications Commissioner and the Refugee Appeals Tribunal, it would not be necessary to consider the decision of the Minister at this stage.

4. The right to challenge the decision of the second named respondent and the third named respondent.

5. An issue that has to be considered in relation of this case is the question as to whether the decision of the second named respondent has merged into the decision of the third named respondent, thus precluding the applicant from seeking judicial review of

that decision. On this issue, reliance was placed by counsel on behalf of the applicant on the decision of the High Court in the case of *Adan v. Refugee Applications Commissioner and the Refugee Appeals Tribunal* (Unreported, Finlay Geoghegan J., 23rd February 2007). Counsel for the respondents also placed reliance on that decision. In the course of her decision in that case, Finlay Geoghegan J. considered at length the issue of "merger". In other words to what extent does a decision of the Refugee Appeals Tribunal oust, supplant or replace the decision of the Office of Refugee Applications Commissioner such that the decision of the Office of Refugee Applications Commissioner is no longer amenable to judicial review. In the course of her judgment Finlay Geoghegan J. considered the decisions in the cases of *Savin v. The Minister for Justice, Equality and Law Reform and Others,* (Unreported, High Court, Smyth J., 7th May 2002), *G.K. v. The Minister for Justice* [2002] 2 I.R. 418, Judgment of Hardiman J., *Okungbowa v. Refugee Appeals Tribunal and Others* (Unreported, High Court, MacMenamin J.), *Croitroriu v. Refugee Appeals Tribunal and Others* (Unreported, High Court, MacMenamin J., 21st June 2005), and *Rusu v. Refugee Applications Commissioner and Others* (Unreported, High Court, Hanna J. 26th May 2006). She then concluded as follows at p. 23 of her judgment:-

> Having carefully considered each of the above High Court decisions I have concluded on the facts of this application that notwithstanding the decision of the Tribunal there remains an extant decision of the Commissioner which as a matter of law could be the subject of an order of *certiorari*. My reasons for so concluding are as follows.
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> Section 13(1) of the Act of 1996 envisages that where the Commissioner carries out an investigation under s. 11, she will then prepare a report in writing and prescribes that the report shall refer to certain matters and also 'shall set out the findings of the Commissioner together with his or her recommendation whether the applicant concerned should or, as the case may be, should not be declared to be a refugee'. The recommendation of the Commissioner is based upon the findings set out in the report. The recommendation is an integral and necessary part of the report of the Commissioner under section 13(1). It is not a decision which in the statutory scheme exists independently of the report of the Commissioner.
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> Further, as a matter of commonsense, on the facts of this application it cannot be suggested that the decision of the Commissioner which is sought to be challenged is confined to the recommendation, included in the report and that the applicant is not seeking to challenge the balance of the report issued by the Commissioner under section 13."

6. She then went on to consider in some detail the decisions in the case of *Stefan v. The Minister for Justice* [2001] 4 I.R. 205, *The State (Roche) v. Delap* [1980] I.R. 170, *McGoldrick v. An Bord Pleanála* [1997] 1 I.R. 497 and *Buckley v. Kirby* [2000] Vol. 3 I.R. 431. She noted that a number of those decisions involved cases where the applicant had appealed a decision of a lower court or tribunal whilst also proceeding by way of judicial review. It was noted that a number of those decisions concerned circumstances where the appeal had not been completed. She then went on to note at p. 31 of her judgment as follows:-

