Neutral Citation [2013] IEHC 305

THE HIGH COURT

JUDICIAL REVIEW

[Record No. 2006/655JR]

BETWEEN

S-M. E.O. AND D. V. O. (A MINOR SUING BY HER MOTHER AND NEXT FRIEND S-M. E. O.)

APPLICANTS

-AND-

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

RESPONDENTS

JUDGMENT of Mr. Justice Mac Eochaidh delivered on 27th day of June 2013

1. This is the substantive judicial review decision in respect of the applicants' claims seeking *certiorari* of the decisions of the Refugee Appeals Tribunal (the "Tribunal") of 1oth April 2006 refusing them both refugee status, leave to seek judicial review in this matter having previously been granted by Mr. Justice De Valera in a decision of the 4th May 2012.

Background:
2. The applicants in this case are a mother and daughter and both are nationals of Nigeria. The second named minor applicant was born on 2ih May 1999 and the applicants have been residing in the State since 13th February 2000. The first named applicant married an Irish national not long after her arrival in the State on 13th November 2000 and apparently did not therefore pursue her asylum application. However, the marriage failed, the parties separated and the first named applicant was informed that her permission to remain in the State was revoked as she was no longer residing with her spouse. The applicant then re-applied for asylum to the Office of the Refugee Applications Commissioner ("ORAC"). A separate application was also made in respect of the second named minor applicant. A negative recommendation was issued in respect of both applications by ORAC and the applicants duly appealed to the Tribunal by Notice of Appeal dated 23rd December 2005.

Procedural Background:
3. The decisions of the Refugee Appeals Tribunal refusing the applicants refugee status issued on the 10th April 2006. Leave to seek judicial review was granted "on the basis in the first [named applicant's] case that the first respondent made an unreasonable evaluation of the credibility of the applicant and in the second [named applicant's] case that the first respondent failed to give proper and due regard to all relevant considerations." The Order of 6th June 2012 specified that the grounds on which the applicants could seek judicial review were: "a.) The first-named Respondent's evaluation of the credibility of the first named Applicant is unreasonable. b.) The first-named Respondent's decision that the second-named Applicant did not have a well founded fear of persecution was: i.) Unreasonable; ii) Failed to take adequate account of the country of origin information; iii) Failed to take adequate account of the subjective and objective elements of fear of persecution; iv)

Failed to give proper and due regard to all the relevant considerations."
4. The matter then came before this court on the 11th November 2012 for the hearing of the motion for judicial review whereupon I raised a question as to whether the rights of the minor child were taken into account by the respondent in reaching its decision. I noted that the minor applicant had spent almost her entire life in the State and in that regard I made reference to the judgment of the Supreme Court in *Okunade v. Minister for Justice and Equality* [2012] IESC 49. As such, the applicants then sought to bring forward a motion to amend their grounds to include various orders including, *inter alia*, an order of mandamus directing that the applicants have leave to remain in the State until the second named minor applicant reached the age of majority. That motion came before the court for hearing on the 12th February 2013 and I delivered an *ex tempore* judgment refusing such an amendment of grounds. My view view was that it appeared counsel was seeking to conflate two parts of the applicants complaint and that while there was a valid judicial review case in being, they had sought to add on an issue of immigration law and policy in seeking an order for leave to remain which was not relevant to the issue in these proceedings as to the validiity of the asylum decisions. Thereafter these proceedings came on for hearing on the 9th of May 2013.

Tribunal Decisions:
5. The Tribunal decision rejected the first named applicant's claim on the basis of credibility. In particular, the Tribunal Member did not believe that the child's father (her supposed captor) would only insist that she was circumcised when she was pregnant with his second child and after they had been living together for some years prior to that. The Tribunal Member found the applicant's story lacked credibility on that basis, even though she had supplied medical evidence as to the fact she had undergone FGM. Further, the Tribunal Member believed that State protection would be available to the applicant in Nigeria to protect against FGM and that once she had escaped from her captor she should have sought assistance from the authorities. Indeed, it was the Tribunal's view that where family pressure was exerted to undergo FGM, it was possible to internally relocate to avoid the risk according to the available country of origin information. In this regard, it was felt that the applicant's evidence as to why state protection would not be available conflicted with the country of origin information. Finally, the Tribunal Member was of the view that the applicant's evidence in relation to certain dates was contradictory as was her evidence in relation to the travel documents she used for travel from Nigeria, through France, to Ireland. The applicant also did not provide a reasonable explanation as to why she did not claim asylum in France according to the Tribunal.

