Neutral Citation [2015] IEHC 441

THE HIGH COURT

JUDICIAL REVIEW

[2011 No. 776 J.R.]

BETWEEN

R.M. (AN INFANT SUING HIS MOTHER AND NEXT FRIEND P.B.)

APPLICANT

AND

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

REFUGEE APPEALS TRIBUNAL

ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Ms. Justice Stewart delivered on the 9th day of July, 2015

1. This is a telescoped hearing for judicial review seeking an order of certiorari quashing the decision of the Refugee Appeals Tribunal (RAT) of 28th July, 2011, which affirms the recommendation of the Offices of the Refugee Applications Commissioner (ORAC) that the applicant should not be declared a refugee. Further, the applicant seeks an order remitting the appeal of the applicant for full reconsideration by the RAT.

BACKGROUND

2. The applicant is a minor born in the State on 26th August, 2010, and by parentage is a national of the Democratic Republic of Congo (hereinafter referred to as the DRC). The applicant's mother arrived in the State in 2006 and is a failed asylum seeker from the DRC. The applicant's mother was granted leave to remain on 8th May, 2014, and this permission was extended to the applicant.

3. An application for a declaration of refugee status was made on behalf of the applicant by his mother, and next friend in these proceedings, on 6th April, 2011. Due to the applicant's age, all questionnaires and interviews were completed by the applicant's mother on the applicant's behalf.

4. At the s.11 interview, the ORAC authorised officer questioned the applicant's mother regarding his asylum claim and it is worthwhile setting out here that part of the interview:

> "Q8. What is your own status in this State?
>
> I have a deportation order. My asylum has been refused and subsidiary protection. Then I was issued with a deportation order.
>
> Q9. Can you explain for me in detail what you fear for your child if he went to DRC?
>
> R[…] does not have any fears. He was born here.
>
> Q10. Are there any reasons why the child would fear to go to DRC?
>
> He is just a child. In Congo they do not know him.
>
> Q.11 May I ask why did you lodge the asylum application on R[…]'s behalf ?
>
> I was asked to lodge the asylum application for him by Immigration as he has no status in this State.
>
> Q12. You have said that R[…] would have no fear should he go to Congo. Is there anything further you wish to add – or any other reasons why R[…] would be unable to go to DRC?
>
> No. The one that is in danger is me not R[…]."

5. At Q.22, the interview continues as follows:

> "Are you satisfied that you had a full opportunity to detail the reasons why R[…] would be unable to go to DR Congo?
>
> Yes. As I said, R[…] is not in danger. It is me. He came to seek asylum because of my case. I would be in danger."

6. By decision dated 16th June, 2011, ORAC recommended that the applicant not be granted refugee status, finding that the applicant did not have a well-founded fear of persecution and that there was no nexus, expressed on behalf of the applicant, to any Convention grounds. A s.13(6)(a) finding was found to be appropriate to this claim, which states: "The application showed either no basis or a minimal basis for the contention that the applicant is a refugee". The result of this finding is that the applicant's appeal to the Refugee Appeals Tribunal was by way of a papers-only appeal.

IMPUGNED DECISION

7. By decision dated 28th July, 2011, the RAT issued a negative decision in respect of the applicant's claim. The tribunal found that the applicant did not have a well-founded fear of persecution, stating that the only fear expressed was that of his mother and that this fear had previously been found by both ORAC and the tribunal not to be well-founded.

8. Under the heading 'analysis of the applicant's claim', the tribunal member sets out the reasons for the negative decision:

"The applicant is entitled to citizenship of the DR Congo based on the stated nationality of his mother. The applicant does not have any fear of returning to DR Congo and the witness did not refer to any reason why he could not return there. The only fear expressed was that of her own and this was found by the Commissioner and the Refugee Appeals Tribunal not to be well-founded. The difficulty inherent in applications such as this where there is no history upon which to rely, other than that of the parent, and in this respect there is always the inclination or tendency to attempt to go back over ground previously covered, in this case the mother's application. The Tribunal is mindful that a re-examination of the case already dealt with should not be entered into. An application by a child born to parents who have already been through the refugee determination process, cannot be 'a second bite at the cherry'. The Tribunal refers to the Judgment of Clarke J. (24th June 2005) [*Imoh & ors. v Refugee Appeals Tribunal & anor.* [2005] IEHC 220]– 'if a decision maker within the refugee process comes to a justified decision (this is to say a decision which is not subject to being quashed on review) to the effect that such a well-founded fear did not exist then that finding would equally apply in relation to the position of any minor whose claims were based on the same grounds'. The Tribunal refers to Clark J. 19th May 2009 I.N.M. –v- MJELR-; 'it will be highly unusual for a parent to fail to establish a fear of persecution and for a dependent minor child to succeed. It will be even more unusual for a toddler to succeed where her mother fails'.

