Neutral Citation: [2015] IEHC 816

THE HIGH COURT

JUDICIAL REVIEW

[2010 No. 703 J.R.]

BETWEEN

F.O. (NIGERIA)

H.O.O. (NIGERIA) (AN INFANT SUING BY HIS MOTHER AND NEXT FRIEND F.O.)

APPLICANTS

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Eagar delivered on the 17th day of December, 2015

1. This is a telescoped application for an order of *certiorari* in respect of the Refugee Appeals Tribunal (hereinafter referred to as "the Tribunal") to affirm the decision of the Refugee Applications Commissioner (hereinafter referred to as "the Commissioner") that the applicant not be declared a refugee.

2. The relief sought are as follows:

> a. An order of certiorari quashing the decision of the second named respondent dated the 10th May, 2010, that the applicant failed to establish a well founded fear of persecution as defined under section 2 of the Refugee Act 1996 (as amended) (hereinafter refereed to as "the Act of 1996");
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> b. an injunction restraining the first named respondent herein from deporting the applicant herein or from taking any further steps in relation to the applicant's application for refugee status pending the outcome of the within proceedings.

Grounds upon which relief is sought

3. The grounds upon which relief is sought are:

> a. The Tribunal erred in law and breached the principles of fair procedures and natural and constitutional justice in the manner in which it assessed the applicant's claim and in particular her credibility. The decision is a pro forma document within which credibility is assessed with reference to matters of minute detail bearing no reference to the well-foundedness of the applicant's fears in keeping with a primary objective to refuse the applicant's claim.
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> b. The Tribunal erred in law and breached the principles of fair procedures and natural and constitutional justice in failing to adequately assess the subject of the availability of state protection to the applicant in Nigeria and it is obliged to do and the decision is therefore invalid.
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> c. The Tribunal erred in law and breached the principles of fair procedures and natural and constitutional justice in failing to give reasons/adequate reasons for the decision and in engaging in conjecture in the evaluation of the applicant's claim.
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> d. The Tribunal erred in law and breached the principles of fair procedures and natural and constitutional justice in arriving at conclusions regarding the applicant's credibility without giving the applicant the opportunity to comment on several matters which were under consideration by the Tribunal.
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> e. The Tribunal erred in law and breached the principles of fair procedures and natural and constitutional justice in failing to have any adequate regard to the notice of appeal and further supporting documentation submitted by the applicant in support of her claim to be a refugee.

4. The statement of grounds was grounded in the affidavit of the applicant, F.O., sworn on the 31st May, 2010. The applicant avers that she is a citizen of Nigeria and has sought a declaration of refugee status in the State. This application was considered by the Refugee Applications Commissioner who duly made a recommendation that the application should be refused. This recommendation to refuse the application was subsequently appealed to and later upheld by the Tribunal by a decision dated the 10th May, 2010. The applicant swears that a letter dated the 20th May, 2010 enclosed the decision, was received by her on the 21st May, 2010.

Applicant's claim to the Refugee Appeals Tribunal

5. The appeals of the two applicants against the negative recommendations of the Commissioner that the applicant should not be declared a refugee was heard by the Tribunal on the 14th April, 2010.

6. It was claimed that the applicants have inter alia, a fear of persecution in their country of origin for Convention reasons, namely political opinion and member of a particular social group.

7. The first named applicant gave evidence on behalf of both applicants and stated that she was born in Edo State in Nigeria on the 20th June, 1980, where she resided for ten years prior to moving to Lagos. She remained in Lagos for six years before returning to Edo State in circumstances where her mother had passed away. She states that she resided there for a further four years until 2000 when she moved to Warri, Delta State. She says she met her future husband that year. But they did not commence a relationship until 2005. She claims to have become pregnant by him, to have moved in with him and to have married him in a traditional ceremony on the 25th October, 2005. Afterwards she discovered that he was a member of the Movement for the Emancipation of the Niger Delta (MEND). She says that they experienced difficulties with this group and that it's members called to their home looking for her husband. According to the applicant this started in 2005. She says that her difficulties arose by reason of her husband's refusal to

fully participate in the activities of the group. She continues that the situation became more violent towards the end of 2006. When members of the group called in November 2006 they shouted when looking for her husband and threatened to kill her him. The applicant states that she was beaten at this time.

