

THE HIGH COURT**JUDICIAL REVIEW****[2011 No. 317 J.R.]****BETWEEN****B.A. (NIGERIA)****APPLICANT****AND****THE REFUGEE APPEALS TRIBUNAL, THE MINISTER FOR JUSTICE EQUALITY AND LAW REFORM, THE ATTORNEY GENERAL AND IRELAND****RESPONDENTS****JUDGMENT of Mr. Justice Eagar delivered on the 11th day of February 2015**

1. This is a telescoped application for an order of *certiorari* quashing the decision of the first named Respondent and seeking an order remitting the appeal of the Applicant for determination *de novo* by a separate member of the Refugee Appeals Tribunal.

2. The Applicant is a citizen of Nigeria. She was born on the 24th June 1979 in Nigeria. The Applicant arrived in Ireland on the 16th September 2009 and applied for refugee status. She was interviewed in relation to her asylum application by the Refugee Applications Commissioner who then recommended that her application be refused. An appeal was submitted to the Refugee Appeals Tribunal but she was never notified of her hearing date and the Minister for Justice and Law Reform refused her application.

3. She engaged the services of Messrs Trayers Solicitors and pursuant to s. 16 of the Refugee Act 1996 (as amended) her application to re-enter the asylum process was successful. On the 20th October 2010 she completed an ASY1 form and a questionnaire and was interviewed by the Refugee Applications Commissioner on the 20th January 2011. She was notified by letter dated 3rd February 2011 that the Commissioner had refused her refugee status. A notice of appeal and supportive submissions were submitted to the Refugee Appeals Tribunal to the first named Respondent by letter dated the 9th February 2011 and her oral hearing was heard on the 28th March 2011. By letter dated the 31st March 2011 she was notified that her appeal was unsuccessful and her solicitors on her instructions have made this application for judicial review.

The Applicant's claim

4. The Applicant's claim is set out in the decision of the first named Respondent. The Applicant said that she had lived with her grandmother as her parents were dead. She is a Muslim. She was orphaned at the age of 5 and lived with her grandmother in Ilorin in Kwara State until she was aged 26 when her grandmother died. Following the death of her grandmother she did not have money to pay for rent and was too scared to stay alone. She went to live with a neighbour described by her as "an area sister called Gloria" on the same street. She also said that she was late starting school as her grandmother did not have much money and continued to attend school when she went to Gloria. She cared for Gloria's two children and worked in her bar/restaurant, "Lady G's Restaurant". She states that she probably started secondary school when she was 17 years of age but she could not remember. Gloria made her "go with guys" and she had to work as a prostitute for "a year or two". The Applicant said she was forced to do this work but that she really wanted to go to university. The Applicant said she could not go to live elsewhere in Nigeria as she knew no one or no place. She said that were she to return to Nigeria, Gloria would find her and she threatened to kill as she tried to run away on one occasion.

5. In response to the presenting officer she said she was 26 years of age when her grandmother died and agreed that her grandmother would have died in 2006/2007. She was cross examined by the presenting officer in relation to details that she had forgotten (like the name of Gloria's bar) in her initial application for asylum and agreed that she did not know the names of Gloria's children. When asked what her grandmother did for a living the Applicant said her grandmother did not work but she had a small shop in front of her house. When asked why she could not have continued living in her grandmother's house after her grandmother died and continue running the shop the Applicant said she was scared to live alone. The Applicant confirmed that she was living with a lady in Ireland whom she had met at a church. When asked if she could have refused to work for Gloria and return to her grandmother's home, the Applicant said she wanted to start an education. She stated she had intended to go to Ilorin University to study business and confirmed that she completed her West African Examinations. The Applicant stated she could not move to another part of Nigeria as she did not know anyone. She said that the only person she told about her forced prostitution was D.K. who was a friend. It was put to the Applicant that there were NGOs and other organisations in Nigeria who could provide her with assistance but the Applicant said she did not know anyone or anywhere.

6. The Applicant confirmed Gloria's address and provided the address of Gloria's restaurant. When asked if she had reported Gloria to the Irish police the Applicant replied that she had not. When asked if she could report Gloria to the police in Nigeria the Applicant said Gloria had a lot of money and connections. She was cross examined about her travel to Ireland through Turkey.

Analysis of the Applicant's claim

7. The issues of credibility were identified as follows:

- 1) The Applicant was unable to provide the name of Gloria's children. Her lack of knowledge of Gloria's children is incredible when one considers she lived in Gloria's house and looked after these children for some time.
- 2) The Applicant was unable to remember when her grandmother had died.
- 3) Generally the Applicant's account was contradictory and inconsistent and seriously undermined the credibility of her claim.