Taking all matters in the round, the Tribunal is satisfied the applicant is not a refugee for any of the reasons set out in Section 2 of the Refugee Act 1996 (as amended). In arriving at this decision the Tribunal has taken into consideration the UNHCR Guidelines in assessing claims by minors, the International Convention on the Rights of the Child and what is in the best interest of the infant."

APPLICANT'S SUBMISSIONS

9. Mr. Paul O'Shea B.L., counsel appearing on behalf of the applicant, submitted that because the applicant's application was submitted three years after the mother's application, up-to-date country of origin information should have been analysed in respect of the claim. Basing the impugned decision on a previous decision was a breach of fair procedures, according to the applicant, and amounts to a refusal to examine the claim, which is a breach of the minimum standards required by both the Council Directive 2005/85/EC of 1st December 2005, on minimum standards and procedures in Members States for granting and withdrawing refugee status, O.J.L. 326/13 13.2.05 (hereinafter referred to as the Procedures Directive), Article 8(2) and European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006), s. 4 (1). The applicant contended that the decision-maker should not have had access to and/or relied upon the mother's decision at all. The applicant submitted that there was an erroneous interpretation of Clark J.'s decision in *I.N.M. v. Minister for Justice, Equality and Law Reform & anor.* [2009] IEHC 233 where the tribunal member quoted from para.32 as follows:

> "It will be highly unusual for a parent to fail to establish a fear of persecution and for a dependent minor child to succeed. It will be even more unusual for a toddler to succeed where her mother fails."

10. The applicant submitted that this does not mean that there should be no re-examination of the applicant's case as the applicant contended had happened in his case.

11. The applicant further submitted that the denial of an oral hearing at the appeal stage of the RAT meant there was no possibility of challenging the credibility finding at appeal stage. Counsel placed reliance on a judgment of Cooke J. in *S.U.N. (South Africa) v. Refugee Applications Commissioner & ors.* [2012] IEHC 338 which concludes, according to the applicant's interpretation at hearing, that where an applicant is refused a grant of refugee status based upon negative credibility findings then the discretion exercised by the commissioner to apply s.13(6) of the Refugee Act 1996 (as amended) is unlawful where the decision is grounded upon credibility.

12. The applicant submitted that the best interests of the child were not considered at all in this case, contrary to article 24 of the Charter of Fundamental Rights of the European Union.

13. The applicant submitted that the tribunal failed to have regard to paras.67 of the UNHCR Handbook on Procedures and Criteria for determining Refugee Status which provides:

> "It is for the examiner, when investigating the facts of the case, to ascertain the reason or reasons for the persecution feared and to decide whether the definition in the 1951 Convention is met with in this respect. It is evident that the reasons for persecution under these various headings will frequently overlap. Usually there will be more than one element combined in one person, e.g. a political opponent who belongs to a religious or national group, or both, and the combination of such reasons in his person may be relevant in evaluating his well-founded fear."

Counsel submitted that even where the decision-maker makes negative credibility findings against an applicant, he or she is still obliged to further investigate the claim made by the applicant as it is not the duty of the claimant to identify the reasons for their persecution. The applicant said it would be a breach of minimum standards not to consider the mother's claim of persecution afresh, as it relates to the minor applicant's claim, notwithstanding the negative credibility findings made against her during her own status determination decision. Not to do so, the applicant submitted, is a breach of the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006) namely s.5(1)(a)(b) which, under the heading 'Assessment of facts and circumstances', sets out as follows:

> "5. (1) The following matters shall be taken into account by a protection decision-maker for the purposes of making a protection decision:
>
> a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application for protection, including laws and regulations of the country of origin and the manner in which they are applied;
>
> b) the relevant statements and documentation presented by the protection applicant including information on whether he or she has been or may be subject to persecution or serious harm […]"

The applicant submitted that these minimum standards were not adhered to in the decision-making process.

