THE HIGH COURT

JUDICIAL REVIEW

[2012 No. 322 J.R.]

BETWEEN

A.L.M. (AN INFANT SUING BY HER MOTHER

AND NEXT FRIEND S.P.)

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY IRELAND

AND THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Mr. Justice McDermott delivered on the 1st day of December, 2017

1. The applicant was granted leave to apply for judicial review for an order of *certiorari* of a decision of the Minister for Justice, Equality and Law Reform (hereinafter "the Minister") dated 10th January, 2012 which refused to grant the applicant subsidiary protection. The application was grounded on the affidavit of the applicant's mother sworn on 10th April, 2012. The applicant was born on 27th March, 2010 at University College Hospital Galway to S.P. and T.M. It was claimed that she was a national of Sierra Leone or Rwanda.

A.L.M's Application for Refugee Status

2. An application for refugee status was made on her behalf on the 12th May 2010. It was based entirely upon the same grounds as those advanced by her parents in respect of their applications for refugee status. Her father T.M. claimed to be a national of Rwanda, her mother S.P was a national of Sierra Leone. The applicant's claim for asylum was based on her parents' respective claims for asylum. T.M claimed that it was unsafe for him to return to Rwanda due to racial tensions between the Tutsi and Hutu. T.M. claimed to be Tutsi and that his family had been victims of persecution in Rwanda. He claimed that it was not safe for his wife S.P. to return to her country of origin Sierra Leone due to racial tensions.

3. S.P. arrived in the State in August 2006. Shortly after her arrival she gave birth on 10th September 2006 to a son. She applied for asylum which was refused following a negative recommendation affirmed by the Refugee Appeals Tribunal on the 15th June 2009 after an oral hearing. She then applied for subsidiary protection and leave to remain in the State under s.3 of the Immigration Act 1999 on the 14th August 2009. Both applications were refused. The "determination of application" for subsidiary protection in her case included a negative finding on her credibility and quoted the negative findings of credibility in the Tribunal decision. She was informed of the refusal of her application for subsidiary protection on 25th February 2011. A deportation order was made against her on the 2nd March 2011.

4. T.M. arrived in the State on the 29th April 2007 from Nigeria via Paris. He applied for asylum. The application was rejected following an oral hearing by RAT on 15th September 2008. He then made an application for subsidiary protection and leave to remain in the State under s.3 of the 1991 Act on 21st November 2008. The subsidiary protection application was refused on 17th July 2012 based on a 'determination of application' which included a reference to the finding of the RAT that his claim had not been found to be credible. He was informed by letter dated 8th March 2012 that the Minister intended to process his applications on the basis that he was a Nigerian national. A deportation order was made against him on the 15th August 2012. During his time in Ireland he and S.P. formed a relationship and their daughter, A.L.M. was born on the 27th March 2010. The child's application for refugee status was initiated on the 12th May.

5. Both parents attended the s. 11 interview in respect of the child applicant's claim on 8th June, 2010. At this time both parents had been refused refugee status by the Refugee Appeals Tribunal at the conclusion of separate applications and had initiated their applications for subsidiary protection and under s. 3 for leave to remain in the State.

6. T.M. informed the interviewer that he feared that his daughter would be targeted in Rwanda because of his Tutsi ethnicity. His parents had been killed during the genocide conducted in Rwanda by the Hutu against the Tutsi. He feared that she would be killed as were his parents. It was pointed out to him that UNCHR were helping Rwandan nationals living as refugees in other countries neighbouring Rwanda to return to their homes. Nevertheless, T.M. feared for his daughter if she were returned.

7. S.P. was asked about her fear of persecution if returned to Sierra Leone. She had claimed asylum based firstly on her claim that she had, as a child, been kidnapped by a rebel militia and forced to train as a child soldier following an attack upon her village in which her parents were killed. She was detained for three weeks. She claimed that she was beaten and raped during this period. She then escaped and walked to her uncle's house where she remained for four years. The RAT did not accept the credibility of her account and concluded *inter alia* that since she was able to live for a long period in a nearby village with her uncle her account (even if true) could not be regarded as the basis for an alleged fear of persecution.

8. The facts upon which S.P. mainly relied in her own case arose from her fear that she, a Christian, would be forced by her uncle to convert to Islam and marry a Muslim who had given money to him as a dowry. She claimed that when she refused to convert, be circumcised and marry this man she was beaten.

9. The applicant left her uncle's house and went to live with a female friend in Koidu about forty minutes by bus from her uncle's village for about two months. She met a young man who became her boyfriend in 2003.

10. She had no further contact with her uncle. However, she described an occasion in November 2004 when two men dressed as women accosted her. She alleges that they and two others kidnapped her at gun-point, took her to a forest and raped her. She said she was tied to a tree and told if she did not marry the man chosen by her uncle she would be killed. Her attackers were then chased

away by a local farmer who took her to his home and looked after her. She remained there for seven days. She said they left behind a camera upon which they had recorded what they had done for her uncle. She retained the original photographs developed from the camera and gave the police photocopies. She threw the camera away after she had the photographs printed.

11. S.P. then went to live at her boyfriend's house in Kambia (five hours from her uncle's home) where she lived for one year and five months i.e. from November 2004 to April/May 2006. In February 2006 her uncle came upon her in the local market place and assaulted her. He wanted to force her to go back home with him. He allegedly started to beat her but she escaped.

12. She continued to live with her boyfriend who owned two farms. After this assault he sold one of his farms to pay a woman to take her out of the country. She was pregnant at this stage. He did not intend to sell his other farm and follow her. She heard that after she came to Ireland her boyfriend had been stabbed to death and she suspected that her uncle was involved. A document purporting to be his death certificate was produced which did not indicate a cause of death and recorded it as having occurred on the 26th October 2006. She was scared that her uncle would injure her daughter. She feared that she would be coerced into marriage. The Tribunal in her case did not accept that her account was credible. In her child's appeal hearing at the Tribunal she expressed the fear that if A.L.M. returned to Sierra Leone she would face similar pressures to covert, undergo Female Genital Mutilation and be subjected to a forced marriage.

13. ORAC recommended that the child applicant should not be accorded refugee status. The matter was appealed to the Refugee Appeals Tribunal.

