

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 7th day of July 2015

1. This is a telescoped application for an order of *certiorari* quashing the decision of the Refugee Appeals Tribunal recommending that the Applicant not be declared a refugee.
2. The Applicant is a national of Sierra Leone who states that he was born on the 11th August 1993. He arrived in Dublin Airport on the 4th September 2009 and it was a number of months after his arrival when he applied for asylum on the 6th January 2010 at the Office of the Refugee Applications Commissioner. He was 16 years of age at the time of the application.
3. The Applicant's brother M.S.J. was granted refugee status on foot of a hearing on the 4th September 2002 before the same member of the Refugee Appeals Tribunal as heard the appeal of the Applicant. That decision was grounded on events alleged to have occurred to the Applicant's brother M.S.J. in Sierra Leone. The Applicant herein gave evidence that he left Sierra Leone in 1995 as a young infant. The Applicant lived in a refugee camp in Guinea and seemed to have been afforded some form of international protection when in Guinea by the Guinean authorities which apparently involved cooperation with international authorities. In this capacity the Applicant attended a refugee school in Conakry in Guinea. The Applicant attended school up to 2005. The Applicant went to live with his uncle at the end of his schooling in 2005. The Applicant worked for a man called L.D. whom the Applicant described as his mother's cousin frequently referring to him as his uncle or as "the commandant". The nature of the Applicant's relationship with his uncle would appear to be that the Applicant performed household tasks and chores for him. The Applicant in his section 11 interview refers to the fact that his uncle was a commandant and a friend of the former President of Guinea, Lansana Conte
4. The Applicant's account is that having spent a relatively trouble free period in Guinea from 1995 onwards enjoying refugee protection, that in June 2009 he was assaulted by people who had come to seek his uncle. In the Applicant's interview he stated that his uncle was a doctor for the former President. He was a best friend of his uncle. The Applicant relates that the attack which occurred in 2009 at the house of his uncle in which his uncle/cousin, the commandant was severely injured and abducted. The Applicant fears that the present regime in Guinea would make a connection between the Applicant and his uncle who according to the Applicant was a friend of the former President who died of ill health in 2008.
5. The second named Respondent said these allegations were necessarily unprovable. If however their veracity were to be accepted, it is questionable why the current regime in Guinea would wait for 6 months after President Conté's death before making a move against the Applicant's uncle. The specifics of the attack as described by the Applicant in his interview was that he was beaten by soldiers using an AK47 rifle. At his interview describing these events at first instance the Applicant was accompanied by his brother. The Applicant stated in his interview that he received injuries to his back and shoulder and that the military broke his shoulder and shattered his pelvis. The Applicant's account is that although badly beaten he managed to extricate himself from the house at the time the beatings were going on: "I was really bad. They threw me out". The second named Respondent stated that it was the Applicant's account that he was in effect rescued by the Red Cross who somehow came to be seen and brought the Applicant to hospital. But the second named Respondent stated that the Applicant had submitted no documentation to corroborate the involvement of the Red Cross, an internationally reputed humanitarian organisation.
6. These events occurred in June 2009 and the Applicant has given no specifics concerning the hospital in which he was detained or treated in save to say that it was in a hospital in Donka. The Applicant gave no medical or other documentary corroboration from Guinea in relation to the events claimed.
7. The medical documentation which had been submitted on the Applicant's behalf from the Mater Hospital in Dublin dated the 4th May 2010 stated that the Applicant suffered a fracture of 14 vertebrae and was treated for TB. There was no reference to any injury to the shoulder or pelvis. The second named Respondent stated that these matters tended to detract from the substance and veracity of the Applicant's account. He also stated that taking the paucity of information of the Applicant in relation to the fate of his uncle, the commandant, and the undocumented and unorthodox manner in which the Applicant left hospital tend to further detract from the credibility of the account given.
8. The Applicant while in Guinea from 2003 onwards had not been in touch with his brother M.J.S who was granted refugee status by the Tribunal in September 2002. Whilst this fact does not defeat the Applicant's claim the events he alleges occurred in June 2009 tends nonetheless to qualify the well-foundedness of the Applicant's fear particularly as the Applicant's brother had exited Sierra Leone via Guinea in 1999 and had spent time in a refugee camp in Guinea where the Applicant's brother met his and the Applicant's parents. The Applicant had not been in touch with his brother in Ireland during the time he lived with his uncle.
9. The Applicant claims he was assisted in his departure from the national hospital in Donka by a man whom he described as a "boy" who was effectively a man servant or valet for his uncle. This person arranged for the Applicant's departure from Guinea and flight to Ireland via Paris. The Applicant claims that this man was sent by his uncle. The Applicant obtained no information about his uncle from his uncle's assistant or the "boy" in his rescue. The Applicant told the Tribunal he was not interested in making inquiries about his uncle.
10. The Tribunal is of the view that as the Applicant's "uncle", the so-called commandant, was the connection between the Applicant and the fear of persecution from the Guinean authorities. The lack of concern shown by the Applicant to the man sent to help him