14. The applicant relies on the judgment of Kelly J. in *Camara v. Minister for Justice Equality and Law Reform & ors.* (Unreported, Kelly J., High Court, 26th July, 2000) where, counsel submitted it was held that only two matters that should be taken into account in the assessment of an application for international protection:

1. Could this applicant's story actually have happened?

2. Is the applicant personally believable?

15. The applicant further submitted that there was no objective examination of the claim which is mandated under the Procedures Directive (Council Directive 2005/85/EC). Moreover, the applicant noted that because the same tribunal member had considered the mother's claim and refused it, there was bias in the decision. Notably, the mother's decision was not exhibited on affidavit before the Court. When counsel was asked how it is known if the decision-maker was the same in both the mother's and the child's case, an affidavit, sworn by the solicitor on record, exhibiting the mother's decision was produced, and the Court was advised that the affidavit had been sworn on the morning of the hearing. However, as the hearing was well under- way and indeed was nearing the end of the applicant's submissions; it was only in response to a question from the Court, said affidavit was mentioned, and no attempt was made either to serve it on the respondents and/or to seek to have it filed in Court before the commencement of the hearing together with accompanying exhibits, the Court refused to admit the affidavit in evidence.

16. The applicant argued that the finding of MacEochaidh J. in *F.A. v. Minister for Justice and Equality* [2013] IEHC 502 is an incorrect statement of the law, and that the correct statement is that all applications, regardless of credibility findings, should be assessed according to the questions outlined above from the Camara judgment. Counsel submitted that there is a serious question of where the law stands in this regard, relying upon a document furnished to this court entitled 'Assessment of credibility in refugee and subsidiary protection claims under the EU qualification directive – judicial criteria and standards', prepared for the International Association of Refugee Law Judges. The applicant argued that this document shows there is a disparity with Irish law and the minimum standards required by European law, as discussed in the document.

17. The form 2 notice of appeal was issued with a cover letter requesting previous decisions of the tribunal. Paragraph 2 of the cover letter, exhibited p.28 of the booklet, sets out as follows:

> "Please take note that our client requires copies to be made available to him of reports of previous decisions of the RAT in relation to similar cases as that of our client, i.e. cases involving the persecution of homosexuals in Nigeria and the availability of police protection and the realistic prospects of relocating internally within Nigeria to avoid such persecution without undue hardship."

The applicant, in respect of a question from the Court, submitted that the reference to homosexuals in the letter was a typographical error. The negative decision was issued to the applicant ten days after the aforementioned letter was sent, without issuing the applicant with the previous decision as requested, notwithstanding the error. The applicant asserted that this was a breach of fair procedures, and as a result of the Supreme Court decision in *P.A.A. & ors. v. Refugee Appeals Tribunal & anor.* [2006] IESC 53, the applicant has an entitlement to those previous decisions of the RAT before his appeal is decided.

RESPONDENTS' SUBMISSIONS

18. Counsel for the respondents, Ms. Ann Harnett O'Connor B.L., made preliminary points in relation to the oral submissions made at hearing by counsel for the applicant. First, in relation to the submissions that s.13(6) was arrived at in breach of fair procedures, the respondents submitted that this amounts to a challenge to the commissioner's findings, who is not a respondent to these proceedings. The respondents relied upon the decision of *N.E. (minor) v. Refugee Appeals Tribunal & ors.* [2015] IEHC 8, where, at para. 14, Noonan J. states:

> "Dealing first with the applicant's complaint that he was not afforded an oral hearing of his appeal, it was the decision of ORAC that determined that issue, not the RAT decision challenged here. The applicant did not seek to impugn the ORAC decision in this respect and on the contrary, in making submissions to the RAT, made no reference to it. If a complaint were to be made, as in the S.U.N. case, the appropriate respondent to that complaint is ORAC, and the complaint ought to have been made before any appeal to the RAT was taken. Accordingly, it seems to me to be beyond argument that this issue cannot be raised in these proceedings."

19. The respondents contended that bias on behalf of the tribunal was only raised at the hearing and had never been relied upon as one of the grounds.

