Neutral Citation: [2014] IEHC 290

THE HIGH COURT

JUDICIAL REVIEW

[2010 No. 755 J.R.]

BETWEEN

L. T.

APPLICANT

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM AND DAVID ANDREWS SITTING AS THE REFUGEE APPEALS TRIBUNAL

RESPONDENTS

JUDGMENT of Mr. Justice Colm Mac Eochaidh delivered on the 30th day of May 2014

1. In this 'telescoped' application, the applicant pursues two complaints in respect of the decision of the Refugee Appeals Tribunal. It is said that the decision lacks clarity as to whether her credibility is rejected and it is also said that the decision on internal relocation is unlawful. The primary issue argued concerned the legality of the internal relocation decision and in particular, whether it complied with the requirements of Article 8 of the Qualification Directive (Council Directive 2004/83/EC), and the relevant transposing measure in domestic law.

Background:
2. The Office of the Refugee Applications Commissioner summarised the applicant's claim in the following terms:

> "The applicant alleges she is Christian and that her husband was Muslim. She contends that she converted him to Christianity in 1992. She maintains she married him August 10 1995. The applicant alleges her husband's family took her child in 1993. The applicant maintains her husband's family said they wanted her to go to their village since 1993, when they allegedly took her child, but she was told that the reason for this was in order to terminate her child and her ... The applicant maintains she moved to various parts of Lagos for various periods of time. She alleges she moved to Kaduna with her husband in 2002 where she lived until June 2006. She maintains the family came to her in Kaduna in June 2006 and that 'They came and my husband saw them we and ran away and took a bus to Lagos'. The applicant remained in Lagos for around a month and then left Nigeria ..."

3. The rejection of the applicant's claim at first instance is based upon a finding of a lack of credibility. In particular, ORAC noted that in the 14-year period between the abduction of her child and her departure from Nigeria, her husband's family had not harmed her. In addition, inconsistent statements were said to have been made by the applicant in respect of her various movements around Nigeria, such movements said to have been attempts to avoid her husband's family.

Refugee Appeals Tribunal Assessment:
4. Having regard to the nature of the complaints made against the decision of the Tribunal Member in this instance, I set out in full the relevant part of the appeal decision.

> **"6. Analysis of the Applicant's Claim**
> The Country of Origin Information, together with the Notice of Appeal and the *Skeleton* submissions by the Legal Representative for the Applicant have been studied in depth in the context of the Applicant's credibility.
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> The unusual feature of this claim is that the Applicant states that her first born child was removed from her custody by her husband's family in 1992. Since that time, from that date until 2006, the Applicant states that she was followed by the husband's family but was not harmed. She further states that she travelled to a number of places to avoid the family on the basis that they did not want their son to be married to a Christian and the fact that, of course, he had also converted to Christianity did not sit well with them.
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> The Applicant refused to go into any detail about her husband's arrival in the UK and his subsequent visit to her here in Ireland. She was very adamant about this and struck the desk in front of her with her hand. In the circumstances, the Tribunal presumes that she and her husband are now separated as the Applicant stated she did not know where he now was. She had made no telephone calls back to Nigeria, as her mother had died, but there was a reference to her father.
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> The Applicant complained to the police about the fact presumably that her child had been taken by her husband's family and that they were harassing her. The police stated that the matter was a family problem and resolution should be solved as between the parties.
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> The Applicant paid 150,000 naire to travel from Lagos to Ireland via France. She did not apply for asylum status in France because the agent suggested to her that they spoke in English in Ireland.
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> In a further admission, the Applicant stated that she had no documentation whatever, and that whilst passing through the various Immigration authorities, it was the Agent who handed the documentation to the various officers. The Applicant arrived in Dublin Airport on 1 August 2006 and really it is not possible to have someone else deal with her documentation on passing through Immigration. Even Irish citizens have to hand up their own documentation personally and this is a fact. In the circumstances, the Applicant's version of her passage through Dublin Airport and indeed through the transit area in the airport in which she arrived in France is totally lacking in credibility.