> "Considering the three Supreme Court judgments *The State (Roche) v. Delap, Buckley v. Kirby and Stefan v. The Minister for Justice*, it does not appear to me that where there is both an application for *certiorari* and an appeal that the determination of the appeal automatically precludes the Court from considering or granting an application for *certiorari*. Whilst Henchy J. in *The State (Roche) v. Delap* uses the phrase 'it was not within the competence of the High Court…' as Geoghegan J. points out the basis of Henchy J.'s reasoning was that the defect in the District Court order could have been corrected by the Circuit Court judge on appeal. In *Stefan* Denham J. stated 'the stage of the alternative remedy may be relevant though it may not be determinative of the issue'. Rather, I have concluded in accordance with those three decisions of the Supreme Court and the principles expressed by Barron J. in *McGoldrick v. An Bord Pleanála* [1997] 1 I.R. 497, approved of in two of those decisions that the High Court retains a jurisdiction to consider and determine an application for judicial review notwithstanding the determination of the related appeal.
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> However in accordance with those decisions the normal position must be that where an appeal is determined an applicant has gone too far and the High Court will not subsequently interfere with the first instance decision by way of judicial review. Whilst the court retains a discretion to do so it should only exercise its discretion to grant *certiorari* of a decision which has been the subject of a decided appeal where there exist special circumstances which make such late interference necessary to do justice for the parties. Such an approach by way of exception appears required by the principles set out above when considered in the context of the purpose of judicial review and distinction from an appeal process. It also appears consistent with the policy of the courts in relation to the non-duplication of procedures and proceedings.
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> It is not appropriate to try and set out exhaustively what might constitute special circumstances which would warrant late interference by the High Court. It will depend on the facts of each application. Relevant considerations may include the nature of the grounds asserted in support of *certiorari*; whether they could be considered on appeal; when the applicant became aware of such grounds; whether the applicant was prevented from bringing the application for leave to apply for judicial review prior to determination of the appeal; whether the applicant acquiesced in or permitted the determination of the appeal; any relevant statutory scheme; the time which elapsed prior to determination of appeal and fairness of appeal procedure."

7. It is clear from the decision of Finlay Geoghegan J. that as she stated the normal position must be that where an appeal is determined an applicant has gone too far and the High Court will not interfere with the first instance decision by way of judicial review.

> 2. The court retains a discretion to grant judicial review of a first instance decision where an appeal is determined, but the discretion to grant judicial review appeal, should only be exercised where there exist special circumstances such that the grant of judicial review at such a late stage is necessary to do justice for the parties.
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> 3. Such special circumstances will depend on the fact of each application.

8. As highlighted by Finlay Geoghegan J. the issue that has to be determined is whether the applicant has established that such special circumstances exist, such that the court should grant leave.

Special circumstances

9. Accordingly I propose to consider the relevant considerations that were urged on me in the course of argument in this case as amounting to such special circumstances. As Finlay Geoghegan J. pointed out the nature of the grounds relied on in support of the application may be relevant. The nature of the grounds is also relevant in the context of an application to extend time to challenge the decisions. Accordingly I will deal with the nature of the grounds when I come to consider the issue of the extension of time.

10. The special circumstances relied on to argue that the applicant herein is entitled to challenge both the decision of the second named respondent and the third named respondent were stated to be (a) the applicant's diagnosis of depression, (b) her history of trauma and (c) her age, such that it was submitted it could not be said that she knowingly or willingly acquiesced in the determination of the appeal by the Tribunal. Reliance was also placed on the time that elapsed between notification of the Commissioners decision and the determination of the appeal, some seventeen days. The final point relied on by the applicant was that the third named respondent did not rely on significant findings of the second named respondent but notwithstanding, affirmed the second named respondent's recommendation to refuse the applicant a declaration of refugee status.

11. As stated above, one of the issues relied on is the diagnosis of depression and the applicant's history of trauma coupled with her age. Dealing with that aspect of the matter, reliance is placed by the applicant on a letter written by a Dr. Conor McNeice dated 20th December 2004. In it, it was stated that the applicant had been a patient of the practice since October 2004. It was noted as follows:-

> "She has been depressed and grieving following the death of her son in N. earlier this year – the cause of this loss is not clear. She has sleep disturbance, anergia, anhedomia and impaired cognition, all symptoms of depressive illness. She depends, I would have thought greatly on the support of her daughter with whom she presently lives. …"

12. It is not entirely surprising that there would be a diagnosis of depression in the circumstances of the death of the applicant's son. The question is whether her depressive illness would have impaired her ability to participate in and acquiesce in the determination of the appeal by the Tribunal. Following the decision of the second named respondent, she had the benefit of legal advice from experienced solicitors who in addition to the grounds set out in the notice of appeal addressed to the Refugee Appeals Tribunal furnished further grounds by a letter dated 27th October 2004. It is noteworthy that in those further grounds it was stated:-

> "The applicant is suffering from considerable memory loss which may be attributable to certain degenerative neural diseases such as Alzheimer's disease. We have been instructed that such appellant is attending her General Practitioner and we await a medical report in support of such."

