

THE HIGH COURT**JUDICIAL REVIEW****[2010 No. 1201 J.R.]****BETWEEN****J. O.****APPLICANT****AND****MINISTER FOR JUSTICE AND LAW REFORM, THE REFUGEE APPEALS TRIBUNAL, IRELAND AND THE ATTORNEY GENERAL****RESPONDENTS****JUDGMENT of Mr. Justice Mac Eochaidh delivered on the 16th day of April 2015**

1. This is a 'telescoped' application for leave to seek judicial review of a decision of the Refugee Appeals Tribunal dated 30th July 2010. The applicant was refused a recommendation of refugee status on the basis that internal relocation within Nigeria is a viable alternative and her account was found to lack credibility.

Background:

2. The applicant is a Nigerian citizen who was born in Edo State in 1985. She came to Ireland on 27th April 2007 and claimed asylum on 2nd May 2007. Her application was refused by the office of the Refugee Applications Commissioner at first instance and she duly appealed to the Tribunal.

3. The applicant claimed to fear persecution from her father who had tried to force her to marry his business partner. The applicant refused to do this and fled her home in Edo State to Lagos. She states that she remained in Lagos for one or two weeks and while there she met a woman who took her in and looked after her. It transpired that this woman was involved in prostitution and sought to introduce the applicant to a customer. The applicant claims that this man decided to help her as he considered that she was too young to be involved in prostitution and she reminded him of his deceased daughter. Two days after their first meeting, this man came to take the applicant away from her situation. The applicant claims that she was brought to a river and taken aboard a big ship. She states that there was an agent there and that she was hidden aboard the ship until she arrived in Ireland.

Section 11 interview:

4. During the course of her exchanges in the s. 11 interview, the applicant gave direct evidence of certain matters which are germane to the later findings reached by the Tribunal Member on internal relocation. It is proposed to set out the relevant extracts of the questions and answers below:

"Q. 1 Have you any documentation with you today which would establish your identity or documentation that you feel is relevant to your claim? Why have you no documentation in relation to your identity, nationality or travel (if relevant)?"

A. No. I don't have ID documents as I didn't plan to travel abroad. I never had any travel documents during my journey to Ireland.

...

Q. 32 Why did you not remain in Lagos instead of leaving to come to Ireland?

A. When I got to Lagos I was planning on staying there to avoid having to marry that man but then I met the man Alhaji and he said I was too young to become a prostitute and that he would help me leave and he brought me to the ship.

Q. 33 But surely you could have stayed in Lagos or gone to another part of Nigeria, avoided prostitution and got a job?

A. That is what I was planning to do, I was going to leave that woman's house and find a job and somewhere else to stay but then I met with Alhaji and he offered to help me.

Q. 34 Why did you not tell Alhaji that you did not need to leave the country, that you were going to stay in Lagos, avoid prostitution and get a job?

A. Because he never told me that he was going to take me abroad, take me to Ireland. He said he was taking me somewhere where I would have a better life and avoid prostitution.

Q. 35 Did you not ask where you were being taken when you got on the ship?

A. I did ask but he just said I was being taken somewhere safe, I thought he meant another part of Nigeria.

...

Q. 43 What about if you just remained in Lagos (or another part of Nigeria) and avoided your father and friends of his from the cult? You stated that this was your intention before the man Alhaji organised for you to travel abroad without your knowledge?

A. I believe that I would be able to remain in Lagos and get a job if my father did not know where I was. I intended to move away from the lady and get a job and somewhere to stay.

Q. 44 So what would prevent you from going back to Lagos and living there in safety, away from your father?

A. I don't really know anybody in Lagos apart from that lady who's involved in prostitution and I don't want to do that.

Also I don't know whether or not my father might try to go to Lagos and he might find me there and bring me back and make me marry his friend."

Submissions:

5. Counsel for the applicant, Paul O'Shea B.L., pursued three main grounds of challenge in these proceedings, namely that the Tribunal had: (i) failed to lawfully deal with the assessment of credibility; (ii) failed to deal with the applicant's submissions; and (iii) failed to lawfully apply the internal relocation alternative.