14. At the appeal hearing S.P. indicated that she was not married to T.M. They met in a hostel in Sligo. She had not heard from her uncle since she left Sierra Leone and was not aware whether he was dead or alive. Her uncle was a farmer in Kono Village which was a good distance from Freetown, where she resided before arriving in the State. She did not return to the Police between 2004 and 2006 concerning the attack upon her in 2004. The Tribunal in her own case found these aspects of S.P.'s evidence incredible. Even if true, the Tribunal was satisfied that there was no well- founded fear of persecution because the issues relied upon could have been addressed safely within Sierra Leone. As will be seen below the credibility issues were compounded by later information which became available to the respondent from the UK Border Agency and are referred to in the assessment made in the subsidiary protection determination.

15. T.M. outlined that he had lost his parents in the genocide in Rwanda. He claimed that his family were Tutsi. He had been brought to live in Nigeria at the age of four. He was abandoned by his foster family when his foster father died. He was unaware of the current position in Rwanda. He believed that if he were to return the infant child would be imprisoned and there would be no one to protect her. She would have no where to live. He believed that the Tutsi genocide was still continuing in Rwanda and that the police in Rwanda would harm her. He stated that he could not go to Nigeria with the applicant as the Nigerian Police would require him to steal for them. He said he was a Muslim and the applicant was also a Muslim. It was pointed out to T.M. that the questionnaire stated that the applicant was a Christian. The applicant's father stated that the applicant was also taken to church but she had not been baptised.

16. The Tribunal determined that the applicant's claim in this case was based entirely on her parents' asylum application. Their respective claims had been deemed to be unfounded. The Tribunal, having considered country of origin information in respect of Rwanda concluded that T.M.'s claim that the child applicant would face persecution due to her Tutsi ethnicity were she to go to Rwanda was not supported by country of origin information and could not be deemed to be well-founded.

17. The Tribunal also considered S.P.'s grounds for seeking asylum. It was not satisfied that S.P.'s fears in relation to Sierra Leone were well founded. It was satisfied that the applicant could return to Sierra Leone with her mother and live apart from her mother's uncle. Considering the time that had elapsed since S.P. left Sierra Leone, the fact that the applicant's mother's uncle was unaware of the applicant's existence, the population of Sierra Leone and the fact that the applicant's uncle was a farmer from a village far from Freetown, the Tribunal was not satisfied that the applicant's mother's uncle would be aware of S.P.'s return to a large city such as Freetown.

18. The Tribunal in refusing the application had regard to the decision of Clarke J. in *M. v. Refugee Appeals Commissioners & Ors* (unreported High Court 23rd June, 2005) and *M. (a minor) v. The Minister for Justice, Equality and Law Reform* [2009] IEHC 233 (Clark J.). who held that if a decision maker in the refugee process came to a justified decision which is not subject to being quashed on review that a well founded fear did not exist of fear of persecution on the part of the parent of an infant applicant, that finding would equally apply in relation to the position of any minor whose claims were based upon precisely the same grounds. The Tribunal was satisfied that insofar as the applicant's claim related to her parent's asylum application, her claim in that regard could not be regarded as well founded. The application was refused on the 20th September, 2010.

Subsidiary Protection

19. On the 10th November, 2010 an application was made on behalf of the child applicant for subsidiary protection pursuant to the European Communities (Eligibility for Protection Regulations) Statutory Instrument No. 518 of 2006 and Council Directive 2004/83/EC of 29th April, 2004.

20. In this application it was claimed that the child was a national of Sierra Leone and/or Rwanda. It was submitted that there were substantial grounds for believing that if returned to Sierra Leona and/or Rwanda she would face a real risk of suffering serious harm and was unable and/or owing to such risk unwilling to avail herself of the protection of that country. The application relied upon the details that her mother had already furnished of the violence she claimed she had to flee due to her arranged marriage with an older Muslim man in Sierra Leone as set out above. The mother's fear was that the applicant would also be subjected to violence and separated from her should the arranged marriage proceed in Sierra Leone.

21. Her father's account of how he had escaped from Rwanda as a child when his parents were killed by the Hutu because they were Tutsi was also relied upon. He feared that his daughter would be persecuted as she is also Tutsi. The more detailed account of the factual background relied upon already on the file was referred to in respect of both parents.

22. The Minister for Justice and Equality determined that the applicant was not a person eligible for subsidiary protection on 10th January, 2012, notification of which was given on the same date.

23. The determination considered the fear advanced on the child applicant's behalf of serious harm and posed the question whether substantial grounds had been shown for believing that if returned to Sierra Leone or Rwanda the child applicant would face a real risk of torture or inhuman or degrading treatment or punishment and critically whether protection would be available to and accessible by her in either country. Having reviewed the country of origin information in respect of Sierra Leone the conclusion was reached that

the applicant had nothing to fear if returned to Sierra Leone in relation to torture or other cruel inhuman or degrading treatment or punishment. It was found that the Government of Sierra Leone did not tolerate this type of behaviour and that its constitutional and legal system prohibits such practices. The child had committed no crime or come to the attention of the authorities and personally had nothing to fear. It was noted that every person whose mother is or was a citizen of Sierra Leone and has not acquired citizenship of another State is deemed to be a citizen of Sierra Leone by birth under the Sierra Leone Citizenship Act of 1973 as amended in 2006.

24. It was noted that the applicant's claim was based on that of her parents who were both the subject of negative recommendations for refugee status by the Office of the Refugee Application Commissioner (ORAC), decisions which were upheld by the Refugee Appeals Tribunal. Of course given the age of the applicant her personal credibility had not been questioned at the Refugee Appeals Tribunal stage. However her claim was based on that of her parents. Serious doubts were raised in respect of her mother's credibility at the Refugee Appeals Tribunal and there was evidence on her mother's file to indicate that she was in fact from Nigeria.

25. This emerged in the following way. A letter was written to S.P. on 24th August, 2011 indicating that new information had come to the Minister's attention that the United Kingdom Border Agency had received a visa application from the applicant's mother under a different name. As part of this visa application her mother had provided a Nigerian passport. The visa was delivered to her in Lagos. This raised serious credibility concerns in relation to S.P.