and the lack of information tends to diminish the well-foundedness of the Applicant's claim and to diminish the credibility of his account to the point of negation.

11. The second named Respondent said that the Applicant had no idea how much the flight from Guinea to Dublin via Paris cost or who paid for it. This, in the view of the Tribunal, tends to detract the credibility provisions of s. 11B of the Refugee Act 1996 (as amended) (hereinafter referred to as "the Act of 1996"). The Applicant told the Tribunal that in his journey he was accompanied by his uncle's assistant who held the passports and the Applicant himself never had to show a passport to authorities in France or Ireland. This again tends to detract the credibility provisions of s. 11(B) of the Act of 1996.

12. The second named Respondent said that the Applicant did not apply for asylum while in Paris. The Applicant displayed no interest in seeking asylum in Sierra Leone, his country of birth. All documented evidence points to the Applicant having been born in Sierra Leone and having nationality of Sierra Leone. The Applicant's reception and the grant of asylum in Guinea was apparently facilitated on the basis of his Sierra Leone nationality.

13. The second named Respondent stated that as the Applicant asserted the nationality of Sierra Leone in his questionnaire and generally throughout his account it is necessary to refer to the political situation now prevailing in that country. Country of origin reports generally accept that the conflict in Sierra Leone ended in 2002. The US State Department states in 2002 the devastating 11 year civil conflict officially ended and the government backed by a UN Peace Keeping Force (UNAMSIL) asserted control over the whole country and the government generally respects the human rights of its citizens.

14. The second named Respondent said that the political conditions in Sierra Leone are thus substantially and radically different now from those existing at the time of his brother's flight from that country in 1999 and the Applicant's own departure in 1995 which predated his brother's departure. The Applicant has not lived in Sierra Leone since he was a 3 year old child and in these circumstances it is difficult, if not impossible to accept that the authorities in Sierra Leone would seek to persecute the Applicant.

15. The second named Respondent said that the Applicant suggests that because he was perceived as the son of his uncle rather than a more distant relation he would be in danger. However the Applicant has been unable to produce documentation to the authorities in Ireland outlining his parentage showing that he is not the son of the man he calls his 'uncle'. It is to be questioned why the Applicant could not rely on such documents in Guinea. The Guinean authorities recognised his pedigree and family.

16. In relation to the fears arising from the link with his uncle, the commandant, the Tribunal would endorse the specific findings of the s. 13 report in the last paragraph of p. 4 where it stated:-

"It did not appear plausible that the Applicant's uncle, the commandant, would return to his home in the barracks if he thought the military was seeking him because of his former membership of the army and subordinate links to President Conté."

17. The second named Respondent said that country of origin information submitted by the Applicant's solicitor, the "Diplomat", published 2nd February 2009 and the BBC News report dated the 22nd January 2009, post-dates the events alleged by the Applicant. Country of origin information furnished at the hearing by the Applicant's solicitor concentrates on the corruption involved in the outgoing regime of President Conté. They do not specify continuing, ongoing acts which could be regarded as persecutory in nature or which would endanger the Applicant. The Applicant has not established to the satisfaction of the Tribunal that he would suffer persecution for Convention reasons in either Guinea or Sierra Leone.

Submissions of counsel for the Applicant

18. The first submission by the counsel for the Applicant related to the decision of the second named Respondent to deal with the application on the basis of both Guinea and Sierra Leone.