> The Applicant stated that she travelled by car from Kaduna to Ogun State. This is quite a journey for a woman who was heavily pregnant and further took another journey of 2 and Yz hours from Ogun State to Lagos. Kaduna State is effectively a Muslim State run under Shariah law and it is very difficult to accept that the Applicant, who was a Christian, would move there in the circumstances. The Applicant took the view that this version of events was lacking in credibility.
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> Section 11B of the Refugee Act, as amended, would apply to the Applicant's account of her travels. Section llB(c) is, in the view of the Tribunal, applicable and suggests the Applicant has not provided a full and true explanation of how she travelled to and arrived in the State. As already mentioned, it raises the spectre of the Applicant not understanding the security arrangements at airports, and again, her credibility must be queried in that regard, as already referred to. It is the belief of the Tribunal that the Applicant could return to Nigeria in safety, having been unharmed for some 4 years by her husband's family."

5. Two clearly expressed negative credibility findings are made by the Tribunal Member in that passage. Her account of not having personally presented documentation on arrival in Dublin is disbelieved, as is her account of living in the State of Kaduna. It is a striking feature of the passage that no view is expressed as to the credibility of the applicant's core claim: the alleged abduction of her child by her husband's family and her fear of persecution at their hands. The question for the court is whether it is possible to discern whether the Tribunal Member rejects the applicant's overall credibility, or merely dibelieves part of her narrative,

6. In *Daniel Damilola Adewoyin v. The Minister for Justice, Equality and Law Reform* (Unreported, Cooke J. 18th July 2012), the learned judge said, in respect of a claim that a decision was unlawful because it lacked clarity on the issue of the applicant's credibility:

> "In the absence of an explicit finding of disbelief, the decision must be read as constituting an acceptance on the part of the Tribunal Member that at least some of the events relied on by the applicant had occurred, such that he had some need of the protection that would be found by internal relocation. Any possible ambiguity or lack clarity on the issue of credibility was, accordingly, irrelevant to the basis for the Tribunal Member's essential conclusion."
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> (The judge found that the Tribunal decision was clearly based upon a single finding in relation to internal relocation only).

7. In *S.B.E. v. The Refugee Appeals Tribunal* (Unreported, Cooke J. 251h February, 2010), a similar issue arose as to effect of negative credibility findings made by the Tribunal. Having reviewed the Tribunal decision in its entirety, the judge said as follows:

> "24.... Read as a whole, therefore, the thrust of the analysis [by the Tribunal] is that while the violence which erupted in Anambra state including Onitsha in June and July 2006, the Tribunal member did not believe the applicant had been directly caught up in it but saw it as an opportunity to leave Nigeria in the hope of making a new life elsewhere.
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> 25. There is no doubt as to the conclusion reached- the applicant was not telling the truth - but a balanced reading of the decision as a whole indicates with sufficient certainty, in the Court's judgment, that the Tribunal member disbelieved the full basis of the claim and not merely the four points mentioned specifically on pages 14 and 15 of the decision.
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> 26. This, therefore, in spite of the difficulties, is a conclusion on credibility which cannot be interfered with by the Court.
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> 27. In the light of this analysis the Court would add one observation. It is, in the view of the Court, unsatisfactory that it should be necessary to undertake such a lengthy examination of an appeal decision in order to reach that view. Where a finding is made on credibility, an appeal decision of this kind should show clearly the process by which it is reached and identifY the salient points or issues on which an applicant has not been believed."

8. Like Cooke J. in *S.B.E.,* I have struggeled to disentangle the remarks of the Tribunal Member in respect of credibility. Following the approach of the same judge in the decision of *Daniel Damilola Adewoyin v. The Minister for Justice, Equality and Law Reform* (supra) it seems to me that the absence of an express rejection of the core claim, balanced against the rather mild negative credibility findings, suggests that the core claim was believed in this instance. The relevance of this finding in these proceedings is that when the internal relocation decision comes to be considered, if it is found to be unlawful, the decision cannot be saved by severing the internal relocation decision, leaving a lawful negative credibility finding which would justify rejection of refugee status. Neither can weakness in such assessment be overlooked or forgiven where the court decides that credibility was accepted or at least not clearly rejected.

Internal Relocation Finding:
9. The internal relocation finding seems to commence with the last sentence of the passage quoted above from the Analysis of the Applicant's Claim and which I repeat here as it runs into the section of the decision dealing expressly with internal relocation. The full quotation is therefore as follows:

> "It is the belief of the Tribunal that the Applicant could return to Nigeria in safety, having been unharmed for some 4 years by her husband's family [my view is that four years is likely to be a typographical error and that the proper figure intended to be used was 14 years, that being the period between the abduction of the applicant's child and her flight to Ireland].

