

**THE HIGH COURT  
JUDICIAL REVIEW**

**2008 847 JR**

**BETWEEN**

**F. T.**

**APPLICANT**

**AND**

**REFUGEE APPEALS TRIBUNAL (OLIVE BRENNAN) AND  
THE MINISTER FOR JUSTICE AND LAW REFORM**

**RESPONDENTS**

**JUDGMENT OF MS JUSTICE M. CLARK, delivered on the 29th day of September, 2010**

1. The applicant, who claims to be a national of Eritrea, applied for political asylum in Ireland in February 2006. According to her narrative which was remarkable for its lack of detail, her husband was arrested in 2005 and she was instructed by a friend who phoned her, to destroy his papers. While engaged on this task the police came to her home and she too was arrested. She was maltreated by the arresting authorities and detained in a police station and then in a prison where she suffered various forms of ill-treatment including beatings, cigarette burns, sexual assault and rapes over a three month period. When she became unconscious she was taken to hospital where she was treated for a further three months before her brother arranged for her to escape. Her brother paid an agent to make arrangements for her leave Eritrea by bus, foot and boat which brought her from Port Sudan to Ireland.

2. The Refugee Applications Commissioner found that her account was not credible and recommended that she should not be declared a refugee. The vague nature of her answers at interview was detailed and it was found that her inability to give any details of her arrest, detention and ill-treatment was not consistent with her detailed narrative of her escape and travel to Ireland. Reports prepared by a HSE Psychologist which described "*somatic symptoms, anxiety, insomnia, social dysfunction and depression*" in the applicant were considered not to be "*conclusive evidence*" of what had occurred to her in Eritrea and it was noted that at interview she seemed a quiet and reserved woman who did not appear to be distressed or upset.

3. The applicant appealed to the Refugee Appeals Tribunal and, of significance to this challenge, she furnished additional medical evidence including a SPIRASI medico-legal report. The examining physician from SPIRASI noted Ms. T's multiple severe psychological difficulties and her history of maltreatment and multiple rapes at the hands of the police and prison authorities. She told the physician that she was taken to hospital because she had severe nose bleeds and vaginal bleeding and had been unconscious. She says she was given a lot of medication and does not remember a lot of things that happened in prison because she has blanked them out. Physical examination found a very unstable right knee and a large number of scars on her inner thighs and chest. The report states that the very numerous scars on her inner thighs "*would be consistent with cigarette burns*" and that:-

*"It is the professional opinion of the Examining Physician that Ms. [T]'s current symptoms and the findings on her physical and mental state examination are consistent with the history that she gives of the ill-treatment that she alleges she experienced at the hands of the soldiers and the police in Eritrea."*

4. A helpful drawing of the applicant's body showing the distribution of the scars and especially the many cigarette burns was appended to this medical report.

5. By decision dated the 9th June 2008 the Tribunal affirmed the Commissioner's recommendation. Following several negative credibility findings the Tribunal Member concluded:-

*"It is incumbent on an Applicant to give an account of that which befell them prior to coming to Ireland. The Applicant, notwithstanding having spent on her own account, some three months in [a named] Prison and three months in hospital, was unable to provide anything relating to either institution other than describing both in the vaguest terms possible. The Applicant however was able to recall and narrate with great particularity the circumstances relating to her journey to Ireland. The Tribunal is familiar and takes cognisance of the effect on the memory of refugees as a result of post-traumatic trauma. While it is accepted that some traumas may indeed be so terrible for the individual involved that they are unable to recall suffering or torture, in the instances of the Applicant's case, having observed her acutely throughout the hearing, I am not satisfied that the criteria applicable in such instances apply in the instances of the Applicant's case."*

*I have considered the medical and psychological reports submitted on behalf of the Applicant and the sequelae regarding the Applicant's state of mind, they are not conclusive evidence of that which the Applicant alleges physically happened to her. While medical and psychological experts are professional competent and able to give reports on the sequelae of an Applicant, they are in the same position as that of the Tribunal in that they are unable to state how or when sequelae came about. These reports have to be read not in isolation but in the overall context of the Applicant's testimony."*

6. The applicant now seeks **leave** to apply for judicial review of the Tribunal's decision on the basis that there was an inadequate assessment of the medical evidence and insufficient regard paid to her psychological condition. The Court is prepared to grant leave on that ground in the terms set out at paragraph 10 below.

