

THE HIGH COURT**JUDICIAL REVIEW****Record No. 2009 / 427 J.R.****Between:/****R. A. E. [CAMEROON]****APPLICANT****-AND-****THE REFUGEE APPEALS TRIBUNAL (FERGUS O'CONNOR)****RESPONDENT****-AND-****THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM, IRELAND AND THE ATTORNEY GENERAL****NOTICE PARTIES****JUDGMENT OF MS JUSTICE M. H. CLARK, delivered on the 30th day of September 2013.**

1. The applicant seeks judicial review of the decision of the Refugee Appeals Tribunal which recommended that he should not be granted refugee status. The treatment of medical reports is the core of the challenge. By agreement, the application was considered by way of a telescoped hearing. Mr Robert Haughton S.C. with Mr James Healy B.L. appeared for the applicant and Ms Siobhán Stack B.L. appeared for the respondents.

Background

2. The applicant applied for asylum in 2006 claiming to have suffered past persecution as a political activist while a student in Cameroon. He claimed in his questionnaire and at his Section 11 interview that he had been arrested and detained and severely maltreated by gendarmes on several occasions because of his support of three political parties which advocate for the independence for the English-speaking provinces of Cameroon. He was blacklisted following his attempt to engage in a demonstration against the President which was intended to disrupt his swearing in ceremony in 1997. The authorities became aware of the plans and the demonstration was cancelled. He was arrested twice in 1997 but was not detained. He graduated in August 1999. He was arrested again in 2000 and on this occasion detained for two to three weeks. Subsequently, he was admitted to hospital for injuries which were inflicted during that period. He then moved to Johannesburg to study for 5 years, returning to Cameroon only for holidays. He claimed to have had permission to reside in South Africa as he was a student. He did not need a passport because of pan-African agreements on travel between African States. He did not remain in South Africa after his studies as although he could have legally done so, it would not have been to his advantage and it was impossible to get a job there. He further stated that human rights abuses occur there and the South African government would not grant him asylum on political grounds as a supporter of the opposition to the ruling party in Cameroon. The South African government was aware of his political background as they kept in touch with the authorities in Cameroon. His twin sister was also shot dead in cold blood in South Africa for her mobile phone. The facts of this tragic event were not associated with his political beliefs and no information was offered or sought as to how it happened that she too was in South Africa with the applicant. Neither was an explanation given for how the applicant was able to support himself for five years and travel back to Cameroon during the holidays.¹ He claims to have completed two post graduate courses in Johannesburg at the University of South Africa in 2005 and then returned to Cameroon in the hope that the political climate had changed. Seeing that the Government continued to imprison people he decided to come to Ireland. He came in April 2006 from Cameroon via South Africa and Amsterdam, travelling on a Malawian passport² which was not his own because citizens of Malawi did not require a visa to enter Ireland. He made no claim of arrest, detention or mal-treatment since the events of 2000 and his fear of persecution arose from past persecution because of his political activities in opposition.

3. He produced a large number of documents in support of his claim but for the most part no comment was made on their authenticity or otherwise. Those documents include a statement from his lawyer which suggests that he was only released by the authorities after considerable pressure from various embassies and from an Amnesty International group in Switzerland. No independent documents supporting that claim were included. The Refugee Applications Commissioner found serious deficiencies in the applicant's knowledge of the aims of the political parties he professed to support and in his knowledge of key political events in Cameroon involving the Social Democratic Front (SDF) – the opposition party with which he claimed active involvement. For instance, he said that the SDF had not contested parliamentary elections when country of origin information (COI) clearly stated that it had, and similarly he described how he had campaigned for the SDF's presidential candidate for two months when COI is unequivocal in stating that all the main opposition party candidates including John Fru Ndi (the SDF candidate) withdrew from the election three days after the date was announced. There were other similar findings in relation to incorrect information on significant issues which he provided about the political parties. When the differences between his answers and COI were put to him at the Section 11 interview, he admitted that he was mixed up in relation to which elections were fought and which were boycotted.

