

THE HIGH COURT**JUDICIAL REVIEW****[2016 No. 5 J.R.]****IN THE MATTER OF THE REFUGEE ACT 1996, AS AMENDED****AND IN THE MATTER OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000 (AS AMENDED)****BETWEEN****OO****APPLICANT****AND****REFUGEE APPEALS TRIBUNAL,****MINISTER FOR JUSTICE AND EQUALITY,****ATTORNEY GENERAL AND IRELAND****RESPONDENTS****JUDGMENT of Ms. Justice O'Regan delivered on the 24th day of November, 2016**

1. The applicant was afforded leave to seek judicial review by Faherty J. on 11th January, 2016, for the purposes of seeking to quash the decision of the Refugee Appeals Tribunal dated December 2015 and received by the applicant's solicitors on 11th December, 2015. The decision of RAT affirmed the prior decision of the Refugee Applications Commissioner made on or about 29th July, 2014.

2. The ground relied upon is to the effect that the decision is vitiated by reason of the manner in which the general credibility of the applicant was rejected and in particular, by making irrational findings in respect of the applicant's identity at para. 5.5 of the finding, when there was reference to "absence of other evidence" and at para. 5.35, where references made to "Baga Town sits upon Lake Chad".

Background

3. The applicant is a Nigerian and claims to be from Baga Town. In his initial application, he claimed that his date of birth was March, 1979 and he asserted that he left Nigeria on 17th May, 2014, and arrived in Ireland on 18th May, 2014. He denied ever being in any other country or having received a Visa. During the course of his s. 11 interview, he admitted having been in the UK for over twelve months prior to coming to Ireland and he then asserted that his date of birth was September, 1979.

4. During the course of the Commission's finding, it was indicated at para. 3.3.2 that the applicant was unable to name the lake that his town sits on.

5. Following a request of UK Visas and immigration, a letter was received by the Commissioner bearing the date 3rd June, 2014, indicating that the person with the details given by Ireland did not match their records, nevertheless they did give details of a party who did appear to match their records namely a Nigerian with a date of birth of 16th September, 1979, who had secured a Visa for himself and his wife to visit the United Kingdom for two weeks. The Visa expired on 8th April, 2013.

6. In the RAT decision, it should be noted that para. 5 comprised an analysis of credibility. There was a subparagraph commencing at para. 5.2 dealing with "Date of Birth Inconsistencies" and under this subheading, having previously dealt with the inconsistencies afforded by the applicant vis-à-vis his date of birth, paragraph 5.5 (a paragraph now impugned) indicated that the applicant had not provided any identity documentation which could provide independent evidence of the matter. This paragraph concluded with the fact that the applicant had provided one date of birth on two separate occasions before changing it which gave rise to a concern about his credibility in respect of identity and generally.

7. Paragraph 5.31 is preceded with a subheading of "knowledge of home area". Paragraph 5.3.1 recounts the fact that in the s. 13 report it was considered that the applicant had not provided sufficient detail about his home area and it was not accepted that he was from Baga Town. In para. 5.32, it is noted that no evidence was led on the matter by the applicant's representative and when the Tribunal subsequently posed some questions of the applicant to assist him in providing some additional information, the inquiries were fruitless.

8. In para. 5.33, it is noted that the most striking feature of the surrounding geography of Baga is that it is close to a very large lake. When the applicant was asked about this, he stated that it was a river. Furthermore, in his s. 11 interview, he indicated that people usually go to the sea to fish and he also indicated we go to this river to get fish. The presiding officer put to him "there is a huge lake near you" when the applicant responded "it's not big like that".

9. In para. 5.35, it is indicated that the applicant's seeming lack of awareness of the large lake upon which his claimed hometown sits is a matter that casts doubt on his account and the paragraph concluded with stating that overall the applicant's evidence regarding the lake was vague and not convincing.

10. At para. 5.36, the report indicates that the applicant provided few other details and it also noted that the burden is on the applicant to make out his claim. The applicant indicated that a local town was known as Geda Town, however, the Tribunal did not make any finding that it existed or that it was close to Baga Town, as the map provided by the respondent did not show this town.

11. In para. 5.37, the applicant's naming of the capital city was done in a manner that tended to indicate to the Tribunal that he is not familiar with it as would be expected of a resident of Borno State.

12. At para. 5.39, it is recorded that the Tribunal asked was Kukawa far from Baga Town and in what direction. It appears that Kukawa is approximately 39km from Baga Town and south west of Baga Town. The applicant, however, answered that it was approximately 15km to the north side of Baga Town.

13. At para. 5.40, it was recorded that overall, the applicant had provided only scanty information about his home area and he appeared to be unaware of the large local water feature. It is also recorded that his account overall was lacking in detail.

14. Immediately prior to para. 5.41, is a subheading entitled "conclusions on credibility – general".

15. In the ensuing paragraphs, the following difficulties with the applicant's credibility were identified, namely:-

- (i) he lied about his journey to Ireland;
- (ii) he did not provide a reasonable explanation for such a lie;
- (iii) he delayed for over a year before seeking international protection;
- (iv) he did not provide a reasonable explanation for such delay;
- (v) he twice provided an inaccurate date of birth;
- (vi) he failed to adequately explain why; and
- (vii) his account was not wholly consistent and was not detailed.