6. Counsel submitted that the Tribunal Member appears to deal with credibility in one paragraph, she states:

"The Applicant states that a stranger, a customer of a brothel, organised her travel to Ireland, did not tell her where she was to go nor did he tell her what she was to do when she got to her destination nor did he provide her with any contact details. It is not credible that a stranger would organise illegal travel for the Applicant, to a country where she knew nobody and that he would not tell her what country she was going to and what she was to do in this country. The Applicant has completed secondary education and had been planning to leave Mama and live and work elsewhere in Lagos. It is not credible that she would have consented to travelling illegally on a ship, to an unknown destination without knowing what she was going to do at this place on arrival. The Applicant's account in this regard is not credible."

7. Counsel submits that the Tribunal Member's assessment of credibility in this case falls short of the oft quoted requirements specified by Cooke J. in *I.R. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 353 and also those referred to in the judgment of this court in *R.O. (An Infant) v. Minister for Justice* [2012] IEHC 573. It is asserted that the single credibility finding in the Tribunal decision arising out of the applicant's travel to the State is peripheral only and does not go to the core of the applicant's claim. It is submitted that this finding alone is insufficient to result in the overall dismissal of the applicant's claim without reference to country of origin information.

8. The Tribunal Member failed to make an adequate assessment of the submissions made by the applicant, it is said. In particular, the applicant claims that the Tribunal member failed to properly assess the submissions made on the question of internal relocation and forced marriages. Counsel states that the Tribunal Member failed to properly refer to country of origin information submitted by the applicant and only refers to a part of same which tends to support the Tribunal's point of view. In this regard, it is contended that if there is competing information before the Tribunal then there is an obligation on it to indicate why one piece of evidence is referred to in preference to another and further that the competing information be appropriately weighed by the decision maker. The applicant cites the decision of Edwards J. in *D.V.T.S. v. Minister for Justice* [2007] IEHC 305 in support of this proposition.

9. It is submitted that the Tribunal Member's approach was fundamentally flawed as it ignored the applicant's submissions entirely. It is said that she was precluded from making the impugned findings without dealing with the case to the contrary and stating clearly why she did not accept it, particularly with regard to the question of internal relocation. In this regard, it is submitted that in *C-277/11 M.M. v. Minister for Justice, Equality and Law Reform* the CJEU held that:

"88. That right [to be heard] also requires the authorities to pay due attention to the observations thus submitted by the person concerned, examining carefully and impartially all the relevant aspects of the individual case and giving a detailed statement of reasons for their decision (see Case C-269/90 *Technische Universität München* [1991] ECR I-5469, paragraph 14, and *Sopropé*, paragraph 50); the obligation to state reasons for a decision which are sufficiently specific and concrete to allow the person to understand why his application is being rejected is thus a corollary of the principle of respect for the rights of the defence."

10. Finally, it is submitted that the internal relocation assessment conducted in the case is unlawful. It is noted that a substantial proportion of the Tribunal Member's decision is taken up with the assessment and the provisions of Reg. 7(1) of the EC (Eligibility for Protection) Regulations 2006 are quoted in the decision. However, the applicant contends that the Tribunal Member, in identifying two potential relocation sites, failed to carry out an analysis of the prevailing circumstances in those sites and failed to assess the personal circumstances of the applicant. Counsel refers to the decision of Cooke J. in *S.B.E. v. Refugee Appeals Tribunal* [2010] IEHC 133 and the decision of this court *E.I & A.I. v. Minister for Justice, Equality & Law Reform* [2014] IEHC 27 in raising this complaint.

11. Counsel for the respondent, Kilda Mooney B.L., submits that contrary to the applicant's claim, the standards laid down in the decision of *I.R. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 353 were complied with by the decision maker. In this regard, it is said that the credibility finding reached by the Tribunal was central to the applicant's core claim and was not peripheral as contended for. It is said that the overall analysis in the decision is extensive and the decision is well reasoned.

12. I agree with Counsel for the Respondent. My view is that this asylum decision rejects, on the basis of improbability, the credibility of the applicant's narrative concerning her interaction with a stranger who decided to rescue her and her improbable tale of boarding a ship without knowing her destination. I can find no fault with this credibility assessment which is clear and well reasoned and I note that it does not reject that part of her narrative regarding her fear of harm connected with her father and the matter of a forced marriage.