8. She says that she next had contact with the group in February of 2007, although in the interim they continued to call to her home but they did not see her as she was not in the house. In February the applicant stated that members of MEND beat her prior to kidnapping her. She was held captive in a place, the location of which she did not know. She remained there for eight days, during which time she was occasioned further beatings and was the victim of rape, forcing her to tell her captors where her husband was. She was raped by two different people, one on each occasion.

9. She said she left the house where she was held captive with the assistance of a man she did not know. She was unsure as to whether or not he was a member of MEND. This man took her to Sapele, Delta state, where she stayed in a house for two and a half weeks from February to March 2007. She says that MEND members came to know where she was staying in Sapele and that they called to the house on approximately three occasions. They threatened to burn the house. On each of the three occasions they called she managed to escape. She says that they were looking for her husband. During this time she communicated with her husband via telephone and she was told someone would come to help her. The applicant stated that a man by the name of Larry came to her aid. He took her to Lagos where they fled Nigeria by plane.

10. She says she travelled through an unknown country en route to Ireland. According to the applicant she arrived in the State on the 16th March, 2007. She gave birth to her son on the 21st April, 2007, the second named applicant herein, after her arrival in the State. She discovered that he suffered a medical condition as a result of the beatings she sustained.

11. She says if she returns to her country of origin she fears for the second named applicant and that she does not want him to see his father and the way he lives and to experience the things that she has.

12. She further fears for her life if returned to her country of origin. She stated that it is an Ishan tradition that her rape will be regarded as adultery and consequentially she will be taken before a shrine and cursed. She further fears the people her husband was involved with.

13. She stated that she did not go to the police in relation to her problems due to their corruption; she says that they ask for money in order to investigation and if this is not proffered then that individual would be accused.

14. She says that she has not been in touch with her family in Nigeria since her arrival in the State and has not spoken with her husband since she left Sapele.

15. It is claimed that the second named applicant's life would be placed at risk as he would not be afforded proper treatment for his medical condition (evidence of which was exhibited) in his mother's country of origin.

Analysis of the applicant's claim

16. The first named applicant was asked about what happened to her during her alleged period of detention in February of 2007 and she claimed that she was beaten and raped. It was put to the applicant that she had not previously mentioned being raped at any stage of her claim during this period and the applicant was asked for the details of the alleged rape. The applicant then proceeded to claim that she was raped by two different men, one on each occasion. When this was put to the applicant she claimed that she did not want to say it because of an alleged curse that is said to follow. She claimed to be afraid because she had spoken of it and afraid of what would happen to her. She says if a woman from Ishan gets involved in "things like that" there is a shrine where they place a curse on you.

17. The analysis notes that there is nothing in the country of origin information on file to confirm the applicant's alleged fears in this regard and it is not considered credible that the applicant would deliberately withhold information in relation to her claim in this jurisdiction because of such fears.

18. The applicant admitted to deliberately withholding information at earlier stages of her claim and claimed to have done so out of fear. In such circumstances, the analysis notes, the value of any evidence she gives is considered dubious.

19. Whilst it was submitted on the applicant's behalf that victims of rape were reluctant to talk about such matters, the applicant herself related her concealment of this aspect of her claim to her fears relating to Ishan tradition and the shrine. Counsel for the applicant were nevertheless allowed time by the Tribunal to submit an article, which counsel for the applicant claimed to have, relating to the reluctance of rape victims to give evidence of such assaults. This information was not subsequently submitted within the time period allowed.

20. The applicant was asked as to when her husband joined the organisation, MEND. She claimed that he told her he joined the group in 2000. It was put to the applicant that based on country of origin information which referred to the group emerging in late 2005, that the group did not appear to exist at that time. When this was put to the applicant she claimed that according to her husband the organisation did exist in 2000. The Tribunal member did not consider this to be a credible explanation. Country of origin information on file stated that "the Movement for the Emancipation of the Niger Delta (MEND) is one of the most visible armed groups based in Nigeria's Niger Delta region. . . It emerged in late 2005 – early 2006".

21. The Tribunal member considered the entirety of the country of origin information on file in this regard and concluded that there is nothing to suggest that the MEND existed as such in 2000 and in circumstances where the applicant's statements in this regard appear to contradict country of origin information, the applicant has accordingly not established any such connection with the group.

