

THE HIGH COURT

IN THE MATTER OF SECTION 21 OF THE REFUGEE ACT 1996

Record No. 2012/239 MCA

Between:

Nz.N.

APPELLANT

-AND-

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT OF MS JUSTICE M. H. CLARK, delivered on the 27th January, 2014.

1. The appellant, who sought asylum in December, 2005, was declared a refugee on the 14th February, 2006. Her infant son D.C.N. who it was claimed was born in Niger on the 19th September, 2005, also benefited from that status. In June, 2012 the Minister revoked the appellant's declaration pursuant to Section 21(1) (h) of the Refugee Act 1996 on the basis that she had provided false and misleading information to the Refugee Applications Commissioner regarding her nationality and identity. She now appeals against the revocation.

2. The appeal was heard in September, 2013. Mr Anthony Lowry B.L. appeared for the appellant and Ms Emily Farrell B.L. for the Minister.

Background to Recognition of Status

3. Nz.N. claimed to be of Hausa ethnicity and a national of Niger.¹ Her claim arose from asserted persecution at the hands of her husband who had at least one other wife and five children. He insisted that she should terminate each of her pregnancies as he was unable to feed the children due to lack of food in Niger. He intended to force her into prostitution. On her last pregnancy he beat her and broke her arm and put her out of his home. She stayed at a friend's house and eventually gave birth to her son in September, 2005 in Niger. An aid worker brought her to Ireland. She had no identity documents. She claimed to have no formal education but the fact that she spoke and wrote English fluently and was a Christian caused some concern in the interviewing officer of the ORAC as Niger is an Islamic francophone country. She explained that she had been a domestic worker for an English-speaking Ghanaian couple who were Christian and who had educated her and converted her to the Christian faith. With some reservations, her account was found mainly credible in that some of her claim was supported by independent sources in relation to the treatment of women in Niger society. The Refugee Applications Commissioner applied the benefit of the doubt and she received a positive recommendation. Nz.N. asserted that she had never travelled outside Niger prior to the 2nd December, 2005, and that she had never been issued with a passport.

4. At some stage a document purporting to be her son D.C.N.'s birth certificate was provided to the Commissioner. The father is named as Bala N. She had previously named her husband as Musa N. and her father as Bala Ali. The document is stated to have issued on the 31st July, 2006.

Family Reunification

5. In October, 2006² – some eight months after receiving her declaration – the appellant married A.S.O, a national of Nigeria born in January, 1985 and an asylum seeker who she said she had met in Ireland. She submitted their marriage certificate, which named her mother as Fatima Bello and her father as Bala N. and she also submitted her husband's Nigerian passport and his Irish driving licence. In February, 2007 she applied for family reunification with her husband. Two years later in February, 2009 the application was granted. The applicant gave birth to two further children in 2007 and 2009.

The Story Unfolds

6. Some time in early 2009 the Gardaí received confidential information that all was not as it appeared with the facts on which refugee status was recognised and family reunification granted and that Nz.N. and A.S.O. were using false identities and were Nigerian. Subsequent Garda National Immigration Bureau (GNIB) enquiries established that Nz.N. who was living with her husband and family in the Dundalk area and receiving considerable sums of unemployment benefit and rent allowance was at the same time employed as a full time staff nurse in a Nursing Home in Armagh as B.Nz.I. B.Nz.I.'s identity and qualifications lodged with the recruitment agency for the position in the nursing home included a copy of B.Nz.I.'s passport and marriage certificate. B.Nz.I. was born in Nigeria on the 12th November, 1976. She was a registered nurse with the Nursing and Midwifery Council of the United Kingdom and she married S.N. in Nigeria in December, 2003.

7. It was then established by documents supplied by the United Kingdom Border Agency (UKBA) that B.Nz.I. had legally entered the UK on foot of a multiple entry work permit issued by the British High Commission in Abuja on the 16th September, 2004 for a period of three years which expired on the 16th September, 2007, and that Nz.N.'s fingerprints taken by the Irish asylum authorities matched those of B.Nz.I. The fingerprints issue will be addressed later. It appears that her visa was extended for a further three years but was revoked later in 2008 when it was established that she had applied for and been granted asylum in Ireland using a different identity.

8. The fact that Nz.N. was working full time in Armagh while receiving unemployment benefits in Dundalk led to a criminal prosecution in this jurisdiction in March, 2009. She repaid the sums over the next three years and a six month suspended sentence was imposed upon her.