20. The respondents asserted that submissions were raised in the notice of appeal about the difference in three years between the mother and the child's decision. The respondents stated that at the appeal stage the applicant is responsible for submitting documents that he wishes to rely upon. The respondents submitted that there are no separate fears on behalf of the applicant and, therefore, the respondent cannot take into account anything except that of the mother's claim.

21. The respondents further maintained that the applicant's contention that the generalised situation in a country of origin is a matter for a subsidiary protection claim and does not belong within the refugee protection decision.

22. The respondents submitted that it is not a legitimate exercise on the part of a tribunal to revisit a previous decision; the mother's decision had been made and she is the subject of a deportation order at the time of her submitting the application on behalf of her child. The respondents asserted that insofar as the applicant contended that the decision made in relation to the mother no longer holds because of the passage of time and that circumstances have changed to the extent that the mother has a new claim for a declaration of refugee status, then a remedy exists for her pursuant to s.17(7) of the Refugee Act 1996 (as amended) to seek to pursue such a claim. The respondents relied, in this regard, on *J.O. (a minor) v. Minister for Justice, Equality and Law Reform & Refugee Applications Commissioner* [2009] IEHC 478, paras. 8-11; *I.N.M. (a minor) v. Minister for Justice, Equality and Law Reform & ors.* [2009] IEHC 233, paras. 31-35; *O.O. (infant) v. Minister for Justice, Equality and Law Reform & ors.* [2014] IEHC 568, paras. 27-31.

23. The respondents submitted that the tribunal specifically states on p.13 of his decision that he has considered all the relevant documentation in connection with the appeal including the notice of appeal which itself was generic and unspecified. The applicant complained of an absence of any engagement by the tribunal with its contents but has not specified the contents with which an engagement is alleged to have not occurred, according to the respondents.

24. The matters in the cover letter dated 18th July, 2011, to which reference was made in the applicant's submissions consisted of a request for copies of previous decisions of the tribunal in relation to similar cases to that of their client. Such cases are quoted as those involved in the persecution of homosexuals in Nigeria and the availability of police protection and the realistic prospects of relocating internally within Nigeria to avoid such persecution without undue hardship. This, in the respondent submission, was a misrepresentation of the applicant's case to which the tribunal was not in a position to respond.

25. This, the respondents contended, is a case in which no separate and distinct case was made out for the applicant minor and where his mother's claim was not considered well-founded on credibility grounds. In this regard, the respondents submitted that where credibility had been fully rejected, the mandatory nature of regulation 5(1)(a) falls away and the decision-maker is not required to consider circumstances in the country of origin as no relevant circumstances or facts could add to or assist with consideration of an applicant's claim for international protection. In *F.A. v. Minister for Justice and Equality* [2013] IEHC 502, the necessity for consideration of article 5(1) of the above regulation was considered by MacEochaidh J. where he stated at paras. 25-26:

> "25. The provisions of Regulation 5(1)(a) are expressed in mandatory terms. The other notable feature of the rule is that the country of origin facts which are to be considered are those which pertain, not at the date. of the matters on which an applicant makes complaint or bases a claim, but at the date of the taking of the protection decision. In other words, it is clear that the rule is designed to apply what is referred to as the forward looking test to see whether the applicant's fears about what will befall him should he return to the country of origin are borne out by the current circumstances in that country. I accept the submission by counsel for the Minister, Mr. Conlan Smyth S.C., that though the provision is expressed in mandatory terms, the only facts concerning the country of origin which have to be considered are facts about the country which are relevant to the claim and where a claim is rejected as false, there are no relevant facts about the country of origin to be considered. In other words, I find that where credibility has been fully rejected, the mandatory nature of Reg. 5(1)(a) falls away and the decision maker is not required to consider circumstances in the country of origin as no relevant circumstances or facts could add to or assist a consideration of an applicant's claim for international protection.
>
> 26. In this context, the dicta of Cooke J. quoted above come back into focus. Where part of an applicant's narrative is believed and part is rejected as untruthful, this will have a bearing on a protection decision maker's duty under Reg. 5(1)(a). The extent of rejection of credibility will govern to the extent of enquiry pursuant to Reg. 5(1)(a). Obviously, a comprehensive rejection of credibility will remove the enquiry requirement. Not finding the applicant's narrative of travel to the State credible but accepting that an applicant had been tortured, for example, would trigger the enquiry as to whether the country, at the date of the decision, engages in torture."

