

THE HIGH COURT

JUDICIAL REVIEW

[Record No. 2009/565/J.R.]

**IN THE MATTER OF THE REFUGEE ACT 1996 (AS AMENDED), IN THE MATTER OF THE IMMIGRATION ACT 1999 (AS AMENDED),
IN THE MATTER OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000 (AS AMENDED), IN THE MATTER OF THE
IMMIGRATION ACT 2004 AND IN THE MATTER OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS ACT 2003 SECTION 3(1)**

BETWEEN

R. F.

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Colm Mac Eochaidh delivered on the 18th day of June 2013

1. The main issue of controversy in this matter involved the presentation by the applicant of a fundamentally different claim to the Refugee Appeals Tribunal (the "Tribunal") at variance with the initial story she maintained at first instance.

Background:

2. The applicant initially maintained that she was a national of Ghana born on the 15th November 1979 and that she had arrived in Ireland on the 20th January 2007. It appears that the applicant, having spent some days in the State, departed by boat from Rosslare to Fishguard but was shortly thereafter returned to Rosslare by the UK immigration authorities owing to her lack of documentation. In her s. 11 interview with ORAC the applicant claimed she had left Ghana because her mother was ill and had suffered a stroke and also suffers from diabetes. The applicant wanted to be able to take care of her sick mother and she also wanted "a good education for [her] younger brothers and sisters". The applicant claimed that she came to Ireland "for a better life" and because she hoped "there are better job opportunities here". The applicant had stated that she had previously travelled to Italy in January 2006 for the same reason.

3. A decision of ORAC duly issued to the applicant on 3rd May 2007 with the ORAC finding that there was no Convention nexus to the applicant's claim and that she had failed to establish a fear of persecution. It was when the applicant lodged her Notice of Appeal against the recommendation of the Refugee Applications Commissioner that she claimed that she was actually of Nigerian origin and had fled Italy after she had been trafficked there on the false pretences of obtaining legitimate work whereupon she was told she owed €40,000 and was forced to work as a prostitute. The applicant claimed that she worked for one year in Italy as a prostitute, that she eventually managed to escape but was in fear of her trafficker to whom she still owed €20,000.

Preliminary Issues at Hearing:

4. At the outset to the hearing the court raised certain concerns in respect of this case with counsel. In particular, the court was concerned about whether the Tribunal had jurisdiction to determine the applicant's claim on appeal because every material fact in the applicant's claim had been changed. The decision reached at first instance was on the basis of entirely different facts and the matters complained of in the Notice of Appeal are not those which were decided upon by ORAC. Counsel for the applicant submitted that the Notice of Appeal is the correct basis on which the Tribunal entertains an appeal and that any such appeal is simply predicated on it being set out in provisions in s. 16 of the Refugee Act 1996 which limit the applicant in terms of the content of such notice in this regard and further points to the fact that the Tribunal itself accepted the manner in which the claim was presented. The respondent in reply suggested that it was always an option for the applicant to withdraw her application and seek to re-enter the asylum process on the basis of an application pursuant to s. 17(7) if she so wished.

5. Despite this somewhat unsatisfactory situation, it is clear that while the Tribunal, in performing its function under s. 16, is required to consider certain particular factors, its overall role can be viewed as being predominantly inquisitorial in respect of the investigation and evaluation of the applicant's claim. It appears that while the Tribunal may only either affirm or set aside a recommendation of ORAC it is clearly not bound to address only those issues raised at first instance. On that basis the hearing proceeded to the full ventilation of the issues pleaded.

6. The applicant raises various criticisms of the decision of the Tribunal. In particular, the applicant claims that there was selective use of country of origin information and that the Tribunal Member failed to have reasonable regard to it. Further it is claimed that the respondent failed to weigh the information or provide a reason for disregarding it. In this regard the applicant relies on the judgment of Edwards J. in *D.V. T.S. v. Minister for Justice* [2008] IEHC 451 and the decision of Birmingham J. in *M.N. v. Refugee Appeals Tribunal* [2008] IEHC 218. The applicant also claims that the Tribunal Member engaged in speculation and conjecture and wrongly required corroboration from the applicant in respect of her nationality and in respect of her time spent in Italy. The applicant claims that there is no legal basis on which the respondent can place a burden on the applicant to corroborate her claim by documentary means or otherwise and that it is unreasonable or irrational of the respondent to do so.

