

**THE HIGH COURT  
JUDICIAL REVIEW**

**2006 No. 1063 J.R.**

**IN THE MATTERS OF  
THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT, 2000,  
THE REFUGEE ACT, 1996 AS AMENDED AND  
IN THE MATTER OF APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

**BETWEEN**

**A. A. F.**

**APPLICANT**

**AND**

**OLIVE BRENNAN ACTING AS THE REFUGEE APPEALS TRIBUNAL**

**RESPONDENT**

**AND**

**THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM**

**FIRST NOTICE PARTY**

**AND**

**IRELAND AND THE ATTORNEY GENERAL**

**SECOND NOTICE PARTY**

**Judgment delivered by Mr. Justice Herbert the 8th day of May, 2008.**

1. The applicant in this application sought asylum in this State on the 3rd August, 2005. He claims to be a national of Somalia and to have been born there on the 1st January, 1975. He claims to have a wife, children, brother and sister (all named) still residing in his last place of residence (identified) in Somalia.

2. At Part III, question 21 of the Questionnaire, which was completed in Somali to his dictation by a "fellow Somali", but without legal assistance, and subsequently translated into English, in reply to the question "why did you leave your country of origin?" He answered:-

"I have always lived in slavery. I have never been free, I am from a tribe that has always been enslaved, called Tumaal. My mother, my father and three of my siblings were imprisoned many times and then killed.

Another brother was abducted and I don't know where he is or where he was taken. I was also kidnapped and imprisoned, then forced to work for one and a half years. In that time I was beaten and they also broke one of my hands, although I was doing all kinds of jobs they needed me to do, during the period I was captive. I was imprisoned by the gangs which are part of the militia; they are also responsible for killing my family. I have escaped my country because of all of these problems."

3. At question 29 of the Questionnaire in answer to the question, "What do you fear may happen to you or any of the people included in this application if you return to your country of origin", he replied:-

"I am afraid to encounter all the problems that I escaped from or even worse. I am scared of the killing, imprisonment, torture and rape because we are from a minority tribe that doesn't have any help and is enslaved."

4. The applicant was interviewed on the 9th February, 2006, with the assistance of an interpreter. He stated that he had a Solicitor, but I do not believe that he was represented by that Solicitor at the interview. The March 2006 Report of the Refugee Applications Commissioner issued pursuant to the provisions of s. 13(1) of the Refugee Act 1996, (as amended), recommended that the applicant should not be declared a refugee. He was notified of this decision by a letter dated 27th March, 2006. On the 14th April, 2006, his Solicitors filed a notice of appeal to the Refugee Appeals Tribunal from this decision of the Refugee Applications Commissioner. This appeal was heard at an oral hearing on the 8th June, 2006, by the respondent and, the applicant was represented at the hearing by Solicitor and Counsel. In her Decision dated the 24th July, 2006, the respondent concluded that the applicant was not a refugee and approved the recommendation of the Refugee Applications Commissioner.

5. By originating notice of motion dated 31st August, 2006, the applicant claims, pursuant to the provisions of the Illegal Immigrants (Trafficking) Act, 2000 and O. 84 of the Rules of the Superior Courts, the following reliefs:-

1. An Order granting the applicant leave to apply for judicial review by way of certiorari to quash the decision of the respondent made on the 24th July, 2006 to affirm a recommendation of the Refugee Applications Commissioner pursuant to s. 13(1) of the Refugee Act, 1996, that the applicant in these proceedings should not be declared a refugee.
2. A declaration that the respondent made errors of fact so basic that it deprived her of jurisdiction to adjudicate in the matter.
3. A declaration that the respondent's decision contained errors on the face of the record.
4. A declaration that the respondent erred in law.
5. A declaration that the respondent acted contrary to natural and constitutional justice requirements and fair procedures in all the circumstances.
6. A declaration that the respondent acted irrationally and unreasonably in all the circumstances.
7. A declaration pursuant to s. 5(1) of the European Convention on Human Rights Act, 2003, that the rule of law governing the scope of judicial review in relation to asylum appeal decisions as set down in *O'Keeffe v An Bord Pleanála* is incompatible with the European Convention on Human Rights.
8. A declaration by way of application for judicial review that the respondent has acted in breach of the European Convention on Human Rights Act, 2003 and/or the constitutional and legal rights of the applicant.