4) The Applicant was unable to state when she began working as a prostitute. Considering the significance of this event the Applicant's age and education it would be reasonable to expect that the Applicant would be able to provide a more detailed account of when she was forced into prostitution and this further undermined her account.

5) The Applicant did not when transiting through Turkey apply for asylum, and that this was not indicative of a person fleeing persecution.

State Protection

8. The first named Respondent then considered the issue of State Protection with a comment at the beginning: "Further were the Applicant's account credible (which it is not)". The first named Respondent stated that if persecution does not emanate from a State it has to be demonstrated that the state is unwilling or unable to provide protection and quoted the US Department of State Trafficking Report of 2010. This report was provided for the court in these proceedings by way of an affidavit of Francis Essex, an executive officer of the Refugee Appeals Tribunal. The report outlined the efforts of Nigeria in seeking to deal with the issues of trafficking and that traffickers and persons who forced women into prostitution in Nigeria. They can be arrested and convicted. The first named Respondent adds that "while it is undoubtedly the case that the police force in Nigeria is in need of vast improvement, it is also the case that sustained efforts have been made by the authorities to combat trafficking and forced prostitution".

Internal Location

9. The Country of Origin Information indicated that the government and various human rights organisations in Nigeria provide protection to women escaping difficulties and considering the size and population of Nigeria it is highly unlikely that Gloria would be aware if the Applicant was returned to a different area of Nigeria. She states that the Applicant was able to work in Ireland by braiding and weaving and she could also seek to obtain similar employment in Nigeria. However the first named Respondent does not identify any particular place which she would suggest for the Applicant to travel to.

Submissions

10. The first ground for review relates to the credibility finding. Counsel on behalf of the Applicant initially dealt with the grounds of review in relation to the first ground of credibility findings. Counsel indicated that Tribunal engaged in conjecture when making the finding in respect of the children's names and her findings in respect of not knowing when she was forced into prostitution or when she finished school are in error.

11. Counsel on behalf of the Applicant also said it was unclear whether the Tribunal accepted the core claim element of the Applicant's claim and that she had been forced into sex slavery and that her life had been threatened.

12. The finding in respect of State protection against traffickers was irrelevant in circumstances where the Applicant is not and never claimed to be a victim of trafficking.

13. The finding in respect of internal relocation was made without any regard to the evidence of the Applicant or the country reports. The Tribunal had failed to identify, even in general terms, a location where the Applicant could live in safety for the long term.

14. Counsel on behalf of the first named Respondent argued that the Tribunal had found the Applicant's account incredible and that if contrary to its findings her claim was considered credible she could have availed of State protection in Nigeria and could have avoided the alleged prosecution by relocating within Nigeria.

15. Counsel for the Respondent detailed the interviews with the Applicant and submitted that the Applicant had been unable to offer a consistent or detailed account of when she was forced into prostitution. Counsel on behalf of the first named Respondent submitted that the Nigerian authorities did not ignore purely domestic sexual servitude. The starting point is the presumption that in the absence of clear and convincing proof to the contrary, a State is presumed to be capable of protecting its citizens.

16. Counsel for the Respondent also submitted that internal relocation would be a viable alternative and that the manner in which the Tribunal addressed the issue of internal relocation was entirely appropriate. He also submitted that it was not necessary for the Tribunal to identify in its decision a putative sight of relocation in Nigeria in order to assess the reasonableness of expecting the Applicant to relocate.

Discussion

17. Professor Hathaway in his book on the Law of Refugee Status, second edition, (2014) states:-

"Despite the clear salience of an Applicant's own evidence, there is little doubt that a quest to disbelieve negatively affects many assessments of the value of a refugee claimant's evidence."

He quoted from the Canadian Federal Court of Appeal in a case of Djama in reviewing a decision to refuse refugee status on the basis of perceived testimonial contradictions:-

"The decision makers clearly exaggerated the import of a few apparent contradictions, hesitations or vague statements which they succeeded in detecting in the comments of the claimant...it seems to us that their fixation of the details of what is stated to be his history causes them to forget the substance of the facts in which he based his claim..."

He continues:-

"Not surprisingly, the scepticism of decision makers is often rooted in concern that persons seeking refugee status is in fact an economic migrant or otherwise seeking to secure an immigration benefit."

18. Professor Hathaway further states:-

"The decision makers are too often prone to impugn an Applicant's credibility on the basis of some vague sense of the implausibility of the testimony given...Even the most careful assessment of plausibility about risks in a foreign country must be undertaken with real humility since the decision makers understanding of plausibility may well be grounded in a view of rationality at odds with the circumstances in the Applicant's country of origin. More generally, account must be taken of the twin cautions that speculation and conjecture cannot form the basis of an adverse credibility finding which must instead be based on substantial evidence."

