Neutral Citation: [2014] IEHC 144

THE HIGH COURT

JUDICIAL REVIEW

[Record No. 2007/1672/J.R.]

BETWEEN

H. O.

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Mac Eochaidh delivered on the 21st day of March 2014

1. This is a judicial review of a decision of the Refugee Appeals Tribunal dated 21st November 2007, confirming the recommendation of the Refugee Applications Commissioner refusing the applicant a declaration of refugee status. Leave to seek judicial review in this matter was granted by McCarthy J. on 14th November 2013.

Background:
2. The applicant in this case is a Nigerian national, born on 10th January 1984, who arrived in the State on 4th June 2007. The applicant claims to have a well founded fear of persecution on the grounds of membership of a particular social group and religion. The applicant claims that her troubles began after she became pregnant in March 2007. Her boyfriend was a Christian while the applicant and all her family are Muslims. The applicant claims that when her father and brother found out that her boyfriend was a Christian, they refused to let her marry him. She claims that they threatened and assaulted him, breaking his hand in the process and that they told her she had to terminate her pregnancy.

3. The applicant states that initially she pretended to acquiesce to their wishes and remained in the family home for a week during which time she claims to have been beaten by her father and brother. She then left for a friend's house nearby. The friend soon became aware that the applicant's brother was actively searching for her and so gave the applicant some money in order to get to Lagos. On reaching Lagos the applicant claims she stayed with relatives, until she was banished on her uncle's return to the house. The applicant claims she then sought out the assistance of a Pastor at a nearby church who got her in touch with a 'white man' to help her. She claims the 'white man' arranged for her to leave Nigeria and initially travelled with her on her journey to Ireland. The applicant arrived in the State pregnant and gave birth to a baby girl who was born on 27th August 2007.

4. The applicant claims that she fears that her family will kill her or her child. She states that she did not make any report to the police as her family had told her they would not intervene as it was a family matter. She further states that she did not seek the help of a non-governmental organisation as she did not know of any.

Submissions:
5. Mr. Mel Christle S.C., on behalf of the applicant, made three broad challenges to the decision of the Tribunal Member in this case. In the first instance, counsel submitted that there was a failure to consider the country of origin information. Second, it is claimed that there was an unlawful finding in relation to the availability of state protection taking into account the country of origin information submitted. Finally, it was contended that the credibility findings made by the Tribunal in respect of the applicant were unreasonable and unlawful.

6. In relation to the first claim, counsel submits that the Tribunal Member failed to take into consideration the country of origin information which was supportive of the applicant's case, in particular with regard to her finding on state protection. In this regard, counsel notes that the Tribunal Member quotes a passage from an Amnesty International report from 31st May 2005 which appears to lend credence to the applicant's proposition that women and girls in Nigeria are subjected to violence from some members of their families. However, counsel makes criticism that in proceeding to address the question of whether the applicant's fear was objectively well founded by reference to the availability of state protection, the Tribunal Member failed to afford the applicant the benefit of the contents of that Amnesty International report and instead preferred the contents of another report. In this regard it is submitted that the Amnesty International report indicated that the persecution feared by the applicant was viewed as a private matter by state authorities and as such didn't warrant their intervention.

7. In assessing the Tribunal Member's finding in relation to state protection, counsel notes that while the Tribunal recognised that the correct test to be applied was to examine whether state protection might reasonably have been forthcoming, she failed to assess the applicant's case on this basis. Instead, counsel submits that the Tribunal adopted a test of questioning whether the applicant did in fact approach the state authorities and ultimately failed to consider whether state protection would be forthcoming, a particular failing in light of the available country of origin information it is said. Further, counsel contends that the Tribunal failed to give reasons as to why it preferred country of origin information from 2004 to that from 2005; why certain country of origin information was not referred to; and why no weight was attached to country of origin information which indicated a lack of availability of effective state protection.