13. Apart from the doctor's letter dated 20th December 2004 setting out details of here depression and its symptoms, to which reference has just been made, there is nothing that indicates that the applicant suffers from Alzheimer's disease or any such degenerative disease which impaired her ability to instruct her solicitors or to deal with the appeal before the third named respondent and it is worth noting that the letter from her doctor does not go as far as was suggested in the "Further Grounds". It should be noted that in dealing with this point, counsel for the respondents referred to another document relied on by the applicant herein which is undated but which accompanied submissions to the first named respondent following the decision of the third named respondent. The letter was from the North Presentation Primary School and was signed by the principal and a number of class teachers. It noted as follows:-

> "O., K. and S. A. are pupils in our junior infants, first and second class. They have been pupils of the school for the last two years and their mother B.A. is well known to us. For the past month or so T. R. T., B.A.'s mother has been looking after the children as B. is pregnant and is ill. Mrs. T. brings and collects the children from school. She has attended parent teacher meetings. There appears to be nobody else in a position to look after the children. It is our opinion that the family would not be able to manage without their grandmother, during their mother's illness. We sincerely hope that her case will be dealt with in the best spirit possible and with the interests of these children foremost."

14. That letter appears to be at odds with the image of a person who is unable to acquiesce in or participate in the determination of here appeal by reason of illness, whatever its nature.

15. In the absence of any clear evidence before this court as to the applicant's medical circumstances, it seems to me to be impossible to reach the conclusion that the applicant did not knowingly or willingly acquiesce in the determination of the appeal by the Tribunal. It does not seem to me that an inference can be drawn by the court from either the letter of Dr. McNeice or the point raised in the further grounds contained in the letter of her solicitor dated 27th October 2004, to the third named respondent such that the applicant was not in a position to "knowingly or willingly" acquiesce in the determination of the appeal.

15. The only other point to note in this regard is the averments contained in the affidavit of the applicant herein at paras. 7 and 9 in which she refers to her state of mind which she stated had been greatly affected since the death of her son "and which affects my ability to remember times and dates". She further referred to her poor psychological state at para. 9 of the said affidavit. I should note that in the decisions of the second named respondent and the third named respondent, reference was made is made to the fact that the Applicant's story being incoherent. Nonetheless, as indicated above, in my view the evidence before this court simply does not go far enough in establishing that the applicant herein suffered from any mental illness or disability such that her ability to deal with her appeal to the third named respondent herein was impaired.

16. Finally, her history of trauma and her age were relied on to argue that her ability to deal with her appeal to the third named respondent herein was impaired. I cannot see anything in the evidence before me to support that contention.

17. The second point relied on related to the period of time between the decision of the second named respondent and that of the third named respondent. Undoubtedly the time scale involved was short. Nonetheless it is clear that the applicant was represented before the third named respondent, the notice of appeal was drafted with the aid of legal advice and detailed further grounds as set out in the letter dated 27th October 2004, were furnished on behalf of the applicant. There is no evidence before me to suggest that the applicant was unable to deal with any matters because of the time scale involved.

18. The next issue that I should consider is the nature of the grounds upon which *certiorari* of the second named respondent's decision is sought and whether those grounds could have been considered on appeal and the related issue as to when the applicant became aware of such grounds and whether the applicant was in some way precluded from making an application for leave to apply for judicial review prior to the determination of the appeal. Before looking at the grounds in detail, it is worth noting that this is a case in which it was found that the applicant showed either no basis or a minimal basis for the contention that she is a refugee. Accordingly that meant that any appeal to the third named respondent was an appeal on papers only. Given that that was the case, one would have thought that the question of the availability of judicial review, would have been considered at that stage. However, no application for judicial review was brought. In her affidavit, the applicant stated:-

> "I say I was not informed of an entitlement to challenge the decisions of the Commissioner and/or Tribunal. I say my financial resources were such as to impair my ability to attain legal advice with a view to challenging the decisions of the first and/or second named respondent. I say that legal advice following receipt of the herein deportation order was

sought. The services of Sean Mulvihil and Company, Solicitors, were engaged. Counsel's opinion was sought at once and on receipt, instructions were given to draft the within proceedings. I say it was always my intention to challenge the impugned decisions if possible."

19. Bearing in mind that the applicant was fully represented at the time of preparing the notice of appeal and before the third named respondent it is somewhat difficult to understand the comments made by the applicant in relation to her financial resources.