9. An order remitting the matter back to the respondent for a full re-evaluation and reconsideration of the applicant application for asylum.

10. If necessary an extension of time.

11. Costs including any reserved costs to be taxed in default of agreement.

12. Such further or other relief as the Honourable Court may deem meet and just.

6. At the hearing before me the respondent and the notice parties did not oppose the application on behalf of the applicant for an extension of time within which to bring this application. I considered that there was a good and sufficient reason to extend the time, (s. 5(2)(a) Illegal Immigrants (Trafficking) Act 2000), and I made an order granting the extension of time sought. The Statement Grounding Application for Judicial Review is dated 31st August, 2006 and is supported by a Verifying Affidavit of the applicant, sworn, having first been translated to Somali as the applicant deposes that he does not understand English. This is supported by an affidavit from the interpreter and an Affidavit of Sarah Ryan, solicitor retained by the applicant to represent him in these proceedings. At the hearing of this application, Counsel for the applicant very properly and commendably confined his argument to three points.

7. Counsel for the applicant submitted that the decision of the Member of the Refugee Appeals Tribunal that the applicant's subjective belief that members of the Tumaal clan of which he claims to be a member, do not have the protection of any of the majority clans in Somalia is not supported by the objective country of origin information contained in a United Kingdom, Home Office Report of October, 2005, is a material error of fact and her decision based upon it, is therefore vitiated. Fair procedures Counsel said, require that a decision should not be based upon such an error.

8. I have carefully read chapter 6 of the United Kingdom, Home Office Report on Somalia of October 2005, the section of the Report addressing Human Rights Issues. I have had particular regard to paras. 6.84 to 6.88 and 6.100 to 6.102 of the Report. I find that there was no material error on the part of the Member of the Refugee Appeals Tribunal in her understanding of this Report. The contents of this Report, no matter how jealously construed, are sufficient in my judgment to sustain the conclusion of the Member of the Refugee Appeals Tribunal, which is therefore neither irrational nor unreasonable, that the applicant's subjective belief that the Tumaal minority group or occupational caste, does not have protection from majority clans in Somalia, is not supported by objective country of origin evidence. No challenge was made to the finding of the Member of the Refugee Appeals Tribunal that this was the core of the applicant's claim for asylum.

9. The second ground advanced by Counsel upon which the applicant seeks leave to apply to *certiorari* and declarations by way of judicial review, is related to the finding by the Member of the Refugee Appeals Tribunal that the applicant had not given a truthful account of the facts relative to his application. Insofar as this conclusion is based on what she described as the varied account of how he allegedly travelled to Ireland, Counsel for the applicant submits that it is unfair and contrary to the intention of paras. 195 to 202 inclusive of the United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status.

10. It is important to point out that this conclusion is not based on just a certain understandable and generally to be expected vagueness on the part of the applicant as to travel routes and arrangements or a reluctance on his part to be specific about travel facilitators and documents. In her Decision, the member of the Refugee Appeals Tribunal found as follows, and no challenge was made to the accuracy of these findings:-

"Of serious concern to the Commissioner and indeed to the Tribunal are the two Eurodac hits on the applicant, one in Malta and the other in Finland. It is the applicant's claim that he went to Malta in July 2004 where he was arrested on a small boat prior to landing and was imprisoned for some six months. He did not apply for asylum and in or around February 2005 he went to Finland. He was deported from Finland and returned to Malta and was then deported to Mogadishu via Libya in April/May 2005. An agent arranged for the applicant to leave Somalia and brought him to Ireland. The applicant was caught by the UK authorities having left Ireland without applying for asylum.

It was put to the applicant if he had applied for asylum in Malta; he told the Tribunal that he had no chance to do so. The applicant claimed asylum on Finland and was refused. The applicant in the course of his appeal mentioned that he left Somalia in 2004 and travelled to Ethiopia to Libya and then to Malta. The applicant was asked why no mention was made of this in the applicant's interview; he simply stated that he went towards Europe on that occasion. The applicant told the Tribunal that he was now being given a chance to tell his entire story and he was not given an opportunity to answer in the course of his Questionnaire. The applicant claimed he was asked lots of questions and was then told by the interviewer that "it was finished and to sign it". It was put to the applicant that his interview was read back to him and that he had to sign each page. The applicant did not respond.

