

THE HIGH COURT

JUDICIAL REVIEW

[2010 No.1223 J.R.]

BETWEEN

A.A.J (A MINOR SUING BY HIS NEXT FRIEND M.S.J) (SIERRA LEONE)**APPLICANT****AND****THE MINISTER FOR JUSTICE EQUALITY AND LAW REFORM, THE REFUGEE APPEALS TRIBUNAL, IRELAND AND THE ATTORNEY GENERAL****RESPONDENTS****JUDGMENT of Mr. Justice Eagar delivered on the 31st day of July, 2015**

1. On 7th July, 2015, this court gave judgment ("the judgment") on an application for a judicial review refusing an application for an order of *certiorari* by the Applicant.

2. The Applicant now applies under s. 5(3)(a) of the Illegal Immigrants (Trafficking) Act, 2000 for a certificate of leave to appeal to the Court of Appeal on the basis that the judgment "involves a point of law of exceptional public importance" and that "it is desirable in the public interest that such an appeal be taken". The criteria to be applied by this court in ruling on an application for a certificate under s. 5 (3) (a) are not in dispute.

3. Following on from the decisions of Cooke J. in *I.R. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 510 and the decision of Clarke J. in *Arklow Holidays v. An Bord Pleanála* [2007] 4 I.R. 112, I say the following principles appear to apply:-

- 1) The case must raise a point of law of exceptional public importance;
- 2) The area of law involved must be uncertain, such that it is in the common good that uncertainty be resolved for the benefit of future cases;
- 3) That it is desirable in the public interest that an appeal should be taken to the Court of Appeal;
- 4) The uncertainty as to the point of law must be genuine and not merely a difficulty in predicting the outcome of the appellant's arguments;
- 5) The point of law must arise out of the court's decision and not merely out of some discussion at the hearing;
- 6) The requirements of exceptional public importance and the desirability of an appeal in the public interest are cumulative requirements;
- 7) The importance of the point must be public in nature and must, therefore, transcend well beyond the individual facts and parties of a given case;
- 8) The requirement that the court be satisfied that it is desirable in the public interest that an appeal should be taken to the Court of Appeal, is a separate and independent requirement from the requirement that the point of law is one of exceptional importance. On that basis, even if it can be argued that the law in a particular area is uncertain, the court may not on the basis, *inter alia*, of time or costs, consider that it is not appropriate to certify the case to the Court of Appeal.

4. I have considered the written submissions and oral submissions of counsel for the Applicant and counsel for the Respondent.

5. The Applicant raises two points:-

a) *The minority status of the Applicant.*

6. When the Applicant appeared before the second named Respondent, he was a minor. The second named Respondent was encouraged to apply the UNHCR Guidelines in respect of minors, and in particular, to apply a liberal application of the benefit of the doubt. The second named Respondent stated that:-

"Nothing in the Guidelines served to establish a well-founded fear on behalf of the Applicant. In the course of the case the Applicant submitted that several of the findings touching on the Applicant's credibility were unreasonable in the light of the fact that the Applicant was a minor."

7. Counsel for the Applicant then cited that the Thirty First Amendment of the Constitution (Children) Act, 2012 was signed into law on 28th April, 2015. He cited the new Article 42 and said that as a result of the coming into law of Article 42A, there should be clear guidance on the manner in which the credibility of minors is to be assessed.

b) *The weight to be afforded to the previous grant of refugee status.*

8. The Applicant arrived in Ireland having already been declared a refugee in Guinea, having claimed status from Sierra Leone. Counsel submitted that the fact that an individual has already been declared a refugee, is a matter with which regard should be had by the second receiving state. As stated, at the hearing of this matter, there is nothing in the 1951 Convention requiring any state to recognise a grant of refugee status by another contracting state, but counsel argued that regard should be had to the recognition that has occurred, and he cited the EXCOM conclusions of 17th October, 1978. The principle of affording recognition to a previous grant of refugee status is part of the principles of comity/legal reciprocity.

9. Counsel submits that it is a matter of exceptional public importance, and in the public interest, that there is some guidance in the State as to how a protection decision-maker deals with this issue.

10. Counsel on behalf of the Respondent said that the second named Respondent identified the following:-

- a) The Applicant was in fact 17 years old at the time of his oral appeal;
- b) The Applicant's age was specifically noted by the Tribunal and that "he may be considered a minor.";
- c) The Tribunal Member also went on to note that he had however indicated, through his solicitor, that he was prepared to give evidence to the Tribunal without a guardian;
- d) The Tribunal Member also specifically noted the contents of the UNHCR Guidelines;
- e) The only complaint made as regard the assessment of credibility in the context of his age was made at ground (E/iii) of the statement of grounds which was a complaint that he should have been given leniency in the context of his medical evidence;
- f) This complaint, it was submitted to the court, was absolutely unsustainable, given the evidence that he did give was entirely contrary to the medical evidence available from an Irish hospital;
- g) It is well established that the Guidelines are guidelines and each case must be assessed in the context of the individual Applicant;
- h) The second named Respondent does in fact have guidelines enforced dated 14th January, 2015, dealing specifically with the assessment of minor asylum Applicants, and she submitted that having regard to the assessment of the Applicant's credibility, and that this case turned entirely on the individual facts of the application, that there is no point of law, not to mention a point of law of exceptional public importance, which transcends the facts of the case.

11. She also argued, with regard to prior refugee status, that this issue was never before the court in this case. It was pleaded at para. (x) of the statement of grounds, that the second named Respondent had erred in assuming that the Applicant might return to Sierra Leone and failed to have regard to the Applicant's personal circumstances, and that he may have acquired Guinean citizenship. The only complaint that the Applicant made in relation to the assessment of his claim as regards Sierra Leone, was that he may no longer have Sierra Leone nationality and therefore could not return there.

12. This court is of the view that the issue of minority status of the Applicant was adequately dealt with by the second named Respondent. The Thirty First Amendment of the Constitution was not part of Irish law at the time of the second named Respondent's decision, and in those circumstances, it would not be appropriate for this court to seek "guidance" on this matter. In this court's view, in relation to the minority status of the Applicant, no point of law of exceptional importance has been identified by the Applicant.

13. This court is also satisfied that the issue of the prior refugee status of the Applicant was adequately dealt with by the second named Respondent. This court is satisfied that the issues raised by the Applicant are inextricably linked to the facts of this particular case. In these circumstances this court finds that the issues raised do not transcend well beyond the individual facts and parties to this case. Further the court is of the point that no point of law of exceptional public importance has been raised, or that it is desirable, in the public interest, that an appeal should be taken to the Court of Appeal.

14. The court is accordingly satisfied to refuse the application for a certificate.