26. The respondents submitted that the raising of a ground in relation to the best interests of the child in the context of a challenge to a decision of the Refugee Appeals Tribunal is misconceived. The respondents argued that this is not necessary in the course of decision-making, involving the statutory process of determining whether the applicant is to be granted a declaration of refugee status, nor should any such competing interest be involved in the process. The respondents submitted that the question for the tribunal member is whether an applicant comes within the statutory definition of refugee. The respondents submitted that considerable effort was made by the interviewer to carry out the investigative function referred to and this having been done, that no conclusion with respect to the definition of the Convention other than that arrived at first, by ORAC, and then the RAT, was possible. Therefore, the respondents argued, it is not sustainable for the applicant to argue that the decision was arrived at in breach of the UNCHR Guidelines.

DECISION

27. This is a judicial review application seeking leave and an order of *certiorari* quashing the decision of the Refugee Appeals Tribunal of 28th July, 2011. It was an appeal based on papers-only as a result of the ORAC's finding pursuant to s.13(6)(a), 'that the application showed either no basis or a minimal basis for the contention that the applicant is a refugee'. The s.13(6)(a) is not under review in these proceedings nor is it open to this Court to interfere with that finding in any way. The sole function of this Court in these proceedings is to consider the nature of the hearing and the decision before the tribunal member and determine whether it provided the applicant with fair procedures and was carried out in accordance with natural and constitutional justice, and in accordance with law. Although it is not relevant to the decision which has to be arrived at in these proceedings, I nevertheless feel that I should state that I absolutely reject the submission made by the applicant that, as a result of the decision of Cooke J. in *S.U.N. (supra)*, where an applicant is refused a grant of refugee status based upon negative credibility findings then the discretion exercised by the Commissioner to apply s.13(6) of the Refugee Act 1996 (as amended) is unlawful where the decision is grounded upon credibility. There is no legal basis for this contention and, in fact, it flies in the face of the established authorities. The lawfulness of a papers-only appeal is set out clearly in the decision of McGuinness J. in *V.Z. v. Minister for Justice, Equality and Law Reform & ors.* [2002] 2 IR 135 and Birmingham J.'s decision in *M.O.O.S. v. Refugee Applications Commissioner & anor*. [2008] IEHC 399, and referred to in a recent decision of this Court in *T.C. [Zimbabwe] v. Minister for Justice, Equality and Law Reform & ors.* [2015] IEHC 404.

28. In relation to the challenge to the decision of the tribunal member, it seems to this Court that the applicant's case was argued before the Court in the absence of any regard to the reality of the applicant's situation. The applicant was born in this State on 26th August, 2010. His mother, the applicant's next friend in these proceedings, arrived in the State in 2006 and is a failed asylum seeker. At the time of the commencement of these proceedings the applicant's mother was the subject of a deportation order. It appears that that has subsequently been rescinded and the applicant's mother was granted leave to remain in this State on 8th May, 2014, and this permission was subsequently extended to the applicant himself. Due to the applicant's age at the date of the commencement of these proceedings, i.e. approximately seven months old, all questionnaires and interviews were completed by the applicant's mother on the applicant's behalf. I have set out earlier in this judgment, in the background section, the relevant part of the s.11 interview, wherein the next friend was asked regarding the applicant's asylum claim, to which she repeatedly answered that the applicant would have no fears were he to go to the Democratic Republic of Congo and that he would be in no danger there.

29. Counsel on behalf of the applicant contended that the tribunal member should have applied a forward-looking test in relation to the applicant's claim and should have had regard to up-to-date country of origin information. It is of note that the notice of appeal lodged on behalf of the applicant in this regard was very general in nature and did not advance any specific claim in relation to the DRC or provide any country of origin information which would support the applicant's claim. The applicant's counsel contended that the decision of MacEochaidh J. in *F.A. (supra)* was wrongly decided. I cannot agree with that proposition. I fully concur with the extract from the *F.A.* judgment (*supra*) and it is my view that, when a claim is rejected upon grounds of credibility, there was no purpose to be served by the tribunal member engaging in a hypothetical exercise in relation to a well-founded fear should the applicant be returned to the country from which he is claiming asylum.