22. The applicant was asked about the alleged attack in November of 2006 and she claimed that five men came into her home and beat her. When asked to describe the attack she claimed that five men entered her home and beat her. She was asked to describe the attack and she claimed that her hair was pulled and she was beaten and that everything in the house was destroyed. When asked how she was beaten she responded that she was beaten with sticks and with a cutlass. She continued that her attackers threatened her and vandalised her house. The applicant was asked if her attackers did anything else to her and she claimed that they beat her and kicked her on the ground. When they left they said they would return, according to the first named applicant. It was put to the applicant that at her interview she claimed she was beaten with guns. When this was put to the first named applicant the applicant claimed that she was beaten with the head of a gun. The Tribunal member did not consider this to explain the inconsistency in the applicant's account in circumstances where the applicant made no mention in her evidence at appeal, prior to the inconsistency being put to her, of these men being armed with guns or as to her being beaten with a gun. This was despite extensive questioning

by the Tribunal as to the detail of the attack.

23. The applicant claimed to have travelled through an unknown country en route to Ireland. She was asked as to how she did not know the name of the country and she claimed that when she was in this country she asked the person who she travelled with if they arrived at their intended destination and he responded in the negative. The applicant was asked as to whether she considered applying for asylum in this unknown country and she claimed that she did not know about asylum and that the person who was bringing her did not tell her anything about it.

24. The Tribunal member did not consider these to be credible explanations. The Tribunal member noted that there is nothing only the applicant's own evidence to suggest that anyone travelled with her and it is not considered credible that the applicant could pass through three international airports and still be unaware as to where she was going or from where she came. The Tribunal considered that if the applicant had any such fears as she relates that she would have made enquiries in the country as to the availability of any assistance to her in relation to the fears she relates.

25. The Tribunal member had regard to the medical evidence in relation to the second named applicant's claim. It is claimed that there are concerns relating to the treatment available to the second named applicant in Nigeria for his condition. The Tribunal member considered the country of origin information in this regard and concluded that there is nothing to suggest that this applicant would be discriminated against on any grounds within the meaning of the Convention as to the treatment available to him in Nigeria or that same could be considered as amounting to persecution in a country with limited resources.

26. The Tribunal analysis notes that the Tribunal member considered all of the documentation, country of origin information; grounds of appeal, submissions and case law relied upon in support of both applicants' claims. According to the Tribunal member, this information does not assist the applicant in circumstances where the first named applicant's credibility is found wanting to such a degree that the very basis of both claims is not believed. The Tribunal member found the first named applicant to be vague and evasive in her manner of answering questions raised by the Tribunal. Her manner of answering such questions appeared to the Tribunal to be deliberate attempt by her to confuse the evidence. The Tribunal could not accept that she ever had the difficulties she alleges in her country of origin or has any genuine fear for herself or the second named applicant as she claims.

27. The second-named respondent decided that, pursuant to section 11A(3) of the Act of 1996 where are an applicant appeals against a recommendation of the Commissioner under section 13, it shall be for him or her to prove that they are indeed a refugee. The standard of proof to be met is that an applicant must demonstrate that there is a reasonable degree of likelihood that he or she will be persecuted for a Convention reason. Based on the reasons articulated by the applicant the Tribunal was not satisfied that this burden had been discharged. Accordingly, pursuant to section 16(2) of the Act of 1996, the Tribunal affirmed the recommendation of the Commissioner made in accordance with section 13 of the Act of 1996 in respect of each applicant and dismissed the appeals.

Submissions on behalf of counsel for the applicant
28. Counsel for the applicant, Ian Whelan B.L., stated that the impugned decision is one which disbelieves the claim advanced in it's entirety. It is submitted that this conclusion was arrived at where credibility was not assessed in accordance with law and where the rationale for the credibility findings is flawed.

29. Mr. Whelan drew the Court's attention to the comparatively recent pronunciation by the High Court as to the adequacy of a statement of reasons in *Mulholland v An Bord Pleanála (No. 2)*[2006] IR 453, which cited *O'Donoghue v An Bord Pleanála* [1991] ILRM 750, in which Murphy J. said at p. 757:-

> *"It is clear that the reason furnished by the Board (or any other tribunal) must be sufficient first to enable the courts to review it and secondly to satisfy the persons having recourse to the tribunal that it has directed its mind adequately to the issue before it. It has never been suggested that an administrative body is bound to provide a discursive judgment as a result of its deliberations …"*

Likewise, in *State (Swenney) v Min. for the Environment* [1979] I.L.R.M. 35, Finlay P. stated at p. 37 that the purpose for the requirement of reasons was:-

> *"… to give … [to an] applicant such information as may be necessary and appropriate for him, firstly, to consider whether he has got a reasonable chance of succeeding in appealing against the decision of the planning authority and secondly to enable him to arm himself for the hearing of such an appeal."*

30. In respect of the obligation on the decision maker to provide a decision which is clear and concise the applicants rely upon the judgment of MacEochaidh J. in *Danga v Minister for Justice, Equality and Law Reform*, delivered on the 20th February, 2015.

