

THE HIGH COURT

JUDICIAL REVIEW

[2016 No. 984 J.R.]

IN THE MATTER OF SECTION 5 OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT, 2000 (AS AMENDED)

BETWEEN

M.G.

APPLICANT

AND

REFUGEE APPEALS TRIBUNAL, MINISTER FOR JUSTICE AND EQUALITY, ATTORNEY GENERAL AND IRELAND

RESPONDENTS

JUDGMENT of Ms. Justice O'Regan delivered on the 21st day of February, 2017

1. The applicant herein is seeking leave to apply for certiorari by way of ex parte docket of 19th December, 2016 to quash the decision of the first named respondent bearing date 21st November, 2016 wherein the first named respondent refused the applicant's application for the grant of refugee status.

2. Substantial grounds are required in order to secure leave pursuant to s. 5 of the 2000 Act as amended.

3. The grounds upon which leave is sought are set out in para. E of the statement of grounds of 9th December, 2016.

4. Submissions of the 16th February, 2017 have been tendered. Para. 9 thereof quotes from para. 7.5 of the judgment by Clarke J. in *E.D. v. Refugee Appeals Tribunal* [2016] IESC 77 to support all grounds. At the hearing of the leave application it was emphasised that country of origin information was not considered as to the possibility of re-trafficking in Albania and violence against women. One of the reports referred to dealt with domestic violence (not relevant in this matter) and the other, on the issue of re-trafficking stated:-

"All that can be concluded is that there is evidence that some victims of trafficking have been re-trafficked and that of those re-trafficked some are forcibly re-trafficked against their will."

Grounds 1 and 2

5. The first ground identified is that the Tribunal Member erred in applying the incorrect standard of proof, that of the balance of probabilities rather than reasonable degree of likelihood in assessing the applicant's credibility. Ground 2 is a similar complaint as to the standard of proof being "the balance of probabilities" relative to past events.

6. With respect to these two grounds I delivered judgment in *O.N. v. Refugee Appeals Tribunal & Ors* [2017] IEHC 13 on 17th January, 2017 when I found that the correct standard of proof to be applied to past events was the balance of probabilities coupled, in appropriate circumstances, with the benefit of the doubt. The appropriate circumstances to attract the benefit of the doubt would be where the overall credibility of the applicant is accepted.

Ground 3

7. In Ground 3 it is asserted that the Tribunal failed to assess the credibility of the applicant in the light of the applicant's individual and contextual circumstances.

However, having considered the 12-page report sought to be impugned giving the general and unspecific nature of this ground I am not satisfied that any argument has been presented.

This ground also suggests that in the alternative the Tribunal erred in failing to state any reasons for rejecting the applicant's explanation for the delay in applying for asylum.

8. At para. 9.1 of the relevant decision it is stated that the applicant was afforded every opportunity to address and explain the discrepancies and lacunas to the Tribunal. This the applicant failed to do. The effect of same was that the appellant's credibility materially and detrimentally affects the veracity of what the applicant told the Tribunal.

9. The Tribunal dealt with the delay in applying for asylum at para. 5.12. Having regard to that paragraph and the following paragraph, para. 5.13 I am satisfied that the Tribunal did state reasons for rejecting the applicant's explanations.

Ground 4

10. The fourth ground is to the effect that the Tribunal erred in failing to have any reasonable regard to the country reports placed before it.

11. The applicant's history of events was that she met a man on Facebook and kept in contact with him for a number of months when she agreed to move to Italy with him and her claim is to the effect that while in Italy she was forced into prostitution for a period of two weeks. She had travelled to Italy on 10th August, 2013. The Tribunal did not accept as a matter of credibility that the person she met on Facebook would in fact pursue the applicant if she returned to Albania. Her claim is to the effect that that she is fearful that if she returned to Albania he would go there and seek her out and she would be threatened and perhaps killed or he might force her to return to Italy.

12. The decision at para. 3.13 records the country of origin documents which were submitted. Para. 5.11 quotes from some country of origin information.

13. In this regard I refer to para. 26 of the judgment of Humphreys J. in *G.I. v. Minister for Justice & Ors.* [2015] IEHC 682 it is stated that for the reasons mentioned in that judgment and as detailed in Humphreys J.'s judgment in *R.A. v. Refugee Appeals Tribunal (No.1)* [2015] IEHC 686 there is no duty to assess country of origin information where the applicant's credibility is being rejected generally.

Ground 5

14. At Ground 5 it is suggested that the decision was arrived at unfairly, erroneously and/or irrationally and these findings cannot be severed. No argument is developed in this regard either in the statement of grounds or the submissions. No clarification is available from para. 9 of the submissions.

Ground 6

15. The sixth ground is to the effect that the Tribunal decision is uncertain as to whether or not the applicant's evidence of being subjected to forced prostitution was accepted as credible. I am satisfied that the Tribunal clearly rejected the applicants' account of forced prostitution: at para. 5.13 it is stated:-

"The only aspect of the appellants' claim I accept is that she is from Albania."

16. In a decision delivered on 15th February, 2016 in *I.E. v. Minister for Justice & Ors.* [2016] IEHC 85 Humphreys J. discussed whether or not the Tribunal had to decide on the "core claim" of persecution and the Court cited a number of cases to support the proposition that where an applicant's credibility is rejected generally the Tribunal does not need to make any specific finding on whether the acts of persecution actually occurred or to what extent or whether any other element of the tests for a well-founded fear of persecution exists.

Ground 7

17. The seventh ground relied upon is that the finding that there was no Convention nexus is wholly unreasoned.

18. In my view, given the adverse credibility findings and the fact that the only matter which was accepted by the Tribunal was that the applicant was from Albania, the totality of the decision does support the finding that there was no Convention nexus.

Conclusion

19. For the reasons above the application for leave is refused.