7. The applicant challenges the decision on additional and separate grounds. Initially she was represented before the Tribunal by the Refugee Legal Service (RLS) who made detailed written submissions addressing the findings made by the Commissioner and submitted

country of origin information (COI) regarding Eritrea. Shortly before her oral appeal hearing was scheduled to take place, she engaged her current legal representative who made supplementary written submission on the eve of the hearing. Those submissions stated for the first time and in a very unfocussed way that the applicant, by virtue of her status as a failed asylum seeker and her membership of the particular social group of women asylum seekers, would face persecution on return as a failed asylum seeker and as a fugitive. Among the additional COI reports submitted at that stage was an IRCB report of December 2005 which states that *"all evidence points to the arrest and mistreatment, including torture, of failed asylum seekers forcibly returned to Eritrea. This is particularly true of those attempting to escape from military service"* and cites reports that *"that those who were forcibly returned to Eritrea have been mistreated by the government authorities"* and that *"Eritreans returning from abroad [...] risk arbitrary detention if they return to Eritrea and are suspected of opposing the government - even if they have a foreign passport"*.

8. While there is no suggestion that this issue was pursued at the oral hearing, the applicant avers that after she gave evidence at the oral appeal hearing on the 9th January 2008, the Tribunal Member indicated that she was not in a position to hear legal submissions but she invited the applicant's legal representative to make written legal submissions within three weeks. Such submissions were duly made by letter dated the 31st January 2008 in which it was reiterated that *"our client's status as a failed asylum seeker and her mental disturbance are cumulative factors which it is submitted combine to bring our client well beyond the threshold for refugee status."* In furtherance of the claim that returning failed asylum seekers were liable to persecution on return the Tribunal Member's attention was drawn *inter alia* to an Amnesty International Urgent Action report dated the 29th November 2007 entitled *"Fear of torture / incommunicado detention / forcible return"* which records that a named Eritrean woman was forcibly returned from the U.K. via Saudi Arabia on the 21st October 2007 had been detained by airport security on the following day and had not been seen since. It was stated that she was reportedly held in a named military prison and that:-

*"Amnesty International fears [the named Eritrean girl] may be tortured as punishment for evading military service and for seeking asylum, which the authorities regard as betraying the country. She could be detained incommunicado indefinitely without charge or trial, and without any access to the courts. Conditions in military detention are harsh and detainees are frequently tortured."*

#### Background Information

*The Office of the UN High Commissioner for Refugees (UNHCR) issued guidelines to all governments in 2004, which are still in force, opposing the return of rejected Eritrean asylum-seekers on the grounds of the Eritrean authorities' record of serious human rights violations.[...]"*

9. The Tribunal Member appears to have also had before her a U.K. Home Office Operational Guidance Note (OGN) on Eritrea dated April 2007 – possibly furnished by the Presenting Officer – which contains some information that is at odds with the account given in the aforementioned IRCB and Amnesty International reports.

10. An applicant who has made a particular claim has an expectation that it will be considered and a determination made on that claim. The Court is concerned that there is no reference to these submissions or COI reports in the body of the decision which raises the possibility that they were not considered at all.

11. The Court will therefore grant leave on the following two grounds:

*"(i) In the assessment of credibility the Tribunal Member has erred in the approach adopted to the medical evidence placed before her. Her conclusions with respect to credibility and with respect to the medical evidence are unreasonable and irrational."*

*"(ii) With respect to the applicant's asserted fear of persecution as a failed asylum seeker, the Tribunal Member has acted in breach of fair procedures in failing to assess directly relevant submissions and country of origin information furnished by the applicant."*