4. The applicant appealed to the respondent Tribunal and submitted two medical reports to support his claim to have suffered persecution in Cameroon. He also provided two extensive reports, one being the 2005 US Department of State on Cameroon and the other a UK Home Office Report from a fact-finding mission to Cameroon conducted between the 17th and the 25th of January, 2004. He also furnished an Amnesty International report on Cameroon from 2004. While the COI furnished does not support his claim and indeed casts serious doubt on the authenticity of the documents he presented (such as his membership card and the letters attesting his involvement in SDF politics), no comment was made on these issues by the Tribunal.

5. The treatment of the medical reports forms a significant part of the challenge. The reports in question are:-

(i) A medical certificate from a Health and Maternity Centre in Buea, Cameroon issued on the 4th August, 2006, which refers to the admission of the applicant to the clinic on the 6th November, 1997, for one week. This report states that he was *"suffering from a fracture on his right wrist, pains at the thoracic cavity, palpating abdomen(sic), lacerated wound on both legs as a result of gross assault and was hypersensitive and NAD. His blood pressure was 180/110 mmg. He was accorded a months [sic] bed rest after treatment."*

(ii) The first GP report is dated the 30th October, 2007, and was prepared for the Refugee Legal Service for the Section 11 interview. This states that the applicant was *"suffering from chest pains which had been ongoing for the past five years. He was beaten in the chest area by police in Cameroon."* The report recites that tests showed that apart from high cholesterol his organs were normal. The report notes complaints of bleeding pr. Haemorrhoids were identified and in response to questioning he told the doctor that he had been brutally raped in Cameroon. The report outlines *"scars on his legs, knees and right ankle attributable to beatings in Cameroon, that in 1997 he had his left wrist fractured, he still has difficulty. It is still deformed. He has pain in his sphi [sic] sternum from a beating in Cameroon. He has back and shoulder pain."*

(iii) The second report from the GP was dated the 5th February, 2009, and thus was furnished after the oral hearing before the Tribunal. This stated that the applicant had been diagnosed with Hepatitis B and was *"extremely depressed. He has flashbacks of what happened in Cameroon. He feels extremely lonely. He suffers from panic attacks and anxiety. He is unable to sleep and suffers from poor memory and poor concentration. He gets very little enjoyment in anything now because of his memories of Cameroon. I feel that Mr [E] needs to stay in this country for both physical and emotional reasons. He is now able to do a course here in Ballinode College Sligo. I feel this would help him mentally and perhaps try and put the past behind him [sic]."*

(iv) The final report from a Radiology Department is dated the 27th February, 2009, which was furnished after the Tribunal Member's decision. It indicates that the applicant's left testis is damaged and that there is *"a very small ovoid area of tissue...which is likely to represent a post traumatic ischemic atrophic residual left testis."*

Tribunal Decision

6. It is clear from the summary in the Tribunal decision of the applicant's evidence on appeal (which is substantially confirmed by the RLS note of the appeal evidence), that there was a major shift in the applicant's evidence at the Tribunal stage. This time he corrected his error in relation to the involvement or otherwise of the SDF in elections. His three arrests were now alleged to have occurred in 1997, 1999 and 2000 (as opposed to solely in 1997 and 2000 as previously claimed), and the year of his detention without charge was changed to 1997 (not 2000 as he had claimed previously). He also claimed for the first time that he had the assistance of a lawyer when he was detained and a letter from his lawyer claimed that he had familiarity with all his detentions saying *"On many occasions I have intervened fought for his liberty and defended his right when he was being tortured and detained only because he organised public lectures or peaceful demonstrations with placards"*. Furthermore, he now claimed that he had had no right to remain in South Africa and that his stay there was illegal notwithstanding his status there as a student of computer engineering at the University of South Africa. His trips to Cameroon for the holidays were now confined to one clandestine trip to see his mother and he said that while there he remained in hiding.