7. The applicant also takes issue with the criticisms of the Tribunal Member on the one hand that the applicant did not produce documentation in support of her claim and on the other hand dismissing the documents provided on the basis they could not be verified. In relation to the Tribunal Member's finding that state protection was available to the applicant, it is contended that the respondent erred in placing a disproportionate weight on the applicant's explanation for not seeking protection (that she simply wasn't aware of the existence of the organisations which might help her) as opposed to analysing the objective situation regarding the availability of state protection over sporadic non-governmental assistance in Nigeria. Finally, the applicant claims that the findings by

the Tribunal in respect of the demeanour of the applicant were in breach of fair procedures and counsel points to the UNHCR Guidelines (RLD4) which state that "the demeanour of an applicant is of limited value in assessing credibility" and that while not irrelevant to an assessment "it should never be considered the determining element in deciding on the credibility of an applicant due to its limited reliability and subjective nature."

8. The respondent submitted that while counsel for the applicant spent a significant amount of time at hearing levelling criticism at the manner in which the Tribunal Member addressed the Country of Origin information, he failed to address the core finding of the Tribunal which related to the applicant's lack of credibility. My view is that the credibility findings are robust.

9. On credibility, the respondent states that this case is on all fours with the previous decision of this court in the case of *G.O. v. Refugee Appeals Tribunal* [2013] IEHC 89 and of Clark J. in *A.A.T v. Refugee Appeals Tribunal* [2009] IEHC 51. The respondent points to a comprehensive analysis of the applicant's claim by the Tribunal Member and states that the Tribunal approaches the issue of the change in the applicant's story with a clear awareness of its statutory duty and provides her with the 'benefit of the doubt' while remaining conscious of the fact that an applicant's story may take of the Tribunal's decision.

10. I agree that the issue surrounding a lack of supporting documentation, which the applicant categorises as a 'burden' placed unfairly and without legal basis on the applicant, is an unfair characterisation of the decision given the history of the case and the manner in which the applicant lied throughout the prior process. As suggested by counsel for the respondent, the applicant has simply failed to convince the Tribunal Member and that the Tribunal Member made it clear that she could not accept the veracity of the applicant's story having regard to its internal inconsistencies and the evasive manner in which she answered questions during her appeal hearing.

11. The conclusions of the Tribunal Member in respect of the demeanour of the applicant were accompanied by an explanation of the findings made. The demeanour findings were not such as those criticised by Hogan J. in *F.O.O. v. Refugee Appeals Tribunal* [2012] IEHC 46, who stated:

"It seems to me that the applicant can establish substantial grounds for contending that the Tribunal member violated these principles, not least in the absence of any reasoned dialogue to explain his conclusions. Why, for example, was the applicant's demeanour lacking in credibility? Did he hesitate to answer difficult questions? Did his answers given the impression that he had been coached or that his answers had been prepared according to a set script? Did he unnecessarily avoid eye contact? Absent an explanation - which would not have to be discursive or lengthy - this Court might be coerced to conclude that the Tribunal member elected to disbelieve his evidence for purely subjective reasons, contrary to the fourth principle articulated by Cooke J. in *I.R.*"

12. The Tribunal Member referred to the applicant as "staring into the air and appeared to guess..." and "...the applicant would repeat the question being asked, in an effort to give herself time to think about the answer..." and "in some cases the applicant would look to the ceiling as if trying to guess an answer...". The Tribunal Member noted that "...the applicant's evidence was vague, she did not convince me she was telling the truth, she mixed up details, she could not answer questions, she delayed in answering questions, this Applicant simply did not convince me that she now telling the truth." These descriptions of the manner in which the applicant was perceived when giving evidence establishes the legality of credibility findings in so far as they rely on demeanour.

13. Further, the views of Kelly J. in *Camara v. Minister for Justice* (Unreported, High Court, 26th July 2000) were cited by the respondent in support of the idea that the Tribunal Member was "uniquely placed to make an adjudication upon [the credibility of the applicant] by virtue of the oral hearing which he conducted and where he had an opportunity to assess the demeanour of the applicant." The respondent also submitted, appropriately I believe, that at no point in her Notice of Appeal or in her affidavit did the applicant seek to explain why she had sought previously to mislead the asylum authorities and nor did she disclose her address, place of birth, family or education details therein.

14. Finally, in respect of the manner in which the Tribunal addressed the country of origin information provided, the respondent cites *A.A.T* and *G.O.* (supra) as two cases where virtually identical country of origin information was assessed and which was similarly reviewed in this case in a manner which was not 'selective' and I agree with this submission. Further, that very country of origin information produced on behalf of the applicant was the basis of the assessment "f the availability of state protection for the applicant by the Tribunal. These conclusions were rational, reasoned and clear and cannot be faulted

15. In these circumstances I refuse to grant leave to seek judicial review in this case.