9. In the meanwhile, on the immigration front, when her husband A.S.O. was granted residency as spouse of a refugee, he was required to register as a lawful resident with the GNIB. However, it had by then (February, 2009) been established that the Nigerian

passport provided to the Irish authorities on the occasion of his marriage contained an inserted page with fraudulent bio-data. It was later also discovered that A.S.O.'s Irish driver's licence was also a fraudulent document.

10. The couple's troubles escalated when a search warrant of the home of V.Nw. (whose name appears as a witness on the couple's Irish marriage certificate) disgorged B.Nz.I.'s original Nigerian passport which matched the copy held in the employment file at the nursing home in Armagh. The passport included her son D.C.N. and was stamped with two UK visas for 2004 and 2008. Mr V.Nw. identified a photograph of A.S.O. as his brother in law S.N.

11. Mr. A.S.O. / S.N. subsequently declined to have DNA samples taken from him and Nz.N. refused to permit DNA samples to be taken from her son D.C.N. to establish the child's paternity.

12. This information obtained by Garda investigation and the UKBA naturally led to the view that the claimed facts on which Nz.N. was recognised as a refugee from Niger could not be true if her true identity was B.Nz.I. born on the 12th November, 1976 in Kaduna, northern Nigeria [where the Hausa tribal group dominate] and that her claim to have been a maltreated wife in Niger had therefore been fabricated.

13. At this stage, the coincidences between B.Nz.I. and Nz.N. were mounting. B.Nz.I.'s husband was S.N. while Nz.N.'s husband was A.S.O. B.Nz.I. and S.N. claimed to have been married on the 4th December, 2003 in Nigeria and they had a son called D.C.N. who was born on the 18th September, 2005 in London and whose father is named as S.N. Nz.N. also had a son D.C.N. who, she claimed, was born on the 19th September, 2005 in Niger. B.Nz.I. and Nz.N. share the name Nz; the husbands share the name S, the sons were both called D.C.N. and the name N is peppered throughout.

14. It was also established through GNIB files that a person with the name S.N. was granted a visa in Abuja in 2002 to come to Ireland to sit exams in the RCSI in Dublin. Records show that he sat and rather miserably failed one of those exams and did not turn up for the other. An affidavit filed by Mr Denis Byrne APO at the Department of Justice avers that that photographs of S.N. obtained from RCSI bear a striking resemblance to photographs of A.S.O. held by the GNIB.

15. Additional information furnished to the GNIB by the UKBA in October 2011 indicated that B.Nz.I. had been interviewed and fingerprinted by the UKBA on the 17th June, 2008, and that on the same day she was served with papers as an immigration offender having obtained leave to remain by deception, after it became known that she had applied for asylum in the Republic of Ireland in another identity. She claimed that she was not B.Nz.I. but had adopted this identity and had paid the real person monies to allow her to take her place in the UK. She accepted that she was known in Ireland as Nz.N. and that she had been living in Ireland when she applied for leave to remain in the UK. She was removed the same day from the UK that day and returned to Ireland. Her visa application form and photograph were attached. At the same time the garda authorities were investigating the use of false identities by A.S.O. and his wife Nz.N. The subsequent prosecutions for social welfare fraud proceeded on the basis that Nz.N. had stolen supplementary welfare benefits.

Revocation of Declaration of Refugee Status

16. On the 4th November, 2011, the Minister informed Nz.N. of his proposal to revoke the declaration of refugee status made in her favour. The basis for that proposal was that she had provided information which was false and misleading in a material particular in the course of her application for asylum particularly with regard to her name, nationality, level of education; that she had made a false claim to have been persecuted at the hands of her alleged husband in Niger; and that she failed to inform the Minister that she had a working visa for the United Kingdom. The proposal to revoke attached a letter from the UKBA setting out B.Nz.I.'s immigration history and a Garda report dated March, 2011 noting the appellant's conviction and stating that the true identity of her husband known as A.S.O. was S.N., who is believed to be the father of the child D.C.N., though he refused to give a DNA sample to prove or disprove paternity.

17. Nz.N. denied the allegations and insisted that she was not B.Nz.I., a Nigerian national. She particularly relied on her identity as Nz.N., stressing that she had been prosecuted and convicted for fraudulently claiming social welfare as Nz.N. which she insisted was her true identity. She explained that she borrowed B.Nz.I.'s identity documents to obtain work and that she had paid B.Nz.I. on a monthly basis for this privilege but that B.Nz.I. was no longer contactable. She explained that although she was not a qualified nurse, the work she did in the nursing home was easy as she was simply looking after an old lady and had attended a ten-week course on care for the elderly and she used to observe her qualified nurse colleagues and followed what they did. Her bank accounts which would have shown payments to B.Nz.I. had been removed in the Garda search of V.Nw.'s house. (She did not explain why her bank accounts would have been in V.Nw.'s house or the original passport of B.Nz.I. or why copy bank documents could not be obtained.)