30. Another of the applicant's complaints was that the tribunal member issued the decision with haste and without responding to the solicitor's letter referred to at p.28 of the booklet. It is difficult to understand why this point was argued before the Court, given that the letter bore no relevance to the applicant's situation. It referred to a different country, Nigeria, it referred to a different problem, i.e. persecution of homosexuals and the manner in which such cases have been dealt with by the tribunal. None of these matters bear any relevance to the infant applicant's situation at the time of the pending appeal before the tribunal. Counsel for the applicant stated that the references to Nigeria and homosexuality in the letter were typographical mistakes and nevertheless contended that an answer should have been given before the tribunal member proceeded to determine the issue. I am satisfied that there was absolutely no basis to this submission and I reject same.

31. It seems to me that the tribunal member dealt very fairly, and in accordance with established law, which the tribunal member recited in the decision in relation to the manner in which he should deal with the application on behalf of a minor child who was born in this jurisdiction and who, in the next friend's own words, had nothing to fear in his country of origin. I should say at this stage that I think it is to the credit of the next friend that she gave such candid and open evidence at the s.11 interview and did not seek to embellish the applicant's story in any way. She stated very clearly that she issued an asylum application upon his behalf having been told to do so by somebody within the asylum system, as the applicant had no status at that juncture and she herself was the subject of a deportation order.

32. Counsel for the respondents pointed out that the issue of bias was not raised at any stage in the pleadings up until the commencement of the hearing before the Court on 18th February, 2015. It was not raised in the notice of motion and/or in the grounds pleaded and/or in the written submissions furnished to the Court for the purpose of this hearing. I accept counsel for the respondents' submission that a fundamental issue such as the presence of bias ought to have been pleaded at an earlier stage and the respondents should have been put on notice of the application. The difficulty in judicial review proceedings in asylum matters is the unfortunate length of time that it has taken to date from the commencement of the proceedings until the hearing before the Court. It was for this reason, notwithstanding the fact that the applicants should undoubtedly have properly and fully pleaded their case and put the respondents on notice of all matters raised, the Court, not just in this case indeed but in many cases, nonetheless and notwithstanding this valid objection proceed to hear submissions in respect of a matter not pleaded because of the delay in having the matter put before the Court at all. The applicant's mother in making her own case before the tribunal on behalf of the applicant relied entirely on her own circumstances. No submissions were made either by the mother or in the notice of appeal as to how the circumstances might have changed since she left the DRC. It was submitted, and I accept, that the lapse of time was not relevant in that the decision in the mother's case was taken at that time before the ORAC and the tribunal. Unless additional circumstances are put before the tribunal member, how is the tribunal member supposed to know of such matters? There is frequent reference to shared burden in the proceedings before the tribunal member; however, that ignores the reality of the state of the evidence in this case, which was such that the applicant's mother stated clearly at the s.11 interview that the applicant had no separate or distinct fears of his own. The respondents submitted, and I accept, that the law in this regard is settled. They in particular referred to the decision of Cooke J. in *J.O. (supra)*.

33. The topic of asylum applications being made in respect of children born to parents, who previously had their own asylum applications refused, was considered in the decision of Clark J. in *I.N.M. (supra)* where at p.13, para.31 of the judgment she stated as follows:

