

**THE HIGH COURT
JUDICIAL REVIEW**

2006 No. 1260 J.R.

BETWEEN**J. S.****APPLICANT****AND**

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

RESPONDENTS**Judgment of Mr. Justice Kevin Feeney delivered on the 16th day of July, 2008.**

1.1 This is an application for an order of certiorari quashing the decision of the Refugee Appeals Tribunal dated the 6th October, 2006. The applicant also seeks a consequential order remitting the appeal to the first named respondent for a de novo hearing before a different member of the Refugee Appeals Tribunal. The applicant was given leave to seek such relief by order of the High Court made the 20th February, 2008. The grounds upon which such relief is sought are as follows, namely:-

"(1) The first named Respondent acted in breach of the of the Applicant's right to fair procedures in the manner in which he determined that state protection and/or the possibility of internal re-location were available to the Applicant. Such findings were made without any reasonable regard to the country of origin information before or otherwise available to the Tribunal.

(2) The first named Respondent failed to consider all the evidence. In particular, no assessment was made relating to the Applicant's fear of persecution by reason of his 'Americo-Liberian' ethnicity.

(3) The first named Respondent failed to make an assessment of how changed country conditions affected the Applicant's circumstances.

(4) The first named Respondent erred in law in having preferential regard to some country of origin reports to the exclusion of other such information.

(5) The Tribunal member made significant errors of fact in assessing the information before him."

The Facts

2.1 The applicant is a national of Liberia and was born in its capital, Monrovia, on the 1st December, 1972. The applicant is of Americo-Liberian ethnicity. That ethnic group represents a small proportion of the population of Liberia and was closely associated with the country's former President, Charles Taylor. The applicant's father was killed in 1995 as a result of his activities in support of Charles Taylor and was a member of the National Patriotic Front (NPF). The applicant's mother and pregnant girlfriend were killed by the forces of Liberians United for Reconciliation and Democracy (LURD) in September, 2003. During the same incident the applicant was rendered unconscious and was left for dead and a medical report was submitted in support of the application to corroborate such assault. The applicant sought and obtained humanitarian shelter in a sports stadium and remained there until February, 2004, when he fled to the Ivory Coast. In May, 2004, violence broke out in the Ivory Coast resulting in the killing of foreign nationals and the applicant went into hiding and thereafter came to Ireland.

2.2 In his application for refugee status the applicant claimed that he was in fear and had to leave his country of origin because he was a target due to him having been a supporter of Charles Taylor's Government and because his father had been a member of his political party. The applicant claimed that he was identified with a particular party because of his ethnic origin and family connections. The applicant claimed that he was unable to return to Liberia as he could be killed or seriously injured on account of his ethnic background and the perception that he was a follower of Charles Taylor.

2.3 In 1847 Liberia was established as an independent State by persons who were freed as slaves in America. For well over a hundred years after its founding, political and economic activities were dominated by a small ethnic minority of the population who were descended from the original settlers and known as Americo-Liberians. Following a coup in 1980, there was a prolonged period of internal strife and armed conflict resulting in extensive human rights abuse. There was an election in 1997 that brought Charles Taylor to power but within a short period the internal strife and armed conflict had re-ignited. By the second half of 2003, Charles Taylor had lost control and a comprehensive peace agreement was concluded bringing to an end a period of fourteen years of civil conflict in Liberia. In November, 2005, Ms. Ellen Johnson-Sirleaf was elected as President following an electoral process which was identified by the UNHCR as having been conducted in a peaceful and calm atmosphere.

2.4 The applicant arrived in Ireland on the 6th June, 2006, and applied for asylum. His application was unsuccessful and he appealed to the Refugee Appeals Tribunal. An oral hearing took place before a member of the Refugee Appeals Tribunal at which the applicant was represented by a solicitor. The Tribunal gave its decision in writing dated the 6th October, 2006. The member concluded that the applicant had not established a well-founded fear of persecution and that his appeal was therefore dismissed and the Commissioners' recommendation that the applicant should not be declared a refugee was upheld.

