

THE HIGH COURT**JUDICIAL REVIEW****[2016 No. 233 J.R.]****IN THE MATTER OF THE REFUGEE ACT 1996 (AS AMENDED)****AND IN THE MATTER OF S. 5 OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000 (AS AMENDED)****BETWEEN****O.O.****APPLICANT****AND****THE REFUGEE APPEALS TRIBUNAL, THE MINISTER FOR JUSTICE AND EQUALITY, ATTORNEY GENERAL AND IRELAND****RESPONDENTS****JUDGMENT of Ms. Justice O'Regan delivered on the 9th day of February, 2017****Issues**

1. By a decision bearing the date of the 2nd March, 2016 and dispatched to the applicant on the 3rd March, 2016 the first named respondent refused the applicant's application for refugee status in Ireland. Leave was afforded to maintain the within judicial review proceedings seeking to quash the decision aforesaid, on the 18th May, 2016.

2. The grounds upon which relief is sought is that the credibility findings were based on matters peripheral to the core claim and are based on conjecture and in addition it is claimed that the Tribunal failed to make any clear and unambiguous finding in respect of the applicant's core claim and the decision is vitiated by a lack of clarity. Finally, the decision is impugned on the basis of an asserted finding in relation to the applicant's demeanour and perceived vagueness.

Background

3. The applicant is a Nigerian national born in 1986.

4. The applicant is an educated woman and ran her own business (a crèche) in her home state. She claims that her brother was murdered by Boko Haram on the 29th September, 2012 and she was obliged to flee Nigeria because she feared that she would be murdered by Boko Haram by reason of her knowledge of the fact that Dr. Gamba was a member of Boko Haram.

The impugned decision

5. The decision is 16 pages and is dated the 2nd March, 2015.

6. At para. 4.1 the first named respondent accepted that the applicant is a national of Nigeria.

7. Thereafter the Tribunal effectively disagreed with the items upon which there was an adverse credibility finding against the applicant in the ORAC decision.

8. At para. 5.8 the Tribunal found that the applicant's account is not supported by any specific country of origin information but is supported by country of origin information in a general sense.

9. The Tribunal found that the applicant's account was not consistent throughout the asylum process (para. 5.1.1). The events which allegedly unfolded when the applicant attended Dr. Gamba's house comprised, in the Tribunal's view, two different accounts which was indicative of a lack of credibility. The Tribunal was satisfied that that was a core issue as it was the incident that sparked the alleged risk.

10. In addition to the foregoing the Tribunal found that the applicant was vague about her whereabouts in Nigeria, whether she had ever lived in Lagos, the identity of her friend Angela, the timing of her industrial training, and where, together with the inconsistency of her account given with the information found on her driving licence. The Tribunal found that the applicant was vague and evasive, that she did not give a clear response and the account given by her to the Tribunal was contradicted by her driving licence. At para. 5.1.8 the inconsistency relative to her industrial training indicated that she was not generally credible. Furthermore the High Court of Lagos certificate of age contradicted her account as to where she was living and the Tribunal held that this damaged her credibility.

11. At para. 5.20 the Tribunal stated that the hesitancy on the part of the applicant in giving evidence was indicative of a potential lack of credibility although the Tribunal was weary of placing any overemphasis on credibility in this regard.

12. The above comes immediately after the heading "Demeanour". Thereafter it was noted that the applicant was clearly a person who was very upset at the thought of returning to Nigeria for whatever reason and the Tribunal gave this very minor weight in her favour because of the fact that demeanour is not a reliable indicator of credibility.

13. At para. 5.22 the Tribunal concludes that the Tribunal had weighed the evidence before it and the applicant had not established her credibility placing particular emphasis on her vague and internally inconsistent evidence at the hearing as well as being inconsistent with the account she had previously given in respect of her core claim. On that basis the Tribunal held that there was no basis for assessing whether the applicant's fears (found not to be credible) were well-founded (see para. 6.1).

The Submissions

14. The applicant argues that the RAT determination was on the basis of a credibility finding relating to a peripheral issue — the circumstances surrounding the applicant overhearing the fact that Dr. Gamba was active within Boko Haram. The respondent counters that this was not a peripheral issue but rather the potential commencement or trigger point of the persecution fear. Further, the

respondent suggests that this was only one of the credibility issues (of a total of 6 issues identified by the decision impugned) and therefore should not be dealt with in isolation.

15. The applicant relies on the judgment of Cooke J. in *I.R. v. Minister for Justice Equality & Law Reform* [2009] IEHC 353 and the decision of Barr J. in *S.J.L. v Refugee Appeals Tribunal & Ors.* [2014] IEHC 608.

16. In respect of Barr J.'s decision I do note that this is a 57 paragraph judgment only one of which dealt with the peripheral issue relative to credibility and no cases were cited.

17. In Cooke J.'s judgment in *I.R.* aforesaid at para. 11 the Court set out principles which might be said to emerge from case law as a guide and the sixth principle was to the effect that dealing with evidence as to credibility the reasons must relate to the substantive basis of the claim made and not to minor matters or to facts which are merely incidental in the account given.

18. The respondent refers to the judgment of Humphreys J. in *I.E. v. Minister for Justice Equality & Law Reform* [2016] IEHC 85 being a decision delivered on the 15th February, 2016 where the judgment of Cooke J. in *I.R.* is considered. At para. 32, following a description of the *I.R.* judgment as setting out the 10 Commandments, Humphreys J. said no judgment warrants quite that kind of unapproachable deference. He goes on to suggest that credibility should not be rejected because of minor unimportant discrepancies of the kind that anybody could make, however significant discrepancies and contradictions may be a basis of rejecting credibility even if they relate to incidental matters such as travel arrangements.