8. Counsel quotes passages from the cases of *D.V.T.S. v. Minister for Justice, Equality and Law Reform* [2007] IEHC 305, *M.N. v. Refugee Appeals Tribunal* [2008] IEHC 218, *T.G. v. Refugee Appeals Tribunal* [2007] IEHC 377 and *Da Silveira v. Refugee Appeals Tribunal* [2004] IEHC 436 in support of these claims. In particular, counsel for the applicant refers to the judgment of Finlay Geoghegan J. in the case of *Kramarenko v. Refugee Appeals Tribunal* [2004] IEHC 101 to support the contention that only in situations in which state protection "might reasonably have been forthcoming" will a claimant's failure to approach the state for protection defeat his claim.

9. The final complaint raised by the applicant is in relation to the manner in which the Tribunal assessed the applicant's credibility. In that regard, counsel submits that the Tribunal Member failed to have reasonable regard to the fact that the applicant was under the stewardship of the "white man" in making adverse credibility findings in respect of her narrative on how she travelled to the State. It is also claimed that statements made by the applicant in relation to whether or not the "white man" accompanied her on her flight were not inconsistent but rather stemmed from the fact that while she did not see him on the plane, she could not conclusively say that he did not travel with her. Further, counsel states that adverse credibility findings made in respect of the applicant's claims that her family were pressurising her into getting an abortion and with regard to the name of the Pastor from whom she sought help in Lagos were unreasonable and lacking in fair procedures. Finally, the applicant claims that the findings reached by the Tribunal Member in respect of her credibility were oblique, in breach of the duty to give reasons and were not based on any evidence.

10. Counsel for the respondent, Ms. Fiona O'Sullivan B.L., noted in the first instance that the State conceded leave on all grounds in this case before McCarthy J. in order to progress matters which had inadvertently lain dormant for some time owing to no fault of the parties. It was also brought to the attention of the court that owing to the efflux of time the infant daughter of the applicant in this matter had separately applied for asylum, had her claim rejected by both ORAC and the Tribunal and applied for leave to seek judicial review of the negative recommendation, suing by her mother as next friend. Counsel pointed out that as the applicant's daughter was an infant her claim was based in its entirety on that of the applicant herein, who gave evidence on her behalf in that process. Judgment was given by MacMenamin J. in *E.N.O. (A Minor) v. Refugee Appeals Tribunal* (High Court, 25th November 2010, MacMenamin J.) refusing the minor applicant leave to seek judicial review on the basis that she failed to make out arguable grounds. MacMenamin J. notes in his judgment that the same Tribunal Member assessed the claim of the minor and the applicant in this case in two separate decisions.

11. The applicant claims that the Tribunal Member failed to take into consideration the country of origin information which was supportive of her case, however counsel for the respondent notes that the Tribunal Member expressly quoted from the relevant Amnesty International report in her analysis. In particular, counsel distinguishes the findings of Edwards J. in the case of *D.V.T.S. v. Minister for Justice, Equality and Law Reform* [2007] IEHC 305 on the basis that in that case there was no mention made of the country of origin information which furthered the applicant's case, whereas in this case such information is expressly quoted, considered and rejected by the Tribunal Member it is said.

12. Counsel submits that the Tribunal Member examined the relevant country of origin information and expressly considered the question "Is there a reasonable possibility that the applicant would be exposed to serious harm if she returned to Nigeria?" In answer to this it is noted that the Tribunal considered the issue of state protection, the applicant's reason for failing to seek it and whether protection would have been forthcoming if she had sought it. The applicant's reason for failing to seek protection was that her family told her that the police would consider her problems to be "a family matter" and as such wouldn't intervene in order to protect her. Counsel notes that the Tribunal did not accept this explanation. Further, counsel highlights that the Tribunal Member relied on a report into human rights in Nigeria from a British-Danish fact finding mission to Abuja and Lagos from November 2004 which indicated that "there were avenues of redress and options for protection available" and as such that protection would have been forthcoming. Further, the respondent submits that there is a general assumption that a state can provide protection unless an applicant shows otherwise, citing *Ward v. Canada* (1993) 2 SCR 689 and *Horvath v. Secretary of State for the Home Department* [2000] INLR 15 in support of this contention.