Decision of the Refugee Appeals Tribunal

3.1 In his decision, the member of the Refugee Appeals Tribunal stated in a paragraph entitled "Decision and Reasons", as follows, namely:-

"Whilst the applicant may have a subjective well-founded fear of persecution, this is not supported by objective country of origin information put to the applicant. It appears that since October, 2003, the government has been progressively extending its control and the political, human rights and security conditions in the vast majority of that country have improved markedly. According to the UK Home Office Report, there is general sufficiency of protection for claimants who fear or who have experienced ill-treatment of dissident combatants. Whilst he was not a member of a political organisation and even though he was a strong supporter of Charles Taylor he has failed to establish that he would be at risk if he was to return to Liberia. Latest country of origin information also suggests that internal relocation is a very live prospect in Liberia where there is freedom of movement. I am satisfied, after taking into consideration all the latest UN

and UNHCR reports on that country, the fact that over 15,000 UN and 1,000 civilian police are deployed, which in turn has encouraged thousands of people to return, the applicant's fears are not well-founded. The Convention is forward looking and I am satisfied that, taking all matters into consideration, the applicant has not established a well-founded fear of persecution."

Grounds for review

4.1 During the course of argument before the Court, counsel on behalf of the applicant confirmed that grounds 1, 3, 4 and 5, set out in the statement of grounds, all related to the manner in which the Tribunal dealt with country of origin information. Ground 2 was identified as being a separate matter in that it was claimed therein that there was a failure on the part of the Tribunal to carry out an assessment relating to the applicant's fear of persecution due to his Amerio-Liberian ethnicity.

4.2 The applicant claimed that the Tribunal erred in that it had failed to have regard to country of origin reports submitted by the applicant which supported his claim. He also claimed that there was a significant error of fact. It was further claimed that the Tribunal had relied upon a perceived change in conditions in Liberia in making its finding that protection from persecution was available in Liberia. It was also claimed that the Tribunal erred in finding that internal re-location was a very live prospect without having regard to the reasonableness of such option in the applicant's circumstances.

Claim that the Tribunal failed to properly consider the evidence

5.1 The applicant claims that the country of origin findings made by the Tribunal were selective in nature and that they had no regard to the reports submitted on his behalf. It was claimed that the Tribunal erred in law by having preferential regard to certain country of origin reports to the exclusion of other information and that it preferred evidence without identifying its reasons for doing so. In support of this claim the applicant relied upon statements in the judgment of Edwards J. in *T. S. v. Minister for Justice, Equality and Law Reform and Ors.* (Unreported, High Court, 30th November, 2007) where Edwards J. stated (at page 4 of 11), when considering whether or not a certificate pursuant to s. 5(3)(a) of the Illegal Immigrants Trafficking Act, 2000, should be granted and in considering whether the issue in that case involved a point of law of public importance as follows:-

"If I might just rehearse some of those well established principles. First of all, there is the principle that a judicial or quasi judicial tribunal must have regard to all of the evidence before it and cannot cherry pick the evidence. If it is to act judicially it must consider all of the evidence put before it. If there is a conflict with respect to the evidence, such that the tribunal cannot resolve that conflict, other than by preferring one piece of evidence over another piece of evidence for good and substantial reasons, then it is incumbent on the tribunal or court, as the case may be, to state clearly its reasons for doing so. It is well established that a court or tribunal may not act arbitrarily, it must act judicially and it must proceed on the basis of what is reasonable and rational. In order that an appellate tribunal might know whether the tribunal at first instance has behaved reasonably and rationally it must know the reasons for, or basis on which, the lower tribunal acted."

Later on in the judgment (at p. 8 of 11), Edwards J. stated in relation to country of origin information, as follows:-

"It is perfectly within the province and jurisdiction of the Refugee Appeals Tribunal, or any other body considering information of that type, to prefer some information over other information. What is critical, however, is that they give a reason for doing so. That doesn't mean that every piece of 'country of origin information' must be alluded to in the judgment, but where there is a major conflict and where the status of one piece of 'country of origin information' versus another piece of 'country of origin information' is an issue of very significant importance in the case, then the judgment should deal with that, and if there is a preferment of one piece of evidence over another it should be justified so that the tribunal can be seen not to have acted arbitrarily but to have acted reasonably, rationally and impartially."

