

THE HIGH COURT

JUDICIAL REVIEW

[2006 No. 49 JR]

BETWEEN

S. E. (A MINOR) SUING BY HIS MOTHER AND NEXT FRIEND V.E.

APPLICANT

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

RESPONDENTS

**AND
HUMAN RIGHTS COMMISSION**

NOTICE PARTY

Judgment of Mr. Justice Roderick Murphy dated the 23rd day of March 2007

1. Pleadings

By notice of motion dated 26th February 2006, the applicant sought an order for *certiorari* quashing the decision of the first named respondent (the Commissioner) which was notified to him on 2nd January 2006, that the applicant should not be declared a refugee, together with an order of *mandamus* directing the Commissioner to afford the applicant a fresh interview, several declarations relating to the alleged failure to have regard to the principles of natural and constitutional justice and that the recommendation was wrong in law having regard to the provisions of the Refugee Act, 1996.

An application for an order providing for an extension of time was not opposed by the respondents and the court made such order by consent.

The grounds upon which such relief was sought were that the Commissioner exceeded jurisdiction in regarding the applicant as a foreign national and failed to have regard to the description by the mother of the applicant that the applicant was a citizen of no country and also erred in giving the application priority.

A further ground was that the Commissioner had erred in law in failing to consider the circumcision of the applicant in his parents' country of origin, to which he had been deported with his father from 5th July 2005, to 24th December 2005, as persecution.

The Commissioner also erred in law in failing to consider the persecution suffered by other members of the applicant's family, including circumstances surrounding his father, as evidence of past persecution indicatory of the risk of subjection to future persecution to which the applicant is exposed.

Further grounds related to the consideration of the well-founded fear of persecution for a Convention reason.

It was also claimed that the Commissioner had failed to identify the country of origin information relied upon.

The Commissioner had also erred in finding that the mother of the applicant had definitively claimed that the father of the applicant had been killed on a refoulement to his country of origin.

2. Affidavit of V. E.

The applicant's mother says she was a foreign national born in 1986, with a baby boy born in Ireland. She had arrived in Ireland on 22nd April 2003, with a foreign born child and applied for asylum with her husband. Her husband was subject to a deportation order and she and her foreign born child are currently the subject of deportation orders. The applicant child, S, was deported to the parents' country of origin on 5th July 2005, together with his father whereupon her husband was immediately imprisoned and handed over to S to a fellow deportee with instruction to deliver him to a pastor who in turn would deliver him to her family and in particular her mother. Her family refused to accept delivery of S from the pastor who then delivered S to an agent for the purpose of returning him to her. She said that she had been told that her husband was now dead but had no way of knowing whether this was correct or not. She received a phone call on 24th September 2005, to say that S had been returned to Dublin and that she should travel there to collect him. She recognised him only by a birthmark.

An individual application for asylum was submitted on S's behalf with the assistance of her solicitor to the Office of the Refugee Applications Commissioner (ORAC) by letter of 6th October 2005. Later that month she was instructed to attend the office to make an application, which she did on 2nd November 2005, and was told that in the box marked "Nationality" that she should insert her country of origin as she was told that she could not state Ireland in that box. Her application on his behalf was to be prioritised and she was given the questionnaire to complete on his behalf on which she stated that the applicant was a "citizen of non-country".

By letter dated 30th December 2005, she was informed that ORAC was recommending a refusal of a declaration as refugee.

The report was headed:

"Country of Origin: 'N' and

Nationality: 'N'"

This had no regard to her submission on behalf of her child that he was Irish.

The report made a number of findings regarding her credibility: she did not know the pastor who organised the return of her child nor of what was happening in her country of origin. The circumcision of her child in his parents' country of origin was not regarded as wrongful or as amounting to persecution. She did not have any medical reports but was trying to find out if she could procure such reports.

In relation to her husband she said that she had no means of finding out whether he was dead or alive as she had been originally told he was in prison and later that he had been killed.

The original application form dated 3rd October 2005, was sent by her solicitors to the first named respondent on 6th October 2005, which gave the child's nationality as Ireland after the parents' country of origin had been deleted.

An appointment was made with the first named respondent for 2nd November 2005, where fresh application was made and signed by the applicant's mother giving nationality as the parents' country of origin and country of birth as Ireland and also giving the name of the spouse and other child which had been omitted from the earlier application form.

The questionnaire dated 15th November 2005, gave S citizenship at birth and current nationality/citizenship as "citizen of non-country".

During her interview the applicant's mother said she had no documentation to establish her identity. She believed that if her son were returned to his parents' country of origin:

"They would kill him because he was deported on 5th July 2005. He was just one month old. He was deported by the Irish Authorities to his parents' country of origin. I wasn't around at the time. He was circumcised in his parents' country of origin and a Pastor saved him. He has a swollen penis. A vein was cut during the circumcision and there was a lot of bleeding.

(On that day I took my other son, S to the doctor and left S with his father. The authorities came and deported S and his father. I haven't any information on his father. I have heard different stories, that he is in jail or he is dead)".