26. The determination also addressed the credibility of her father T.M. Issues were raised in relation to his nationality as detailed in ORAC's report pursuant to s. 13(1) of the Refugee Act 1996 (as amended) and in the findings of the Refugee Appeals Tribunal. The applicant's father claimed to have been born in Rwanda but to have lived in Nigeria since the age of four. The Tribunal raised credibility concerns concerning his account of fears that he expressed relating to Nigeria.

27. The serious credibility issues raised in respect of the parents by extension applied to the applicant's own case the determination of which was substantially dependent upon their claims. It was concluded that she did not warrant the benefit of the doubt. Thus the subsidiary protection application was refused.

The Case of S.P. – the Applicant's Mother

28. The applicant's mother, S.P. claimed to be a national of Sierra Leone in her application for refugee status. The court has already set out the credibility issues that arose in respect of her claim for refugee status. ORAC declined to recommend S.P. for refugee status. She appealed to the Refugee Appeals Tribunal which upheld the decision. The Tribunal determined that the claim was neither coherent or plausible.

29. S.P. then applied for subsidiary protection on 19th October, 2009. It was refused on 25th February, 2011. That application was based on the same facts which founded her application for refugee status. The UK border Agency information emerged later.30. The determination concluded that S.P. had nothing to fear when returned to Sierra Leone in respect of torture or other cruel inhuman or degrading treatment. Country of origin information was relied upon to the effect that Sierra Leone's civil war was over. It was concluded that she could relocate to Sierra Leone in another town or area or move to another part of the country to get away from her uncle. Her personal circumstances were outlined. It was noted that her religion was Christian. Her first language was Creole. She also spoke English and had eight years of formal education but did not complete her secondary studies having left school in 1995. She gave no work history. She was described as single but named her partner as Mr. Kareem Shittah. This was the young man who was allegedly murdered after her departure from Sierra Leone. Her parents were described as deceased and she did not know the whereabouts of her two younger sisters and brother. Her son was born on 10th September, 2006 in University College Hospital. A conclusion was reached that there was nothing in her personal circumstances that would prevent her from seeking protection from the authorities in Sierra Leone. Furthermore it had not been demonstrated that Sierra Leone was unable and unwilling to provide protection against the treatment allegedly suffered by her. The alleged inflictors of the treatment could not be considered to be "actors of serious harm" within the meaning of Regulation 2(1).

31. There was considerable emphasis placed on the applicant's credibility and whether the benefit of the doubt should be given to her. It was noted that the applicant's credibility was questioned at the Refugee Appeals Tribunal. A very extensive quotation from the Refugee Appeals Tribunal decision was then set out in the determination at the conclusion of which it was stated that because of the doubt surrounding her credibility the applicant did not warrant the benefit of the doubt and a recommendation which was acted upon was made that she should be refused subsidiary protection.

32. An application was made to the High Court for leave to apply for judicial review to quash the decision refusing the application for subsidiary protection and a further decision made to deport S.P. on 2nd March, 2011. This was refused on the basis of S.P.'s lack of candour in the following circumstances as set out in the judgment of Cooke J. (*S.P. v. the Minister for Justice, Equality and Law Reform Ireland the Attorney General*) (unreported High Court Cooke J. 20th January, 2012)

> "11. In moving the application for leave to seek judicial review of the subsidiary protection decision, particular emphasis has been placed by Counsel for the applicant both in the written legal submissions and in oral argument upon the allegedly unlawful, unfair and irrational reliance placed by the respondent on the issues of lack of credibility in the Tribunal decision; on the respondent's use of country of origin information and on the alleged disregard by him of the representations of submissions presented in the application for subsidiary protection. It is claimed that the rejection of the claim by the Tribunal "was based purely on conjecture and without proper regard to other factors".
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> 12. On 22nd September, 2011 shortly before the return date for the motion seeking leave, an affidavit sworn by Chris Carroll on behalf of the respondent was filed and served. In addition to putting before the court the documentation in relation to the full asylum process in the case, this affidavit exhibited correspondence which the respondent had exchanged with the UK border agency in August 2011. This disclosed that a woman whose finger prints matched those of the applicant furnished by the respondent had sought to enter the United Kingdom on 23rd November, 2002 using a valid Nigerian passport issued to a Muyibat Doyin Olaleye. According to the information supplied by the UK Border agency that passport holder had sought to enter the UK on foot of a visa delivered in person to her in Lagos on 15th November, 2002 and valid for multiple visits to the UK from that date until 15/11/2004. The agency stated:
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> > "The visa was issued on the 15th November, 2002 and used to enter the United Kingdom on 23rd November, 2002. The passport holder was then refused entry on 29th November, 2003 as the visa had been subsequently falsified. Removal directions were set for her return to Nigeria but she failed to attend as required and has been treated as an absconder."

13. On 24th August, 2011 the Minister had written to the applicant putting this information to her and inviting her within 15 days to make any observations or comments she might have as to why she ought not to be returned to Nigeria. The applicant and her solicitors do not appear to have replied to that letter.

14. On 15th December, 2011 however the applicant swore a replying affidavit dealing both with the grounds for obtaining an extension of time for the leave application (see further below) and by way of answer to the information given in the affidavit of Chris Carroll. Because of its importance to the reason why the court has decided to refuse to grant leave, it is necessary to quote in full the applicant's explanation for her admitted visit to the United Kingdom at a time she claimed to living with an uncle in Sierra Leone and her non disclosure of that fact at any stage in the asylum process.

> "I say and reiterate that I am citizen of Sierra Leone. In November, 2003 I had a boyfriend in Sierra Leone. His first name was Camara I do not recall his surname. He invited me on a holiday and together we left Sierra Leone in November, 2003 and we flew directly to Cote D'Ivoire then to Saudi Arabia and then to London. He was wealthy and paid for all the expenses and also supplied me with the documentation for travelling. As far as I recollect I had a different passport for each leg of the trip and none of them were (sic) genuine. On arrival in London the Nigerian passport which had been given to me by my boyfriend was taken from me by the Immigration Authorities. I understand that it was obvious that it was a false passport because the photograph showed me wearing headgear which would not have been permitted in the normal course for a passport photograph. I was let into the UK and told by the authorities at the airport to "come back tomorrow". My boyfriend became very frightened – I believe he may have been involved in trafficking and that is why he appeared to have a plentiful supply of "travel documents" available. He was anxious to leave the UK and did not take me back to the authorities the following day but rather took me back to Sierra Leone approximately two days later. This holiday in total lasted only for approximately one week. I accept that I said at part 4 of my questionnaire … that I had not previously travelled out of Sierra Leone and I said this because I was afraid because I thought that short trip would be hard to explain and also that it was not of any relevance to my claim for asylum in Ireland as it predated the events leading up to my asylum application … Upon my return to Sierra Leone, I went back to my uncle in Kono District and lived there. My uncle was putting pressure on me to marry a friend of his and that is the period and that is the period that the experience related by me in my asylum claim commenced".

