

**THE HIGH COURT
JUDICIAL REVIEW**

[2009 No. 914 J.R.]

BETWEEN

B.O.B.

APPLICANT

AND

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

RESPONDENTS

AND

THE HUMAN RIGHTS COMMISSION

NOTICE PARTY

JUDGMENT of Mr. Justice Colm Mac Eochaidh delivered on the 2nd day of May 2013

1. In these 'telescoped' judicial review proceedings, the applicant seeks reliefs arising from a negative determination by the Refugee Appeals Tribunal (the "Tribunal").
2. The applicant is from Ghana and was born in 1982. The persecution alleged arises from his conversion from Islam to Christianity and the negative reaction of his father, a Muslim elder. The applicant's first born child was said to have been killed by an unknown assailant in 2000 and the applicant suspects his father's involvement. The applicant complained that the police were inactive following this event. He married his Christian girlfriend, the disapproval of his father notwithstanding. His house was burnt down. Following threats from his father and his father's associates, the applicant fled Ghana alone in 2007 and eventually sought asylum in Ireland.
3. Three complaints are maintained against the decision of the Tribunal in these proceedings.
4. Firstly, it is alleged that the Tribunal failed to assess the applicant's core claim. The complaint is expressed as follows in written submissions:

"The Tribunal failed to perform the fundamental task of making an assessment of the evidence and thereafter expressing in clear terms whether or not it was accepted that the Applicant had married and created a family with a Christian, had formally joined a Christian church himself, whether his father was a Muslim elder well-known within Muslim circles and who resolved to destroy the Applicant's 'life, children and marriage', whether the Applicant had in fact been subject to the threats and assaults as stated by him, and whether the father's actions and threats were plausible in the light of known country conditions."
5. The second complaint made of the Tribunal is that negative credibility findings were not based on an accurate assessment of the evidence. Numerous credibility findings seem to have been made by the Tribunal Member who neither expressly accepts nor rejects the applicant's conversion to Christianity and his persecution by his father. The assessment of the applicant's claim is expressed in the following terms by the Tribunal Member:

"The applicant claims to be a Ghana national who suffered difficulties as a result of religion. The applicant states he lived most of his juvenile life with his uncle who brought him up as a Christian. The applicant states that on one occasion his father, who was a staunch Muslim, attended at his uncle's home and sought his repatriation in order for him to be brought up in the Muslim right.

The applicant states that he met a Christian woman in 1998 who he continued to have a relationship with and ultimately have three children, to the annoyance of his father and this brought about problems for the applicant. However, the Tribunal must look at the overall picture in respect of the applicant's claim. The applicant was living with uncle who was a Christian. It is not credible that if his father was such a staunch Muslim as is indicated by the applicant that he would be allowed to live most of his juvenile life with his uncle who was a Christian and who had brought him up in the Christian faith. *[That appears to be the first credibility finding.]* Furthermore, the applicant stated that in 2003 he formally was baptised. This was the same date as his mother. If this was the case, the applicant states that his mother and father divorced, however it appears that his mother had no difficulties and was allowed to continued *[sic]* and was not pursued by her husband. *[This appears to be the second credibility finding].*

One of the sinister elements of the applicant's claim is that the applicant alleges his daughter was stabbed to death by his father. The applicant states that he believes his father was involved however the Tribunal has no proof that his father was involved in the death of his daughter. The claim that his daughter died cannot be substantiated by the Tribunal. Furthermore the applicant indicated he was unable to provide any information to the police to assist them or any proof to assist the police that his father was involved. The applicant went on to state that these cases can be influenced due to corruption and the police would consider it a family matter. However, the applicant never reported this matter to any state authorities or never sought to complain about the treatment of the investigation. Bearing in mind the allegation of murder was so severe in nature it is not credible that the matter could not have been taken up by a higher authority. *[This appears to be the third credibility finding.]*

The Presenting Officer asked the question that in the questionnaire the applicant stated he was introduced to Christianity by his girlfriend, however he now states that he was a Christian while living with his uncle. The applicant states he should have mentioned this and it was an error. [*This appears to be the fourth credibility finding.*]