18. Later she claimed that she had purchased a passport from a woman purporting to be B.Nz.I. She also provided a quite extraordinary document as proof of her birth name as Nz.N. It appears to be a decision of an appeal court dated the 31st July, 2006, apparently recording that she was born in 1980 and her parents were N. Bala (father) and Fatima (mother). [The Questionnaire completed in the course of the application for asylum gave her parents' names as Ali Bala and Fatima Bala Musa N.] Why the registration of her birth required court proceedings was not explained and the document on its face appears highly suspect. Notably, the document is virtually identical to a "birth certificate" submitted to the Commissioner some five years earlier to establish her son D.C.N. They were both issued on the same day being the 31st July, 2006.

19. The Minister did not accept these explanations and revoked her asylum status. He *determined* that the overwhelming evidence is that she is in fact B.Nz.I., a Nigerian national, and not Nz.N., a national of Niger, which indicates that she gave false or misleading information to the Commissioner and that she had failed to provide credible, verifiable evidence of her claimed Niger identity. He also found that it was unlikely she could have been employed as a Staff Nurse without being fully qualified to take that position and the only credible, verifiable evidence indicates that she is B.Nz.I., a national of Nigeria.

20. The examination of file refers to patent difficulties surrounding the authenticity of the birth certificates furnished by the appellant for herself and her son. The "*striking resemblance*" between a photo of B.Nz.I. taken in Abuja in 2004 for the purpose of obtaining a UK visa and a photo taken of Nz.N. when she applied for asylum in 2005 was noted.³ The similarities in name and date of birth between B.Nz.I.'s son and Nz.N.'s son were considered not to be coincidental.

The Appeal

21. The appellant sought to call her husband as a witness at the appeal hearing in September. He presented a Nigerian passport and, through Counsel, informed the Court that he had an appointment with the Nigerian Embassy in early December, 2013 to verify the passport. Counsel for the respondent was permitted to examine the passport visually but was not in a position to comment on its authenticity. No valid explanation was proffered for why the appointment with Embassy officials was at such a remove from the hearing, which had been sent down for hearing many months previously or why the validation of the passport had not already taken

place. The *bona fides* of the husband were not accepted and the hearing proceeded without his testimony.

The Evidence on the Oral Appeal

22. The appellant filed a supplemental affidavit sworn in response to Mr Byrne's affidavit on behalf of the respondent, in which she explained why her husband A.S.O. submitted a counterfeit passport, saying he got it by proxy from Nigeria because this was cheaper. She also says she never knew him to go by the name S.N. and she had no knowledge of him attending at the RCSI for exams in 2002. She denied that V.Nw. was related to her or her husband, though she said he was known to her.

23. Her appeal was conducted on the basis that she is not B.Nz.I. and that B.Nz.I. is a different and separate person and that she did not provide any false or misleading information to the Minister or to the asylum authorities.

24. The appellant gave evidence of working as a nurse in a nursing home in Armagh while using B.Nz.I.'s papers and that B.Nz.I. is a different person. She gave very contradictory evidence on her relationship with B.Nz.I. and of trying to contact her to give evidence at this appeal. She could not contact B.Nz.I. by telephone as she did not have her telephone number but she had not tried to contact her at the number at which she is listed on the UK Register of Nurses and Midwives. She did not know B.Nz.I.'s present address and said that B.Nz.I. lived in Crossmaglen when she met her but she then moved. She just "walked away" when she gave her the identification papers. She spoke to B.Nz.I. a couple of times over the phone before the immigration problem arose but then she could not reach her as B.Nz.I.'s phone just went blank. B.Nz.I. said she would take her papers back when she returned to Ireland. She sent B.Nz.I. some money every month for the papers but has no evidence of those payments. It was B.Nz.I. who filled the application form for the job and got the job for her. She was not asked many things at the nursing home, she was just asked about how to care for an elderly person which she knew about she had done a course on Care for the Elderly in Dundalk. B.Nz.I.'s son called D.C.N. is a different boy to her son D.C.N. Her son and B.Nz.I.'s son are two different people as are her husband A.S.O. and B.Nz.I.'s husband S.N.

25. The Court suggested that the matter could be resolved if the appellant's son and her husband underwent a DNA test. The value of DNA testing to exclude A.S.O. as D.C.N.'s father and the non-invasive nature of the taking of DNA tissue was explained. The appellant was informed that the DNA testing could establish the truth of what she asserted. She was warned that inferences could be drawn from her failure or refusal to engage in DNA testing and she was given time to consider her decision. The appellant declined to avail of the DNA option, saying that her son is a little boy and she did not want him to be involved in this case and she wanted to protect him. What would he think of her as a mother if she gave out his DNA? She did not want to expose her son to her problem as her son has not done anything wrong.