31. Counsel submitted that the impugned decisions are such as to be particularly unclear and lacking in reasoning. In I.*R. v Minister for Justice, Equality and Law Reform* [2009] IEHC 35, Cooke J. reiterated the law in the area of the assessment of credibility in refugee matters to encompass ten indicia. Mr. Whelan advances the claim that the Tribunal failed to adhere to the standards contained therein and those further articulated by MacEochaidh J. in *Omidiran (an infant) v. Minister for Justice, Equality and Law Reform* (Unreported, High Court, 20th December 2012). In the instant case it is submitted that the Tribunal member further based findings on his own "gut feeling" or opinion.

32. In respect of the individual findings the following is submitted:

> a. Failure to mention the rape
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> i. The applicant claimed to have not previously volunteered information about having been raped on account of her own objectively held fear. The Tribunal member found that "…it is not considered credible that the Applicant would deliberately withhold information in relation to her claim in his Jurisdiction because of such fears".
>
> ii. It is submitted that this finding is one predicated on a "gut feeling". The applicant and Tribunal member are both from different cultures with differing belief sets. The finding is confused in that the Tribunal member appears to accept that the first named applicant withheld information and that she did so out of fear. Counsel argues that this is simply conjecture and gut feeling. It is submitted that the Tribunal must be careful when entirely disregarding a statement as implausible, particularly where the assessment undertaken is one conducted solely on the issue of credibility without any analysis at all of objective country of origin information. It is submitted that the credibility findings arrived at by the Tribunal constitute an inadequate assessment of the applicants' claim, particularly where the obligation to consider

country of origin information is deemed to have been removed.

b. When the first applicant's husband joined MEND

i. Counsel stated that there is nothing in the country of origin information to suggest that MEND did not exist in 2000. He notes that militant groups have existed in the Niger Delta since the mid-1990's. The standard of proof existing in such matters is not the criminal law standard of beyond all reasonable doubt, but the lower standard in which a matter need only be established to a reasonable likelihood or possibility.

ii. It was submitted that the Tribunal member acted irrationally in deciding that the claim was incredible as a result of the fact that that MEND did not appear to exist at the time in question. This was in circumstances where this finding was not open to him on the evidence before him.

c. Failure to mention being hit with the gun

i. The first named applicant stated that she was hit with a gun. This was said at interview. And upon being asked at her appeal hearing she confirmed that she was hit by the head of a gun. The Tribunal member makes a finding in this respect. The finding reached in this regard is the opposite to the one referred to at (a) above. In (a) the applicant was penalised by saying something at her appeal which she omitted to say at interview. In this instance the first named applicant is penalised for failing to repeat verbatim everything she had said at the interview stage when asked if "anything else" had happened to her.

ii. Mr. Whelan submits that the said finding is irrational, in particular on account of the fact that it undermines the principle of audi alteram partem. It is submitted that the finding as to credibility in this instance is not properly made in accordance with the relevant case law.

d. The travel finding

i. In the first instance it is argued that these findings are peripheral and in the second instance they are based on gut feeling and conjecture. It is further advanced that they are improperly reasoned.

ii. The Tribunal member is, if dealing with findings of this nature, obliged to apply section 11(B) of the Act of 1996. He fails to do this and accordingly the decision is invalid.

e. The demeanour finding

i. The Tribunal member states that the applicant was "vague and evasive in her manner of answering questions raised by the Tribunal. Her manner of answering such questions appeared to be a deliberate attempt by her to confuse the evidence. . . ". The Tribunal was, when making such a finding obliged to give reasons for it. It is argued that the Tribunal member fails to give a single reason for this damning conclusion in respect of the applicant.

ii. Additionally it is submitted that the applicant was assisted at the hearing before the Tribunal by an interpreter and that therefore the answers which she gave to the Tribunal were conveyed by means of an interpreter which the member awaited the translation. Mr. Whlelan states that it can be assumed that the Tribunal member is not an Ishan speaker.

iii. The assessment of credibility is stated by Mr. Whelan to be cumulative.