15. It is thus clear that although the applicant claims to have been in the UK in 2003 rather than in 2002 and only for a week, she does not now dispute that she was the woman who had claimed to enter the UK using a Nigerian passport and a name other than the name she now uses. Furthermore she accepts that the visit in question was entirely voluntary for holiday purposes and thus wholly unrelated to any persecution and/or harm she now claims to have suffered prior to that date. In the view of the court, this is of fundamental significance for the admissibility of the present judicial review application. In essence there has clearly not only been a material lack of candour and truthfulness on the part of the applicant throughout the entire asylum and deportation process but the grant of leave to seek judicial review in these circumstances upon the grounds sought to be advanced would require the court to sanction the prosecution of a substantive judicial review hearing upon a basis which would effectively be false. …"

33. Cooke J. was dissatisfied with S.P.'s affidavit of 15th December, 2011 because it was significantly "disingenuous and unforthcoming" as a response to the information from the UK Border Agency. It left a series of questions unanswered. Thus it did not explain how she left the UK after two days without a passport, how she re-entered Sierra Leone without a passport, by what flights or through which airports she returned. She failed to explain how the passport with a visa was delivered to her in person in Lagos on 15th November, 2002. The court noted that a claim for subsidiary protection made no distinction between her mistreatment and threats of violence from her uncle before and after either of the possible dates of her visit to London. Indeed the continuity of serious harm alleged to have been suffered from January 2000 until her arrival in Ireland in September 2006 was emphasised in her application for subsidiary protection. There was no attempt to avail of international protection in the United Kingdom where she went on a holiday.

34. Cooke J. therefore concluded as follows:-

> "22. Accordingly, the applicant has not only lied in the asylum application when she said that she had never previously left Sierra Leone, but the deliberate non-disclosure of the London holiday means that all of the decisions made throughout the process by the Commissioner, the Tribunal or the Minister have been made on a false basis. Nor is what is sought to be suggested in this situation be excused as a mistake made by a woman coming from a rural African background with little education to a wholly strange country and a new culture in circumstances of great stress. Quite apart from the applicant's connivance in the arrangements for the holiday visit to the United Kingdom which she clearly knew to be unlawful, the handwritten memorandum of comment and rebuttal of the Tribunal decision … clearly demonstrates that the applicant is fully able to read a Tribunal decision and to formulate a response to identified findings of credibility."

The learned judge concluded that to grant the leave would be manifestly unreasonable and inequitable to the respondent who would be required to meet a case which purported to challenge the reliance upon the applicant's credibility when that process itself had been falsified by the applicant's deliberate concealment of a significant event to both her claim and her personal history. "It is in that sense that a substantive hearing of a judicial review on the terms demanded by the present application would be fundamentally false". The court also noted that the UK authorities did not say that the passport was false only that the visa was falsified. It is the applicant who now claimed that the passport was false. He added:-

> "24. … Quite apart from the crucial doubt which is thereby raised with the respondent at this stage as to whether the applicant is indeed from Sierra Leone and not from Nigeria, what is significant is that she admits to having been able to leave Sierra Leone voluntarily in 2002 (or 2003) at a time when she now claims to have been the subject of persecution by her uncle. She further asserts that she then returned voluntarily to Sierra Leone to that uncle and that source of persecution."

Thus the application was refused because of lack of candour amongst other reasons.

35. It is against that background that the conclusion concerning serious doubts in respect of S.P.'s credibility in the decision on ALM's application for subsidiary protection must be viewed. At the time of the child's application for subsidiary protection the Minister was aware of the matters set out in the judgment of Cooke J. summarised at p. 13 of the subsidiary protection determination and concluded that "this raises serious credibility concerns in relation to the applicant's mother and by extension the applicant's own

case". This, of course, was because the applicant was relying upon her mother's application as the basis upon which to establish a risk of harm which the child was said to face in Sierra Leone. The same falsehoods and concealment applied to the child's application for asylum and for subsidiary protection.

T.M. – the Applicant's Father
36. T.M. claimed that he was a Rwandan national and that he was rescued by a Mr. M., a Nigerian national, during the Civil War. He claims to be a Tutsi, of the Muslim faith and speaks English and Yoruba. He claims that he was born in Rwanda in 1990. During the genocide in 1994 he claims to have lost his elder brother and was rescued by Mr. M. He was brought from Lagos to Benin. Mr. M died. T.M. went to his basketball coach and told him that the family that was caring for him could no longer take care of him anymore in Nigeria. His coach advised him to come to Ireland and claim asylum. He does not wish to return to Rwanda because he has a fear of the Hutu's killing the Tutsi's. He has resided in Nigeria between 1994 and 2007. He travelled then from Lagos in April 2007, arriving in Dublin via Paris.

37. In his own application for subsidiary protection T.M. stated that when his guardian Mr. M. died in 1999, he was placed in the care of an orphanage. Having completed primary school in 2003 he played basketball for the Whales basketball team. He claimed that in 2007 he was approached by the army who wanted him to steal for them and threatened that if he did not do so he would be killed. He explained this to his basketball coach who decided to help him to leave the country. He claims that if he were to be returned to Nigeria he fears that he would be killed for refusing to steal for the army. If returned to Rwanda, he fears that he would be targeted by the Hutu people because he is Tutsi.

38. The determination of his application for subsidiary protection states that there are serious credibility issues surrounding his claim to Rwandan citizenship. It quotes from the ORAC decision on this matter which concluded that it was highly unlikely that he was in fact Rwandan. It stated:-

> "The applicant does not have any knowledge of his alleged family, home town or local language in Rwanda that would satisfy the examiner that he is indeed from there. The applicant claims to have spent the rest of his life living in Nigeria. It is considered likely that the applicant is in fact from Nigeria having regard to his statements at interview and regard to the documents he has submitted.
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> The applicant's account is not deemed to be credible."

