Neutral Citation Number: [2008] IEHC 336

THE HIGH COURT

2007 1600 JR

BETWEEN

M. I. A.

APPLICANT

AND

THE REFUGEE APPEALS TRIBUNAL AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENTS

JUDGMENT OF MR JUSTICE HEDIGAN, delivered on the 29th day of October, 2008.

1. The within proceedings were instituted through the applicant's next friend, a Social Worker, when the applicant was a minor. She has since turned 18 years of age and an application was therefore made on her behalf at the outset of the hearing, seeking leave for the applicant to proceed in her own name. That application having been granted, she now proceeds in her own name. She is seeking leave to apply for judicial review of the decision of the Refugee Appeals Tribunal (RAT) to affirm the earlier recommendation of the Office of the Refugee Applications Commissioner (ORAC) that she should not be declared a refugee.

Factual Background
2. The applicant is a national of Nigeria. Until 2006, she lived with her parents and five siblings in a village some three hours from Lagos. She says that she left her village at the age of 16 owing to violence between her village and another village on foot of a land dispute. She says the elders of the other village threatened to kill the children of her village as a result of the land dispute.

3. The applicant travelled to Lagos, where she was homeless for a month and survived by living under a bridge and begging for food. The applicant says that when begging, she met a woman (S) who brought her home and cared for her. Through S, the applicant met another girl, who brought the applicant to meet a woman (J) who had just returned from abroad. J said she would help the applicant to find work in a shop outside of Nigeria. A fortnight later, J brought the applicant to a shrine in a village in Lagos and forced her to engage in a ritual and swear not to run away. Thereafter, J's boyfriend brought the applicant to the airport, from where she travelled alone to Ireland, via Frankfurt, London and Belfast.

4. The applicant says that she was met in Belfast by J and brought to a house in Sligo where she met two other Nigerian girls. En route to Sligo, J told the applicant she would have to work as a prostitute in order to repay the sum of €60,000 and she threatened to kill the applicant if she escaped. Three days later, a Garda raid was carried out on the house in Sligo. The applicant was detained in Mountjoy for three days and was then placed in HSE care in Chester House.

5. CCTV footage shows that some time later, three unidentified Nigerian women came looking for the applicant and the other Nigerian girls who had been in the house in Sligo. The applicant remained in her room but the other girl who was in Chester House disappeared at that time and the third girl, who had been placed elsewhere, also disappeared and was later found in a brothel in the U.K.

Procedural Background
6. An application for asylum was made on behalf of the applicant on 22nd November, 2006. In her ORAC application, the applicant focussed on her fear of violence in her home village and her fear of the shrine in Lagos. In the section 13 report compiled by the authorised ORAC officer, several negative credibility findings were drawn and it was recommended that she should not be declared a refugee.

7. From the ORAC decision, the RLS appealed on behalf of the applicant to the RAT. In support of her appeal, the RLS forwarded a number of redacted RAT decisions and an amount of country of origin information, including portions of a *Report on human rights issues in Nigeria* compiled by a joint British-Danish fact-finding mission to Abuja and Lagos in 2004, and a US DS Country Report on Nigeria for the year 2005. An RAT oral hearing took place on 2nd August, 2007. It was stressed that the applicant was focussing on the second strand of her claim, i.e. that she fears reprisals by J and also from the oracle, as she ran away and broke the oath that she took at the shrine. The applicant now claims to be a refugee *sur place.* She did not seek to rely on her fear of violence in her home village owing to a land dispute. Evidence was given by a Detective Inspector of the Garda National Immigration Bureau (GNIB) and by a Social Worker.

The RAT Decision
8. The decision of the Tribunal Member to reject the appeal, dated 26th September, 2007, was notified to the applicant by letter dated 11th October, 2007. He made allowance for the applicant's tender years and for cultural differences but nevertheless drew several negative credibility findings in respect of her story. He went on to conclude that if returned to Lagos, the applicant could avail of the protection of the International Organisation for Migration (IOM) or if returned to her village, the applicant would be able to avail of the protection of her family, who continue to live in the village.