20. Apart altogether from the issue of the financial resources of the applicant it is necessary to consider the grounds relied on by the applicant in relation to the second named respondent. There are some general grounds which are relied on in respect of both the second and third named respondent, but in relation to the second named respondent the grounds are as follows:-

> "3. The failure of the second named respondent to have any proper regard to the evidence was in breach of fair procedures. The finding that the deceased son of the applicant had no fear of persecution on the basis that he twice returned to N. failed to have any regard to the fact that he was deported there on each occasion and further failed to have regard to the fact that he was dead three weeks following his second deportation to N.. Further, the inference drawn from the aforesaid perceived lack of fear of persecution on the part of the applicant's son was used to undermine the credibility of the applicant.
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> 4. The procedures and consideration applied by the respondents to the applicant's case are not capable of a perception of objective fairness and/or free of the perception of capriciousness. Further the respondents further erred in law in failing to apply the appropriate standard of proof and/or have any proper regard to the evidence adduced. Further the failure to allow the applicant time to locate and produce identity documents in circumstances where the failure to furnish same was central to the decision to deny the applicant an oral appeal.
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> 16. The second named respondent failed to apply to the applicant a policy that had been applied to other persons in like positions. The said failure is such a misuse of governmental power as to entitle this Honourable Court to grant the applicant indefinite or limited leave to remain in the State."

21. In the formal notice of appeal to the third named respondent the grounds relied on by the applicant were that the second named respondent had erred in fact and in law "as the applicant has established a case as such as to qualify her for refugee status as defined in s. 2 of the Refugee Act as Amended (1996)."

22. In the "Further Grounds" relied on, a number of further matters were set out. They are as follows:

> The appellant was the last of wife of her late husband with whom amongst other children she had one boy named I. T. She was told that this child would need to be submitted to an initiation ceremony in a local cult and that she did not have any authority to prevent this taking place. Her son came to Ireland to seek asylum. However he was refused at first instance and upon appeal.
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> My client is convinced that her son's return to N. and his subsequent death was caused by the influence of parties who wished him to undergo this particular initiation ceremony.
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> The applicant is suffering from considerable memory loss which may be attributable to certain degenerative neural diseases, such as Alzheimer's disease. We have been instructed that such appellant is attending her General Practitioner and we await a medical report in support of such.
>
> My client instructs me that the police in N. consider her difficulties to be family issues and they would not investigate or intervene. Further the police in her particular area were under the influence of those parties who intended to harm her and her son.
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> The client did attend (sic) to internally relocate in N., however this was not successful and she ultimately travelled to Ireland where she claimed asylum.
>
> The client did not have a passport when she presented to the Office of Refugee Applications Commissioner. This was because the passport or papers which were used by her were retained by the agent upon her arrival in Ireland. This is a standard practice amongst agents and we believe that the appellant should not be held responsible for such shortcomings. Further it should be noted that the applicant has not ever previously travelled outside her own country and therefore she would not be familiar with the requirements of immigration officers at international borders. The Refugee Appeals Commissioner incorrectly determined the appellant's application without having proper regard for the appellant's state of mind and personal circumstances."

23. It is clear from the above that comprehensive grounds were relied on by the applicant before the third named respondent.

24. Although it is not expressly set out in the Statement of Grounds herein, one of the issues complained of by the applicant was the reliance in the decision of the second named respondent upon files/papers relating to the asylum histories of the applicant's son and daughter and a country of origin report which were not disclosed to the applicant. It is clear from the report pursuant to s. 13(1) of the Refugee Act 1996, that the Commissioner in its decision relied on that material. That this was so, was readily apparent. To quote from the s. 13(1) Report it is noted:

> "The applicant claims that she was persecuted by her in-laws because of her son. She states that the secret cult wanted him and in the event that they could not access him then they would take her instead. The applicant's son I. T. came to Ireland in April 1998. He stated that his parents were both dead. He was claiming asylum because of his activities as P. of the L. P. S. He makes no mention of his father or any cult activities. [Appendix 1 – Assessment of I. T. to claim for refugee status – 69/2034/98] In light of the above information the veracity of the applicant's statements in relation to her son must be questioned."