39. The Refugee Appeals Tribunal's decision on T.M.'s appeal from a refusal to recommend that he be granted refugee status is also quoted. It stated:-

> "The applicant appears to have some kind of status in Nigeria. He lived in Nigeria for a significant period of time. He attended school in Nigeria, played for a basketball team and lived in a State orphanage. During the interview … the applicant stated he had no problem in Nigeria and there is no mention in the questionnaire about difficulties the applicant had with the Nigerian army. During the appeal hearing the applicant stated that the army in Nigeria wanted him to steal and they threatened to kill him if he refused. The applicant's account in this regard is not credible as it would be reasonable to expect the applicant would have mentioned these threats to his life in the questionnaire or during the interview.
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> During the interview the applicant was unable to give the first names of Mr. M. and his wife … the applicant's lack of knowledge in this regard undermines the credibility of his account …"

The Tribunal also noted that the applicant gave two different dates of birth, one when he arrived in Ireland and another when he filled out the form pursuant to s. 8 of the Refugee Act 1996. It found that his account of events in Nigeria was not credible and any fear he may have in relation to Nigeria was not well founded. The Tribunal also concluded that his fears in relation to Rwanda were not well founded. This was supported by extensive country of origin information indicating a policy of non-recognition of ethnic identities. The subsidiary protection determination stated that in light of these matters it was reasonable to consider that the applicant's statements in relation to his claim to fear a return to Rwanda or Nigeria were not credible. As a result, it was concluded that his claim was not credible.

40. In respect of the child applicant's case, the determination on subsidiary protection refers to her father's case and the credibility issues raised in relation to his nationality. It concluded that by extension this raised credibility issues in the child applicant's own case which was founded entirely on her parents' claims.

41. The determination then states that "because of the doubts surrounding the credibility of her parents' claims and by extension her credibility, the applicant does not warrant the benefit of the doubt". It is clear that the applicant is dependent upon the credibility of her parents' claims in respect of nationality and a real risk of suffering serious harm because of her age and the fact that she was born in Ireland.

42. On the 7th February, 2012 the Minister wrote to the child applicant's solicitors who also acted on behalf of her mother in respect of her application for subsidiary protection and an application which had been made on her behalf for leave to remain under s. 3 of the Immigration Act 1999. The letter formally notified the solicitors that the United Kingdom Border Agency has informed the Minister about the child's mother's entry into the United Kingdom using a Nigerian passport and a visa which had been delivered to her mother in Lagos, Nigeria. The solicitors were informed that the Minister intended to consider the child's application on the basis that she was a Nigerian citizen because her mother held and was in possession of a Nigerian passport. The solicitors were given fifteen days within which to make further representations in relation to the matter. A reply was furnished dated 20th March, 2012 which set out an explanation which has already been referred to extensively in the judgment of Cooke J. quoted above.

The Present Proceedings
43. The applicant seeks leave to apply for judicial review following an application made *ex parte* to Cooke J. on 25th April, 2012. The learned judge directed that the matter should proceed by way of notice of motion. An application was made grounded on the affidavit of the applicant's next friend S.P. That affidavit sets out a chronology of the course of events in respect of the minor's application for refugee status. A number of documents were exhibited in the affidavit. These included the ASY1 form, a copy of the applicant's questionnaire and the s.11 interview conducted in respect of the applicant dated 8th June, 2010. A copy of the decision of the Refugee Appeals Tribunal dated 20th September, 2010 was furnished. Further correspondence in respect of the child applicant's case and a copy of the proceedings involving her mother S.P. and the judgment of Cooke J. in those proceedings set out above were also exhibited.

44. The grounds upon which leave is sought in this case were originally set out in a statement of grounds dated 11th April, 2012. Relief was sought on grounds E1, 2 and 3. The first ground may be summarised as a complaint that the respondent had a duty to reach a preliminary finding on the question of the minor applicant's nationality "in circumstances where there is clearly a significant doubt in the mind of the first respondent as to the nationality/citizenship of the applicant's parents". It was contended that the nationality of the parents ought to be determined before carrying out an assessment of the application. It was also contended that any procedural failings or misrepresentation by the parents in respect of their nationality should not have been visited upon the applicant. It was claimed that the respondent in making a determination was not entitled to rely upon the conclusions of the Refugee Appeals Tribunal but was obliged to reach a decision independent of the conclusions of that body.

45. The second ground contended that there was a failure by the respondent to co-operate with the applicant in assessing the relevant elements of the claim in breach of the minimum standards mandated by the terms of Council Directive 2004/83/EC of 29th April 2004 (hereinafter "the Qualification Directive").

46. Thirdly, it was claimed that the unavailability of an effective remedy under which an impugned decision refusing subsidiary protection may be challenged was unlawful. In particular, the absence of an appeal mechanism was cited as a fundamental flaw in the procedure. Furthermore, it was contended that the Minister could not be regarded as an impartial decision maker because he had been involved in refusing the application for refugee status. I am satisfied for the reasons submitted by the respondent that these grounds do not provide a basis for granting the relief claimed.

47. The same solicitors representing S.P. and the child applicant also applied for leave to apply for judicial review on behalf of T.M. (*T.M. v Minister for Justice and Equality* Record No. 2012/841 JR) for an order of *certiorari* quashing the decision of the Minister refusing to grant T.M. subsidiary protection dated 16th July, 2012 and the deportation order made on 11th August, 2012. This application was based on more extensive grounds than those relied upon in the child applicant's application. In the course of those proceedings an affidavit was filed on behalf the respondents in which Mr. Denis Byrne stated that the Minister wrote to T.M. on the 8th March, 2012 informing him that for the purposes of both his subsidiary protection application and his representations pursuant to s. 3 of the Immigration Act 1999 the Minister would consider the applications based on the fact that he was habitually resident in Nigeria. However, in refusing the application for subsidiary protection and in making the deportation order the Minister considered both Nigeria and Rwanda.