1) The Applicant stated before the Refugee Applications Commissioner that he feared persecution in Sierra Leone on account of his brother's former membership of the Revolutionary United Front, which was a rebel army which fought a failed 11 year war in Sierra Leone starting in 1991 and ending in 2002.

2) Counsel submitted that 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 (this was not a ground articulated in the statement of grounds).

3) He submitted that it was questionable that the current regime in Guinea would wait for 6 months before making a move against the Applicant's uncle. This was based only on the Tribunal Member's conjecture without reference to the Country of Origin Information which did not support this finding.

4) Further he submitted that the finding on the medical evidence was unreasonable and irrational having regard to the Applicant's medical evidence and to his minority status.

5) Counsel also submitted that the credibility findings reached were unreasonable and irrational given the Applicant's minority status.

6) The findings on travel in relation to the decision are unreasonable and irrational. The Applicant clearly stated that his uncle had arranged his travel, the price of the flights is irrelevant, the Applicant is a minor and minors are accompanied at airports.

7) Counsel submitted that the Applicant was deemed to have been someone who "displayed no interest in applying for asylum in Sierra Leone, his country of birth". This finding is for obvious reasons irrational and the Applicant could not do so as a matter of first principles.

8) Counsel also submitted that the decision of Herbert J. in *Keagnene v. The Minister for Justice Equality and Law Reform* [2007] IEHC 17 be relied upon in the circumstances where there were a number of credibility findings but as a number were not permitted to stand the entire decision must be set aside.

19. Counsel submitted that there existed an obligation on the decision-maker to give reasons for his decision. Counsel for the Applicant submitted that the Tribunal Member had failed in his duty to give reasons in relation to the following:-

- a) No reason was given as to why it was deemed to be "questionable" that the current regime in Guinea would wait for 6 months before making a move against the Applicant's uncle.
- b) The findings regarding the Applicant's contact with his brother are not capable of being understood.
- c) The Tribunal Member referred to the paucity of information from the Applicant in relation to the faith of his uncle.
- d) Representations made at the hearing of the matter concerning the fact the Tribunal Member should as a matter of law deal with the claim by reference to Sierra Leone. The Tribunal Member is obliged to consider this and did not do so.

Submissions for counsel for the Respondent

20. Counsel for the Respondent submitted as follows. The Tribunal Member did not accept the credibility of the events outlined by the Applicant in relation to Guinea. He stated:-

- a) The allegations were "necessarily unprovable"
- b) It was questionable why the regime would wait for 6 months after the President's death to make a move against the Applicant's uncle.
- c) He could submit no documentation from the Red Cross.
- d) The Applicant gave "no specifics concerning the hospital in which he was detained".
- e) The Applicant gave no medical or other documentary corroboration from Guinea in relation to the events claimed.
- f) The medical documentation from the Mater Hospital made no reference to his shoulder or pelvis.
- g) There was a paucity of information as to the fate of his uncle.
- h) The undocumented and unorthodox manner in which he left the hospital detracted from his credibility.
- i) He had no idea how much the flight from Guinea to Dublin cost or who paid for it.
- j) He did not hold his passport while travelling and he never showed a passport to the authorities in France or Ireland
- k) The Applicant had documentation establishing his parentage and it was questionable as to why he did not rely on these documents in Guinea to show he was not the son of the commandant/uncle, as was alleged.
- l) It is not plausible why the commandant would return to the barracks if he thought the military were looking for him. He also had regard to the Country of Origin Information in documents submitted and was satisfied that they did not specify continuing acts which could be regarded as persecutory in nature which would endanger the Applicant. Further the Tribunal Member considered the political landscape in Sierra Leone and was satisfied that the political conditions were substantially and radically different from those at the time of his brother's departure.
- m) At the time of this decision the Applicant was 17 years old.

21. In relation to the medical evidence counsel submitted that this evidence suggested that the medical issue was not a substantive issue for the following reasons:-

- 1) The Applicant never submitted any medical report from Guinea from the Red Cross nor the hospital and gave no specifics of the hospital where he was allegedly treated.
- 2) The documentation submitted from the Mater Hospital consisted of two notes from the hospital referring to a lesion of the lumbar vertebrae four and an admission for abdominal pain post an appendix and indicating a fracture of the vertebrae and treatment for TB.
- 3) The Applicant had maintained from the point of application that he was happy speaking English and did require and interpreter.
- 4) The Applicant expressly maintained in his section 11 interview that he had been educated in English. The Applicant expressly stated his shoulder was injured and that his shoulder was broken and that his shoulder was broken and pelvis shattered requiring two operations.
- 5) The language used by the Applicant as to his injuries was specific and medical evidence produced by the Applicant from the Mater Hospital bore no relationship to his account.

