

THE HIGH COURT**2008 1076 JR****BETWEEN****J. O. (A MINOR, SUING BY HER MOTHER AND NEXT FRIEND, A. O.)****APPLICANT****AND****THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM AND THE REFUGEE APPLICATIONS COMMISSIONER****RESPONDENTS****RESERVED JUDGMENT of Mr. Justice Cooke delivered on 28th day of October, 2009.**

1. In this application leave is sought to apply for, *inter alia*, an order of *certiorari* to quash a report of the second named respondent, the Commissioner, dated the 5th September, 2008 made under Section 13 of the Refugee Act 1996 in which the authorised officer of the Commissioner recommended that the applicant be not declared a refugee. The report is comparatively short because it reaches its negative recommendation on the basis that the minor applicant, who was three months old at the time, had no well-founded fear of persecution if returned to Nigeria because her fear was the fear of her mother and that fear had been found not to be well-founded in a separate report by another officer dated the 30th September, 2005.

2. It is this feature of the child's Section 13 report which constitutes the ground upon which it is proposed to seek to have the report quashed. It is submitted that the report is unlawful because the child's application for asylum has received no individual examination or consideration; no investigation into her personal circumstances had been carried out in breach of the obligation imposed by Regulation 5 of the European Communities (Eligibility for Protection) Regulations 2006. It is also submitted that the report gives no adequate statement of reasons for rejecting her claim.

3. The minor applicant was born in Ireland on the 12th June, 2008. Her parents are from Nigeria. Her mother, A.O., claimed asylum and included four older sisters in the application at the time. The claim was based on the threats of her husband's family because she had given birth to daughters only. They wanted him to marry another woman.

4. The claim was the subject of a negative report on 30th September, 2005, as mentioned and was, at the time of the Section 11 interview in the present case, subject to a pending appeal to the Refugee Appeals Tribunal. The applicant's father had also claimed asylum based on the threats to him from his own family because of his wife's failure to bear him a son. His claim was also found not to be well-founded in a report of the Commissioner of the 10th October, 2007. On appeal to the Tribunal, that recommendation was later affirmed and that decision is currently the subject of an outstanding judicial review proceeding.

5. It is submitted that it was particularly mistaken on the part of the authorised officer in this case to rely on the negative recommendations made in the cases of the child's parents when both of those cases had not been finalised and were the subject, respectively, of outstanding appeal and judicial review proceedings.

6. The first question which arises, therefore, on this application is whether this is a situation in which it is necessary and appropriate for this Court to intervene by way of judicial review in the processing of this child's application for asylum at this point rather than to allow it proceed to reconsideration on appeal before the Tribunal.

7. A preliminary point must be made. As the claims for asylum made by her four sisters were included in and considered with their mother's application, one might expect that the same might have been done in this case also, so that all could have been considered together by the Tribunal on appeal. That, of course, was not possible however because an appeal to the Tribunal lies only in respect of a report and recommendation made under Section 13 and the minor applicant was born after both reports on the mother and father had been made. A separate application on behalf of this child was therefore necessary if she was to be included with her family for consideration as refugees.

8. The Court does not however consider that this Section 13 report can or should be quashed for a number of reasons. First, it is not strictly true that the applicant's case has not received individual consideration or investigation by reason only of the fact that no distinct investigation into the child's personal circumstances was carried out. The child's personal circumstances were perfectly clear and straightforward. She was born on the 12th June, 2008. She has never been to Nigeria. She has never met her father's family and knows nothing of it or of their threats. Her life now and for the next few years at least is bound up with and dependent upon that of her parents and on the decisions and choices that they may make for the family. The child's only case for claiming asylum is the case made by her parents for themselves and for her sisters. Had she been born earlier she would have been included, no doubt, in the mother's claim and thus be in precisely the same position as she will be if this Section 13 report is allowed to proceed to appeal before the Tribunal and joined with the mother's pending appeal.

9. It has not been suggested that there is any other fact, circumstance or consideration peculiar to the child's claim to asylum that is not part of the mother's claim. Her prospect of being declared to be a refugee is entirely dependent upon the fate of her mother's claim. It is true that each claimant is entitled to have his or her claim to asylum subjected to individual examination and decision but that does not mean in the Court's judgment that the Commissioner is obliged to conduct some sort of pro-forma separate investigation into the potential claim of a three month old child when the claim explicitly made on the child's behalf is that of her mother and no distinct fact or consideration is put forward as to how or why the child's risk of persecution is in any way different from that of the parent. This is particularly so where the claim to a fear of persecution is not based on some external threat or on the general conditions in a country of origin to which

members of some ethnic or social group are exposed but on the purely domestic, private source of potential harm, in this case, the threats of the father's family.

10. It must be borne in mind that the function and duty of the Commissioner is to examine the application, to interview the applicant, to carry out any enquires that might be appropriate to verify the claim made and then to report on this to the Minister with the recommendation as to whether the applicant has or has not established the ingredients of refugee status. In circumstances where this three month old child's claim is identical to and dependent upon the claim made by the mother, it is difficult to envisage what further investigation or enquiry might have been carried out into the child's claim, nor has any been illustrated or suggested on her behalf.

11. Finally, the Court will point out that while asylum applications fall to be examined and determined individually, objectively, and in accordance with law, the asylum process is also to be carried out expeditiously, flexibly, and reasonably. This Court is not required to suspend common sense when asked to review that process. This case is an example of a situation in which the Court ought not to permit formalistic arguments of technical illegality to distract it from the need to apply common sense so as to ensure that the process remains not only lawful but fair, flexible, and expeditious. In this case, the authorised officer had before him the mother's Section 13 report and was clearly familiar with its contents as it is both annexed to the present report and referred to in the body of the report. Given that the claim made by the mother for the child was identical to that which she made for herself and her sisters, the authorised officer was, in the Court's judgment, entitled to adopt its contents as the basis of its conclusion.

12. For that reason and also for the practical reason that this child's claim should clearly be considered at the appeal stage, jointly with that of her mother and her sisters, the Court is satisfied that there is no good reason to exercise its discretion to intervene by way of judicial review of this Section 13 report at this stage. For that reason, leave will not be allowed.