48. In the affidavit of Alan King submitted 28th June, 2016 it is stated that in the course of correspondence S.P., named by T.M. as his partner and mother of his children including the child applicant in this case, submitted two original Nigerian passports for the applicant and herself. These passports were referred to the Garda Technical Bureau in the Phoenix Park for examination and subsequently a report was received dated 13th May, 2016 indicating that both passports were genuine Nigerian passports. Mr. King therefore averred that S.P. and T.M. were both Nigerian nationals and not nationals of Rwanda as the applicant claimed or Sierra Leone as was claimed in respect of the case of S.P. It was therefore claimed that the applicant had demonstrated lack of candour and *mala fides* in his dealing with the Minister and with the court. T.M. withdrew his application for judicial review on 31st March, 2017 and the case was struck out with no order as to costs.

49. In the meantime the case had been made the subject of a telescoped hearing in February 2013 with a direction that it would be heard in tandem with the child applicant's case. Both were heard together. In early 2013 an order was granted permitting additional grounds to be argued in respect of both applications which were the same grounds as those which were the subject of the application for judicial review in M*.L. and others v. Minister for Justice and Equality and others* [2017] IEHC 570.

50. In the child applicant's proceedings an application was made by the respondents to dismiss them as an abuse of process which the court refused in a judgment delivered on the 8th February, 2013 [2013] IEHC 23. It was submitted on behalf of the respondent in that application that the reasons set out in the judgment of Cooke J. for refusing to allow the mother's application for leave to apply for judicial review to proceed applied equally to the minor applicant's case in these proceedings because her claim for asylum was based in large measure on the story told by her mother. It was submitted that the mother's story and verifying affidavit informed the decision making process and the initiation of this judicial review proceeding in the same way that it informed her own claim. It was also submitted that the courts finding in S.P.'s case that it would be manifestly unreasonable and inequitable to expect the respondent to meet a case which purports to challenge the assessment of the mother's credibility in the asylum process when the asylum process itself was falsified by the mother was equally applicable to the child applicant's case. This Court's judgment (at para. 24) accepts that the falsification of the mother's claim was relevant to the applicant minor's claim which was substantially based upon it. However, the relevance of the mother's falsehoods in relation to the child's claim had to be viewed in the context of how the child's claim evolved and the precise basis upon which Cooke J. refused to grant leave to apply for judicial review to the mother.

51. The court noted that the child applicant's claim for subsidiary protection was proceeding as her mother's case progressed and was determined on 10th January, 2012 shortly after the delivery of the replying affidavit by the applicant's mother in her proceedings and days before the judgment delivered by Cooke J. on 20th January, 2012 in that case. It was following the conclusion of that case on 7th February, 2012 that the respondent wrote to the child applicant's solicitors (who also acted for the mother) setting out the UK Border Agency information and requesting submissions in respect of same. At that time, this Court was not satisfied to dismiss the child applicant's claim because of the existence of her father's application for leave to apply for judicial review.

52. The court was satisfied that it was clear from the documentation and the determinations of the Refugee Appeals Applications Commissioner, the Refugee Appeals Tribunal and the subsidiary protection decision in respect of the father's claim that his claim that he was a Rwandan who was taken to Nigeria as an orphan at the age of four was of significance in the determination of the child applicant's status in the State. The father at that time had an intention to pursue judicial review proceedings in his own subsidiary protection case. The rejection of his claim on the basis of credibility and the various legal issues surrounding the making of that decision placed a question over his final status at that time. The court concluded that since the same issue of credibility did not arise in respect of his judicial review application as had been determined by Cooke J. in respect of S.P. it was not possible to conclude that the issues decided in the mother's case coincided precisely with those that arose in the applicant minor's case. Although the child applicant's case might be affected to a significant degree by the decision of Cooke J. in respect of S.P. the court was not satisfied that she was precluded from pursuing her application by reason of an estoppel based on Cooke J.'s judgment or by reason of an abuse of process. The court at that time was not satisfied that the applicant was precluded from continuing with her application on other grounds which encompassed matters beyond the lack of candour and dishonesty that were fatal to her mother's application. The court was also mindful that in exercising its discretion it had to have regard to the rights of the child applicant and any other feature of the case that might entitle her to a remedy by way of judicial review. The court was satisfied at that time that these proceedings were also closely connected to grounds relied upon by her father whose proceedings remained to be determined.

53. As already noted the child applicant was also granted leave to argue the grounds which were the subject of the judgment of this Court in *M.L. and others v. the Minister for Justice and Equality* and set out at paras. 11 and 16 of that judgment. The applicant was

also granted leave to amend her grounds to embrace the issues raised in the decisions of the CJEU in *M.M. v. Minister for Justice, Equality and Law Reform* (Case C-277/11), the High Court in *M.M. v. Minister for Justice, Equality and Law Reform* [2013] 1 I.R. 370 and *M. v. Minister for Justice and Equality* (Case C-560/14).

54. The amended grounds were:-

Additional Grounds

> (1) "By confining the right to apply for subsidiary protection to circumstances in which the asylum seekers entitlement to remain lawfully in the State pursuant to s. 9(2) of the Refugee Act 1996, has expired and a decision has been taken to propose the deportation of the applicant under s. 3(3) of the Immigration Act 1999, Regulation 4(1) of the 2006 Regulations in conjunction with s. 3 of the said Act of 1999, has the effect of imposing a precondition or disadvantage upon a subsidiary protection applicant which is *ultra vires* Council Directive 2004/83/EU of the 29th April, 2004 and is incompatible with general principles of European Union law.
>
> (2) The procedures applied by the Minister with regard to subsidiary protection are unfair and in breach of natural and constitutional justice, and *ultra vires* Council Directive 2004/83/EU and in breach of general principles of the law of the Union, in that:
>
> > (i) the applicant is told of her right to apply for subsidiary protection after being told that her right to remain in the State has expired;
> >
> > (ii) the applicant potentially carries findings of a lack of credibility with her from the asylum process thereby creating a negative impression from the outset;
> >
> > (iii) the applicant cannot bring a claim unless she has been informed by the Minister that she is a failed asylum seeker. The decision to refuse a declaration of refugee status implies that the Minister has already given some consideration to the case and has made a negative determination in relation to the applicant's case. This creates an impression of partiality on the part of the Minister whose officials will also consider the subsidiary protection application;
> >
> > (iv) an application for subsidiary protection is considered during the pre-deportation process, when the Minister has already formed an intention to consider making a deportation order;
> >
> > (v) the competence, knowledge and training of the civil servant assessing eligibility for the subsidiary protection, a complex legal issue, is not regulated; and
> >
> > (vi) in contrast with asylum applications, subsidiary protection applications are not considered by a person who is independent of the Minister in the performance of his function.
>
> (3) The failure of the respondent to provide an oral hearing to the applicant for subsidiary protection in circumstances where such a hearing is available to an applicant for asylum was in breach of the fundamental principles of EU law and *ultra vires* Directive 2004/83/EU."