7. The Tribunal decision affirmed the negative recommendation contained in the Section 13 report. The decision records the applicant's evidence in some detail. It was noted that the applicant claimed to have a problem with his memory and that while this was mentioned in the medical report, the issue with memory was not mentioned either in his questionnaire or at interview. The applicant's explanation for this omission was found not credible and neither did the Tribunal accept that the applicant was mixed up at his interview. He was unimpressed that memory loss was the reason now offered for the applicant's inability to recall the events which led to his detention in Cameroon.

8. The fact that he lived in South Africa for five years and had returned to his country of origin to visit his mother was not found to be consistent with the difficulties and fears described in his claim. The Tribunal Member was unimpressed by the change in the applicant's evidence on why he did not remain in South Africa and highlighted the fact that a document submitted to support the claim that he was wanted for questioning by the Cameroon authorities was from a website which was unconnected with politics and onto which anyone could upload documents. The applicant's responses and explanations were not found credible. Ultimately, the Tribunal did not accept that the applicant ever had any difficulties in his country of origin as he alleged or has any fear of returning there for any reason.

The Parties' Submissions

9. The applicant contends that the Tribunal decision ought to be set aside on two major grounds – first, the Tribunal Member failed to assess his evidence in light of the medical evidence of his *mental condition* and secondly, the Tribunal Member failed to explain why he did not consider the photographs submitted to be of probative value. The respondents argue generally that there were many reasons why the applicant was not believed and that most of those reasons are not challenged. The treatment of the many documents in support of his membership and involvement with the political parties was not challenged. Any one of those reasons or a combination of them would suffice to justify the decision that he lacked credibility. In particular, the applicant did not even know about the boycott of the presidential elections in 1997. Further, at no stage did he make the case in his appeal grounds that he suffered from a mental disturbance, poor memory or concentration to explain his errors of recall. The two medical reports before the Tribunal made no mention of any such condition. The GP's report which refers to extreme distress, flash backs, panic attacks, anxiety and poor memory and concentration was not furnished until after the appeal hearing but before the decision was delivered.

(a) Failure to Consider Credibility in Light of Medical Evidence

10. The applicant points out that although the medical report which describes his complaints of depression and memory loss was not available until after the appeal hearing, it was available to the Tribunal before he wrote the decision. The applicant submits that the Tribunal failed to take his extreme depression into account to explain the inconsistencies and confusion in his evidence. Moreover, the Tribunal erred in fact in finding that memory impairment was not mentioned until the report was forwarded after the hearing. In fact, when it was pointed out at his Section 11 interview that his evidence of the 1992 and 1997 elections did not accord with COI, the applicant said *"It has been a long time. My mind was not so much focused on the issues. I have mixed up dates."* He relies on the *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status* insofar as it relates with mentally disturbed persons at paras. 206-212. It was submitted that the applicant displayed considerable general knowledge in relation to the history and politics of Cameroon and had knowledge specific to individual political figures but was afforded no credit for this.

11. The respondents argue that the case was never made until the judicial review hearing that the applicant suffered from a

mental disturbance. He made no mention of any difficulties when responding to a specific question on his questionnaire. The issue of claimed memory loss and depression was first raised in the medical report submitted after the oral hearing and was nevertheless expressly considered and weighed in the balance by the Tribunal Member; this is apparent from his decision as he commented on the report, particularly noting that the GP did not make any specific clinical finding in relation to the applicant's emotional or mental difficulties and did not seek or offer any clinical judgment as to how those difficulties had come about or how such difficulties could explain inconsistencies in the applicant's evidence and that the report appears to proceed on the stated history of the applicant. The respondents submit that the Tribunal correctly found that the reports were not of probative value in that the only basis for the cause of the injuries derives from the account given by the applicant to the GP. As the applicant was not a credible witness, the medical reports consequently are of little or no probative value and the Tribunal Member acted rationally in the manner in which he took them into account. The respondents contend that the Tribunal acted in accordance with the decisions in *M.E. v. The Refugee Appeals Tribunal* (Unreported, High Court, Birmingham J., June 2008), *Nicolai v. The Refugee Appeals Tribunal* [2005] IEHC 345 (O'Neill J.) and *Pamba v. The Refugee Appeals Tribunal* (Unreported, High Court, Cooke J. May 2009).