13. The inconsistency in the applicant's testimony is highlighted by counsel for the respondent to show the basis on which the Tribunal Member made adverse credibility findings against her. In particular, counsel highlights the applicant's inconsistent narrative with regard to her travel to Ireland, namely with regard to the "white man" who helped her to get here. In this regard, counsel notes that at interview the applicant stated that the "white man" did not travel to Ireland with her, that he held her documents, including her passport and ticket at all times and that she did not know his name despite staying with him for a week. It is noted that at the Tribunal hearing, the applicant stated that she could not remember how long she stayed with the man, that he had travelled with her and that he had shown the staff in the airport her passport and ticket before she boarded the second plane which took her to Ireland, but that she did not see him on the plane and did not know if he got on the second plane or not. It is submitted by counsel that the Tribunal acted reasonably and rationally in finding that the applicant's evidence was inconsistent on this point. Counsel notes that the Tribunal's findings in this regard were made pursuant to s. 11B of the Refugee Act 1996.

14. It is also recorded that the Tribunal found other aspects of the applicant's claims to lack credibility. Counsel notes that the applicant was inconsistent in introducing evidence at the late stage of the appeal hearing with regard to a threat made by her family to have her child aborted. It is claimed that she mentioned in her questionnaire that she feared her family would kill her and her child as opposed to seeking an abortion. Counsel for the respondent highlights the fact that the applicant's own counsel raised the issue that at no stage prior to the hearing had she mentioned that she was pressurised into having an abortion and rejects the applicant's explanation that she simply failed to mention it as she had not been asked. Finally, counsel highlighted the inconsistency in the applicant's evidence with regard to the name of the Pastor, with whom she stated she stayed with for one week, who she said was called Chris at her interview and who she said was called Steve at her hearing. Counsel submits that the Tribunal did not err in making an adverse credibility finding in this regard.

Findings:

15. The applicant's first claim is that there was a failure to consider the country of origin information or that the Tribunal Member was selective in her use of same. In this regard I note that the Tribunal expressly quotes from the Amnesty International 'Unheard Voices' Report of 31st May 2005 and goes on to find that: "The submitted country of origin information indicates that such violence is frequently excused and tolerated. Dismissive attitudes within the police and an inaccessible justice system compound the failure of the State to protect women's rights. It is further noted that violence against women and in the home is generally regarded as belonging in the private sphere and is shielded or outside scrutiny." In my view the Tribunal Member could not be said to have failed to consider the country of origin information submitted by the applicant. Rather, the Tribunal Member's comments must be viewed in the light of her statement that: "I have considered the submitted country of origin information. The applicant may well have a subjective fear of her family which makes her fear returning to Nigeria, but what the Tribunal must assess is whether the applicant's fear is well founded. Is there a reasonable possibility that the applicant would be exposed to serious harm if she returned to Nigeria?" As such, it is clear that the Tribunal Member accepted the contents of the country of origin information and the Amnesty International report insofar as it indicated that the applicant may have a subjective fear of her family. However, the Tribunal Member was then obliged to examine whether the applicant's fear could be said to be objectively justified and thus well founded.

16. In this regard, the Tribunal Member proceeded to examine the issue of state protection for the applicant. The second complaint raised on behalf of the applicant is that the Tribunal made an unlawful finding on state protection by failing to give her the benefit of the more favourable Amnesty International report contained in the country of origin information and by failing to apply the correct test and examine whether state protection might reasonably have been forthcoming.

17. I can find no such flaw in the decision making of the Tribunal Member in this case. In my view the Tribunal Member's decision clearly recognises the correct test and then proceeds to apply it to the facts. In that regard, the Tribunal stated that she had to consider: "firstly, the applicant's reason for failing to seek state protection and secondly whether, if the applicant had sought state protection, it would have been forthcoming." In applying this test to the facts of the case the Tribunal Member found: "The applicant's reason for failing to seek state protection is that she was told that it was a family matter. I do not consider this to be sufficient to discharge the onus which is on the applicant to seek the protection of her state." In my view it is clearly within the Tribunal Member's jurisdiction to come to such a conclusion and I can find no irrationality in this conclusion.