It was put to the applicant that his first child was born in December 1998, however he had met his girlfriend towards the middle of 1998. The applicant stated that it was at early 1998 that they met. [*This appears to be the fifth credibility finding.*]

It was also put to the applicant that certain items were omitted from his questionnaire. [*This appears to be the sixth credibility finding.*]

The applicant stated that he did not read all of the interview, there is an onus on the applicant to provide a truthful account of the circumstances surrounding their departure from their country of origin. [*This appears to be the seventh credibility finding.*]"

6. Apart from setting out a short statement of the law on the assessment of applications for asylum, the Tribunal Member confines himself in the assessment of the applicant's claim to the following paragraph:

"The applicants account of his alleged persecution is vague, the applicants story in respect of his fathers involvement in the death of his child is supposition, there is no evidence before the Tribunal that his fears are well-founded furthermore if the applicant had wished to he had an option of relocating.[sic]"

7. Having set out how the Tribunal Member approached the claim, I now examine the first complaint in respect thereof. Was the applicant's core claim actually decided by the Tribunal Member? A number of authorities are cited by the applicant in support of the proposition that a core claim should be decided (see *E.P.A. v. The Refugee Appeals Tribunal*, (Unreported, Mac Eochaidh J., 27th February 2013) [2013] IEHC 85), where the court said, as to the core claim:

"A clear and reasoned finding on this central issue was required of the Tribunal and a failure by the Tribunal Member to decide this critical part of the applicant's claim in express terms establishes a substantial ground that the decision is unlawful ... (see paragraph 9 of the decision)."

8. Reference is also made to *Voga v. The Refugee Appeals Tribunal* (Unreported, High Court, Ryan J. 3rd October, 2010), and *S.R. [Pakistan] v. The Refugee Appeals Tribunal* (Unreported, High Court, Clark J. 29th January, 2013, at paragraphs 18 to 23). In *Meadows v. The Minister for Justice, Equality and Law Reform*, Murray J. said as follows:

"An administrative decision affecting the rights and obligations of persons should at least disclose the essential rationale on foot of which the decision is taken. That rationale should be patent from the terms of the decision or capable of being inferred from its terms and its context.

Unless that is so then the constitutional right of access to the Courts to have the legality of an administrative decision judicially reviewed could be rendered either pointless or so circumscribed as to be unacceptably ineffective. In my view the decision of the Minister in the terms couched is so vague and indeed opaque that its underlying rationale cannot be properly or reasonably deduced."

9. In view of that statement, it seems to me that a Tribunal Member should express conclusions on an applicant's claim clearly. In this case, for instance, it was open to the Tribunal Member to accept that the applicant had converted to Christianity but to reject the assertion that his father was persecuting him. No finding is made as to whether the applicant had converted to Christianity. This of itself is not fatal to the Tribunal's decision. The Tribunal might make multiple credibility findings in relation to a part of an applicant's account, which, read cumulatively, might adequately express rejection of that part of the claim. The fact that no express finding is made on a separate part of the same claim might not vitiate the decision.

10. In this case, it seems to me that the Tribunal Member may well have accepted that the applicant converted to Christianity. But if the reason for the rejection of the applicant's claim was difficulty believing the tale of persecution by the father, this should have been stated in terms. The standard required of a decision maker on an asylum claim as to the expression of a rejection of a claim and the statement of reasons therefor has been elaborately addressed by Irish courts, not only in the passage quoted from Meadows above but also in *I.R. v. The Refugee Appeals Tribunal* [2009] IEHC 353 and in *R.O. v. The Refugee Appeals Tribunal* [2012] IEHC 573. Having regard to these requirements I find as follows.

11. The first credibility finding seems to me to be irrational because the applicant explained the circumstances in which he came to be raised by his Christian uncle notwithstanding the Muslim faith of his father. The applicant's case is that his father objects to his adult religious conversion, not exposure to christianity in childhood and that his father travelled a great deal when he was a child and this was the reason he was reared by his uncle. This is not implausible. The second credibility finding ignores the explanation given for the fact that the applicant's mother was not persecuted although she too had converted to Christianity. The third credibility finding on the alleged failure of the applicant to report inaction by the police following the killing of his child is based on an error of fact - the applicant did make such complaint to the police. The sixth credibility finding that the applicant omitted items from his questionnaire is insufficiently detailed and one is left guessing as to what matters were omitted from the questionnaire.