26. She said that she has no nursing qualifications. Her marriage in Niger was a traditional marriage and not one conducted under Islamic law. Her Niger husband was a cousin so her marital surname was the same as her father's surname. She named her previous spouse as Musa N. and said that her parents have the same surname N which was general family name. She never considered she was previously married as she had been forced to marry and there was no certificate. She accepted that for the purposes of her marriage here she stated that she was never previously married. She accepted that the passport her husband used to get married had a false bio-data page but she said she did not know that when they married.

27. Generally the appellant's case was that she did not provide false or misleading information to the Commissioner and the Minister failed to demonstrate, on an individual basis, that she is not a refugee. She relies on the Garda assumption that she worked using a "false" identity and their decision to prosecute her under the name Nz.N. Curiously, she sought the directions of the Court to determine whether, on the balance of probabilities, her identity is Nz.N. or B.Nz.I. and in particular she sought a request for confirmation from the UKBA that the only fingerprints on their file for B.Nz.I. were those taken upon the appellant's arrest in Northern Ireland in June, 2008. In her affidavit she makes the most unusual averment that "If the UK authorities have a fingerprint match for Nz.N. / B.Nz.I. that pre-dates that date, then I accept that this appeal is unstateable".

28. The Minister relies on the history of the misleading and fraudulent statements made and the information obtained by the UKBA and the Gardaí on the appellant and her husband which, in the Minister's submission, establish a fraudulent asylum claim.

The Applicable Law

29. Section 21(1)(h), Refugee Act, 1996 provides that the Minister may revoke a declaration of refugee status in respect of:

"a person to whom a declaration has been given on the basis of information furnished to the Commissioner or, as the case may be, the Refugee Appeals Tribunal which was false or misleading in a material particular."

30. Regulation 11(2) (b), European Communities (Eligibility for Protection) Regulations, 2006 provides, in so far as it is relevant:

"Where [...] a person to whom a declaration has been given misrepresented or omitted facts (including through the use of false documents) and this was decisive for the granting of the declaration, the Minister shall, without prejudice to section 21(2) of the 1996 Act, revoke or, as the case may be, refuse to renew the declaration."

31. The powers of the Court on an appeal against a revocation of refugee status is to determine whether the decision to revoke the declaration was correctly made and should be confirmed, or whether the decision was wrong and should be withdrawn. The Court can consider all the evidence which was before the Minister and hear oral evidence from the appellant and any witnesses called by either party in determining the appeal. The Court can come to its own view as to whether the decision to revoke is appropriate or should be withdrawn.

32. While in *Lukoki v. Minister for Justice* (Unreported, ex tempore, High Court, 6th March, 2008) and in *Morris Ali v. Minister* [2012] IEHC 149, De Valera J. considered that the test was the reasonableness of the Minister's decision to revoke. The later decisions of *Minister for Justice v Gashi* [2010] IEHC 436, *Abramov v. Minister* [2010] IEHC 458 and *Adegbuyi v. Minister* [2012] IEHC 484 the decision of the Court on the appeal was distinguished from its powers in judicial review. The Court is not empowered to ask the Minister to re-consider the decision and the Court must come to its own decision confirming the Minister's original decision to revoke the appellant's refugee status or restoring the appellant's status by directing the Minister to withdraw the revocation of the declaration. The Court does this on the evidence which was before the Minister and any additional evidence presented on the appeal.

The Court's Decision

33. The appellant was a singularly unimpressive witness who became irretrievably tangled in her web of deception and lies. Why B.Nz.I., a qualified nurse with permission to work in the UK, would choose to apply for asylum in Ireland posing as a citizen of Niger is a question which has never been resolved as the appellant insists that she is not B.Nz.I., that B.Nz.I. is another person and that she had permission from B.Nz.I. to use her identity documents for a fee to work as a nurse in Armagh as she needed the money, B.Nz.I.

does not respond to her calls and has disappeared. She maintains that she is Nz.N. from Niger.

34. It is not the function of the Court to determine whether the appellant is a refugee or whether she should have been declared a refugee. The issue is whether the Minister correctly revoked that status because she provided false and misleading information to the Commissioner which was instrumental in her recognition as a refugee. The evidence that she did provide such false and misleading information is overwhelming and it is clear that B.Nz.I. and Nz.N. are one and the same person, that Nz.N. / B.Nz.I. is from Nigeria, that from 2004 to 2005 she lived and worked in the UK where she gave birth to D.C.N. and that B.Nz.I. was not from Niger or ever suffered persecution in Niger as claimed.