As previously indicated by me the applicant was intercepted by the UK authorities when he attempted to enter the UK in July 2005. The applicant was asked why he had not sought asylum at the first available opportunity available to him. The applicant told the Tribunal that he was afraid that he would be sent back to Somalia. It was put to the applicant that had applied for asylum on his own account in Finland, notwithstanding the fact that no documentation in that regard had been made available to the Tribunal. When the applicant was asked to clarify his statement, he replied 'I was afraid I would be sent back to Somalia but was not afraid to seek asylum'. This is nonsensical. The applicant then went on to tell the Tribunal that when he arrived in Ireland he did not know where he was. This in the light of the applicant's account of having travelled from Ethiopia through Sudan to Liberia and then onto Malta and ultimately to Finland is simply not credible."

11. Section 11B of the Refugee Act, 1996 (as amended), provides that the Refugee Appeals Tribunal in assessing the credibility of an applicant for the purpose of determining his appeal *shall* (the emphasis is mine) have regard to, *inter alia*, whether the applicant has provided a full and true explanation of how he travelled to and arrived in the State.

12. In my judgment the established omissions from and inconsistencies in the applicant's account could not reasonably be regarded as mere minor inconsistencies or understandable lapses in recollection. While accepting that the applicant might lie as to how he travelled to Ireland through fear or threats or misinformation by agents, and might even fail to disclose what occurred in Malta and in Finland for fear of prejudicing his application for asylum here, I am satisfied that it was still reasonably and rationally open to the Member of the Refugee Appeals Tribunal to conclude from this evidence that the applicant lacked credibility. Even if, while accepting the mandatory requirement of s. 11B of the Refugee Act, 1996 (as amended), one could regard matters relating to travel to this State as essentially collateral to the principal issues required to be addressed in an asylum application, I am satisfied that there is still

sufficient substance in this evidence to enable the Member of the Refugee Appeals Tribunal, acting objectively and reasonably, to reach the conclusions which she did as to this applicant's credibility.

13. The third ground advanced by Counsel upon which this applicant seeks leave to apply for judicial review, relates to a question put to the applicant at the oral hearing before the Refugee Appeals Tribunal as to what the weather was like in Somalia in the previous five years. The applicant replied that it was hot and that it was usually hot in Somalia. The conclusion reached by the Member of the Refugee Appeals Tribunal in her decision was that there had been a prolonged drought in Somalia during this period and therefore any native of Somalia would be aware of such a catastrophe and the failure of the applicant to refer to this drought in his answer cast further doubts on his credibility. It was submitted by Counsel for the applicant that the inference drawn from the applicant's reply that he was unaware of this drought and was therefore not, as he claimed, a native of Somalia or had been away from his country of origin for at least five years was unfair, unjustified, irrational and unreasonable.

14. I agree. I do not accept that it was within the jurisdiction of the Member of the Refugee Appeals Tribunal to find that the failure of the applicant to advert to this drought when asked about the weather in Somalia in the previous five years rendered his claim to be from Somalia incredible. The applicant's answer to the question was strictly correct, even if not fully complete as to all aspects of weather. If the Member of the Refugee Appeals Tribunal had gone on to ask about the rains and the applicant did not know that there had been five or more years of abnormally low rainfall, then her conclusion would have been justified, reasonable and fair.

15. However, I agree with Counsel for the respondent and the notice parties that this particular conclusion by the Member of the Refugee Appeals Tribunal was not material to her decision which would have been the same even if this question had never been asked and never been answered. This is apparent on the face of the decision itself. The Member of the Refugee Appeals Tribunal records that she concluded that the applicant's answer cast further doubts on his credibility, thereby clearly indicating that she had already and for other reasons, come to the conclusion that he lacked credibility. I am satisfied that a non-material error of this nature does not invalidate her decision.

16. In the circumstances I am satisfied that this applicant has failed as required by the provisions of s. 5(2)(b) of the Illegal Immigrants (Trafficking) Act, 2000, to demonstrate that there are substantial grounds, – that is reasonable, arguable and weighty and not just trivial or tenuous, – for contending that the decision of the Member of the Refugee Appeals Tribunal is invalid or ought to be quashed. The Court will therefore refuse this application for leave to seek judicial review.