Neutral Citation Number: [2010] IEHC 517

THE HIGH COURT

JUDICIAL REVIEW

2008 806 JR

Between

F. A. AND S. C. A. (a minor suing through her mother and next friend F. A.)

Applicants

AND

THE REFUGEE APPEALS TRIBUNAL,

THE MINISTER FOR JUSTICE EQUALITY AND LAW REFORM, ATTORNEY GENERAL,

IRELAND

Respondents

JUDGMENT of Mr. Justice Ryan delivered the 5th November, 2010

1. This is an application for leave to apply for judicial review of the decision of the Refugee Appeals Tribunal to affirm the recommendation of the Refugee Applications Commissioner that the applicants should not be granted declarations of refugee status. The hearing took place on 20 October 2010. Mr. Mark de Blacam S.C. appeared for the applicants with Mr Karl Monahan B.L., and Ms. Sinead McGrath B.L. appeared for the respondents.

2. The first applicant, a national of Nigeria, is the mother of the second applicant and claimed a fear of persecution in Nigeria from a dangerous cult, the Ogboni aborigine cult. She alleged that her husband's father was a member of this cult and, following his death in 2007, cult-members visited the applicant's husband to persuade him to take his father's place. Her husband refused as he had become a born-again Christian. The applicant claimed that cult members assaulted her and her husband. One of the family shops was burnt down and other threatening incidents occurred. The family sought police protection but it was not forthcoming. The applicant claims that there was an attempted abduction of her daughter in May 2007. Following these incidents, the family left their home, moving first to the applicant's grandmother's house, and then to another location in Lagos. On each occasion, members of the cult were able to find the applicant and her family so, finally, they fled Nigeria and arrived in Ireland in 2007.

3. On 27 September 2007, ORAC issued a negative recommendation in respect of both applicants. This was appealed to the RAT; the hearing took place on 7 April 2008 and the decision issued on 7 May 2008. The Tribunal decision recorded the first applicant's account in meticulous detail before analysing the substance of the claim. The decision dealt with whether the applicant had a well-founded fear of persecution, the question of state protection and the possibility of internal relocation.

4. Counsel on behalf of the applicants argued that there were three areas in which the decision of the tribunal member was deficient to such an extent as to entitle the applicant to leave to bring judicial review proceedings. These were consideration of letters to and from the police, a credibility finding and the internal relocation finding. I will consider these three issues in turn.

5. The first alleged error on the part of the Tribunal Member related to the important question of state protection. On the authorities, a heavy onus rests on a person who says that he or she faces a risk of persecution from non-state actors but is unable to get protection from the police. The applicant submitted a letter dated 6th March 2007 which she claimed was written by lawyers on behalf of her husband. The letter, headed "Candour Attornies", was addressed to the Deputy Commissioner of Police in Lagos and requested the `Criminal Investigation Department' to assign two policemen to protect the life and property of the applicant's husband due to a threat to his life and family by the Ogboni Fraternity. The second letter, dated 10th March 2007, appeared to be from the Deputy Commissioner and was a reply to the lawyers' request. It referred to the threat and harassment from Ogboni "confraternity" members and the request for police protection and stated that "We regret to inform you that this can not be done presently, however, we will carry out a thorough investigation and apply appropriate action."

6. The Tribunal Member expressed considerable unease in relation to these two letters and their authenticity. There was a significant delay between the first reference to this correspondence and when it was produced; the Tribunal Member thought the word `attornies' was spelt incorrectly and that this amounted to "a significant error and such as to cast a doubt on the authenticity of the document"; references in the correspondence to the persecutory group appeared to be inconsistent, the applicant's lawyers had referred to a `fraternity' whereas the police had referenced a `confraternity.' This alleged discrepancy reflected a degree of confusion that appeared to be present in the applicant's evidence between the `Ogboni Fraternity' (a lawful group, according to country of origin information) and the `Ogboni Cult', whose members engaged in unlawful activity according to the applicant's account.

7. Mr Mark de Blacam, S.C., argued that the Tribunal Member erred in respect of the spelling of the title of the legal firm, submitting that `attorneys' was an alternative, but equally correct, spelling to the more commonly used `attorneys.' The result of her error was that the Tribunal Member effectively rejected the correspondence as being confirmation of the applicant's account.