When asked how S got back to Ireland she said:

"I received phone calls from someone in her country of origin, I do not know who, telling me that my son is in danger. They told me that his father had already been killed. I begged with them not to kill my baby. I was told to keep my phone on so they could contact me at all times. Eventually I was told to come to Dublin and reveal what colour clothes I was wearing. I went to the spot they told me to and a car pulled and handed me my baby. I only knew him because of the birthmark... All I know is that the man said he was a Pastor and that the baby's life was in danger..."

She said that she had no medical documents from her GP and that she took S to the hospital on 18th October. She did not know when S was reunited with her – end of September.

When asked why she thought S would be in danger in his country of origin, she replied:

"Because a pastor saved him."

As to who would want to kill him she said:

"I don't know. I haven't heard from his father at all so it is obviously not safe in his country of origin Maybe the people who have taken or killed his father would want to harm S."

She did not know the pastor's name nor how he had contacted her other than that "maybe the other people on the plane being deported told the Pastor. I don't know".

Later she said that if he was safe in his country of origin they would not have sent him back. They could kill him. She did not know who would kill him as she did not know what happened in his country of origin. She was constantly afraid of deportation and wanted help from the Irish Authorities not to be deported.

She did not know the address of her doctor, Dr. Reagan.

While it is not, of course, necessary for the court to consider the answers to the questionnaire and come to its own conclusions, these references have been referred to in relation to the s. 13 report referred to by counsel in relation to the s. 13 report.

3. Report Pursuant to s. 30 of the Refugee Act, 1996, as amended.

The report states by way of introduction that the applicant's case is based on an alleged fear of persecution in his parents' country of origin because his mother states that he would be killed if he relocates to that country. The legal basis for assessment is s. 2. The report deals with the basis of a well-founded fear and makes a number of findings in relation to credibility and plausibility. It finds that it was completely implausible that anyone would bring a four month old baby from that country to Ireland and hand him over to his mother without introducing themselves or explaining what had happened in her country of origin. Counsel for the applicant says that the applicant's mother's reply that other people on the plane being deported may have told the Pastor and that she did not know, answers the finding that she was unable to state who brought him back to Ireland.

This Court finds that such finding had, indeed, an evidential basis.

It is submitted that the finding that the applicant's mother stated that she was informed that her alleged husband was killed in his country of origin was incorrect as she had said that he was either in jail or killed. However, as seen above she was told that he had been killed. The question of credibility is her inability to state why he had been killed or who killed him.

There is a further finding that the mother did not apply for asylum for a number of months and that this undermined the applicant's claim. The applicant was born in 2005, had been deported 5th July 2005 and returned on 24th September 2005. His application for asylum was not made until 6th October, five months after his birth and, excluding his absence, a period of two and a half months. The difference is consistent with the finding of the Commissioner that the applicant's claim lacked credibility was unfounded. It seems to this Court that there was evidence to ground such a finding.

Counsel further submits that the reference to "available country of origin information" as well as the applicant's mother's testimony led it to conclude that the applicant did not have a well-founded fear of persecution in his country of origin was a breach of the applicant's fundamental rights given that the country of origin information was not identified and that the provisions of *Moyosola v. The Minister* should apply.

This Court considers that general references to country of origin information must be distinguished from specific reliance on documents. In *Okeke v. Minister for Justice* [2006] IEHC 46, Peart J. stated:

"The Member stated that she was not satisfied that the applicant could not access meaningful protection by relocating within N, and was of the view that B, P H or L would be such places. She had already referred to the fact that this applicant was highly educated and employable, and that she had a network of friends in the country. I am satisfied that it cannot be substantially argued that this was a conclusion which could not be properly arrived at by the Tribunal Member. Curial deference certainly permits in the case of N that a certain knowledge of that country would be available to the Tribunal. I will come to the fair procedure point shortly. At the moment I simply deal with the submission that the Member failed to take into account relevant country of origin information in that regard. But that submission totally disregards the responsibility which is shared by an applicant and the Tribunal to bring forward relevant information and material. The applicant brought forward no evidence or material herself which the Tribunal might have considered, but that is not to say that the Tribunal was bereft of any information or basis on which to make a judgment that the applicant's safety could be reasonably assured elsewhere in N. The decision does not take place in a vacuum. It is formed against a backdrop of knowledge of the overall situation in the country of origin."

There is, in this case, no indication of any country of origin information put forward by the applicant herself on behalf of her son. The Member dealing with the case on behalf of the Refugee Applications Commissioner does not refer to specific cases but to general country of origin information which seems to me to be consistent with the "certain knowledge of that country that would be available" in the decision of Peart J.

Finally the s. 13 decision is that it is not possible to ascertain a s. 2 Convention link. The applicant has not shown a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion. The applicant's mother's claim that the applicant would be killed in his country of origin by people for no particular reason does not constitute a well-founded fear of persecution for a Convention ground reason.

It seems to this Court that there is an evidential basis for this finding. The applicant's mother does not say where she comes from nor gives any details in relation to where the applicant was circumcised or that there would be any further harm done to him if he were to return to his parents' country of origin.

Counsel on behalf of the applicant also objected to the reference in the decision to the deportation status of the mother and the father of the applicant. It is clear that does not form the basis of the decision. It is not a matter which is pleaded. Even if it were, it does not seem to me that judicial review lies in relation thereto.

For these reasons the court refuses to grant leave.