Extension of Time
9. The applicant is outside of the time allowed by section 5 of the *Illegal Immigrants (Trafficking) Act 2000* to make this leave application. The State has raised no objection to the extension of time and in the circumstances, I am satisfied that there is good and sufficient reason for extending time.

The Submissions
10. Although a number of further grounds were also advanced in the applicant's written submissions, the primary complaints advanced at the hearing were as follows:-

a. Error of fact as to the evidence given by the Garda at the oral hearing;

b. Failure to consider country of origin information in a manner which accorded with the requirements of natural and constitutional justice.

(a) Error of Fact
11. In section 3 of his decision, the Tribunal Member refers to evidence given at the oral hearing by the Detective Inspector of the GNIB, who he refers to as "[t]he witness". No reference is made to any other witness. In section 6 of the decision, the Tribunal Member states as follows:-

> "After listening to the evidence of the witness, the Tribunal is satisfied that should the applicant return to Lagos there is adequate protection for her under the auspices of the IOM should she wish to avail of that organisation. The witness gives evidence that numerous females who were trafficked to Italy returned to that country and found protection under the IOM. Protection therefore is available to the Applicant should she return to Lagos."

12. The applicant submits that this statement constitutes an error of fact. A note of what occurred at the oral hearing was taken by an RLS caseworker, who has sworn an affidavit to the effect that the note is a comprehensive and accurate reflection of the conduct of the appeal. The portion of note pertaining to the evidence given by the Garda makes no reference to the trafficking of women to Italy.

13. The respondents submit that the Tribunal Member did not make any serious error of fact in this case, and that even if an error was made, it does not render the decision unreasonable or irrational. Reliance is placed on the principle that it is not appropriate to parse and analyse a decision word for word in an attempt to establish a want of process (see e.g. *Tabi v The Refugee Appeals Tribunal* (unreported, High Court, Peart J., 27th July, 2007)).

(b) Treatment of Country of Origin Information
14. The applicant complains that the Tribunal Member failed to consider the country of origin information before him in the manner set out by Edwards J. in *Simo v The Minister for Justice, Equality and Law Reform* [2007] IEHC 305. In that case, the applicant challenged the treatment of country of origin information by the Tribunal Member. Edwards J. held:-

> "While this court accepts that it was entirely up to the Refugee Appeals Tribunal to determine the weight (if any) to be attached to any particular piece of country of origin information it was not up to the Tribunal to arbitrarily prefer one piece of country of origin information over another. In the case of conflicting information it was incumbent on the Tribunal to engage in a rational analysis of the conflict and to justify its preferment of one view over another on the basis of that analysis."

15. Reliance is also placed on the subsequent decision of Edwards J. (of 30th November, 2007) in respect of an application seeking a certificate of leave to appeal the *Simo* judgment, a transcript of which has been provided to the Court. In that decision, Edwards J. stated that the following is a well established principle:-

> "First of all there is the principle that a judicial or quasi judicial tribunal must have regard to all of the evidence before it and cannot cherry pick the evidence. If it is to act judicially it must consider all of the evidence put before it. If there is a conflict with respect to the evidence, such that the Tribunal cannot resolve that conflict, other than by for good and substantial reasons preferring one piece of evidence over another piece of evidence, then it is incumbent on the Tribunal or court, as the case may be, to state clearly its reasons for doing so."

16. It is argued on behalf of the applicant that there is no reasonable or rational analysis in the Tribunal Member's decision in the present case as to why the Tribunal Member preferred some country of origin information suggesting that the applicant would be able to avail of State protection if returned over the preponderance of country of origin information, which is said to be to the contrary effect.

17. The respondents argue that the country of origin information before the Tribunal Member supports the conclusions drawn by him. It is contended that *Simo* can be distinguished from the present case, as there was a very sharp conflict of evidence before the Tribunal Member in *Simo*. The respondents note that the salient documents before the Court in the within case generally paint the same general picture as to State protection in Nigeria as many other reports with which the Court is familiar – i.e. that State protection does exist, albeit in an imperfect manner.