22. Counsel also argued that it was open to the Tribunal Member to note that it was questionable why the regime would wait several months before tracking down and seeking to kill his uncle. It is the function of the Tribunal Member to assess his evidence in this regard. Country of Origin Information referenced by the Applicant in supporting this aspect of his claim bears no relevance to the facts as this information does not outline details of the new regime tracking down and killing people such as the Applicant/or his uncle.

23. Counsel for the Respondent stated that the Applicant had made an astonishing complaint that the Tribunal Member erred in having regard to the country conditions in Sierra Leone and in particular the Tribunal Member was prohibited from even assessing the possibility of return to his Country of Origin Information given that he had continuing refugee status in Guinea.

24. Counsel submitted that the Applicant at all times asserted his nationality of Sierra Leone in his asylum application. The Applicant had never expressly informed the asylum authorities that his family had been granted refugee status by another contracting state in 2002.

25. The Tribunal had considered all the evidence put at the hearing and all relevant documentation in connection with the appeal including Country of Origin Information, the notice of appeal, the Applicant's asylum questionnaire and the replies given in response to questions by or on behalf of the Refugee Applications Commissioner and the report made pursuant to s. 13(1) of the Act of 1996.

Discussion

26. The Court is satisfied that the second named Respondent based his decision on the issues of credibility and counsel for the Respondent has outlined in her submissions the various issues of credibility. In *I.R. v. The Minister for Justice Equality and Law Reform & Ors* [2009] IEHC 353 Cooke J. stated at number 8 of his rules:-

"When subjected to judicial review, a decision on credibility must be read as a whole and the Court should be wary of attempts to deconstruct an overall conclusion by subjecting its individual parts to isolated examination in disregard of the cumulative impression made upon the decision-maker especially where the conclusion takes particular account of the demeanour and reaction of an Applicant when testifying in person."

Cooke J. further states at number 10 of his rules:-

"There is no general obligation in all cases to refer in a decision on credibility to every item of evidence and to every argument advanced, provided the reasons stated enable the Applicant as addressee, and the Court in exercise of its judicial review function, to understand the substantive basis for the conclusion on credibility and the process of analysis or evaluation by which it has been reached."

27. Cooke J. in *I.R. v. The Minister for Justice Equality and Law Reform & Ors* [2009] IEHC 353 then sets out the guide in which evidence going to credibility ought to be treated and, as this is largely a case of credibility, Cooke J. provides some assistance, at para. 11.3 he states:-

"There are two facets to the issue of credibility, one subjective and the other objective. An Applicant must first show that he or she has a genuine fear of persecution for a Convention reason. The second element involves assessing whether that subjective fear is objectively justified or reasonable and thus well founded."

Cooke J continued that:-

"A finding of lack of credibility must be based on correct facts, untainted by conjecture or speculation and the reasons drawn from such facts must be cogent and bear a legitimate connection to the adverse finding."

28. In *EMI Records (Ireland) Ltd & Ors v. The Data Protection Commission and Eircom* [2013] IESC 34. Clarke J., who gave the judgment of the Court, stated that at para. 6.8 that:-

"Legal certainty requires, as was pointed out in Christian, that it must be possible to accurately determine what the reasons were. There should not be doubt as to where the reasons can be found. Clearly, an express reference in the decision itself to some other source outside of the decision document meets that test."

29. I am satisfied that the finding of the second named Respondent sets out the issues of credibility and further sets out in clear terms the reasons for the decision. I am also satisfied that the second named Respondent adequately dealt with the Country of Origin Information which was presented to him by the Applicant's solicitor.

Decision

30. Having regard to the findings of this Court above, I therefore refuse the application for certiorari in this case.

Counsel for the Applicant, Ian Whelan B.L., instructed by

Counsel for the Respondent, Sinead McGrath B.L., instructed by the Chief State Solicitors Office