6.1 INTERNAL ALTERNATIVE RELOCATION INTERNAL FLIGHT

> (a) The Tribunal refers to para. 81 of the UNHCR Handbook: 'the fear of being persecuted need not always extend to the *whole* territory of the refugee's country of nationality. Thus, in ethnic clashes or in cases of grave disturbances involving civil war conditions, persecution of a specific ethnic or national group may occur in only one part of the country. In such situations, a person will not be excluded from refugee status merely because he could have sought refuge in another part of the same country, if, under all the circumstances, it would have been unreasonable to expect him to do so'.
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> (b) The Tribunal takes note of the UNHCR Position Paper on 'Relocating Internally as a Reasonable Alternative to Seeking Asylum- (the so-called 'Internal Flight Alternative' or 'Relocation Principle')' dated February 1999.
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> (c) The Tribunal believes that the tests referred to in *R. v. Secretary of State for Home Department Immigration Appeals Tribunal ex parte Anthony Pillai Francis Robinson* [1997] EWCA Civ. 2089, 11th July 1997, are very helpful in considering whether an Applicant(s) has/have an alternative:

'in determining whether it would not be reasonable to expect the claimant to relocate internally, a decision-maker will have to consider all the circumstances of the case, against the backcloth that the issue is whether the claimant is entitled to the status of refugee. Various tests have been suggested. For example,

(a) if it is a practical matter (whether, for financial, logistical or other good reason) the 'safe' part of the country is not reasonably accessible;

(b) if the claimant is required to encounter great physical danger in travelling there or staying there;

(c) if he or she is required to undergo hardship in travelling there or staying there;

(d) if the quality of the internal relocation fails to meet basic norms of civil, political and socio-economic human rights. So far as the last of these considerations is concerned, the preamble to the Convention shows that the contracting parties were concerned to uphold the principle that human beings should enjoy fundamental rights and freedoms without discrimination'.

The Applicant has now been out of Nigeria for some 4 years and it is unlikely, in the opinion of the Tribunal, that the family of her husband would be alerted to her return to Nigeria. It was noted the Applicant is a trader and relocation should present no problem to her."

10. The decision on internal relocation is said, by the respondent, to be related to a passage in s. 3 of the RAT decision which is as follows:

"The Applicant was questioned as to whether she could have relocated in Ahuja or Port Harcourt. The Applicant stated that the family had found her and chased her from Kaduna and on to Lagos. If she was to return to Lagos, she would have no financial resources and no protection from the police. The police told her it was a family problem and there would be nobody in Nigeria to support her."

11. The complaints which are pursued in respect of this internal relocation decision may be summarised as follows:

(i) The decision fails to identify particular place or internal relocation.

(ii) It refers to a UNHCR position paper from 1999 on the question of internal relocation, notwithstanding that the position paper had been replaced by a subsequent document from 2003.

(iii) The internal relocation decision breaches the terms of Article 8 of the Directive 2004/83 EC and Article 7 of the Irish EC (Eligibility for Protection) Regulations 2006.

Relevant Principles on Internal Relocation Decisions:
12. Article 8 of the Qualification Directive is as follows:

"'Internal protection
1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country.

2. In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.

3. Paragraph 1 may apply notwithstanding technical obstacles to return to the country of origin."

13. My view is that a protection decision maker, examining the possibility of internal relocation (ideally, having accepted credibility) must enquire as to whether the applicant's persecutors might harm the applicant in an identified part of the country of origin. The decision maker's task is not complete where it is found that the identified part of the country is free from the applicant's well founded fear of persecution. Further enquiry is necessary. The decision maker must be satisfied that the applicant "can reasonably be expected to stay" there. The decision and these two enquiries (absence of persecution and reasonably possible to stay there) must be taken having active regard to the general circumstances prevailing there, and regard being had to the personal circumstances of the applicant. A decision on internal relocation required by the Directive is not simple, though it is relatively straightforward.

14. Before considering whether the decision in suit complies with the provisions of Article 8, certain Irish case law on the approach to internal relocation decisions should be mentioned.