6. The second named minor applicant's case was adjudicated on separately and a decision of the Tribunal also issued on 10th May 2006. The minor applicant put forward the same reason for leaving Nigeria as her mother and it was stated by the first named applicant that the child would be at risk on her return to Nigeria because her father's family would seek to have her circumcised. The Tribunal rejected the minor applicant's claim on the basis that country of origin information indicated that any claim that she was at risk of FGM by her father was contrary to UNHCR reports which stated that the procedure was performed by women and, in this

regard, the minor applicant's mother and grandmother were against the procedure. Secondly, the Tribunal noted that FGM is banned in Cross Rivers State where the applicants were from and also that it is opposed by the Nigerian government. Finally, the Tribunal was of the view that the minor applicant could internally relocate with her mother if she were returned to Nigeria and this was backed up by country of origin information.

7. The first complaint levied at the decision of the Tribunal Member by the first named applicant is that she failed to include certain particulars of evidence in her account and that the evidence recited is incorrect in certain parts. The applicant sets out various examples of same in the submissions. In this regard the respondent refers to the decision of *Pamba v. Refugee Appeals Tribunal* (Unreported, High Court, 19th May 2009) to the effect that a Tribunal Member is not obliged to recite each and every piece of evidence on the face of the decision. The applicant claims in particular that the Tribunal Member has erred in stating the evidence regarding where the first named applicant's son is now staying. In this respect the respondent submits that no evidence is before the court as to what was said to the Tribunal Member and further that any such evidence should have been put on affidavit by the first named applicant's solicitors if they seek to make that type of complaint. In any case the respondent submits that if such errors were made they were immaterial to the outcome of the case. It seems to me that the respondent is correct and I can find no flaw on the part of the Tribunal Member in the manner in which this issue was addressed.

8. The applicant then proceeds to address the Tribunal Member's findings in respect of the credibility of the first named applicant. In this regard the applicant believes the Tribunal Member has erred, namely: i) in making an adverse finding with regard to the timing of the FGM suffered by her; ii) in respect of her assessment of the country of origin information relating to FGM before her; iii) in failing to look at the entire picture and referring only to materials which supported her decision; iv) in failing to take account of the prevalence of FGM in the southern states of Nigeria; v) in finding that state protection was available to the applicant; vi) in relying on incorrect facts in making her decision; vii) in putting too much weight on the discrepancy of evidence in relation to the applicant's age when she left school; and viii) in making adverse credibility findings in respect of the applicant's account of her travel to Ireland. Further, the applicant makes complaint that the Tribunal Member did not make reference to the submissions made on behalf of the applicant at the hearing or give reasons as to why same were rejected and also that she did not consider or evaluate the persecution suffered by the applicant by virtue of the rape and sexual abuse perpetrated by her captor.

9. In reply to these claims the respondent addresses and rejects each in turn and in my view the respondent's submissions are compelling and persuade me that the decisions in suit are robust. With regard to the timing of the FGM suffered by the applicant, the applicant gave evidence that the child's father insisted she be circumcised before giving birth to his child but did not do so until she was expecting the second named applicant, their second child together. I accept that the Tribunal Member has made a rational finding in this regard. The respondent also refutes that the Tribunal Member erred in her assessment of country of origin information. Noting that FGM had been criminalised in Cross Rivers State, the Tribunal went to great lengths to look at the reality of the risk of FGM in that State. The Tribunal Member noted that there were organisations which could assist the applicants and further that any possible limitations in the state protection available didn't apply to the applicants. It is difficult to fault these findings.