25. This information was clearly available to the applicant when the notice of appeal from the decision of the second named respondent was submitted to the third named respondent. Admittedly, no point was made to the third named respondent in the Notice of Appeal or the "Further Grounds" furnished to the third named respondent on this issue. Nonetheless it is manifestly clear that the applicant could have raised this issue before the third named respondent. It is interesting to note that in the decision of the third named respondent the member of the Tribunal dealing with the applicant's appeal expressly disregarded the information contained in

that Appendix and two others referred to and of which complaint has now been made by the applicant. The Tribunal member noted:-

> " … I am totally disregarding the contents of Appendices 1, 2 and 3 which are susceptible to explanations which do not necessarily impugn the applicant's credibility."

26. The Applicant had submitted that another special circumstance was the displacement of significant findings of the second named respondent whilst affirming the decision of the second named respondent as referred to above. It is correct to say that the Tribunal member expressly excluded certain material from his considerations. However, he then considered the Applicant's story as a whole and came to a view on it. The fact that the Tribunal member properly decided not to consider certain material which was taken into account by the second named respondent in coming to its decision is not of itself such a special circumstance as to prevent the merger of the decision of the second named respondent into that of the third named respondent.

27. Having regard to all the circumstances and to the submissions I have heard and having considered the criteria set out in the decision in *Adan v. RAC and RAT* referred to above, I cannot see any basis for coming to the view that this court should interfere with the first instance decision by way of judicial review in circumstances where an appeal has been determined in respect of the first instance decision. I am not satisfied that there exist special circumstances as would permit this court to exercise its discretion to grant leave to apply for judicial review in respect of the decision of the second named respondent.

Decision of the third named respondent

28. Having reached that conclusion it is then necessary to consider whether or not the applicant has established the necessary grounds to be granted leave to apply for judicial review in respect of the decision of the third named respondent. In the course of submissions complaint was made as to the finding of the Tribunal on the basis that the Tribunal had rejected the substantial findings of the second named respondent based on the asylum history on the son and daughter of the applicant and then went on to affirm the recommendation of the second named respondent to refuse the applicant a declaration of refugee status, stating:-

> "As set out in her answer to question 21 of the questionnaire at pp. 10 to 19 of the interview report it is also very implausible and unconvincing, particularly in relation to the alleged involvement of members of a cult."

29. Based on that passage from the decision it is submitted that the applicant had no notice that such a matter would be a central basis of the rejection of her appeal and that she was afforded no opportunity to respond. It is submitted in that context that the applicant was denied fair procedures. Finally it was submitted that the Tribunal failed to consider or affirm the finding in the Commissioner's report that s. 13(6)(a) of the Refugee Act 1996, applied to the applicant. In support of this submission reliance was placed on the decision in the case of *Iroegbu v. Refugee Appeals Tribunal* (Unreported, High Court, Murphy J., 23rd January 2007) in which it was stated:-

> "The Tribunal should consider the substantial findings in the Commissioner's report before it affirms or sets aside a recommendation of the Commissioner."

30. In essence what was being argued by the applicant on this point was that the third named respondent affirmed the conclusion of the second named respondent but not the findings of the second named respondent. Having regard to the form of the decision furnished in this particular case, I cannot agree with that argument. In the course of his decision the member of the third named respondent dealing with this matter states:-

> "I consider that the recommendation of 19th October 2004, should be affirmed. I am required by s. 16(16a) of the Act to affirm that recommendation unless I am satisfied, having considered the matters referred to in subsection 16, that the applicant is a refugee. I am not so satisfied."

31. The member of the third named respondent then went on to give his reasons. The argument being made by the applicant was to a large extent that the Tribunal member was not entitled to affirm or set aside the decision of the second named respondent in circumstances where the Tribunal member came to different conclusions on some issues to the second named respondent. There is no doubt in this case that the tribunal member expressly disregarded certain matters, namely the contents of Appendices 1, 2 and 3 which were relied on by the second named respondent. Having done so the Tribunal member went on to come to a conclusion which is clearly set out in the course of the decision and it is on that basis that the decision was affirmed. The applicant further complains that she had no notice that the account given by her as to the alleged involvement of members of a cult would be a central basis for the rejection of her appeal is difficult to understand. Quite clearly that account was at the heart of the applicant's claim for asylum. In my view, the applicant has not established substantial grounds on this point. Indeed I am satisfied that none of the matters relied on by the applicant in regard to the Tribunal decision seem to me to demonstrate any or any substantial grounds for challenge.