19. In my decision in *S.F. (Afghanistan) (a minor suing through his next friend, Thomas Dunning) v. Refugee Appeals Tribunal, The Minister for Justice Equality and Law Reform*, delivered on the 4th February 2015, I adopted the principles of the role of the judicial review judge as described by Cooke J in *I.R. v. Minister for Justice Equality and Law Reform and the Refugee Appeals Tribunal* and set out statutory duty of the Refugee Appeals Tribunal. Cooke J set out ten principles which might be said to emerge from the case laws as a guide to the manner in which evidence going to credibility ought to be treated and a review of conclusions of credibility to be carried out. These principles are well known to the Refugee Appeals Tribunal and practitioners who act in matters of judicial review decisions of the Refugee Applications Tribunal. The fourth principle of Cooke J is:-

"The assessment of credibility must be made by reference to the full picture that emerges from the available evidence and information taken as a whole, when rationally analysed and fairly weighed. It must not be based on a perceived correct instinct or gut feeling as to whether the truth is or is not being told."

The fifth principle is:-

"A finding of lack of credibility must be based on correct facts untainted by conjecture or speculation and the reasons drawn from such facts must be cogent and bear a legitimate connection to the adverse findings".

20. It appears that the first named Respondent in this case identified her findings of credibility on what she describes as the Applicant's account being contradictory and inconsistent. She does have regard to the Applicant's relative youth but in all of her statements are accumulatively considered the claim presented is not credible.

21. There seems nothing incredible about the general account of the Applicant in this case. The first named Respondent does not seem to deal with the life of the Applicant in that her parents died when she was five, she was reared by her grandmother and when her grandmother died she found herself dependent on a neighbour who then took advantage of her. The first named Respondent appears not to have dealt with the Country of Origin Information contained in the UK Border Agency Report of the 9th July 2010 and in particular the difficulties that Nigerian women face in the exercise of their civil liberties. The finding of an expectation that the Applicant being an adult should apply whilst in transit in Turkey are in my view not a core issue but a peripheral one. It appears to me that it is natural to assume that the person would in these circumstances rely on the agent who accompanied the Applicant to find that the decisions on credibility in these circumstances appear to avoid the perfectly simple explanation that if a person pays an agent they will rely on the agent who accompanies them to the country which the agent has decided as the country of destination. This seems to me to be a principled approach to the issue.

22. The first named Respondent in dealing with the issue of state protection appears again to avoid the issues raised in the country of information documentation from the UK Border Agency. Whilst the Nigerian government have tasked the Nigerian Human Rights Commission with monitoring and protecting human rights the commissions operations were limited by insufficient funding, could only make non binding recommendations to the government. Since the end of military rule in 1999 the human rights situation in Nigeria has improved significantly but human rights defenders working in certain regions of the country are certain human rights issues will continue to face serious challenges. Further some issues like corruption, good governments and impunity are also particularly sensitive and human rights defenders including media practitioners may face retaliation for their work documenting and denouncing abuses. Furthermore despite improvement since the military rule ended the legislative framework remains insufficient to ensure adequate protection to the work of human rights defenders. The report continues to deal with the issue of forced and early marriages and the difficulties for women in freedom of movement.

23. In relation to the issue of internal relocation the Country of Origin Information of the UK Border Agency states that Nigerian women face severe limitations in the exercise of their civil liberties. Women's freedom of movement is restricted and they are obliged to obtain their husband's permission to obtain a passport or travel outside the country. Clearly internal relocation is legally possible but the United Nations Development Fund for Women stated that there were four scenarios for women who relocate within Nigeria in order to avoid FGM, forced marriage and domestic violence. She can approach the local church or mosque or religious establishment and seek assistance from their leadership. She can approach friends or relatives who are willing to hide her. She can approach NGOs working on human rights however these NGOs may only be known to women in those urban settlements, town or cities where the organisations are active or she can take to the street.

24. In her answers to her Section 11 interview to the authorised officer she stated with regard to relatives in Nigeria, she said she may have relatives but she did not know them. In answering an issue of relocation to Lagos she stated that she did not know anybody there, she did not have any money and she did not know where to start from.

Decision of the court

25. I have found that the decisions on credibility were not untainted by conjecture or speculation and in my view the reasons drawn from the facts did not bear a legitimate connection to the adverse finding. I am also satisfied that the decision of the first named Respondent in relation to state protection and to internal relocation did not sufficiently consider the Country of Origin Information which was available and in those circumstances I propose to grant an order of *certiorari* in respect of the decision of the first named Respondent and remit the appeal of the Applicant for a determination *de novo* by a separate member of the Refugee Appeals Tribunal.