The Court's Assessment
18. This being a leave application, the applicant must establish that substantial grounds exist in support of the contention that the Tribunal Member's decision should be quashed. As is now well established, this means that grounds must be shown that are weighty, arguable and reasonable, as opposed to trivial or tenuous.

(a) Error of Fact
19. The note taken by the RLS caseworker seems to be a careful and comprehensive account of what occurred at the RAT oral hearing, albeit not a verbatim transcript thereof. On that basis and in the absence of an affidavit from the respondents, I would accept that the Tribunal Member erred by attributing to the Garda his knowledge of the trafficking of women to Italy. According to the note, the Garda gave evidence in respect of the applicant, his experiences of the beliefs of Nigerian people as to the power of the shrine, and the level of protection available to victims of trafficking through IOM in Nigeria. It appears that the reference to trafficking in Italy instead derived from the country of origin information that was before the Tribunal Member. Sections 5.7.11 to 5.7.15 of the joint British-Danish fact-finding mission report (2004) refer to co-operation between the Nigerian and Italian governments in combating trafficking, the establishment of societal protection schemes for women forced into the sex industry in Italy, the return of victims of trafficking from Italy, and the reception and support of those victims in Nigeria.

20. If one is to take a holistic approach to the decision – which this Court is obliged to do – it seems clear to me that the information on which the Tribunal Member drew his conclusions was properly before him and that it was open to him to draw the conclusions that he did from that information, irrespective of the error of attribution.

(b) Treatment of Country of Origin Information
21. I would strongly concur with the view expressed by Edwards J. in *Simo* that decision-makers must treat country of origin information with care and in accordance with the principles of natural and constitutional justice. It does not follow, however, that the obligations set out in *Simo* apply in each and every situation where a decision-maker seeks to rely on country of origin information.

Rather, as Edwards J. noted at pages 10-11 of the transcript of his decision of 30th November, 2007, the obligation for the decision-maker to give a reason for his or her reliance on one report over another arises "where there is a major conflict and where the status of one piece of 'country of origin information' versus another piece of 'country of origin information' is an issue of very significant importance in the case". Such a "major conflict" occurred in *Simo*, where certain pieces of country of origin information indicated that those who opposed the Government in Cameroon were routinely subject to arrest, detention and torture, while the report relied on by the Tribunal Member (who gave no reasons for relying on that report instead of on the others) suggested that state persecution no longer occurs and that those who perpetrated torture in the past were now being punished by law. The Tribunal Member failed to allude to the conflict that existed between the various country reports, and he also failed to give any indication as to why he was inclined to prefer the information contained in one over another. As Edwards J. noted at page 8 of the transcript of his decision of 30th November, 2007, "[t]his was not a peripheral issue in the case. This was a central issue in the case."

22. The salient country of origin information before the Tribunal Member in the present case comprised the reports referred to at paragraph 7 above. Section 5 of the joint British-Danish report - entitled "Trafficking in Women" - contains the following subheadings (among others): Contracting the victims, Legal provisions and governmental actions, Risk of reprisals by traffickers and madams, Societal attitudes, and Protection of victims. I have read the relevant sections and in my view, when viewed in its entirety, the information contained therein supports the general conclusion drawn by the Tribunal Member that State protection – albeit imperfect – would be available to the applicant if she were to be returned to Nigeria. The opinions cited in the relevant report as to the availability of protection for victims of trafficking are relatively cohesive.

23. It does not seem to me that there is a conflict of any significance as to the availability of protection; rather, different opinions are expressed as to the quality and duration of the protection that is available to victims of trafficking. In my judgment, therefore, it was open for the Tribunal Member to reach the conclusion that he did based on the information that was before him, and he did so with due regard to natural and constitutional justice.

Conclusion
24. In the circumstances, I am not satisfied that substantial grounds have been established and I must therefore refuse leave.