(b) Failure to consider the photographs

12. The applicant submitted photographs in relation to a demonstration at a bridge which he says depicts him. He complains that the Tribunal Member did not give any reason for not attaching weight to the photographs or for why he did not consider them to carry any probative value. The respondents submit that the photographs are clearly not probative of the alleged harm. They are utterly non-specific. It is only if a piece of evidence is so probative or compelling in relation to an issue to be determined by the Tribunal that it requires express consideration.

THE COURT'S ANALYSIS

13. This is a very weak case which discloses no error which could be described as substantial. The Court gave its finding *ex tempore* following the hearing but as the respondents requested a written decision the Court now furnishes that decision.

14. The submissions relating to two crowd scene photographs were so nebulous as to be unworthy of legal argument in the High Court. The photographs are on any examination incapable of any corroborative value. One photograph shows a group of young people posing for a group photograph and the other shows an orderly march or demonstration. Apart from the fact that the persons are black, the photographs could have been taken anywhere and anytime.

15. The Court is also satisfied that the Tribunal provided a reasoned and careful decision which came to reasonable conclusions based on well founded credibility findings. The Tribunal was entitled to form negative views on credibility on the basis of the facts before him. The reality of this claim is that even if the applicant's evidence had not been peppered with inconsistencies and was not characterised by a lack of knowledge of fairly basic information (i.e. whether the leader of his party contested a presidential election or whether a political party was affiliated with another) and even if all the self serving documents of doubtful provenance had been accepted at face value, the applicant would still have to explain why he did not seek asylum in South Africa in the five years he lived there or why he did not remain there. However, the claim clearly failed because following evaluation of the applicant's statements in accordance with the UNHCR Handbook, the Tribunal found inconsistencies and credibility issues going to the heart of his claim that he was a political activist who experienced past persecution and feared that he would be at risk of continued persecution if he returned to his country.

16. It is clear that the Tribunal was unimpressed by both the medical reports and the applicant's explanations for failing to mention that he had problems remembering key events in his life until after he was aware that his evidence did not accord with objective COI. While the medical reports form part of the overall evidence to be weighed and assessed, their content was found not so convincing that they could overturn or compensate for the doubts about the veracity of the rest of the claim. The first medical report suffers from defects which would call its authenticity into question at first glance. The two reports from the applicant's GP in Ireland undoubtedly found evidence of past injury. The report repeats what the applicant told the doctor was the cause of those injuries. The complaints of bleeding and pain in his accounts appear to refer to injuries suffered long after 1997. The report dated 2007 states that his chest pain had existed for the last five years; the report dated 2009 states that the trauma to his left testis occurred eight years previously. These dates are more consistent with the period he was in South Africa than with his time as an opposition activist in Cameroon.

17. It is also notable that at no stage did his GP, who outlined his stormy health history since he came to this State, suggest that he was unfit to give evidence or that his evidence would be unreliable or potentially contradictory because of any psychiatric or psychological order. He was not referred for specialist treatment nor was the Tribunal asked to adjourn the hearing until he was in a fit state to present his case. It cannot have escaped the Tribunal's notice that the applicant was attending a course in further education which is not consistent with the emotional state urged before this Court.

