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Neutral Citation Number: [2007] IEHC 174

THE HIGH COURT

JUDICIAL REVIEW

[2006 No. 4 J.R.]

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

BETWEEN

T. G.

APPLICANT

AND

DAVID McHUGH ACTING AS THE REFUGEE APPEALS TRIBUNAL

RESPONDENT

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

FIRST NOTICE PARTY

AND

IRELAND AND THE ATTORNEY GENERAL

SECOND NOTICE PARTY

Judgment of Mr. Justice Charleton delivered on the 18th day of April, 2007

1. The applicant was born on 23rd June, 1971, and is a Cameroon national. He claims to be a member of a tribe. He claims that the Cameroon is separated into English-speaking and French-speaking regions, in addition to those who predominantly speak African languages, and that in consequence of his attachment to a movement seeking greater support for English-speaking persons he has been persecuted and is likely to be again subject to similar treatment. He told the Refugee Appeals Tribunal that he took part in a demonstration on behalf of this organisation while he was at university. In consequence, he claims to have been arrested, detained and tortured. Following his release, he claims that he was no longer allowed to continue with his university course but instead took up small business in a small way as a printer. When the authorities discovered that he had photocopied some flyers on behalf of this organisation, he was again, he said, arrested and tortured. The applicant left his country in June, 2003 stopping over in France for a couple of minutes, as he says, probably for an aircraft change, and then arrived in Dublin.

2. Ireland is obliged, pursuant to international convention, to give asylum to those who are refugees. Under s. 2 of the Refugee Act, 1996, as amended, this, in effect, means a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, has gone outside the country of his nationality and is unable to avail himself of the protection of that country, or who is fearful for good reason of seeking the protection of his country.

3. The applicant now seeks leave to apply for judicial review pursuant to s. 5(2) of the Illegal Immigrants (Trafficking) Act, 2000. On arrival in Ireland he was interviewed on applying for refugee status. That application was refused and he therefore appealed to the Refugee Appeals Tribunal, who gave a decision against him on 12th October, 2005.

4. An application under s. 5(2) of the Illegal Immigrants (Trafficking) Act, 2000 has to be made within fourteen days of the date on which the applicant was notified of the relevant decision. As set out in s. 5(1), the High Court may, for good and sufficient reason, extend the period within which the application can be made. Leave to commence a judicial review of many of the decisions related to claims for refugee status cannot be granted unless the High Court is satisfied that there are substantial grounds for contending that the decision is invalid or ought to be quashed. In that context, the grounds advanced must be reasonable, arguable and weighty and must not be merely trivial or tenuous. The determination of the High Court under this section is final. No appeal lies to the Supreme Court except where the High Court certifies that its decision involves a point of law of exceptional public importance which makes it desirable in the public interest that an appeal should be taken.

5. The grounds advanced on behalf of an applicant must be placed on a firm legal foundation. Here, it is argued that the mistakes allegedly made by the respondents should be subject to 'anxious scrutiny'. If this be so, it has been argued, it would mean that the court should overturn the decision if it would have come to a different decision by reason of the inferences to be drawn from the evidence, or if the case against the decision was found, on a scrutiny of the papers, to be stronger than the case for them. This test of anxious scrutiny does not, at the moment, form part of Irish law but has been subject to certain statements in the Supreme Court to the effect that if constitutional rights are at stake then the existing test for scrutinising a decision of a tribunal that is subject to judicial review, of unreasonableness, may fall short of what is likely to be required for their protection; *A.O. and D.L. v. Minister for Justice* [2003] 1 I.R. 124 at 126, and *Z. v. Minister for Justice* [2002] 2 I.L.R.M. 215 at 236. There is no definition of what anxious scrutiny may be beyond a general indication of a court being required to take serious care where an applicant's life or liberty may be at risk in consequence of a refusal of relief.

6. In contrast, the test as to reasonableness in reviewing the decisions of lower judicial or administrative tribunals has been based on the theory of jurisdiction. If a tribunal makes an utterly unreasonable decision then, it is thought, it exceeds its jurisdiction. In *O'Keeffe v. An Bord Pleanála* [1993] 1 I.R. 39, and in *The State (Keegan) v. Stardust Compensation Tribunal* [1986] I.R. 642, it has been held that an administrative or judicial tribunal's decision should only be overturned where it flies in the face of fundamental reason and common sense.

