

THE HIGH COURT

[2011 No 114 J.R.]

BETWEEN

P.E. (NIGERIA)

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

APPLICANT
RESPONDENTS

JUDGMENT of Mr. Justice Eagar delivered on the 11th day of March 2015

1. This is a telescoped hearing of an application for an order of *certiorari* quashing the decision of the second named Respondent that the Applicant had failed to establish a well-founded fear of persecution as defined under s.2 of the Refugee Act 1996 (as amended).

2. The Applicant is a citizen of Nigeria. Her date of birth is 10th October 1955. She is a widow as her husband died on the 5th December 2008. She has two adult children. She left Nigeria on the 14th July 2010 and came to Ireland on the 15th July 2010. She worked as a cleaner for two months before coming to the Refugee Applications Commissioner to apply for asylum on the 15th September 2010. She completed on that date an ASY1 Form and an application for refugee status questionnaire on the 23rd September 2010. She had an interview with the Refugee Applications Commissioner on the 7th November 2010 and the finding and recommendation of the Refugee Applications Commissioner was that the Applicant was not at risk for reasons of nationality, political beliefs, religious beliefs, race or membership of a social group as required by s. 2 of the Refugee Act 1996 (as amended) and had failed to establish a nexus to s. 2 of the Refugee Act 1996 (as amended). There was also a recommendation that s. 13 (6) (c) of the Refugee Act 1996 (as amended) would apply as the Applicant had failed to make an application as soon as reasonably practicable after arrival in the State.

3. Notice of appeal was lodged by her solicitors and the second named Respondent made a decision on the 27th January 2011 affirming the recommendation of the Refugee Applications Commissioner in relation to the application for refugee status.

Applicant's claim

4. The Applicant is a Jehovah Witness and is an Ibo of ethnic origin. She is a farmer and states she never applied for asylum in Ireland or any other country previously. She has no family in Ireland.

5. The core of the Applicant's problem is that the Applicant's brother-in-law sought her land after her husband died. The Applicant then sold the land in January 2010 for about €3,500. She had lived with a friend until she left Nigeria. She made up the rest of the monies that she had to pay for travelling by selling her property such as her fridge and clothes. She decided to go to Ireland where she decided to work as a cleaning lady or child minder and she worked in a house for about two months.

Decision of the second named Respondent

6. The second named Respondent stated at the outset that the notice of appeal had been studied in depth and applied to this decision and set against the Applicant's credibility. He also stated that further submissions were made by the Applicant's legal representatives under letter dated the 19th January 2011.

7. In his analysis of the claim the second named Respondent found that the Applicant had not gone to the police authorities with her problems. She did not go to the police on the grounds that she did not want to tell them because it was a family problem. There is a mistake in the findings of the second named Respondent in that he noted that the Applicant's husband was alleged to have been killed in December 2008. In fact he died in 2008 but was not killed. However the second named Respondent did not make any issue in relation to this alleged killing and made no finding. He did say that when the Applicant left Nigeria in July 2010 it was a long time to wait to leave the country if that was her intention at the time. She failed to get the authorities to assist her. She stated that this further undermined her suggestion that she had to fear for her life.

8. Her main claim was that the Applicant's brother-in-law would seek to kill her over the land and the second named Respondent said that he found it extraordinary that the Applicant's brother-in-law would now seek to kill her on the basis that she sold the land to pay for the trip to the State. He also stated further that she did not give details of her route of travel and she suggested that someone else handed the passport into immigration offices at the various checkpoints. The second named Respondent found this highly unlikely.

9. The nub of the decision of the second named Respondent was that the Applicant stated that she was afraid that she would be killed by her brother-in-law on the basis that she owned the land that he wanted and she subsequently sold this land. He said that in his view this is an act based on a crime and in the circumstances she would not come within a Convention reason. He confirmed the finding of the Refugee Applications Commissioner that she did not come within a social group of the definition of a refugee having regard to under s. 2 of the Refugee Act 1996 (as amended).

10. The rest of the decision of the second named Respondent dealt in detail with the issues of internal relocation and counsel for the Respondents was happy to concede that the findings in the decision concerning the issue of relocation were no longer sustainable given developments in the law since the decision was made. The issue of internal relocation only arises once the Applicant establishes a fear of persecution on a Convention ground.

11. Counsel on behalf of the Applicant suggested that the assessment of credibility was unlawful and quoted the decision of *I.R. v. Minister for Justice Equality and Law Reform* [2009] IEHC 353, a decision of Cooke J. He further contended that no reasons had been given justifying the findings of the second named Respondent. He further contended that because the Applicant had no oral hearing the only way that the Applicant could make her case was to do so in writing and this was done by way of the notice of appeal. He complained that the second named Respondent ignored the decision entirely and that this was a flawed approach and he quoted from

M.M. v. Minister for Justice Equality and Law Reform & Ors, Case C-277/11, [2012] ECR I-000, a decision of the European Court of Justice. He made submissions in relation to the issue of the internal relocation and it was not being pursued by the Respondent. He referred also to s. 17 of the Refugee Act 1996 (as amended) and quoted the case of *D.A. v. Minister for Justice Equality and Law Reform*, a decision of Cooke J. on the 5th March 2010 indicating that the Minister is the person who has the final say on whether an Applicant is declared to be a refugee.

12. Counsel on behalf of the Respondent submitted that the Applicant's claim falls outside the Convention. The second named Respondent did not refuse the claim because it was based on credibility grounds but refused it because it was based on a crime and had no connection with the 1951 Convention or s. 2 of the Act and that was the thrust of her submissions.

13. In response counsel on behalf of the Applicant indicated that the particular social group to which the Applicant claimed she belonged to was a particular social group comprising single women and/or widowed women and/or female lead households in Nigeria.

Discussion

14. The definition of a refugee in accordance with s. 2 of the Refugee Act 1996 (as amended) states as follows:-

"In this Act "a refugee" means a person who, owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his or her former habitual residence, is unable or, owing to such fear, is unwilling to return to it." (this Court's emphasis).

15. There is a requirement that the person seeking refugee status is being persecuted for, *inter alia*, a membership of a particular social group.

16. *"The Law of Refugee Status"* by James Hathaway and Michelle Foster (2nd edition, published in 2014) states:-

"There is little doubt that of the five Convention grounds social group is the Convention ground with the least clarity. Perhaps due to its nebulous nature and concomitant malleability, it also the ground that has been subject to the most rigorous examination by courts."

He continues:-

"An attempt to transform this ground into a "catch all" category is seductive on a humanitarian perspective but would effectively render the nexus clause superfluous and hence cannot stand as a matter of treaty interpretation."

He further continues:-

"Hence it is well accepted that the size of the group should be irrelevant: a social group may be constituted by a very small group (family) or a very large group (women)."

17. However as counsel for the Respondent pointed out the Applicant was not being persecuted because she was a woman but because she was being threatened as she owned land and her brother-in-law wanted that land.

18. I am satisfied that the second named Respondent considered the notice of appeal as he stated that he had studied it in depth and applied it to the decision and I can see no fault in the decision of the second named Respondent such as would warrant an order of *certiorari*. For the reasons stated above I therefore refuse the relief sought in the notice of motion.