10. I agree with the respondent's view that complaint (iii) above is in reality a ground of appeal as it is clear that the Tribunal Member didn't rest her decision solely on the fact that FGM had been banned but also looked to possible relocation and the availability of state protection in examining the whole picture. The complaint at (iv) above is not a ground for judicial review as the prevalence of FGM in the southern states of Nigeria has to be examined in the context of the criminalisation of the practice in the applicant's home state. In relation to complaint (v), the Tribunal Member dealt with the issue of state protection rationally and looked at the applicant's evidence as to why she didn't seek protection, considered it and validly rejected it in light of the country of origin information. It is submitted by counsel that complaint (vi) is inadmissible as it appears to consist of an argument not made at the appeal. Further, complaint (vii) appears to admit that the applicant gave contrary evidence in relation to her age, while the weight to be attached to such contradiction is a matter within the jurisdiction of the Tribunal according to the respondent and again I agree with this submission.

11. Counsel for the respondent submits that complaint (viii) is contrary to the well-established requirement of the Tribunal Member to have regard to an applicant's account of their travel to the State as mandated by s. 11 B of the Refugee Act 1996. It is lawful to base credibility findings on serious concerns about an acount given as to how an applicant arrived in Ireland and in so far as this is what happened in this case I can find no legal flaw in such approach. Finally, in respect of the remaining complaints regarding the inclusion of submissions and the examination of persecution advanced by the first named applicant, it is not necessary for the Tribunal Member to recite each piece of evidence in her decision. The credibility findings made against the applicant were a rational basis for rejecting her appeal and that detail insisted on by the applicant is not required as a matter of law.

12. The complaint made on behalf of the second named applicant relates to the finding that she would escape FGM if returned to Nigeria as the procedure is usually carried out by women and would not therefore be carried out by the applicant's uncle (her father being deceased). Counsel states that such a finding is unreasonable as it ignores the obvious fact that a third party could act as the 'excisor' in the FGM procedure; it fails to take account of the failure of state protection in the previous ten years of the first named applicant's imprisonment; and yet at the same time it accepts that the minor applicant would have to flee from her home, her grandparents and her extended family. The applicant also claims that the Tribunal Member failed to take adequate account of country of origin information on the practice and prevalence of FGM in Nigeria, in particular with regard to the first of two documents referred to by ORAC. Further, counsel for the minor applicant claims the Tribunal engaged in conjecture and that there was a failure to take account of the subjective and objective elements of the fear of persecution with regard to the manner in which the first named applicant was held by her captor and the country of origin information submitted which described the general attitude of the Nigerian police in these situations. Finally, counsel makes complaint that the supposed relocation option open to her would, in effect, separate the minor from her extended family and her grandparents and that this also ignores the evidence given that the first named applicant moved to Ibadan and then Lagos but continued to receive threats directed against her.

13. My view is that the Tribunal gave adequate, rational and cogent reasons for its decision in respect of the issue of FGM. Bearing in mind the findings that the minor applicant's mother and grandmother opposed the practice, that the practice is unlawful in the relevant State, that internal relocation is a possibility (according to certain organisations concered with FGM), the finding that the minor applicant would not be at risk if returned was a rational one. The Tribunal Member was tasked with weighing, assessing and drawing inferences from the evidence (as noted by Birmingham J. in *M.E. v. Refugee Appeals Tribunal* [2008] IEHC 192) and it is clear that this is the process which was conducted by the Tribunal and that all of the evidence was assessed, including the relocation of the applicant prior to coming to the State.

14. I agree with the respondents that the submission that the minor applicant should not be obliged to relocate to escape harm from is misconceived. There is an onus on an applicant to show that their country of nationality could not offer protection and that onus was not discharged in this case.

15. Having carefully reviewed the decisions of the Tribunal and considered the detailed submissions by counsel, my firm view is that the decisions in suit are unassailable. Both decisions represent a fair assessment of the evidence. My view is that credibility findings made in respect of the first named applicant are in accordance with the decision of Cooke J. in *I.R. v. The Refugee Appeals Tribunal* [2009] IEHC 353. Proper and fair use of country of origin information is evident. I can find no fault with the conclusions reached in respect of the availability of protection from harm in the country of origin, whether from State organisations or private organisations. Neither can I fault the conclusions made with respect to the possibility of internal relocation. The respondent persuades me that this is a coherent and lawful decision. The complaints advanced on behalf of the applicants refer to minor matters, which even if established, could not undermine the core of these careful and lawful decisions. I therefore reject the applications for orders of certiorari and any other relief claimed.