55. This Court in *M.L.* rejected the same grounds set out at 1, 2(i), (iii), (iv), (v) and (vi). The court heard A.L.M.'s case at the same time as T.M.'s application which relied on similar grounds. The court reserved judgment in respect of both cases and indicated and it was understood by the parties that the determination of the issues in those cases would be significantly influenced by the decision in *M.L.* Consequently, it is clear from the conclusions reached by the court in *M.L.* that these grounds could not possibly succeed.

56. The remaining grounds at paras. 2(ii) and 3 were also the subject of the court's determination in *M.L.* and arose directly from the issues raised in the series of cases involving *M.M.* referred to and cited above in respect of the determination of issues of credibility in the course of subsidiary protection applications and whether an applicant was entitled to an oral hearing. Those issues were considered by the court in *M.L.* at paras. 68 to 94 inclusive of the judgment.

57. The adverse determination of the child's application for subsidiary protection took into account the findings made in respect of the credibility of S.P. and T.M. in their respective applications for refugee status in Sierra Leone and Rwanda. The decision of the Refugee Appeals Tribunal in each case and the express findings that neither were credible informed the decision of the Refugee Appeals Tribunal in the applicant's case for asylum and in her subsequent application for subsidiary protection. The decision of the Refugee Appeals Tribunal on credibility also informed the rejection of the credibility of their accounts in the parent's subsidiary protection decisions and the subsequent deportation orders made against them.

58. It is clear that the child applicant was entitled to have these issues of credibility determined separately from her parents' case as a matter of principle. It is clear from the *M.M.* Case C-277/11 that the right to be heard guaranteed to each applicant for subsidiary protection an opportunity to make known his or her own views effectively during the process and before a decision on subsidiary protection is made. The decision must consider any submissions and all relevant aspects of the case advanced by the applicant carefully and impartially. Thus in a bi-furcated procedure, it is necessary to hear and determine these matters in a separate independent process. This is of particular importance when as in *M.M.* and indeed in this case, the reasons given for rejecting the application for subsidiary protection rely on the reasons given in the asylum application in respect of credibility, in this case the child's parents credibility. However, the court must have regard to the dominating feature of the child's case that it was entirely dependent on the accounts advanced by her parents which were repeatedly found to be lacking credibility. Indeed in her mother's case her claim was demonstrably false.

59. Hogan J. interpreted the requirements set out in Case C-277/11 as meaning that the subsidiary protection issue should not be determined relying upon the reasoning in an earlier asylum application. This might preclude the reopening of the credibility issue. He noted the express disapproval of the CJEU of the reliance placed by the Minister in *M.M.* on the findings made in the asylum application as a ground for rejecting the subsidiary protection application. The learned judge concluded that the Minister failed to provide an effective hearing in the subsidiary protection application because he relied completely on the adverse credibility finding made by the Tribunal in respect of the applicant.

60. At a minimum it was necessary to provide the applicant with the facility to address an adverse credibility finding made by the Refugee Appeals Tribunal. An applicant should be accorded an opportunity to revisit all matters bearing on the subsidiary protection claim in a manner which is completely free of the assessment of the issue of credibility made in a previous asylum application.

61. On appeal to the Supreme Court against the judgment of Hogan J., a further question was referred to the CJEU Case C-560/14 in which the court was asked whether the "right to be heard" on an application for subsidiary protection required an oral hearing including the right to call or cross-examine witnesses in the context of bi-furcated procedure. The court determined that the right to be heard in such cases did not require "as a rule" that the applicant for subsidiary protection should be accorded a right to an interview relating to his application and the right to call or cross-examine witnesses when that interview takes place. However, it added that an interview must be arranged where specific circumstances relating to the elements available to the competent authority or to the personal or general circumstances of the applicant render it necessary in order to examine that application with full knowledge of the facts. It held that an interview must be arranged if the competent authority is not objectively in a position to determine with full knowledge of the facts whether substantial grounds have been shown for believing that if returned to his country of origin the applicant would face a real risk of suffering serious harm or whether he is unable owing to such risk to avail himself of state protection in that country. The interview could allow the competent authority to question the applicant regarding the elements which are lacking for the purpose of taking a decision on his/her application and establish whether conditions laid down in Article 4(5) of the Directive were met. It might also be necessary, for example, if due to an applicant's age or other matters his/her specific vulnerability was apparent. It is clear in that context that the nationality of the applicant is one of the essential elements to be considered on such an application.

62. In this case it is clear that the nationality of the child was a matter of significant controversy. The relevant country to be considered in respect of her application depended upon its determination. The credibility of each parent on this issue was not accepted in their own applications for asylum, subsidiary protection and ultimately the deportation orders made against them. The child applicant's claim in respect of asylum and subsidiary protection was necessarily dependent on the credibility of her parents' claim of nationality. This follows inexorably from the fact that she was born in Ireland. There was no other experience upon which the application could be based. It is clear that previous High Court decisions held that when a decision maker in a refugee process came to a justified decision which was not subject to being quashed on review that a well-founded fear of persecution did not exist on the part of an applicant, that finding would apply equally in relation to the position of any minor whose claims were based on precisely the same grounds. That is how the child applicant's claim for refugee status was lawfully determined. It is not surprising therefore that the subsidiary protection decision maker would take into account the finding made in respect of credibility of the parents of the child applicant as considered in the decision of the Refugee Appeals Tribunal when the child could have no other grounds for the application than those based upon the alleged experience of her parents. This is consistent with the principled approach adopted in the case-law referred to above.

63. It is clear that the Refugee Appeals Tribunal held an interview with the parents in respect of which it formulated its own determination on credibility and also considered the previous decisions on credibility in respect of the parents' claim in their respective asylum applications. It is said that it is insufficient for the respondent to simply adopt the findings on credibility reached in the Tribunal decision in respect of the child applicant concerning her parents. However, there was additional evidence considered.