Submissions on behalf of counsel for the respondent

33. In relation to the assessment of credibility, the consideration of documentation submitted and the adequacy of reasons, counsel for the respondent, Ms. Silvia Martinez B.L., submitted that the Tribunal made nine clear findings regarding the credibility of the first named applicant. She advances the case that these findings validly ground the rejection of her credibility such that she was no longer entitled to the benefit of the doubt, in accordance with para. 204 of the UNHCR Handbook:-

> *"204. The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible and must not run counter to generally known facts."*

a). Failure to mention the rape

34. The applicants contend that the Tribunal's failure to accept that the first applicant could have had fear was based on conjecture and gut feeling and "through the optic of an Irish person without having regard to cultural differences". Counsel for the respondents accepted that a decision maker should seek to view an appellant's account of events in the context of conditions in the country from which the appellant comes. However, it is also clear from case law, namely the case of *Y v Secretary of State for Home Department* [2006] EWCA civ 1223 that "a decision maker is not expected to suspend his own judgment" and *"is entitled to draw on his common sense and his ability, as a practical and informed person, to identify what is or is not plausible"*

35. Counsel submitted that it is clear from the Tribunal decision that he considered the country of origin information on file and in doing so concluded that there was nothing therein to confirm the first applicant's alleged fears in this regard. Furthermore, the decision-maker, in applying his own reason and common-sense concluded that it was not considered credible that the applicant would deliberately withhold information in relation to her claim because of these fears. The applicants were allowed to submit an article which their counsel claimed to have relating to the reluctance of rape victims to give evidence of such assaults but this material was never submitted. Thus, counsel submitted that this credibility finding was valid

b). When the applicant's husband joined MEND

36. The applicants contend that there is nothing in the country of origin information suggesting that MEND did not exist in 2000. However, the decision-maker quotes country of origin information on file which states that MEND "is one of the most visible armed groups based on Nigeria's Niger Delta region. . . It emerged in late 2005 – early 2006". It is noted by counsel that the onus is on the applicants to disturb an ostensibly lawful decision of the Tribunal by showing, in this instance, that the country of origin information before the decision maker demonstrated that MEND did exist in 2000. Thus, it is submitted that this credibility finding is lawful.

c). Failure to mention being hit by a gun
37. The applicants contend that the first applicant was penalised for failing to repeat verbatim everything she said at the interview when asked "if anything else" happened to her. While counsel accepts that a credibility finding was made on foot of the first applicant's failure to mention to the Tribunal that she was beaten with guns, it is submitted that this is an incorrect summary of how the decision-maker arrived at this credibility finding. Rather, it was the failure of the first applicant to mention being hit with a gun following extensive questioning by the Tribunal, and the fact that the answer given by her when questioned about the inconsistency in her account was that she was beaten with the head of a gun, that resulted in the Tribunal arriving at the credibility finding in this regard. This is clear from the decision. It is submitted, therefore, that the Tribunal was entitled to make this finding.

d). The travel finding
38. The Tribunal made two findings in relation to the applicant's story regarding her travel from Nigeria to Ireland: (a) that it was not considered credible that the applicant could pass through three international airports and still not know where she was either going to, or coming from and that (b) if the first named applicant had any such fears she would have made enquiries in this country as to the availability of any assistance to her in relation to the fear she relates.

39. In this regard counsel submits that the Tribunal was entitled to make these findings and that they are clear and reasonable.

e). The demeanour finding
40. It is submitted that the decision maker made no findings in relation to the applicant's demeanour. Rather, in finding that the first named applicant was "vague and evasive in her manner of answering questions raised by the Tribunal" and that "[h]er manner of answering questions appeared to be a deliberate attempt by her to confuse the evidence". The Tribunal made findings on the manner of the applicant's answers. Counsel thus submitted that the Tribunal made findings and that they are clear and reasonable.

Discussion
41. The applicants in this case find themselves challenging the decision of the second-named respondent's decision which was based on the assessment of the credibility of the first-named applicant. In these cases, the court's duty is limited as the court has no function to express any view as to whether, presented with the same evidence as the Tribunal was presented with and accepting, as the Tribunal did, the particular standards and legal propositions in accordance with which they could assess those claims, this Court would have to come to the different view as the Tribunal has done. All the court can do is to reach a conclusion as to whether the decision reached by the Tribunal was open to it on the evidence before it and having regard to matters which it is bound to take into consideration.