18. The Tribunal Member then goes on to examine whether "if the applicant had sought state protection, it would have been forthcoming." The Tribunal notes that as the applicant claims to fear persecution from non-state agents, namely her family, it must be shown that the state is unable or unwilling to provide protection. In this regard, the Tribunal Member was of the view that: "Country of origin information would indicate that there was state protection available to the applicant. A report on human rights issues in Nigeria, a joint British-Danish fact finding mission to Abuja and Lagos, dated 19 October to 2 November 2004, indicated that there were avenues of redress and options for protection available." It is clear that the Tribunal Member had regard to all of the country of origin information proffered and reached the conclusion that in the overall context there was state protection available to the applicant. I can find no error with regard to the Tribunal Member's assessment of the country of origin information in this regard and I reject the complaints raised of behalf of the applicant.

19. Further, the Tribunal refers to the fact that the applicant failed to go to the police or to an NGO or to make any attempt to seek protection from the state. In such circumstances it was noted by the Tribunal that: "An applicant's failure to approach the state for protection in circumstances where that protection might reasonably have been forthcoming will defeat a claim for asylum." Counsel for the applicant seeks to claim that while the Tribunal Member recognised the correct test to be applied in line with the decision of Finlay Geoghegan J. in *Kramarenko v. Refugee Appeals Tribunal* [2004] IEHC 101 that she failed to apply it in this case. I am not of the view that the Tribunal Member failed to apply this test, rather it appears that the dicta of La Forest J. of the Supreme Court of Canada (as cited by Finlay Geoghegan J. in *Kramarenko*) was expressly followed. It is worth noting that the Canadian court stated: "only in situations in which state protection 'might reasonably have been forthcoming', will the claimant's failure to approach the state for protection defeat his claim. Put another way, the claimant will not meet the definition of 'Convention refugee' where it is objectively unreasonable for the claimant not to have sought the protection of his home authorities." In my view, the Tribunal clearly applied this test in reaching its conclusion.

20. Finally, it was contended that the credibility findings made by Tribunal Member in respect of the applicant's travel to the State and with regard to perceived inconsistencies in her evidence were unreasonable, in breach of the duty to give reasons and was not based on any evidence. I reject the claims of the applicant in this regard. On review of the applicant's questionnaire and her evidence at the hearing as recorded by the Tribunal Member, it is clear that there were apparent inconsistencies in her testimony as regards her travel to the State. Issues which arose included whether the 'white man' accompanied her at all times, whether he retained her passport and travel documents and whether he came to the State with her. Coupled with these inconsistencies the Tribunal notes that the applicant claims not to have known the name of the 'white man' who helped her despite stating that she spent a week in his company before fleeing her home country and embarking on her journey to Ireland. Further, the applicant gave clearly inconsistent evidence as regards the name of the Pastor who helped her while she was in Lagos. It is also recorded by the Tribunal Member that the first time the applicant raised claims regarding her family pressurising her to have an abortion was at her oral hearing.

21. The Tribunal had regard to s. 11B of the Refugee Act 1996 and was also cognisant of the applicable legal principles in assessing these various facets of the applicant's evidence in the context of her credibility. The Tribunal Member records "that such assessment should address the core issue or issues in the applicant's story as opposed to peripheral issues." She goes on to note that "However, credibility can be considered in the context of an accumulation of implausible events. I find that in the applicant's case that there were a number of inherent inconsistencies and unresolved contradictions that affected her credibility." In my view the Tribunal Member applied the correct test, properly considered the testimony supplied and did not stray into illegality in her assessment of the applicant's credibility. In any event, I am not of the view that the credibility findings in this case were the primary basis on which the applicant's appeal was rejected by the Tribunal Member, however I do consider them to be robust .

22. Having rejected the various claims raised by counsel, I refuse this application for judicial review.