

THE HIGH COURT

[2011 No. 912 JR]

BETWEEN

F. A.

APPLICANT

AND

REFUGEE APPEALS TRIBUNAL,

THE MINISTER FOR JUSTICE AND EQUALITY, THE ATTORNEY GENERAL AND IRELAND

RESPONDENTS

EX TEMPORE JUDGMENT of Mr. Justice Colm Mac Eochaidh delivered on the 30th day of July, 2015**Introduction:**

1. This is a telescoped application for judicial review arising from the negative determination by the Refugee Appeals Tribunal of the applicant's appeal against a negative recommendation from the Refugee Applications Commissioner. The applicant is approximately 44 years of age. She is the mother of four children. She is a widow whose partner, the father of her daughters, died in 1999. She claimed to have arrived in Ireland in mid December, 2010. She was selling goods in a market in Benin City in Nigeria accompanied by her children. A woman named Rita Amara approached her and asked her why her children were not at school. She explained she could not afford to send them to school. The woman offered to help her and some months later returned to her saying she would bring her to Europe to work as a child minder and a cleaner. This woman accompanied the applicant to Ireland where she minded Ms. Amara's children. A Nigerian man named Valentine was the father of the children. She was told that she owed €40,000.00 for her travel to Ireland and that she would be required to work for the couple to repay this money. After four months of child minding she was told she would be required to work as a prostitute. Valentine threatened to find her children and harm them if she did not cooperate.

2. The applicant sought asylum by completing the relevant questionnaire on the 17th May, 2011. She was assisted in completing the questionnaire because she says she is illiterate. She attended an interview with the O.R.A.C. on the 13th June, 2011. She stated that the reason she did not wish to go back to Nigeria was because she was afraid of Rita and Valentine as they were threatening her. A s. 13 report was issued on the 21st July, 2011. Several negative credibility findings were made, in particular, it was noted that the applicant could not provide the names of the children she was minding; she stated the names of the children were strange and that she had not heard them before. The report says at para. 4.3 (a):-

"Nevertheless, the applicant asserted she minded these children everyday; as such it is difficult to accept that she be completely ignorant of their names. This raises credibility concerns pertaining to the applicant's alleged activities since she arrived to this State."

Credibility findings were also made with respect to her alleged lack of primary education and her inability to give details of her travel to Ireland. The finding pursuant to s. 13(6)(a) was made by the decision maker that "the application showed either no basis or a minimal basis for the contention that the applicant is a refugee." This had the effect of ensuring that any appeal would be a papers only appeal without the benefit of oral evidence.

3. During the course of the processing of the claim for asylum the applicant made contact with the Gardaí in respect of the allegation that she was the victim of trafficking. In this regard, the O.R.A.C. was contacted by the Refugee Legal Service by letter of the 8th August, 2011, which enclosed a letter from the G.N.I.B. (Garda National Immigration Bureau) to the Refugee Legal Service. The Gardaí sent a form entitled "Notice of Potential Victim of Human Trafficking to the Legal Aid Board". The form states:-

"In relation to the provision of the appropriate legal services by the Legal Aid Board, the person named below [the applicant] has been identified by the Garda National Immigration Bureau (GNIB) as a "potential victim" of trafficking for the purposes of an investigation of an offence under the Criminal Law (Human Trafficking) Act 2008."

The form indicates that a date of first contact with the G.N.I.B. by the applicant was the 27th June, 2011. The A.S.Y. 1 application form was completed on the 5th May, 2011.

4. By letter of the 6th September, 2011, the applicant's solicitors wrote to the R.A.T. saying:-

"We confirm that we have been informed by the Refugee Legal Service that [the applicant] has been declared by the Gardaí Anti Trafficking Unit to be a potential victim of trafficking on foot of information supplied."

James Kenny on behalf of the R.A.T. swore an affidavit exhibiting the solicitor's letter to the O.R.A.C. and the solicitor's letter to the R.A.T. and he confirmed that these documents were "on the tribunal file."

Decision of the R.A.T.:

5. The tribunal member briefly stated the basis of the applicant's claim for asylum. In respect of the correspondence about trafficking the tribunal member said:-

"The applicant applied for asylum on the 5 May, 2011. Correspondence from the Applicant's solicitor states that the authorities of this State are of the opinion that the Applicant maybe a potential victim of trafficking."