42. In *I.R. v. the Minister for Justice Equality & Law Reform and the Refugee Appeals Tribunal* [2009] IEHC 353, Cooke J. set out a most helpful analysis of the assessment of credibility of oral testimony faced by a decision maker. It is useful for me to quote in some detail the judgment of Cooke J.:

> *"1. In most forms of adversarial dispute the assessment of the credibility of oral testimony is one of the most difficult challenges faced by the decision-maker. The difficulty is particularly acute in asylum cases because, almost by definition, a genuine refugee will be someone who has fled home in circumstances of stress, urgency and even terror and will have arrived in a place which is wholly strange to them; whose language they do not speak and whose culture may be incomprehensible. Inevitably, many will have fled without belongings or documentation from areas in a state of anarchy or from the regimes responsible for their persecution so that obtaining any administrative evidence of their status and even identity may be impractical, if not impossible.*
>
> *2. In such cases the decision-makers at first instance have the unenviable task of deciding if an applicant can be believed by recourse to little more than an appraisal of the account given, the way in which it was given and the reaction of the applicant to sceptical questions, to the highlighting of possible discrepancies or to contradictory evidence from other sources. Recourse will also be had in appropriate cases to what is called "country of origin information" but in most cases this will be of use only in ascertaining whether the social, political and other conditions in the country of origin are such that the events recounted or the mistreatment claimed to have been suffered, may or may not have taken place.*
>
> *3. It is because in such cases the judgment of the primary decision-maker must frequently depend on the personal appraisal of an applicant, that it is not the function of the High Court in judicial review to reassess credibility and to substitute its own view for that of the decision-maker. Its role is confined when a finding of lack of credibility is attacked, to ensuring that the process by which that conclusion has been reached is legally sound and not vitiated by any material error of law.*

43. Counsel for the respondent stated that she identified that the Tribunal had made nine clear findings regarding the credibility of the first named applicant.

44. This Court has identified seven findings of lack of credibility and one finding in relation to the second named applicant in that he would be discriminated against on any grounds within the meaning of the Convention as to the treatment available to him in Nigeria. Before analysing the decision, the second named respondent quoted para. 37 of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and in particular:

> "Determination of refugee status will therefore primarily require an evaluation of the applicant's statements rather than a judgement on the situation prevailing in his country of origin."

Paragraph 38 of the Handbook, which is also quoted by the second named respondent, provides:

> *"38. To the element of fear – a state of mind and a subjective condition – is added the qualification "well-founded". This implies that it is not only the frame of mind of the person concerned that determines his refugee status, but that this frame of mind must be supported by an objective situation. The term "well-founded fear" therefore contains a subjective and an objective element, and in determining whether well-founded fear exists, both elements must be taken into consideration."*

It is well settled jurisprudence that the decision maker is obliged to give reasons.

45. In *R.O. & Anor. v. the Minister for Justice* [2012] IEHC 573 MacEochaidh J. reviewed the case law on giving reasons in credibility cases and he approached the review of the adequacy of reasons in the case by asking the following questions:

i. Were reasons given or discernible for the credibility findings?

ii. If so, were the reasons intelligible in the sense that the reader/addressee could understand why the finding was made?

iii. Were the reasons specific, cogent and substantial?

iv. Were they based on correct facts?

v. Were they rational?

Failure to mention the rape
46. According to the second named respondent the first named applicant was asked about what happened to her during her alleged period of detention in February of 2007 and she claimed she was beated and raped during this time. She stated this to the second named respondent. It was put to her that she had not previously mentioned being raped during this period. The applicant was asked for details of the alleged rape and she gave that. She stated that she did not want to say it before because of a curse. She was asked about the curse and the second named respondent said there was nothing in the country of origin information on file to confirm the applicant's alleged fears in this regard. However the second named respondent said it was not considered credible that the applicant would deliberately withhold information in relation her claim in this jurisdiction because of these fears. In applying the test laid down by MacEochaidh J in *R.O.* this Court accepts that the reasons were given for the credibility finding. The reason was intelligible but it is hard to say that they were substantial reasons and they were not rational in the context of the experience of sexual violence of the type which the applicant claims she experienced. It is the view of this Court that it is reasonable that the applicant could deliberately withhold information of such trauma.