5.2 In this case there were four different items of country of origin information before the Tribunal. Two of those items were submitted by the presenting officer and two by the solicitor representing the applicant. The Tribunal member expressly stated that he considered all papers submitted to him for the purposes of the appeal. The first of the items submitted by the presenting officer was an extract from a U.K. Home Office Operation Guidance Note issued on the 2nd December, 2005. The other item was a report from the UNHCR Refugee Agency detailing that organisation's position on the international protection needs of asylum seekers from Liberia, dated 31st March, 2006. The two items submitted on behalf of the applicant were a report from Amnesty International covering events in Liberia from January to December, 2005, and a country summary from the Human Rights Watch Organisation dealing with Liberia, dated January, 2006. It is claimed on behalf of the applicant that the Tribunal preferred the evidence contained in the two reports submitted by the presenting officer and cherry-picked evidence. It is also claimed that the Tribunal had not acted judicially in failing to identify reasons as to why it preferred such evidence. It was claimed that there was a failure to deal with conflicting evidence or to identify why certain evidence was preferred.

5.3 Counsel for the respondents accepted that the Tribunal cannot cherry-pick evidence where there is a real conflict of evidence in relation to a significant matter. In such a case if the Tribunal prefers one piece of evidence over another piece of evidence, then the Tribunal should identify reasons for doing so. Counsel for the respondents argued that there was no major conflict between the different items of country of origin information. Any difference was of emphasis and not such as to support the contention that there was a conflict of importance.

5.4 In considering these matters the Court adopts the approach I identified in the case of *Banzuzi v. The Refugee Appeals Tribunal and Ors.* (Unreported, High Court, 18th January, 2007) where I deemed it appropriate where a dispute arose, in relation to country of origin information, to read the entire of that country of origin information such as was available to the Tribunal. A reading of the entire country of origin information demonstrates that the findings and reasons contained in the decision are not dependant upon selective quotations, nor do they rely on isolated statements, nor is there a cherry-picking of the evidence but rather the findings are consistent with the overall content of the entire country of origin information.

5.5 There was no dispute but that all four country of origin documents were based upon a recognition of real progress in relation to human rights and security conditions in Liberia. These had resulted in significant improvement in protection for civilians. The Tribunal member concluded that it appeared that since October, 2003, the Liberian Government had been progressively extending its control and the political, human rights and security conditions in the vast majority of that country had improved markedly. That finding contained in the written decision is effectively a quotation from paragraph 3.6.7 of the Operation Guidance Note from the U.K. Home Office issued on the 2nd December, 2005. However, such finding is entirely consistent with the statement contained at the commencement of the Human Rights Watch document to the effect that:-

"The completion in October and November, 2005, of presidential and parliamentary elections marked a major step towards

the consolidation of Liberia's transition from a near failed State rife with human rights abuses to a democratic State governed by the rule of law."

That report went on to state that at years end (2005),

"...there were solid grounds for optimism including the disarmament of more than 101,000 combatants; the return home of tens of thousands of civilians who had fled during the war; the recognition by both Liberia and the international community of the role corruption played in fomenting armed conflict; and the ability of journalists and civil society to function after years of being silenced, persecuted and targeted."

That report also referred to significant improvements in the protection for civilians.

The report from Amnesty International confirmed that over two hundred thousand internally displaced people and refugees returned to their homes, although disputes over land and property appropriated during the war raised ethnic tensions. It went on to state:-

"Implementation of the Comprehensive Peace Agreement remained on track".

The UNHCR report indicated that the electoral process in November, 2005, had been conducted in a peaceful and calm atmosphere and that the overall security situation remained relatively safe and stable.

There was no doubt that each and every one of the reports identified continuing problems in relation to the rule of law stemming from inadequate police and civil authorities and deficiencies within the judicial system and also recognised serious social and economic problems following from the prolonged conflict. However, any rational reading of the four country of origin documents confirms an overview of significant improvements in protections for civilians and the progressive extension by the Government of its control resulting in an improvement in the political and human rights and security conditions for the majority of the population. The statement to the effect that there is a general sufficiency of protection for claimants who fear or who have experienced ill-treatment of dissident combatants is consistent with the content of all four country of origin documents.