12. As to the treatment of the applicant's core claim, I accept that the Tribunal Member failed to decide whether the applicant was persecuted by his father. It is not sufficient to say that the alleged persecution "is vague". The alleged persecution was far from vague. Concrete examples of persecution associated with the activities of the applicant's father were given. The real question was whether the account of the persecution was credible. If it was not credible, a proper explanation as to why the applicant's account was not believed should have been expressed, based, for example on unsubstantiated connection between the acts of persecution and the father, implausibility, contradictions, inconsistencies, impossibility or the lack of objective evidence to support the account.

13. The failures which I have identified in the credibility findings support the applicant's first complaint that his core claim has not been adequately assessed. Lawful credibility findings, had they been made, might well have answered this complaint.

14. The third complaint prosecuted by the applicant is that the treatment by the Tribunal Member of the issue of internal relocation is unlawful. As indicated in the quotation at paragraph 6 above, the matter is addressed in bare terms as follows:

"Furthermore, if the applicant had wished to, he had an option of relocating."

15. Following this stark statement, the Tribunal Member sets out the role of internal relocation in the assessment of a claim for international protection. Reference is made to the possibility of internal relocation as an answer to risk of harm. The Tribunal Member notes that "an internal flight alternative is inherent in the definition of a Convention refugee", that it is not something separate, and a quotation from the UNHCR "position paper" is set out to the effect that "if claimants are able to seek safe refuge within their own country, there is no basis for finding that they are unable or unwilling to avail themselves of the protection of that country".

16. The bare treatment of the relocation issue by the Tribunal Member does not appear to me to meet the minimum standard required. In *V.P. v. The Minister for Justice* [2003] 4 I.R. 200, Gilligan J. found that internal relocation for a person fearing persecution was an alternative to refugee status and not a component of the test of whether one was entitled to claim refugee status. This is a very significant statement as it highlights the possibility of a person having a well-founded fear of persecution for a Convention reason but nonetheless being denied refugee status because of the possibility of finding adequate protection by relocating internally in the country of origin.

17. The fact that refugee status can be denied on this basis means that the possibility of internal relocation must be examined with care. A mistaken finding on this issue would result in an applicant being returned to an established peril. In *D.T v. The Refugee Appeals Tribunal* [2009] IEHC 482, Cooke J. said (with regard to Regulation 7 of the Protection Regulations on internal relocation):

"14. The primary consideration in examining the perspective of relocation within a country of origin is to ensure that the particular source of persecution will not exist in that place or be likely to be encountered there once again. That is most frequently the primary consideration in cases where the threat is of a general or public character such as a tribal conflict in part of the country oppression by a political regime which is in power in part of a country. In such cases, it may be necessary by recourse to appropriate country of origin information to confirm that such a threat is genuinely absent from the proposed area of relocation.

15. The position is different, however, in the court's judgment, where the specific risk identified is a private or domestic one, such as the threat from a particular family member. Country of origin information is of little relevance in assessing such a risk. It falls to the decision maker to make the assessment by reference to an objective and commonsense appraisal of the reality of the risk ... the judgment to be made on that issue is the proper function of the specialist decision maker.

16. If it is reasonable to conclude that the prospective site is one in which the specific risk of persecution is eliminated or highly improbable, the only remaining question is whether the Tribunal Member erred in not seeking out specific information on the general economic, social or other conditions and circumstances prevailing in Freetown."

18. A detailed and careful consideration of internal relocation is only necessary where the decision maker accepts that the applicant has a well-founded fear of persecution for a Convention reason. Had lawful credibility findings been made in this case there would have been no need to deal with the issue of internal relocation. Though the Tribunal Member in this case attempted to make credibility findings, he also went on to make a wholly unnecessary statement in respect of internal relocation. As is apparent, not only was the statement unnecessary, it was legally inadequate by reference to the dicta of Cooke J. in *D.T* No risk assessment of a proposed site of relocation is disclosed much less the objective and commonsense appraisal of risk required by law.

19. As such, I formally grant leave and find that the decision of the Tribunal must be quashed and the matter remitted for a re-hearing.