

THE HIGH COURT

[2010 No. 1590 J.R.]

BETWEEN

F.U. (AFGHANISTAN)

APPLICANT

AND

THE REFUGEE APPEALS TRIBUNAL,

THE MINISTER FOR JUSTICE EQUALITY AND LAW REFORM,

ATTORNEY GENERAL AND IRELAND

RESPONDENTS

JUDGMENT of Mr. Justice Robert Eagar delivered on the 21st day of May, 2015

1. On the 11th February 2015 this Court gave judgment on an application for a judicial review by the above named applicant and granted an order of *certiorari* quashing the decision of the first named respondent dated the 29th November, 2010 and remitted the appeal of the applicant for a *de novo* consideration by a separate member of the Refugee Appeals Tribunal.

2. The respondent now applies under s. 5(3)(a) Illegal Immigrants Trafficking Act 2000 for a certificate of leave to appeal to the Court of Appeal on the basis that the judgment "involves a point of law of exceptional public importance" and that "it is desirable in the public interest" that such appeals be taken. The criteria to be applied by this Court in ruling on the application for a certificate under s. 5(3)(a) are not in dispute.

3. Following from the decisions of Cooke J. in *I.R. v. The Minister for Justice Equality and Law Reform & Refugee Appeals Tribunal* [2009] IEHC 510 and the decision of Clarke J. in *Arklow Holidays v. An Bord Pleanala* [2007] 4 I.R. 112 I say the following principles appear to apply:-

- 1) The case must raise a point of law of exceptional public importance.
- 2) The area of law involved must be uncertain such that it is in the common good that uncertainty be resolved for the benefit of future cases.
- 3) That it is desirable in the public interest that an appeal should be taken to the Court of Appeal.
- 4) The uncertainty as to the point of law must be genuine and not merely a difficulty in predicting the outcome of the appellant's arguments.
- 5) The point of law must arise out of the court's decision and not merely out of some discussion at the hearing.
- 6) The requirements of exceptional public importance and the desirability of an appeal in the public interest are cumulative requirements.
- 7) The importance of the point must be public in nature and must therefore transcend well beyond the individual facts and the parties of a given case.
- 8) The requirement that the court be satisfied that it is desirable in the public interests that an appeal should be taken to the Court of Appeal is a separate and independent requirement from the requirement that the point of law is one of exceptional importance. On that basis even if it can be argued that the law in a particular area is uncertain the court may not on the basis, *inter alia*, of time or costs consider that it is an appropriate case to certify the case to the Court of Appeal.

4. I have considered both the written and oral submissions of counsel for the respondent. Counsel for the applicant indicated that he had no contact with his client since the hearing of the judicial review and counsel for the respondent indicated that he felt that it would be inappropriate for counsel for the applicant to address the Court in relation to this issue. Counsel for the applicant subsequently indicated that he was proposing that he would make an application to come off record.

5. The respondents are applying for a certificate on the following grounds:

- 1) Whether and to what extent a decision of the Refugee Appeals Tribunal is vitiated by the course of questioning or comment by officers of the Refugee Applications Commissioner either at interview under s. 11 of the Refugee Act 1996 (as amended) or at hearing before the Tribunal itself
- 2) The manner in which the Refugee Appeals Tribunal must treat or consider documents produced by an applicant alleged to originate from a non-state paramilitary or terrorist organisation.

6. Counsel for the respondent submitted that the manner of questioning by the Refugee Applications Commissioner was not inappropriate or hostile. He also submits that the Refugee Appeals Tribunal was powerless to influence or alter the course of the section 11 interview. The Tribunal had found the applicant's claims hard to accept and noted that the applicant was interviewed again by the Commissioner's office. The respondents are saying there was nothing incorrect or inappropriate in the Tribunal referring to this issue or dealing with it. The only argument which counsel for the respondent has suggested that this is an appropriate case for a certificate of appeal in accordance with the jurisprudence is that this appears to be a novel issue and the Court's reference to an alleged "canteen culture" (which the respondents do not accept) highlights the potential significance of the Court's findings in this case.

7. It is clear to this Court that there is a duty on the Refugee Applications Commissioner and the Refugee Appeals Tribunal to

understand the enduring importance and value of human rights in striving to do justice in an independent and impartial and just manner.

8. Whilst I must accept the respondent's view that there is no "canteen culture", there is in my view a danger that such would arise in situations where the applicant is appearing before the first named respondent for the first time but the authorised officers and presenting officers appear regularly before the Refugee Appeals Tribunal and particularly the first named respondent in this case who has responsibility for quite a considerable number of appeals. However I do not accept that on this basis there is a point of law of exceptional public importance arising and I do not accept the submission by counsel for the respondent's description of this matter as a novel issue.

9. I am satisfied that it is the duty of the judicial review judge to supervise the decision-making process. In circumstances, where in my view, an applicant has not been afforded fair procedures, the applicant is entitled to judicial review remedies.

10. Counsel on behalf of the respondent in relation to the second issue relates to the finding of this Court that the Tribunal erred in failing to say why it did not accept documents submitted by the applicant as assisting his credibility. The Refugee Applications Commissioner has noted in the s. 13 report that the validity of these documents could not be verified or refuted and the respondent's submissions during the hearing before the Court was that the documents purported to be from the Taliban, even if taken at face value were of limited probative value. It was in any event impossible to authenticate documents purporting to emanate from a terrorist organisation.

11. Counsel for the respondent argued that I should grant a certificate for leave to appeal to the Court of Appeal in relation to the manner in which the Refugee Appeals Tribunal must treat or consider documents produced by an applicant alleged to originate from a non-state paramilitary or terrorist organisation. The first named respondent in her analysis of the claim never mentioned these documents. In those circumstances I do not believe that this point raises a point of law of exceptional public importance.

12. I therefore refuse the application for a certificate in both the grounds suggested by the respondents.