18. The Court is satisfied that the applicant overstates the contents of the GP report to build a case of mental impairment which is not supported by any evidence. The Tribunal Member was not "*confronted with an applicant having mental or emotional disturbances that impede a normal examination of his case*" which would bring into play paras. 206-212 of the UNHCR Handbook and was entitled to proceed on the basis that he had a normal appellant witness before him. It has to be recalled that the applicant's case on appeal was that he was arrested and detained in 1997. He was mistreated and sustained injury to his right wrist and chest and spent a week in hospital. He then returned to his course in University, graduated two years later and continued in politics. He campaigned in elections, was arrested at a demonstration and was released through the intercession of a relative who was a high ranking policeman. He then went to South Africa where he engaged in further study obtaining a qualification in computer engineering. On his own evidence, when he came to Ireland in 2006, nine years had elapsed since his detention. It is therefore difficult to understand why in 2009 he would suffer poor memory, poor concentration and depression associated with his maltreatment in 1997.

19. Paras. 206-212 of the UNHCR Handbook are not relevant to a person such as the applicant whose loneliness and depression are common features in asylum seekers caught up in a system of long delays in hearings for judicial review. This situation is all the more acute when one is highly qualified, unemployed, single and in direct accommodation for an extended period.

20. A Tribunal Member is entitled to use his life experience and common sense to consider that depression does not normally cause a person to radically change his evidence or lead that person to produce a volume of documents of doubtful authenticity as occurred in this case. While it is a fact that little reference was made at the appeal stage to the documents produced before the Commissioner and no challenge is made relating to the treatment of those documents, the Court notes that several letters attesting to the applicant's membership of the organisation and to his history of maltreatment at the hands of the authorities purport to come from the SDF. The Home Office Fact Finding Mission report filed by the applicant himself includes an interview with the President of the SDF who stated that the party does not issue letters of attestation for asylum seekers.

21. There were clearly many general credibility issues identified which, as the respondents submit, could on their own justify the

rejection of the claim. The findings were all matters of ordinary good sense and, in the view of the Court, arrived at in accordance with the general principles applicable to the assessment of credibility as mandated by Section 11B of the Refugee Act 1996 and Regulation 5 of the *European Communities (Eligibility for Protection) Regulations 2006* (S.I. No. 518 of 2006). Further, the Tribunal's task was conducted in accordance with the principles restated by Cooke J. in *I.R. v. The Minister* [2009] IEHC 353. The assessment of credibility was made, "*by reference to the full picture that emerges from the available evidence and information taken as a whole, when rationally analysed and fairly weighed.*" They were not "*based on a perceived, correct instinct or gut feeling as to whether the truth is or is not being told*", and they were based on "*correct facts, untainted by conjecture or speculation*" which "*bear a legitimate connection to the adverse finding.*"

22. These credibility findings are not challenged. The Court was instead asked to consider that the treatment of the applicant as a person suffering from a *mental disability* asserted to have been confirmed in the medical reports was so defective as to infect the entire decision. The Court has already found that the applicant's interpretation of the medical reports is grossly overstated and that in the circumstances of this case, depression, flash backs, sleep disturbance and memory loss (all self reported) do not equate to the mental disability envisaged by the UNHCR Handbook. The argument that the medical reports confirm the claim that the applicant was tortured in 1997 and that the Tribunal Member ignored these findings is not persuasive. As noted in the Tribunal decision, the only basis for the cause of the injuries in the GP's reports is the account given by the applicant to the GP. The Tribunal commented extensively on the reports and on his view of their probative value which he considered to be low and therefore incapable of advancing the applicant's case. While it is clear that injuries and pain were sustained, the issue of how and when they were sustained was not established at any level. The fact that the applicant claimed to suffer from memory loss which was connected in some way with the injuries which he had suffered was not ignored. It was separately considered and was found not to be a credible part of his claim.

29. As the applicant has not reached the threshold of establishing substantial grounds the application is dismissed. The respondents are entitled to their costs on the basis of a telescoped hearing.

¹The Court notes that Johannesburg in South Africa is as far from Cameroon as Dublin is from Moscow.

²Originally, he claimed that he travelled on his ID card without any difficulty.