13. With regard to the applicant's second ground of challenge, the respondent submits that the pleading is excessively vague and not in conformity with the Rules of the Superior Courts as it is said that the applicant has not specified what part of the supporting documentation was not considered by the Tribunal Member. Without prejudice to this initial complaint, it is said that it appears from the face of the Tribunal decision that the decision maker did have regard to the relevant documentation including the notice of appeal and the country of origin information submitted on behalf of the applicant.

14. Counsel notes that the applicant claimed the Tribunal Member failed to have particular regard to certain paragraphs of a UK Home Office report. In rejecting this point I agree with counsel for the Respondent that the Tribunal expressly referred to paragraphs 24.21 – 24.28 at page 21 of the decision and specifically refers to the country of origin report dated 15th January 2010 in other parts of the decision. It cannot be said that the decision maker did not have regard to the material submitted by the applicant. There is no obligation on a Tribunal Member to set out each piece of information relied on by an applicant as indicated by Cooke J. in *I.R. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 353. Where evidence relied upon in an asylum application is central to that claim and is rejected, the Tribunal Member must give reasons why this is so. Here the country of origin information submitted was of a general nature. In so far as some of that information was supportive of the applicant's case, the decision maker was entitled to prefer the opposite case without parsing all the nuanced differences in the country information. Where such information contains internal contradiction relevant to a central part of an applicant's case, a decision maker could nonetheless prefer one point over another

provided the decision in this regard complied with rules as to rationality, including of course the duty that it be reasoned.

15. I agree that there was a rational basis for the Tribunal Member to consider that state protection was available in parts of Nigeria and that internal relocation was a viable option. The decisions of Ryan J. in *O (P) [Nigeria] v. Refugee Appeals Tribunal* [2010] IEHC 513 and Clark J. in *K.D. [Nigeria] v. Refugee Appeals Tribunal* [2013] IEHC 481 support this approach.

16. The Tribunal Member identified an area for proposed relocation, put this suggestion to the applicant at the hearing and conducted an inquiry into whether, having regard to her personal circumstances and the conditions on the ground, she could reasonably be expected to stay in Lagos or a large urban area.

17. The Tribunal was entitled to conclude that the applicant could reasonably be expected to stay in another part of her own country where she would not be at risk of persecution or where meaningful protection from such persecution is available and that she was not a refugee as a result.

18. In reaching this conclusion, the Tribunal Member relied extensively on country of origin information, particularly noting the availability of assistance and protection for women who are escaping forced marriages and other domestic issues. The Tribunal, correctly in my view, placed emphasis on the fact that the applicant had relocated to Lagos and had decided to stay there until a third party decided that she should leave. Unusually for an asylum seeker, the applicant says she had no intention of leaving Nigeria but was spirited out of the country on a boat which she believed was bound for an internal Nigerian port. However incredible this tale might be, it prevents the applicant from saying that she could not relocate within Nigeria without engaging in fatal self contradiction.

19. The Tribunal Member identified Lagos or Abuja as potential areas of relocation for the applicant and she has clearly had regard to the fact that the applicant lived safely in Lagos for the duration of her stay there and the fact that she had intended to look for a job there. It is submitted that the Tribunal clearly has regard to the applicant's education, age, the basis of her fear and the assistance available to her in concluding that internal relocation would not be unduly harsh on her. I have no hesitation in finding that the applicant's personal circumstances were adequately considered in the context of internal relocation. The evidence given by the applicant was that it was not impossible for her to relocate and that she was unaware she was coming to Ireland but rather thought she was in fact moving to another part of Nigeria. This evidence was relied on by the Tribunal Member in reaching the finding that internal relocation was a safe option for the applicant. This is a rational conclusion for the Tribunal Member based on the facts. In the final analysis, I agree that the Tribunal Member applied the correct test and reached a reasonable decision on internal relocation on the basis of the information available to her.

19. Substantial grounds not having been made out, I refuse leave to seek judicial review.