No further mention is made of this matter in the decision of the R.A.T..

6. Section 5 of the R.A.T. decision is entitled "analysis of the applicant's claim" and is nine pages in length. Two relatively short paragraphs of the analysis of the applicant's claim express the tribunal member's rejection of her credibility in the following terms:-

"According to the Applicant after her arrival into this state she took care of Rita's children for a number of months. (q.42\59, interview). The Applicant did not know the names of these children. The Applicant is an adult who sold goods on the street in Nigeria (q.26, interview). Considering her age and the contact she had with these children it would be reasonable to expect that the Applicant would be able to provide the names of these children and to her failure so to do calls into question her activities since she arrived to this state and her general credibility."

The Applicant states that she did not know the nationality of the passport she used to travel to this State (p8, interview) nor was she aware of the name or date of birth on this passport. It is difficult to understand why Rita would have allowed the Applicant to embark on international travel with such limited information about her travel details – had the Applicant been questioned at any point her lack of knowledge of her purported identity for her travel would have caused serious problems for the Applicant and Rita. Section 11 B(c) of the Refugee Act, 1996 (as amended) is relevant to this claim.”

7. In the pleadings, complaint is made in respect of these findings as follows:-

“The Tribunal erred in law and acted in breach of fair procedures in the manner in which adverse credibility findings were arrived at. Findings were based on conjecture and related to peripheral matters. The ignoring or discounting of a document stating that the Gardai are of the opinion that the Applicant may be a potential victim of trafficking resulted in a failure to consider the Applicant’s court claim in the light of all the information furnished, and particularly in circumstances where the Applicant was denied an oral appeal.”

8. I do not find that the tribunal member ignored the information submitted by the applicant’s solicitor, that the G.N.I.B. had indicated that the applicant was a potential victim of human trafficking. The matter is expressly identified by the tribunal in its report. It is clear that the tribunal had regard to this matter. It could not be said that the G.N.I.B. form submitted to the O.R.A.C., which was on the tribunal file, was evidence corroborating the asylum claim which had been ignored. The fact that the G.N.I.B. had identified the applicant as the potential victim of trafficking merely suggests the applicant told the asylum authorities and the Gardaí the same story. She was prompted to tell the Gardaí by the O.R.A.C..

9. In order to understand what complaint was being made about the manner in which the tribunal approached the evidence as to the attitude of the G.N.I.B., I enquired of counsel what use should the tribunal member have made of this information. Counsel said that the tribunal ought to have referred this matter to the O.R.A.C. for further investigation to see what had become of any Garda investigation into the claim. In my view, there was no legal obligation on the tribunal to enquire as to what had happened in respect of any Garda enquiry.

10. In any event, this was a matter which was of interest to this court in assessing these judicial review proceedings. I was of the view that it might be of use to the parties, and to the court, to discover what, if anything, had happened in respect of a Garda investigation into the allegation of trafficking. It was possible that the Gardaí had conducted an investigation and had found the applicant’s claims to be true and had prosecuted the guilty persons. If this had happened the parties might have reassessed these proceedings and the applicant’s circumstances generally. The proceedings were adjourned to permit the enquiries to be made and the applicant swore a second affidavit on the 8th June, 2015, where she said:-

“I say that I have co-operated with the Gardai in relation to their investigation about my claim to have been trafficked. I say and believe that this investigation has not yet concluded. I say that the last contact with the Gardai was in or around June or July, 2013 when a Garda met me at my home.”

11. It is safe to assume that if the applicant had any other information in respect of her involvement with the police and the investigation of her claim to have been the victim of trafficking such information would have been put on affidavit. I infer that the investigation has not progressed in anyway since June or July, 2013. I also infer that the only contact between the applicant and the Gardaí was the first contact which gave rise to the form referred to above and which confirmed a contact date of the 27th June, 2011. The date of the R.A.T. decision is the 13th September, 2011. Thus, had the R.A.T. made the enquiries which counsel urges me they ought to have made, the result would not have produced any useful information of any sort. In other words, no corroboration of the applicant’s claim would have resulted from such an enquiry. In these circumstances, I reject the complaint that the tribunal mishandled the significance of the G.N.I.B. form, or failed to take any appropriate action with respect to the attitude of the Gardaí to the fact that the applicant was identified as a potential victim of human trafficking.

12. I refuse this application for judicial review.