> "I am not at all convinced that there is merit in the child applicant's claim on any of the grounds claimed. Certain obligations fall on refugee applicants in the asylum process, the most important of which is to tell their story as to why they seek refugee status in a full and truthful way. When a parent seeks to include a dependent child in a claim for refugee status, then it is up to that parent to establish his/her claim first and to then establish whether the child has a separate and independent fear of persecution in its own right or whether the child's claim depends entirely on that of the parent. This is well trodden ground admirably elucidated by Peart J. in the High Court hearing in Nwole and followed in many judgments since then. His findings on the general principles applying where the parent brings an application on his/her own behalf but does not advance or bring to the attention of ORAC or the RAT any facts or circumstances relevant to that minor that are separate and distinct from the facts of circumstances relevant to the parent's application, were not considered by the Supreme Court in *N. (A) & Ors v Min for Justice & Commissioner of An Garda Siochana* [2007] I.E.S.C. 44. The question for determination by the Supreme Court related to the refusal of an asylum application. Finnegan J. decided that if the head of the family is not a refugee there is nothing to prevent any one of his dependants, if they can invoke reasons on their own account, from applying for recognition of their status as refugees. He determined that "there was no application by or on behalf of the minors" and accordingly there could have been no refusal of the minors' applications and that s. 3(2) (f) of the Immigration Act 1999 did not apply to them: "the basis upon which the Minister purported to make deportation orders in relation to the minors did not exist".
>
> Nothing in the decision of the Supreme Court in *N.A. and others* changed the principle that it is entirely appropriate that members of the same family units should make joint asylum claims as clearly, if the parent establishes a well-founded fear of persecution for a Convention reason, then the spouse and dependent children are also at risk and in need of protection. Protection to the family is ensured in section 18 of the Refugee Act 1996, as amended, and Council Directive 2003/86/EC of 22 September, 2003 on the right to family reunification. It will be highly unusual for a parent to fail to establish a fear of persecution and for a dependent minor child to succeed. It will be even more unusual for a toddler to succeed where his mother fails."

34. At para. 34 Clark J. continues:

> "Later claims made on behalf of children when the adult claim has failed are of necessity made through the mouths of their parents who for many reasons do not wish to leave but are not permitted to remain in the State. It is not unknown that inventive grounds, doomed to failure, are raised in an effort to thwart the enforcement of their own valid deportation orders. If this is what was intended by the decision in *Nwole* then it follows that those parents could evade deportation indefinitely by continuing to have children. Of necessity this means that the stage comes when children who have never known any life but one in Ireland face returning to a country which is unknown to them and where standards of living may be wholly different from those they enjoyed here. This cannot contribute to an orderly immigration policy and gives advantages to failed asylum seekers who can produce children over those who do not or cannot have more children."

35. The respondents pointed out, and the Court accepts, that no distinct fear was expressed on behalf of the child by the next friend in this case. The notice of appeal was very generic in its nature and while written submissions were filed in this matter alleging an absence of an engagement by the tribunal member, it failed to point what was allegedly absent in the decision-making process.

36. The applicant complained of a lack of consideration of up-to-date country of origin information but, as the respondents stated, and the Court accepts, it is settled law that there is no need to look at country of origin information where the credibility of the applicant has been rejected as per *A.B. v. Refugee Appeals Tribunal & anor.* [2013] IEHC 46. If an applicant told a story that is simply unbelievable then no amount of perusal of country of origin information will change that situation.

37. Among the authorities submitted to the Court on behalf of the applicant was a paper from the International Association of Refugee Law Judges entitled 'Assessment of credibility in refugee and subsidiary protection claims under the EU qualification directive – judicial criteria and standards'. This was a paper prepared by Allan Mackey and John Barnes for the International Association of Refugee Law Judges (IARLJ) in its role as a partner in the Credo Project, January – December, 2012. It appears that the paper was prepared after consultation with judges (i.e. tribunal members/decision-makers) in member states and while undoubtedly a valuable

piece of academic and judicial discourse, it is nonetheless a discussion paper for consideration by the IARLJ. The respondents submitted, and I accept, in relation to the matters to be determined by this Court, that the relevant matters to which the Court must have regard are the statutory provisions and the decisions of the Irish and European courts.

38. Counsel for the applicant submitted that the decisions of Clark J. in *I.N.M. (supra)* and the decision of MacEochaidh J. in *F.A. (supra)* are incorrectly decided and sought to rely on the decision of *Camara (supra)* and further relied on article 67 of the UNHCR Handbook. It seems to me that there has been a lot of development and expansion of the jurisprudence in this area of practice since the *Camara* decision, rather than, as submitted by counsel for the applicant, a divergence in the jurisprudence. It would be worthwhile at this juncture to highlight the relevant paragraphs of the *Camara* judgment. At p.12 Kelly J. stated as follows:

> "From the foregoing it is clear that an Applicant's credibility is always a relevant issue which falls to be assessed by the examiner. Goodwin-Gill ("The Refugee and International Law", Clarendon Paperbacks, Oxford) at page 349, puts the matter this way:
>
> > 'Simply considered, there are just two issues. First, could the applicant's story have happened, or could his/her apprehension come to pass, on their own terms, given what we know from available country of origin information? Secondly, is the applicant personally believable? If the story is consistent with what is known about the country of origin, then the basis for the right inferences has been laid.
> >
> > Inconsistencies must be assessed as material or immaterial. Material inconsistencies go to the heart of the claim, and concern, for example, the key experiences that are the cause of flight and fear. Being crucial to acceptance of the story, applicants ought in principle to be invited to explain contradictions and clarify confusions'.
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> These quotations appear to me to accurately represent the questions which must be addressed by an examiner and the approach which ought to be adopted by the examiner and the Authority."

39. At pp.14 to 15 of *Camara*, under the heading 'the recommendation of the authority, Kelly J. stated:

> "At the hearing before the Authority representatives of the Minister pointed out that there were numerous inconsistencies between the evidence given at the appeal and the story related by the Applicant in the interview which had taken place in September 1998. They also submitted that there were inconsistencies between the description of prison life given by the Applicant and the depiction of prison life in Guinea portrayed in both United Nations and U.S.A. State Department Reports. For the Applicant it was submitted that the description of political life for opposition members in Guinea was consistent with the independent documentary evidence and that that was attested to by the appalling nature of the scarring on the Applicant's body. There is no doubt but that the Authority posed the correct question to himself when in the course of his recommendation he said that the Applicant would have to satisfy him that he has a well founded fear of persecution for a Convention reason. Having posed that question he then went on to render his decision. He found that indeed the Applicant did have what he described as "quite appalling scars to his upper body which is consistent with the evidence he gave in relation to the alleged torture". Notwithstanding the evidence of scarring however he found other aspects of the Applicant's claim to be lacking in credibility.
>
> I do not propose to rehearse in detail the various elements of the Applicant's account which the Authority found to be lacking in credibility. This is not an appeal but a review of the decision. I must apply the tests set forth by the Supreme Court in the cases which I have already cited. If the Applicant here is to succeed it is necessary that he should establish to my satisfaction that the Authority did not have any relevant material before him which could support his decision. In my view the Applicant has failed to make out this case. The issue of the Applicant's credibility was undoubtedly a relevant matter to be considered by the Authority. There was material before him which could support and justify a decision that the Applicant's claim was lacking in credibility. For example, his description of the conditions in which he was held in prison suggested a comparatively mild regime. A diet of rice and fish, in-cell toilets and showers outside was hardly consistent with the actual prison conditions described by the Authority as being 'amongst the worst in any country that I have seen described'. There were many other such inconsistencies such as the discrepancies between the amounts paid to effect the escape, the two versions of how the passport was acquired and numerous other items of information given by the Applicant which could justify a finding such as was made. It was suggested by Counsel on behalf of the Applicant that the issue of his credibility assumed too great an importance before the Authority who lost sight of the actual question which he had to decide. That contention is not made out. The recommendation made by the Authority poses the appropriate question and answers it in a manner which is not irrational.
>
> In my view the question of the credibility of the Applicant was a matter which was relevant for consideration by the Authority who was of course uniquely placed to make an adjudication upon it by virtue of the oral hearing which he conducted and where he had an opportunity to assess the demeanour of the Applicant."

40. What is clear from the above is that in the *Camara* decision the applicant's account of the alleged persecution was inconsistent with the available country of origin information.

41. I am satisfied that the decisions of Clark J. and MacEochaidh J. represent the most up-to-date interpretation of the law in this area. It seems to me that where the decision-maker is satisfied that there is no basis to the claim of being persecuted for a Convention reason that the strict requirements of regulation 5(1)(a) fall away and the decision-maker is not required to consider circumstances in the country of origin information as no relevant circumstances or facts could add to or assist a consideration of an applicant's claim for international protection. In this instance, the applicant did not put forward any claim of fear of persecution in DRC. The applicant was entirely dependent on his mother and next friend's fear of persecution in DRC and that had been previously rejected by both ORAC and the RAT.

42. Thus, I am satisfied that there is no basis to any of the grounds of the applicant's challenge to the decision of the Refugee Appeals Tribunal and I therefore refuse leave.