47. The applicant was asked when her husband joined the organisation MEND and she claimed he told her he joined the group in the year 2000. It was put to the applicant that based on country of origin information which referred to the group emerging in late 2005, that the group MEND did not appear to exist at that time. When this was put to the applicant she claimed that according to her husband the organisation was in existence since the year 2000. The second named respondent held that because country of origin information on file states that MEND emerged in late 2005/ early 2006 and says there is nothing to suggest however that the group MEND existed as such in the year 2000. However it was the evidence of the applicant before the first named respondent that she only started a relationship with her husband in the year 2005 and to have married him in a traditional ceremony of marriage on 25th October 2005. The evidence is that she said that it was subsequent to the marriage that she discovered that he was a member of MEND. The finding of lack of credibility in relation to the date when MEND existed or began to exist is not something which can be laid at the feet of the applicant who is recounting what she was told by her husband whom she married in 2005 when the organisation was clearly in existence. The country of origin information states that:

> "MEND is recent and most renowned of the large number of militant groups in the Niger Delta…
>
> …Militant groups, which were primarily composed of young men dissatisfied at their inability to find jobs, proliferated beginning in the 1990s. The first insurgent group to receive international attention was the Movement for the Survival of Ogoni People (MOSOP) led by Ken Saro-Wiwa, a well known political leader who was executed by the military regime in 1995."

48. In this Court's view the decision of the second named respondent was irrational and not based on the evidence which the second named respondent had heard from the applicant.

The alleged attack in November of 2006
49. The second named respondent stated that the applicant was asked about the alleged attack in November of 2006 and she claimed that five men came into her home and beat her. She was asked to describe the attack and claimed that her hair was pulled and she was beaten and that everything in the house was destroyed. She was asked how she was beaten. She said she was beaten with sticks and with a cutlass. It was put to her that at her interview that she said that she was beaten with guns. When this was put to the applicant, the applicant claimed she was beaten with the head of a gun. The second named respondent said this was not considered to explain the inconsistency in the applicant's account in circumstances which the applicant made no mention in her evidence at the appeal. The omission of being hit with the head of a gun having already described being beaten with sticks and with cutlasses does not appear to this Court to be such a difference that a finding of a lack of credibility could be regarded as cogent and/or reasonable.

The travel finding
50. This Court has held on a number of occasions that travel findings are peripheral. Refugee Appeals Tribunal members are well used to persons applying for asylum in Ireland travelling with an agent who hands them (almost certainly) an EU passport which the agent retrieves from the asylum seeker on arrival in Dublin. It is not clear what is meant by "findings that the applicant could pass through three international airports without being stopped. There is no suggestion that the first named applicant came to Ireland in any other way and it is also the consistent evidence of applicants that agents provide passports. The applicant gives that explanation and yet the second named respondent stated that:

> "There was nothing, only the Applicant's own evidence to suggest that anyone travelled with her."

This finding, in itself, flies in the face of the experience of the Refugee Appeals Tribunal and is a completely irrational finding on behalf of the second named respondent.

Manner of answering questions
51. The second named respondent said that she found the first named applicant to be vague and evasive in her manner of answering questions raised by the Tribunal. Her manner of answering such questions appeared to be a deliberate attempt by her to confuse the evidence. However no examples of this are given by the second named Respondent and in these circumstances this Court finds that the finding that the applicant was vague and evasive without giving any examples of this cannot be regarded as being based on either correct facts or on the basis of rationality.

The medical evidence
52. The second named applicant was born in Ireland on the 21st April 2007. The first named applicant, having arrived in Ireland on the 16th March, 2007. It was claimed that the second named applicant's life would be at risk because he couldn't be afforded proper

treatment for his condition in Nigeria. The second named respondent said there was nothing to suggest that the second named applicant would be discriminated against on any grounds within the meaning of the Convention as to the treatment available to him in Nigeria. Nevertheless the second named respondent is under a duty to consider the welfare of the child and there was little in the country of origin information in relation to the medical treatment which might be available to a child and none mentioned by the second named respondent.

53. For these reasons this Court will grant leave. As this is a telescoped hearing, this Court grants leave and finds that the decision of the second named respondent must be quashed and the matter remitted for a rehearing by a separate member of the Refugee Appeals Tribunal.

Counsel for the Applicant: Mr. Ian Whelan B.L., instructed by Burns Kelly Corrigan, solicitors

Counsel for the Respondent: Ms. Silvia Martinez B.L., instructed by the Chief State Solicitor