16. Based on the foregoing matters, the Tribunal found that the applicant had not established his general credibility.

17. Immediately prior to para. 5.44, is a subheading entitled "conclusions on credibility – home area".

18. At para. 5.45, the Tribunal concluded that it could not accept the applicant's account that he was Borno State as only bare details were given. This paragraph includes a sentence:-

"The applicant's evidence regarding the lake was problematic for the reasons set out above. Overall, the Tribunal cannot accept that the applicant is from Borno State, applying the lower standard of proof."

19. Finally, at para. 5.46, it was recorded that the Tribunal made no finding of fact beyond accepting that the applicant is a Nigerian national.

20. The applicant in the within matter asserts that there was an irrational finding at para. 5.5, relative to the absence of other evidence and this assertion is made apparently because of the existence of the letter of 3rd June, 2014, from the UK Visa and Immigration Office. When asked of the applicant's counsel as to how the content of such letter would assist the applicant it was indicated that same provided independent evidence of his name.

21. In my view, taking the RAT report in the round, same clearly had full regard to the content of the letter of 3rd June, 2014, given that it was from this document it was discovered that the applicant's correct date of birth was 20th March, 1979. It was also because of this document that it came to light that the applicant had been in the UK and had previously secured a visa. Therefore I am satisfied that the RAT had full regard to that letter.

22. Paragraph 5.5 states:-

"The appellant has not provided any identity documentation which could provide independent evidence of this matter."

23. As a matter of fact, this statement is correct in that the applicant did not provide the letter of 3rd June, 2014. Furthermore, until the content of that letter of 3rd June, 2014, was put to the applicant at the s. 11 interview, he continued to maintain an altogether different account of his travel to Ireland. It was in this context that the statement was included to the effect that "in the absence of other evidence, the Tribunal must focus on the appellant's own account in respect of his identity".

24. The second argument relied upon by the applicant to impugn the RAT decision was the asserted irrational finding at para. 5.35 "that Baga Town sits upon Lake Chad".

25. As previously mentioned, the name of the lake upon which Baga town allegedly sits was raised in the ORAC finding. Accordingly, it appears to me reasonable to assume that if the applicant wished to challenge this aspect of the basis upon which the ORAC considered that his claim to have lived in Baga Town was undermined, the time to adduce evidence in respect thereof was at the RAT oral hearing on 2nd December, 2015.

26. Furthermore, as has already been noted at para. 5.32 of the RAT report, no evidence was led on the matter of knowledge of his own home area by the applicant's representative and it is further noted that the Tribunal attempted to afford the applicant an opportunity to provide some additional information which proved fruitless.

27. Maps were provided by the ORAC to the Tribunal which tended to support the proposition that Baga Town was close to a very large lake. Furthermore, country of origin information also supported the view that Baga Town was close to Lake Chad. Counsel on behalf of the applicant appears to recognise the deficit of information furnished on behalf of his client to the RAT in the oral hearing of 2nd December, 2015, by requesting, now, liberty to enter evidence before this Court for the purposes of establishing that Baga Town is close to a river as asserted by the applicant. In the alternative to dealing with the lack of evidence on the part of the applicant, it is asserted on his behalf that he had afforded evidence that Baga Town is close to a river, and, therefore, suggests that there was evidence before the RAT to this effect

28. In my view, by suggesting that the evidence of the applicant might be supplemented with evidence as to the proximity of a river is an attempt to avail of the within judicial review process as an appeal of the RAT finding.

29. The applicant refers to the decision of *I.R. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 353, the judgment of Cooke J. and in particular para. 11, subpara. (7) thereof in support of a contention that an adverse finding based on a single fact will not necessarily justify a denial of credibility generally to the claim. This argument is made notwithstanding that none of the grounds upon which the general credibility of the applicant was rejected is impugned in the within proceedings. Furthermore, earlier in the course of Cooke J's judgment at para. 3, the Court confirms that the role of the court is confined when a finding of lack of credibility

is attacked, to ensure that the process by which that conclusion has been reached is legally sound and not vitiated by any material error of law.

30. The applicant asserts that the RAT decision is vitiated by reason of the manner in which the general credibility of the applicant was rejected and particularises this claim by suggesting that the Tribunal made an irrational finding.

31. I do not accept the assertion on behalf of the applicant as above. It was for the applicant to prove his claim to the RAT and the applicant was on full notice of the fact that the ORAC believed that Baga Town sits on Lake Chad. Furthermore, all evidence that was actually before the Tribunal supported such a conclusion and, therefore, it cannot be said that the content of para. 5.35 was irrational.

32. In all of the circumstances, I accept the representations made on behalf of the respondent to the effect that the applicant has misstated the findings and methodology adopted by the RAT. I further accept that there was no finding of fact that Baga Town sat on Lake Chad but rather the only finding of fact was as per para. 5.46 of the RAT decision to the effect that the only finding made was accepting that the applicant is a Nigerian national.

33. In the circumstances, I refuse the relief claimed.