Extension of time

32. If I am wrong in my view that the decision of the second named respondent cannot be challenged as the applicant failed to establish special circumstances which would permit the court to exercise its discretion in her favour and if I am incorrect in my view that the applicant herein has not established the necessary grounds to challenge the decision of the third named respondent, I would nonetheless have great difficulty in granting leave to apply for judicial review in this case because of the delay in making the application for judicial review. The question of an extension of time to challenge the decisions of the second and third named respondent was dealt with at some length in the submissions of counsel herein. It was submitted that the special circumstances relied on in relation to the question of entitlement to challenge the decisions of both the second and third named respondents were also of relevance to this issue, namely the applicant's diagnosis of depression, her history of trauma and her age. In this regard it is worth remembering that the applicant is approximately 56/57 years of age. I have already referred to the situation in relation to her health of which the only concrete information there is consists of the letter from her doctor in 2004. There is no evidence whatsoever before this court to suggest that by reason of her age or her state of health in respect of any depressive illness or any neurological deficit is such as to have prevented her from bringing an application sooner. As referred to previously, the applicant in para. 18 of her affidavit stated that she was not informed of the entitlement to challenge the decisions of the Commissioner and/or the Tribunal. In support of his submissions on this point, counsel on behalf of the applicant referred to two decisions, namely that of *Kelly v. The County Council of the County of Leitrim and An Bord Pleanála* (Unreported, High Court, Clarke J., 27th January 2005) in which Clarke J. noted the various factors to be considered prior to a decision as to whether or not to exercise a discretion to extend time. Whilst that was a case involving planning at p. 12, he noted:-

> "There can, therefore, be little doubt that a consideration as to whether there is an arguable case is a matter which the court is entitled, in asylum matters, to take into account in considering whether to extend time."

33. In reaching that conclusion, Clarke J. had referred to the decision of the Supreme Court in the case of *G.K. v. Minister for Justice,*

Equality and Law Reform [2002] I.L.R.M. 401 and he quoted from a passage of Hardiman J. (at p. 406 in which it had been stated as follows:-

> "On the hearing of an application such as this it is of course impossible to address the merits in the detail of which they would be addressed at a full hearing, if that takes place. But it is not in excess of burden to require the demonstration of an arguable case. In addition, of course, the question of the extent of the delay beyond the fourteen day period and the reasons if any for it must be addressed."

34. He also referred to a passage commencing at p. 16 of the judgment in *Kelly* to the following effect:-

> "Under the latter heading some regard must be had to the possibility (though on the evidence before me it is impossible to reach any conclusion) that part of the delay may be attributable to Mr. Kelly's legal advisors. In considering such a question in C.S. McGuinness J. seemed reluctant to attribute blame to the applicant in that case for delay attributable to her legal advisors. However in so doing she stated that she was bearing in mind the observations of Finnegan J. (as he then was) in this Court in the *G.K.* case where he held (at p. 87) that:-
>
> > 'In determining the extent to which an applicant should be held vicariously liable for the default of his solicitor it is important to bear in mind the serious consequences which could result from an application failing because of the delay ... where however an applicant is deported the consequences for him maybe very serious indeed in that he may be deported to a state in which his fundamental human rights would not be vindicated'.
>
> 35. It seems proper therefore to regard the question of the vicarious liability of an applicant for delay attributable to his or her advisors as being a factor which might loom less heavily in asylum type matters than it would in planning or public procurement matters."

36. Reliance was also placed on the decision in *Odunbaku v. Refugee Applications Commissioner, Refugee Appeals Tribunal and the Minister for Justice, Equality and Law Reform and Others* (Unreported, High Court, Clarke J., 1st February 2006) in which it was stated:-

> "In the event, therefore, that I have become satisfied that there are substantial grounds in respect of any of the challenges which she seeks to mount I would be prepared to extend time."

37. Clarke J. had noted that in that particular case there were wholly exceptional circumstances.

38. As I have pointed out there is little or no explanation before the court in relation to the reasons for the delay in bringing this application. It is difficult to see upon what basis one could have extended the time herein. Given the view I have taken on the issue of a challenge to the decision of the second named respondent and the absence of substantial grounds upon which to challenge the decision of the third named respondent, the question of an extension of time simply does not arise.

39. Accordingly I am refusing to grant leave to apply for judicial review in respect of the decisions of the second and the third named respondents herein. I will hear further submissions from the parties in relation to the application for leave in respect of the decision of the first named respondent herein.