

THE HIGH COURT

JUDICIAL REVIEW

[2016 No. 965 J.R.]

BETWEEN

EBS

APPLICANT

AND

THE REFUGEE APPEALS TRIBUNAL

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENTS

JUDGMENT of Ms. Justice O'Regan delivered on the 13th day of February, 2017

1. The applicant seeks leave to condemn a decision of the first named respondent bearing date of the 16th November, 2016 wherein the conclusion was to the effect that the recommendation of the Commissioner that the applicant and her son not be declared refugees was affirmed. At page 16 of the report it is stated that:—

"Given the negative credibility findings made above, it is considered that the appellant cannot be afforded the benefit of the doubt in this regard and thus it is not accepted that she has shown herself to be a victim of sexual abuse. When looked at holistically, the appellant's stated fear is not believed by the Tribunal. Her claim of a fear of persecution is not considered credible on the balance of probabilities for the reasons given."

2. The applicant had submitted a SPIRASI Report which was considered by the Tribunal at para. 5.10. When considering the report the Tribunal notes that the medical report cannot definitively identify the source of the applicant's depression, anxiety and PTSD. Further, it is stated:—

"This report does not say, and is incapable of saying, who caused these injuries and therefore cannot rule out the possibilities that these injuries were carried out by persons and in circumstances other than that claimed by the appellant. Insofar as the findings regarding the appellant's mental health are concerned, the report accepts that her symptoms are not specific just to torture and there may be other factors which contribute to the symptoms found."

3. The applicant is seeking the relief on the basis of:—

(a) A misapplication of the provisions of Reg. 5 (2) of S.I. 518 of 2006, and

(b) Failure to weigh relevant information or took into account irrelevant considerations.

4. In submissions, a claim is made that the medical report was not given due weight. This argument is not accepted. The medical report was considered and accepted and the Tribunal merely identified the fact that the medical reports could not either identify who caused the injuries of the first named applicant or definitively identified the source of her mental health issues. It was within the jurisdiction of the Tribunal to find that notwithstanding the medical report, nevertheless the applicant's credibility was found wanting. Such a finding is rational and reasonable.

5. Insofar as Reg. 5 (2) of S.I. 518 of 2006 is concerned the application of the provision has been dealt with by Hogan J. in *S.N. v. Minister for Justice and Law Reform* [2011] IEHC 451 and has since been considered in the case of *S.I. v. Minister for Justice & Ors.* [2016] IEHC 112 a judgment of Humphreys J. of February, 2016. The effect of Reg. 5 (2) is that the decision maker assesses as to whether or not past persecution has been accepted. It is only when past persecution has been accepted however there is also a finding that there is no real risk of further persecution if returned that the question needs to be posed as to whether or not there are compelling reasons arising out of previous persecution alone (in an application for refugee status) such as might nevertheless warrant a determination that the applicant is eligible for protection.

6. As there was no finding of past persecution the provisions of Reg. 5 (2) were not engaged and accordingly even if the consideration afforded under Reg. 5 (2) was incorrect nevertheless no injustice has been occasioned to the applicant as there was no valid engagement of the provision.

7. In the events, application for leave is refused.