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Neutral Citation Number: [2007] IEHC 235

THE HIGH COURT

JUDICIAL REVIEW

[2005 No. 1035 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, 2003 (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

H. I.

APPLICANT

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

RESPONDENTS

AND
HUMAN RIGHTS COMMISSION

NOTICE PARTY

Judgment of Mr. Justice Brian McGovern delivered the 19th day of June, 2007

1. This is an application for leave to apply for judicial review for an order of *certiorari* quashing the decision of the second named respondent to refuse the applicant refugee status and also for an order of *certiorari* quashing the decision of the first named respondent to issue a deportation order in respect of the applicant.

2. The applicant is a national of Nigeria and was born in August, 1975. Prior to arriving in Ireland he lived in the Delta region of Nigeria. He is a member of the Isoko tribe and he worked on a small family farm with his father. The Niger Delta is an area rich is oil resources and there has been strife between tribes in the Delta region and the oil industry. Apparently this concerns issues such as pollution and the entry by members of the oil industry upon private lands to drill for oil with no, or inadequate compensation being provided to the land owners. The applicant is a leader of a local youth group campaigning for change relating to the oil industry. In October, 2004 the applicant claims to have led his group in successfully preventing oil workers from entering upon his father's farm. The oil workers returned with machinery and with a military escort but they were again prevented from entering upon the land and the machinery was burned by the youth group led by the applicant. He claims that he was returning from a meeting of representatives of youth groups in Warri and he was informed that his parents had been arrested by soldiers who were searching for him. He went into hiding and eventually fled Nigeria and arrived in Ireland in November, 2004. He applied for asylum. He has been refused a declaration of refugee status by the Refugee Application Commissioner and, on appeal, by the Refugee Appeals Tribunal (the second named respondent).

3. In addition to his application for Judicial Review the applicant also claims an order extending the time for bringing this application.

4. I propose dealing with the time issue first.

5. DELAY.

Section 5(2) of the Illegal Immigrants (Trafficking) Act, 2000 provides that an application for leave to apply for judicial review challenging a decision of the Refugee Appeals Tribunal or a deportation order made by the Minister shall be made within a period of 14 days commencing on the date on which the person was notified of the decision "…unless the High Court considers that there is good and sufficient reason for extending the period within which the application shall be made…".

6. In this case the chronology of relevant events is as follows:-

November, 2004 the applicant arrived in Ireland.

11th November, 2004 the applicant completed questionnaire in his application for refugee status.

6th December, 2004 the applicant`s interview took place.

21st December, 2004 and 8th January, 2005 the s. 13 report and recommendation of the Refugee Applications Commissioner was made.

22nd February, 2005 Notice of Appeal to Refugee Appeals Tribunal was issued.

14th June, 2005 Refugee Appeals Tribunal decision.

16th June, 2005 Refugee Appeals Tribunal decision was notified to the applicant.

28th June, 2005 the applicant was informed by Legal Aid Board Refugee Legal Service that they "…do not believe there are grounds for bringing Judicial Review proceedings in the High Court" and suggested that he consult with a private solicitor at his own cost to seek a second opinion in the matter if he wished. This letter also informed the applicant that he only had 14 days from the date of notification of the decision within which to bring a judicial review case.

15th September, 2005 a deportation order was made by the first named respondent.

22nd September, 2005 notification of the deportation order was given to the applicant.

28th September, 2005 the notice of motion grounding application for leave to apply for judicial review quashing the

decision of the first and second named respondents was issued.

7. It is quite clear that in this case the applicant's challenge to the decision of the second named respondent is out of time. The decision was notified to the applicant on the 16th June, 2005 and the notice of motion did not issue until the 28th September, 2005 which was over three months later. I have to decide whether "…there is good and sufficient reason for extending the period within which the application shall be made…". In the case of *Saia v. The Minister for Justice, Equality and Law Reform and the Refugee Appeals Tribunal and Ireland* (unreported judgment, 9th July, 2004) Peart J. dealt with an issue of delay and the effect of delay in applications under the Refugee Legislation. He pointed out that the legislature has put in place a very limited time for lodging applications for judicial review in matters of this kind namely 14 days from the date of notification of the decision or order. He held that where the applicant does not satisfy the court that there is good and sufficient reason why the time limit should be extended that the court should not then enter upon the merits or otherwise of the grounds which would be argued in relation to the challenge to the Refugee Appeals Tribunal or the Minister. I agree with that view. If the court holds there was delay it would be quite futile and a waste of valuable court time to then embark upon the issue of the merits of the case.

8. In deciding whether or not there is a good and sufficient reason for extending time in this particular case I have regard to the fact that the applicant was in touch with the Legal Aid Board Refugee Legal Service sometime between the notification of the decision on the 16th June and the 28th June, 2005 when they wrote to him. By the 15th July, 2005 the applicant had notified the first respondent that his new legal advisor was Mr. Sean Mulvihill, Solicitor. So having received notification of the Refugee Appeals Tribunal decision on the 16th June, 2005 he had gone to the Refugee Legal Service of the Legal Board and had been informed of the urgency of bringing an appeal if he wished to do so and was specifically notified it would have to be done within 14 days of the notification of the decision. He had then, by the middle of July, obtained the services of another solicitor yet it was not until almost two months later that the notice of motion was served. The applicant has not given any good reason why this delay occurred and I find that there are no good or sufficient reasons for extending the period to enable the applicant challenge the decision of the second named respondent. In the circumstances I do not propose dealing with the merits of the application so far as it concerns the decision of the Refugee Appeals Tribunal. To do otherwise would be to frustrate the will of the legislature as set out in s. 5(2) of the Illegal Immigrants (Trafficking) Act, 2000.

9. That just leaves the issue of the deportation order. The deportation order was made on the 15th September, 2005 and was notified on the 22nd September, 2005. The notice of motion was served on the 28th September, 2005. I am satisfied that the application to challange the deportation order has been made within time although I note that nothing was done in relation to the decision of the Refugee Appeals Tribunal until the deportation order was served.

10. The law relating to the decision to make a deportation order under the Refugee Legislation has been set out by Clarke J. in the case of *Kouape* (Unreported, 9th November, 2005). I agree with the exposition of the law on this matter as set out in that judgment and in particular the observation of the learned judge that "…the grounds upon which a decision by the Minister to make a deportation order in the case of a failed asylum seeker, can be challenged are necessarily limited."

11. In this case the Minister was proceeding on the basis that the applicant was a failed asylum seeker. It is clear that the applicant was given an opportunity to make representations to the Minister and it also appears to me, from the documents which have been exhibited in relation to this matter, that the Minister considered the case in a manner which could not be said to be irrational or unreasonable. An affidavit has been sworn by Mr. Sean McNamara of the Department of Justice, Equality and Law Reform who says "…that extensive, current and relevant country of origin information was duly considered by the first named respondents servants and/or agents, when preparing these Examinations of File and by the first named respondent in deciding to make the deportation order."

12. The applicant has not produced any evidence to show that the Minister acted in a way which was irrational or that he failed to adhere to principles of natural justice. I am quite satisfied that the Minister has complied with his obligations under the legislation and that there is no basis for quashing the deportation order.

13. Accordingly I refuse this application.