15. In *K.D. (Nigeria) v. The Refugee Appeals Tribunal and the Minister for Justice, Equality and Law Reform* [2013] IEHC 481, Clark J. surveyed numerous decisions and the provisions of the Directive and the Irish Regulations relating to the issue of internal relocation. She distilled the following principles governing the decision making:

"28.The following principles can be said to apply to an assessment of the internal relocation alternative:-

(1) An inquiry into the availability of internal relocation is only appropriate where a protection decision-maker **accepts** that the applicant has a well founded fear of persecution for a Convention reason in his country of origin **but** that risk is localised and does not extend to the whole of the state.

(2) Internal relocation has **no** logical part to play in a decision if **no well founded fear** of persecution is accepted or if it is found that the persecution feared has no Convention nexus;

(3) A large number of decisions refer to the relocation option notwithstanding a finding that there is **no well-founded fear of persecution on credibility grounds**. In such cases, what the decision maker really means is, *'if what you say is*

true, which is not accepted, you have given no credible explanation for coming to Ireland instead of moving elsewhere away from the claimed danger'. These *'even if'* findings are not internal relocation alternative findings requiring adherence to Regulation 7 but are part of a general examination of whether an applicant has a well-founded fear of persecution.

(4) *Localised Risk*: Where it is **accepted** that an applicant has a well-founded fear of persecution for Convention reasons but that fear is **localised** and confined to a particular area, it is relevant to consider the possibility of internal relocation as an alternative to refugee status. In such cases, Regulation 7(1) of the Protection Regulations requires the protection decision maker to identify (if only in general terms) a place or area within the country of origin where the risk of persecution does not exist and where the applicant might reasonably be expected to stay. Security from persecution or serious harm and meaningful state protection in the proposed area of relocation are key.

(5) Where there is a well-founded fear of persecution and a general area has been identified as an alternative to refugee status then the protection decision maker must pose two questions: (i) *is there a risk of persecution I serious harm in the proposed area of relocation*? If not, (ii) *would it be reasonable to expect the applicant to stay in that place?*

(6) **Absence of Risk**: Where the persecution feared is of a general or public character such as a religious or tribal conflict or oppression by a political regime which controls a particular region or city, it will be necessary to consult appropriate up-to-date COI to determine whether the risk of persecution I harm is genuinely absent from the proposed area of relocation. In such cases the decision maker must engage in a detailed and careful enquiry as to the general circumstances prevailing on the ground in the proposed area, in accordance with Regulation 7(2).

(7) If the persecution feared emanates from private or domestic actors, such as a threat from a particular family member, **and** a Convention nexus has been established, the protection decision-maker must make an objective, common sense appraisal of the reality of whether the risk faced by the applicant could be avoided by moving elsewhere, having regard to the applicant's own evidence.

(8) **Reasonableness**: It is not enough for the protection decision-maker to determine that the risk of persecution is absent from the proposed area of relocation. He or she must go on to consider whether it would be reasonable to expect the applicant to stay in that place, having regard to his I her personal circumstances and the general conditions prevailing on the ground, in accordance with Regulation 7(2) of the Protection Regulations. The reasonableness assessment is not concerned with assertions such as *'I won't know any one'*, but rather with matters of substance such as whether the applicant is old, infirm, ill, has many small children or is without family support and other real issues.

(9) The *UNHCR Guidelines on International Protection: Internal Flight or Relocation Alternative* (2003) indicate that consideration should be accorded to whether the applicant could lead a relatively normal life in the selected place of relocation without undue hardship, *in the context of the country concerned*. Unless there is objective evidence that the general circumstances prevailing in the proposed area are harsh - for example if the proposed area is the site of a conflict or a humanitarian crisis - there is in general no obligation to seek out a specific town or detailed information on economic and social conditions in the proposed location. However, if a specific objection is taken by the applicant to the location this objection must be examined.

(10) *Burden of Proof* There is a shared burden of proof. The protection decision-maker who accepts a well-founded fear of persecution but determines that refugee status is not appropriate because internal relocation is available must conduct a careful enquiry to identify a safe relocation area, having regard to up-to-date objective evidence about that area and also to the applicant's own evidence in that regard.

(11) *Fair procedures*: As a matter of fair procedures the proposed safe area should be notified to and discussed with the applicant to establish whether he/she could reasonably be expected to stay there. The applicant is obliged to cooperate, to answer truthfully, to provide all relevant information available to him I her to determine the reasonableness of the relocation area and to provide information on any personal factors which would make it unreasonable or unduly harsh for him I her to relocate rather than being recognised as a refugee;

(12) No state is obliged to consider the internal relocation alternative even when the Convention-related persecution feared is confined to a particular part of the applicant's state. States can recognise an asylum seeker as a refugee solely on the basis the criteria under Section 2 of the Refugee Act 1996, without ever turning to the relocation alternative.