5.6 This is not a case in which the Tribunal has cherry-picked evidence nor has it preferred one piece of evidence over another piece of evidence. There is no major conflict in relation to the status of one piece of country of origin information versus another piece of country of origin information and the authority relied upon by the applicant has no application to the facts of this case. A reading of the entire country of origin information confirms that the findings and conclusions contained in the decision are consistent with the overall content of the country of origin information. The fact that there are continuing problems in Liberia does not take away from the overall position identified in all of the reports of significant improvements in the protection for civilians. It is clear that such improvement continued into 2006 after the date of the Human Rights Watch document.

5.7 The report of the Tribunal proceeded on the basis that the applicant might well have a subjective well founded fear of persecution but that that was not supported by objective country of origin information. It is clear that this matter was put to the applicant and that the applicant endeavoured to deal with such matter by saying that he did not believe the country of origin information. It was conceded during argument by counsel on behalf of the applicant, that there was no country of origin information available to support the applicant's subjective fear of persecution on grounds of his ethnic origin. In circumstances where the country of origin information was directly put to the applicant and where there was no objective evidence to support the applicant's fear of persecution by reason of his ethnicity. That there can be no requirement for the detailed analysis or assessment contended for by the applicant. The factual position is that the country of origin information did not identify any risk due to ethnicity. The Court is therefore satisfied that the Tribunal did not fail to consider all the evidence in making an assessment that the applicant was not at risk of persecution by reason of his ethnicity. Nor did the Tribunal fail to make an assessment of how the changed country conditions affected the applicant's circumstances. Consideration was given to the applicant's claim that as a former supporter of Charles Taylor he would be targeted. The objective country of origin information available indicated that even as a supporter of Charles Taylor that there was no identifiable risk if he was to return to Liberia. The conclusion that the latest country of origin information also suggested that internal relocation was a very live prospect in Liberia was supported by the country of origin information and was a finding available to the Tribunal based upon such information. Again it cannot be said that such finding arises from an isolated statement or from a cherry-picking of the evidence. This did not amount to a preferential regard to some country of origin information reports to the exclusion of others. The findings made by the Tribunal were made with due regard to the country of origin information.

5.8 The separate contention that there was a significant error of fact in assessing the information before the Tribunal is based upon the statement contained in the decision:-

"I am satisfied, after taking into consideration all the latest and UNHCR reports on that country, the fact that over 15,000 UN troops and 1,000 civilian police are deployed, which in turn has encouraged thousands of people to return, the applicant's fears are not well-founded."

It was suggested that that is an error of fact in that the deployment of 15,000 troops was based upon a UN mandate which ran until the 30th September, 2006 and that, therefore, the position identified in the report of the 6th October, 2006 was not necessarily correct. It was conceded in argument that the mandate was renewed. The Court is satisfied that it cannot be suggested that there was a significant error of fact. It was factually correct that the latest UN and UNHCR reports indicated that over 15,000 UN troops and 1,000 civilian police were deployed as of the date of those reports and that the presence of such persons had encouraged thousands of people to return to Liberia. There is no real basis for the claim that the Tribunal member made a significant error of fact in assessing the information before him.

5.9 The applicant argued that the Tribunal relied on selected passages within the country of origin information and failed to have regard to other country of origin information. A similar argument was put forward in the case of *H. O. v. The Refugee Appeals Tribunal and Ors.* (Unreported, High Court, Hedigan J., 19th July, 2007). In that judgment (at page 8) Hedigan J. stated:-

"The applicants further argued that the Tribunal relied on selected passages from the country of origin information put forward by the applicant. It is clear that the Tribunal must take into account COI (country of origin) that is submitted to it. The manner in which it balances that COI it seems to me is a matter for the Tribunal of fact. Absent some glaring and manifest flaw, I cannot see how the court could intervene in such an assessment of the facts without becoming in effect a Court of Appeal on the facts. This is something it must avoid."

On the facts of this case the Court is satisfied the Tribunal had regard to all the evidence and did not cherry-pick the evidence. The decision of the Tribunal is based on what is a reasonable and rational conclusion arising from the country of origin information. Due

regard was also had to the applicant's personal background and the decision in so far as it was based on the ability to relocate was consistent with the available evidence.

Decision of the Court

6.1 In the light of the above, the Court is satisfied that the applicant has failed to establish any of the ground upon which relief is sought and the Court therefore refuses the relief sought.