35. There is strong evidence of studied deception at every stage of the appellant's stay in Ireland. The trail starts with B.Nz.I.'s application with the UK Embassy in Abuja in 2004 to which a photograph of B.Nz.I. was attached. B.Nz.I. gave birth to a son in London. His father's name was S.N. B.Nz.I. was registered with the nursing authorities in London. B.Nz.I. later worked in a nursing home in Armagh, which retained a copy of her identity documents and nursing qualifications. Her contact address was given as an uncle's address in England which was the same address provided on D.C.N.'s UK birth certificate. When the UKBA discovered that the fingerprints of the woman who was working in Northern Ireland as B.Nz.I. matched those of a person who had sought asylum in Ireland using a different name and nationality, her right of residence in the UK was cancelled. She admitted to the interviewing member of the UKBA that she had a different name in Ireland which was Nz.N.

36. The Court considers it extremely unlikely that when the case was investigated by the UKBA that they had to obtain fingerprints for the first time from the person who was calling herself B.Nz.I. in Armagh. They would have in the ordinary course had her fingerprints on file when she applied for her working visa in 2004 and checked those fingerprints against her visa when she arrived in the UK at the port of entry. Even if the Court is incorrect in that, it is far fetched to suggest that the fingerprints held by the UKBA matched those held by the GNIB only because Nz.N. was masquerading as B.Nz.I. when they took her fingerprints. The UKBA were clearly investigating B.Nz.I. who they had learned had claimed asylum in another name while seeking an extension of her UK residence card. They were not investigating Nz.N. who was pretending to be B.Nz.I. It was B.Nz.I. who's right to remain in the UK was revoked and who was deported to Ireland. They had B.Nz.I.'s photograph and they interviewed B.Nz.I. In addition, B.Nz.I.'s passport was found – not in her own house – in a friend / relative's house. No valid reason has ever been provided for this.

37. As to her identity as Nz.N. in Ireland, both documents produced by the appellant in support of her identity as a woman from Niger with a son born in Niger are highly suspect on the face of the documents and the timing of their delivery. These documents purport to be evidence of the birth of mother and child in Niger. They were issued on the same date by the same judicial authority and they bear consecutive serial numbers, with the son's number preceding the mother's. They were both issued after mother and child had come to Ireland and after they were recognised as refugees. The child's purported birth certificate names his father as Bala N. while that name appears as the mother's father (the child's grandfather) on her Irish marriage certificate (the legality of which is now suspect). On her asylum questionnaire the appellant named her former husband and D.C.N.'s father as Musa N.

38. The appellant has never provided any proof of her asserted Niger identity. She claimed to have had no formal education but on a job application named her school in Niger and GCSE qualifications. It is highly unlikely that a school qualification in Niger would be one used in the UK and Commonwealth countries. On her asylum questionnaire the appellant named her former husband and D.C.N.'s father as Musa N.

39. Every document produced by her husband in Ireland is also false or suspect including his Nigerian passport provided to the GNIB in 2009 and no doubt to the local Registrar for marriages in 2006. His driver's licence was declared a forgery by the issuing authority. The Garda file states that V.Nw. identified a photograph of A.S.O. as S.N. and confirmed that the same man is known by both names and that he had attended the wedding of A.S.O. / S.N. to Nz.N. The Court also notes that both A.S.O. and Nz.N.'s marriage certificates name the groom's father as Jonathan.

40. The UKBA file states that they interviewed B.Nz.I. and deported her to Ireland. B.Nz.I. / Nz.N. collected wages in Northern Ireland in one identity and social welfare in Ireland in the other identity and there was sufficient proof of fraud to ground a criminal conviction on numerous charges in Dundalk.

41. The appellant's willingness to engage in further dishonesty before the Court was discomfiting. Her reasons for B.Nz.I.'s absence as a witness were close to farcical. Her refusal to agree to present her son D.C.N. for DNA testing was telling and her reasons unacceptable.

42. All in all, the Court found no reason to fault the Minister's decision. The evidence of a false and fraudulent claim was strong and the number of similarities in the names of the husbands, the sons and the family names was so compelling as to indicate that all three are the same persons and to exclude coincidence. The appeal must fail and the decision of the Minister is confirmed.

¹. A State which borders northern Nigeria

². The examination of file indicates that the application was, in fact, dated 13th March, 2006 but was not submitted until October, 2006. In other words, the applicant Nz.N. had met her husband within a month of her declaration and four months after she arrived in the State as an asylum seeker.

³. The Court file contained extremely poor quality photocopies.