(13) The threshold to be reached before internal relocation is considered is high. The applicant would be recognised as a refugee but for the fact that he can safely relocate. The inquiry is commensurately careful." [emphasis in original]

16. As I indicated in *E.I (A Minor) & Anor v. Minister for Justice, Equality and Law Reform* [2014] IEHC 27, these principles properly describe the approach of decision makers to such decisions, though I disagreed with the finding that compliance with Regulation 7 (of the Irish EC (Eligibility for Protection) Regulations 2006) is not required when an internal relocation finding follows a rejection of credibility.

Analysis of the Decision in Suit:
17. It is clear from the quoted text at para. 9 above, that in the operative part of the decision, no part of Nigeria is identified for the proposed internal relocation. Counsel for the respondent says that the Tribunal Member, by recording that the possibility of relocation in Abuja and Port Harcourt were expressly put to the applicant, thereby discloses the part of the country being considered for the proposed internal relocation. In this regard, he refers to the decision of Murray C.J. in *Meadows v. The Minister for Justice, Equality and Law Reform* [2010] IESC 3 who said that though reasons are required for decisions, there are circumstances in which the reasons for a particular decision are patent rather than express and this will not impair the decision. I accept that the Tribunal Member, in questioning the applicant, has identified two parts of Nigeria as places for possible internal relocation, though it would be preferable that the identified parts of the country of origin be clearly noted in the operative part of any decision on internal relocation.

18. As is clear from my comments at para. 13 and from the principles identified by Clark J. in *K.D.*, the exercise in deciding that internal relocation is a solution to an applicant's problems does not end with the identification of a part of the country. The nature and extent of further enquiry will depend on whether the source of persecution is State or non-State. The exercise is more obvious where the persecutor is the State.

19. Regardless of the source of persecution, the protection decision maker must ask whether it would be reasonable to expect the applicant to stay in the identified place and to make this enquiry bearing in mind the applicant's personal circumstances and the

general circumstances in that place. It is difficult to imagine how a decision on internal relocation which does not reveal that such enquiries were undertaken and that such considerations were actively engaged could survive challenge.

20. As indicated earlier, it may be lawful in some the cases that matters considered in a decision making process and reasons for conclusions are patent rather than express but where a court finds itself guessing what the reasons were for an internal relocation decision; assuming that the locale for internal refuge is the place discussed with the applicant during questioning; hypothesising as to what consideration was accorded to the circumstances in that place and to the personal circumstances of the applicant; and presuming that it has been decided that it would reasonable for the applicant to stay there, then it seems to me that the decision must fall. This is what I have been required to do with respect to the decision in suit. There are too many gaps to be filled.

21. Though the degree of assessment by the decision maker in respect of the place of internal relocation will vary depending upon the facts of each case and the source of the persecution, a robust decision which accords with Irish and EU law is always required for the obvious reason that an internal relocation decision is premised on the acceptance by the decision maker that the applicant has a well-founded fear of persecution. If the internal relocation decision is not robust, there is a real danger that the applicant's well-founded fears will materialise in the place of internal refuge. It maybe that a negative asylum decision containing a weak internal relocation assessment might surv1ve challenge where there is a clear and comprehensive rejection of credibility of the applicant's core claim. In such a case, a court might find that the internal relocation assessment is unlawful but nonetheless exercise discretion to refuse relief because of the existence of a robust rejection of the applicant's credibility. Another approach might for the court to consider the severability of the deficient internal relocation assessment, leaving the negative asylum decision based on rejection of credibility intact.

22. I have been unable to discern compliance with the rules on internal location in this case. It is not possible to sever the deficient limb. I have found that the equivocal assessment of credibility must be read as an acceptance of the applicant's core credibility. The decision is consequently unlawful. In these circumstances it is not now necessary for me to rule upon an application for an order of reference pursuant to Article 267 of the Treaty on the Functioning of the European Union whereby the applicant requested the court to refer questions as the meaning of Article 8 of the Directive to the Court of Justice of the European Union.

23. I grant leave to seek judicial review and final orders quashing the decision in suit.