64. The court must also take into account the reality that the facts advanced by S.P. concerning her nationality in her and A.L.M.'s applications in the asylum and subsidiary protection processes were untrue. S.P. and T.M. persisted in maintaining the stance that S.P. was a national of Sierra Leone in this application for judicial review in which S.P. acts as A.L.M.'s next friend and swore the verifying affidavit. The same facts were also asserted by T.M in an affidavit in these proceedings sworn on the 3rd October 2012.

65. The additional information furnished to the respondent concerning S.P.'s entry to the United Kingdom from the United Kingdom Border Agency information is set out above. A full opportunity was given to the child applicant's solicitors to address this information in correspondence which they did. The explanation furnished to the respondent was considered. It is clear that serious doubts were raised in respect of her mother's credibility at the Refugee Appeals Tribunal. The respondent in the assessment of the claim considered that this additional evidence indicated that her mother was in fact from Nigeria. There is a serious credibility concern in relation to the applicant's mother and by extension to the applicant's own case which was part of the reason for the conclusion that she would not face risk of serious harm if returned to Sierra Leone.

66. It should also be noted that this Court, as is clear from the judgment of Cooke J. set out above considered that the applicant's mother, her next friend in these proceedings, had demonstrated a material lack of candour and truthfulness in her application for judicial review and throughout the entire asylum deportation process. It is clear that a similar lack of candour and dishonesty was maintained in the course of these proceedings which was considered in the judgment of this Court in 2013.

67. In the meantime T.M., the child applicant's father relied on his claim for Rwandan nationality in his applications for subsidiary protection and for leave to remain under s. 3 of the Immigration Act 1999. His nationality was in issue. The credibility of his claim to be a Rwandan national was not accepted in his application for refugee status by the Refugee Appeals Tribunal. Subsequently when advanced as a ground for claiming asylum by the child applicant based on her parents' experience, his credibility was not accepted in accordance with the decision in M *(a minor) v. the Minister for Justice, Equality and Law Reform* and *M.V. v. Refugee Appeals Commissioner and others* (unreported High Court 23rd June, 2005). The child's application for refugee status was unsuccessful on the grounds of her father's lack of credibility as well as that of her mother. T.M.'s application for subsidiary protection also failed on grounds of lack of credibility and on the basis that if returned to Rwanda he would not be subject to a serious risk of harm on the basis of country of origin information. The child applicant's application for subsidiary protection insofar as it was based on her father's claims was also rejected on the ground that credibility issues had been raised in relation to his nationality in the s. 13(1) ORAC Report and in the findings of the Refugee Appeals Tribunal. The Tribunal also raised credibility concerns in relation to his account of fears he may have had relating to Nigeria. This was said to raise serious credibility issues in relation to the child applicant's case.

68. T.M. launched an application for judicial review of the Minister's decision to reject his claim for subsidiary protection and the deportation order made against him. T.M. was granted leave to amend the grounds of his application to reflect the same grounds as those set out in *M.L.* set out above and the additional grounds concerning the reliance by the Minister in the subsidiary protection decision and findings relating to lack of credibility made by the Refugee Appeals Tribunal in T.M.'s case- the *MM* series of cases. T.M. was also granted leave to advance the ground that the failure of the respondents to provide an oral hearing in the subsidiary protection process was in breach of fundamental principles of EU law and *ultra vires* Directive 2004/83/EU. This Court heard full argument in relation to all of the grounds advanced by T.M. at the same time as the child applicant's case. The judgment was reserved until the finalisation of the judgment in *ML* and the references in the *M.M.* cases referred to above. It was intended and understood that the grounds advanced in the case of T.M. and the child applicant would be fully considered in the test case of *M.L.* the judgment in which was delivered on the 20th June, 2017. In the meantime, an original Nigerian passport in the name of T.M. was submitted to the Department of Justice in 2016 which was authenticated as genuine by An Garda Síochána. T.M. withdrew his

proceedings which were struck out by order of this Court on the 31st March, 2017. S.P also now holds a Nigerian passport.

69. It follows that the orders and decisions made deporting S.P. and T.M. to Nigeria are now of full effect and that the subsidiary protection decisions and asylum decisions made in respect of the parents are valid and have full legal effect.

70. The court is satisfied that there is no basis in law or fact for a claim that the child applicant is a national of Sierra Leone or Rwanda. The court is satisfied that the child's parents are nationals of Nigeria and fully entitled to travel to Nigeria on foot of valid Nigerian passports. The basis of the child's mothers claim was patently false from its inception. At the very least any claims raised in respect of Rwanda are and were entirely irrelevant to the child applicant's case. Her application for subsidiary protection was based upon the claim that she was either a national of Sierra Leone or Rwanda or both which is incorrect. There is no basis upon which to challenge the subsidiary protection decision which was based upon those claims of nationality and consequently there can be no issue of credibility arising in relation to the determination of that claim under the principles applicable in *M.M.* or otherwise. It would be unfair, unjust and unreasonable to grant relief by way of judicial review on any of the grounds advanced in respect of a subsidiary protection decision which was advanced and considered on an entirely wrong and false basis.

71. On 15th August, 2012 following a decision making process pursuant to s. 3 of the Immigration Act 1999 the Minister dealt with the proposed deportation of the child applicant on the basis that she would be returned to Nigeria and not to Rwanda or Sierra Leone. In a supplemental affidavit the court was furnished with a true copy of the deportation order and a copy of the examination of file and letters notifying the applicant's solicitors of the making of the deportation order. No challenge was made to this deportation order in these proceedings. It remains in effect. This order followed the letter of the 7th February, 2012 in which the child applicant's solicitors were informed that based on the information received from the UK Border Agency and the Nigerian passport used in her mother's visa application in Lagos, Nigeria which indicated that she was a Nigerian national it was intended to process the application for leave to remain under s. 3 on the basis that the child was a Nigerian national. In the events that followed it would appear that this decision was in accordance with the facts of the case.

72. Having considered all of the grounds advanced on behalf of the child applicant, the evidence and history of this case together with that of S.P. and T.M., the court is satisfied that this application should be refused. Even if any of the grounds advanced had any merit, which they do not, the court would exercise its discretion against granting any relief having regard to the lack of candour displayed by the parents in the case throughout this process.