19. Humphreys J. also referred at para. 21 of his judgment to s. 11(b) of the Refugee Act, 1996 which allows credibility decisions to be taken into account on what might be termed peripheral matters.

20. Insofar as Humphreys J. clarifies the meaning of minor matters at para. 11(6) of the judgment of Cooke J. in *I.R.*, I adopt such an approach.

21. The applicant complains that the RAT failed to decide on the credibility of the applicant's testimony that her brother was a doctor with a colleague of his involved with Boko Haram and on the basis that her brother failed to comply with instructions of Boko Haram he was killed and she fled in fear. Based on this asserted failure it is suggested that the reasoning of the Tribunal is inadequate and the decision lacks clarity.

22. The applicant relies on *B.O.B. v. Refugee Appeals Tribunal & Ors.* [2013] IEHC 187 being a judgment of Mac Eochaidh J. In that decision it appears that the Court held that the decision maker must specify what part of the claim is being affected and what part is being rejected.

23. In the *I.E.* decision of Humphreys J. at para. 18 the Court suggests that Mac Eochaidh J. subsequently clarified his position in *P.D. v. Minister for Justice & Law Reform & Ors.* [2015] IEHC 111 and suggests that the case of *B.O.B.* should not therefore be read in isolation from the subsequent judgment of *P.D.* In *P.D.* at para. 48 thereof the Court stated that it was an oversimplification of the jurisprudence to say that a decision maker must decide on the truth of each element of a claim for asylum. The common thread in the judgments is the need for clearly expressed decisions relative to the core claim and the extent to which elements of a claim are required to be formally decided upon depends upon the circumstances of each case. The Court suggested that it may be possible to dispose of the application where proof of one only of a number of elements of the claim fails.

24. The final argument presented on behalf of the applicant was to the effect that the Tribunal based its finding on the demeanour of the applicant. The judgment of Hogan J. in *O. v. Refugee Appeals Tribunal & Ors.* [2012] IEHC 46, is referred to and it is noted that this judgment granted leave to apply for judicial review and at para. 8 thereof the Court found that the assessment of demeanour in itself can rarely be a sure ground for dismissing the cogency of a witness's evidence by reason of that fact alone.

25. The respondent relies on *R. v. Refugee Appeals Tribunal & Minister for Justice* [2011] IEHC 151, as did the Tribunal, and in particular para. 7 thereof which states the Tribunal Member is perfectly entitled to base a finding of lack of credibility upon the manner in which the asylum seeker gives evidence and his or her demeanour when answering questions in relation to details. The Court goes on to say that:—

"the decision-maker must be careful not to misplace reliance upon demeanour and risk construing as a deliberate lack of candour a demeanour which may be the result of nervousness... In the judgment of the Court, before a decision maker in the asylum process bases a rejection of a claim upon lack of credibility based mainly on the personal appearance and demeanour of the claimant, the decision-maker ought to be fully confident that the basis of the claim and all relevant facts and circumstances recounted have been fully and correctly understood and that there is no possibility that the decision-maker and claimant have been at cross purposes on any material point."

26. The respondent further refers to the fact that the interview before the RAT was conducted in English and therefore the prospect of a misunderstanding was greatly reduced.

27. In oral submissions the applicant stresses the point that the grounds of appeal of the ORAC decision were largely successful insofar as the applicant was concerned and thereafter the applicant failed on credibility issues which were not highlighted or material to ORAC. In this regard therefore it is suggested that there was an exercise of a *de novo* jurisdiction although in fairness to the applicant, the applicant acknowledges the Supreme Court decision in *M.A.R.A. v. Minister for Justice* [2014] IESC 71 to the effect that the RAT does have jurisdiction to make an entirely new finding.

28. The applicant also suggests that even if peripheral issues can be taken into account in credibility matters then it would depend upon the peripheral issue in question as to the impact thereof on the finding and the applicant suggests that the peripheral issue of the living or not in Lagos is just such a finding that should not be held against the applicant in her overall credibility.

Conclusion

29. I am satisfied that the RAT considered the matter in detail and identified a significant number of credibility issues between para. 5.11 and 5.19 of its decision. As was pointed out on behalf of the respondent some of the credibility issues in fact arose because of the same documents that the applicant did in fact tender as evidence, namely her driving licence and the certificate of registration of age.

30. I am not inclined to the view that all issues on credibility were peripheral issues and even if they were peripheral issues they certainly cannot be considered to be minor as identified by Humphreys J. in the *I.E.* decision aforesaid. Furthermore the amount of

credibility issues identified by the Tribunal were such that irrespective of whether they were minor or peripheral, numerically they were such that it was rational and reasonable and within the jurisdiction of the RAT to find the general credibility of the applicant as lacking.

31. I am satisfied that the argument that the decision herein should be quashed merely because the applicant failed on credibility grounds identified by the Tribunal and not identified in the ORAC decision, is not sustainable having regard to *M.A.R.A.*

32. I am satisfied that the decision of the Tribunal was clear and unequivocal and identified the salient points and/or issues on which the applicant has not been believed.

33. Insofar as demeanour is concerned, the height of the RAT decision was contained at para. 5.20 to the effect that the demeanour might be taken as indicative of a potential lack of credibility although the Tribunal was weary of placing an overemphasis on credibility (presumably relative to demeanour). This appears to me to be a fair balance by the Tribunal in that at para. 5.21 the Tribunal found that the applicant was clearly upset at the thought of returning to Nigeria for whatever reason and the Tribunal gave the applicant minor weight in her favour in this regard. In the events, therefore, minor weight seems to have been afforded both for and against the applicant based upon her demeanour which in my view is legally sustainable.

34. For the reasons set out herein, therefore, I am satisfied that the applicant has not made out a case to succeed in an order of *certiorari* quashing the decision of the first named respondent dated the 2nd March, 2015.