7. As I understand the submissions, the appropriateness of the test to be applied in these circumstances is subject to a number of reserved judgments. I have therefore decided to look at this case on the basis that I should do my best to scrutinise it carefully, pending a definitive decision as to the correct test as between reasonableness and anxious scrutiny.

8. Essentially, this case depends on the credibility of the applicant in claiming refugee status before the respondents. The test which I will apply, therefore, in considering this issue is that set out by Peart J. in *Mabel Imafu v. the Minister for Justice* [2005] I.E.H.C. 416 at 426:

> "This Court must not fall into the trap of substituting its own view on credibility for that of the Tribunal Member. The latter, just as a trial judge is at trial rather than the appellate court, in the best position to assess credibility based on the observation and demeanour of the applicant when she gives her evidence. These are essential tools in the assessment of credibility, and it is always essential to remember that what appears as the spoken word in a transcript or in a summary of evidence contained in any written decision cannot possibly convey the necessary elements for the

> assessment of credibility. That is what a Court will be reluctant to interfere [with] in a credibility finding by an inferior tribunal, other than for the reason that the process by which the assessment of credibility has been made is legally flawed."

9. I also note that Peart J. held in *R. K. S. v. The Refugee Appeals Tribunal and the Minister for Justice* [2003] 879 J.R., (Unreported, 9th July, 2004), that the standard of proof on an applicant claiming refugee status is less than the civil balance of probabilities. It must also be borne in mind that, even if a lie is told, which turns out to be an identifiable lie, that this does not necessarily mean that all his assertions are untrue; to use a colloquialism, that all the dominoes will consequently fall in a row. It can happen that a person who has a genuine claim will tell a lie. One should not assume because a single lie has been told that everything that the applicant says in relation to his or her refugee status has been presented deceitfully.

10. In addition, in assessing credibility, the first named respondent is obliged to have regard to the indicia as to credibility as set out in s. 11B of the Refugee Act, 1996, as amended. This involves considering identity documents and their absence; why the first safe country was not chosen to make an application; if a full and true account of travel to Ireland has been given; whether documents have been forged; whether false evidence in support of an application has been given; and other material matters.

11. In his decision, the first named respondent had regard to the Home Office Report of a fact finding mission that was made to Cameroon in January, 2004. This covers the time of the applicant's alleged detention and torture in 2003. The conclusion noted was that although some groups, such as that to which the applicant claims to have allegiance, had suffered persecution in the past, this was no longer the case. During the period 1999 to 2001 no activist allegedly associated with the applicant's group could be found to have been imprisoned for this reason alone. This was regarded as not corroborating in any way the applicant's evidence. In fact, it was treated as undermining it. The applicant claimed that he had been subjected to torture to his feet but did not offer a medical report. The first named respondent commented as follows on the applicant's evidence in relation to torture:

> "… with regard to the matter of his alleged torture, I do however find, having regard to the reticent manner in which this tranche of his evidence was delivered, and his overall demeanour, that he is not credible as to his allegation of torture at the hands of the Cameroonian authorities."

12. On his initial interview the applicant had said that he had travelled through some other country from Cameroon prior to arriving in Ireland. He said

> "I think the country should be France. I didn't apply for asylum there because we were continuing with the journey; they had told me where we were going to. It was just a stopover of some few minutes."

13. This testimony was found incredible by the first named respondent on the basis that the applicant had alleged that he had travelled through at least one country, or perhaps more than one country, on a false passport and without difficulty. It was held that this assertion of being able to travel through various international boundaries and immigration controls in such a manner was unbelievable.

14. I have carefully scrutinised the papers relative to the decisions made by all of the respondents. The decision made by the Minister, to deport the applicant, is dependent upon the decisions made at earlier stages by the tribunal, the first named respondent. In making a decision to deport, the Minister is entitled to have regard to the immigration policy of the State. Every country is entitled to decide who should come to live within its boundaries and who should be deported. International obligations as to refugees requires that our country give refuge to those who are genuinely fleeing persecution as defined in s. 2 of the Refugee Act, 1996, as amended. If, apart from that consideration, there may be other issues relevant to the rights of an applicant which the Minister should take into account, then the balance between the immigration policy of Ireland and these rights should be considered by the Minister. There is no evidence that this was not done.

15. In the result, therefore, I must refuse the application.