

**THE HIGH COURT**  
**JUDICIAL REVIEW**

**2011 757 JR**

**BETWEEN**

**M.A.A. (AN INFANT SUING BY HER MOTHER AND NEXT FRIEND O.A.)**

**APPLICANT**

**AND**

**THE MINISTER FOR JUSTICE AND EQUALITY,  
THE REFUGEE APPLICATIONS COMMISSIONER,  
IRELAND AND THE ATTORNEY GENERAL**

**RESPONDENTS**

**JUDGMENT of Mr. Justice Cooke, delivered the 19th day of December 2011**

1. This is the Court's ruling on the respondents' motion to dismiss this application for leave to seek judicial review of a report made by the Refugee Applications Commissioner under s. 13 of the Refugee Act 1996, upon the ground that the application for leave is either frivolous and vexatious or doomed to fail or an abuse of process.

2. The minor applicant in this case is an infant who was born in the State on either the 25th October, 2010 (according to the asylum application made on the 28th January, 2011), or on the 28th January, 2011, (according to the s. 13 report).

3. The applicant's mother is a national of Nigeria, who came to this country in August 2005 and claimed asylum. Her own claim was rejected in a s. 13 Report dated 1st November, 2005.

4. In her application for and in the name of her above daughter, the mother said that she had met the applicant's father in Dublin, but at the time of making the asylum application did not know his whereabouts. Her daughter's claim for asylum was based upon the mother's fear that if she returned with her daughter to Nigeria the applicant would be subjected forcible circumcision as a result of pressure from the mother's family and the village.

5. In the s. 13 Report for which leave to seek judicial review is sought in this proceeding, the claim was rejected upon the basis that:-

- (a) The minor applicant was born here and has never been to Nigeria and has never suffered any past persecution;
- (b) State protection against circumcision would be available to the applicant if her mother opposed it, according to country of origin information; and
- (c) The threat from the family or village could be avoided by returning to another location in Nigeria such as Edo state.

6. The grounds proposed to be advanced in the statement of grounds as to why the s. 13 report is unlawful and ought to be quashed are, in the view of the Court, of a generic and pro forma formulation for the most part and largely unrelated to any specific facts of findings in the reports sought to be challenged.

7. Thus, ground (a) is purely introductory in identifying the challenged decision;

Ground (b) claims that the Commissioner failed to have regard to his obligations under the European Communities (Eligibility for Protection) Regulations 2006, but the claim does not identify any particular obligation or any specific flaw in the decision in that regard;

Ground (c) claims in very general terms that the applicant's claim has not been accorded an effective remedy against the Commissioner's first instance determination in accordance with the procedures directive, but does not specify any particular issue in respect of which the available statutory appeal to the Tribunal would be ineffective;

Ground (d) claims that there has been inadequate consultation of country of origin information, but there is no explanation given as to which aspect of the mother's claim based on her fear of pressure from her own family that would be thus corroborated;

Ground (e) raises the proposition that there is a duty of cooperation which requires that the applicant be provided for comment with a draft of the s. 13 Report before its adoption. This proposition has been rejected by the High Court in decided cases. In any event the s. 13 Report is based upon direct cooperation with the mother and next friend in the form of the s. 11 Interview in conformity with Article 12 of the Procedures Directive and Article 14.2 of that Directive does not require that the report in question be furnished in advance of its adoption.

Ground (f) claims that the decision is irrational because the mother's own claim was different from that she expressed on behalf of her daughter. This ignores the fact that the mother's claim to fear threats from her own parents and her husband's family was rejected as lacking credibility and the family is the same source of the fear now expressed on behalf of her daughter.

Ground (g) alleges that no independent assessment of the claim has taken place;

Grounds (h) - (i) contain unspecified allegations of non compliance with the UNHCR Handbook or guidelines and of the Qualifications Directive.

8. In the view of the Court, grounds put forward in this generalised way divorced from the specific flaws alleged in a challenged decision raises a *prima facie* implication that the judicial review proceedings is commenced as a delaying tactic only. However, it is not necessary in this case to reach any definitive conclusion on that issue because the Court has been informed that a notice of appeal to the Tribunal has in any event been lodged as a precautionary measure.

9. It is now well settled in law that where the statutory appeal is available and has been evoked in good time, it is only in exceptional cases that the High Court will entertain an application for judicial review of the s. 13 Report and then only when the report is shown to have some potentially independent consequence for an applicant which is incapable or inapt to be dealt with by the statutory appeal.

10. Having regard to the fact that the only issue in this case is the reality of the alleged fear that this infant might be exposed to a risk of forcible circumcision against the wishes of her mother if returned to Nigeria, the Court is satisfied that no valid reason has been advanced as to why the statutory appeal in this case would be inadequate, ineffective, or inconvenient. In practical terms, as this child has never been to Nigeria and whose existence may not even be known to her mother's husband (who has in any event disappeared) the only appealable aspects of the s. 13 Report will appear to turn upon the possibility of a general threat to the child of circumcision in Nigeria and the availability of local protection against the specific alleged threat from the family or the village, if the mother and child relocated elsewhere. These are issues that turn upon consultation of country of origin information at this stage and are clearly dealt with adequately and more conveniently by the statutory appeal.

11. This therefore is a case in which the leave application is bound to fail because, quite apart from the absence of *prima facie* of substantial grounds for the grant of leave, it is clearly a case in which the Court would in any event require the applicant to pursue the statutory appeal instead.

12. The motion is therefore allowed. The proceeding is dismissed.