8. Ms Sinead McGrath submitted that the comments made by the Tribunal Member in relation to these letters were justified and represented the exercise by her of the function that she was obliged to carry out. The Tribunal had to consider the evidence, including the submitted letters, and assess the weight to place upon them. Even if the comments regarding the name and spelling of the law firm were considered unjustified, the Tribunal Member clearly set out several other reasons which justified her scepticism about the correspondence. Thus, if an error was present, it was not a material error of fact and the remaining reasons for doubting the authenticity of the documents retained their validity.

9. The Tribunal Member did not reject these documents out of hand, nor did she consider them to be evidence that undermined the applicant's case. The applicant's argument is that the tribunal should have taken these letters into account instead of putting them to one side. Taking this argument at its height, the most the applicant can say is that the tribunal was in error in not considering the letters as evidence confirming her case. However, the problem, as I see it, is that the correspondence does not actually assist the applicant's case and, in fact, does precisely the opposite. The letter apparently from the Deputy Commissioner does not reject the plea for police protection but states simply that the two requested policemen cannot be provided at that particular time, without ruling out the possibility that police protection may be provided at a later stage. The letter goes on to undertake that there will be an investigation into the matter. That is the opposite of a refusal or failure to afford state protection.

10. The tribunal made a finding elsewhere in the decision that the applicant failed to seek state protection in respect of a number of assaults and threats made against her and her family. These findings have not been challenged.

11. In the result, the applicant has not established any substantial ground to challenge this part of the decision, dealing with state protection.

12. The applicants submitted that the Tribunal Member erred in making a negative credibility finding in relation to the alleged attempted abduction of the second applicant. The Tribunal Member found this to be implausible and not credible. In making this finding, she cited an apparent discrepancy in the first applicant's account of the incident at her ORAC interview and at her RAT hearing. At interview, the applicant was quoted as saying that she asked a friend to check on her daughter at the hospital as she was stuck in traffic, and stated "my friend said that she had checked at the hospital and had been told that no child had been brought there by my daughter's name that day." The Tribunal contrasted this version with the fact that at the appeal hearing the first applicant stated she called this friend "who worked at the hospital" and asked her to check if her daughter had been brought in. The Tribunal Member found that these two accounts differed.

13. It does seem to me looking at the note of the interview and the tribunal decision that there is indeed a significant difference but of course I do not have to make that decision. If I were to consider the matter, I would be doing so without reference to the proceedings that took place before the Tribunal. I think the submission made by counsel for the respondents is correct: this is the very thing that the Tribunal had to do. I make a point about the apparent discrepancy, as it appears to me, so as to indicate that it could not be said that this identification of a discrepancy constituted irrationality on the part of the Tribunal Member. The applicant has failed on this point also to make out any substantial ground.

14. Finally, the applicants challenged the Tribunal's finding that internal relocation "is almost always an option in a situation such as this" and as the applicant has family in Port Harcourt, in all the circumstances, that internal relocation is a viable option for the applicants. The applicants submitted that in reaching this finding the Tribunal Member relied on the general statement that relocation is always an option, without giving reasons as to why she preferred this generalised statement of country of origin information over specific testimony the applicant gave regarding her attempts at relocating within Nigeria.

15. I think the comments about internal relocation have to be seen in the context of the decision as a whole. In my opinion, the possibility of relocation was referred to by the Tribunal Member in connection with assessing the credibility of the applicant in regard to her story of persecution and her account generally. As I read the decision, internal relocation was considered both in the context of the subjective element of the credibility issue, namely, whether the applicant did indeed fear persecution in the manner that she claimed for the reasons that she cited, and also as a discrete issue. In these circumstances, the Tribunal Member considered relocation and specifically why the applicant would not consider moving from Lagos to Port Harcourt for the safety of herself and her family. I do not think that she was obliged to specify in light of her other detailed consideration and findings that she rejected the applicant's reason for not having the option of another place of safety.

16. In the circumstances, the applicant has not established any substantial ground for challenging this decision.