THE HIGH COURT

JUDICIAL REVIEW

Record No 2012/231 JR

BETWEEN

T O (A MINOR)

APPLICANT

AND

THE REFUGEE APPEALS TRIBUNAL, IRELAND AND THE ATTORNEY GENERAL

RESPONDENT

JUDGMENT of Mr. Justice Colm Mac Eochaidh delivered on the 21st day of December 2012

1. This is an application for leave to seek judicial review in respect of the decision of the Refugee Appeals Tribunal on the minor applicant's application for refugee status.

2. The applicant was born in Ireland on 17th November 2009. She sues in this court through her next friend, her mother, who herself is barely beyond minority. The applicant's mother unfortunately suffers from depression and has difficulties with her mental health. The applicant's mother made an unsuccessful application for asylum to the Refugee Appeals Tribunal.

3. It is argued that the determination of applications for refugee status fail to provide an effective remedy within the meaning of the Procedures Directive. This issue has been referred by the High Court in Ireland to the Court of Justice of the European Union pursuant to Article 267 of the Treaty on the Functioning of the European Union and a decision is awaited. The Advocate General delivered his opinion in the matter on 6th September 2012. The parties agree that this aspect of the case should be adjourned until the decision of the Court of Justice is to hand. I agree.

4. The application for asylum was submitted to the Office of the Refugee Applications Commissioner on 7th September 2011. The minor applicant's mother claimed that Testimony (her daughter, the minor applicant) would be exposed to persecution in Nigeria by reason of the absence of extended family and her own inability to provide for her. Her refugee status was denied by the Commissioner and this decision was appealed to the Refugee Appeals Tribunal.

5. The Notice of Appeal indicated there were serious mental health issues. It was claimed that persons with a mental illness are ill-treated, imprisoned, stigmatised and otherwise targeted in Nigeria. The case made on behalf of Testimony was that she would be targeted as a result of her mother's illness. Country of origin information indicated the disadvantages suffered by persons with mental illness in Nigeria.

6. The appeal was accompanied by three medical reports as to the mother's illness and it is not contested that she is on prescription medication for the illness.

7. On 19th January 2012, the Tribunal sent information to the applicant's representatives regarding the standard of medical care for persons with mental illness in Nigeria, and in its letter of 19th January 2012, the Tribunal said that this information *"appeared to suggest that psychiatric medicine and medical care is available in Nigeria"*. The Tribunal found that were the applicant to return to Nigeria, her mother could seek medical assistance and assistance for the applicant herself from various non-governmental organisations. The Tribunal also noted that a report from Dr. O'Sullivan, consultant psychiatrist, of 13th June 2011, though stating that she suffered from *"a significant psychiatric illness"* and needed medication to remain well, also indicated that Testimony's mother was *"currently very well"*. The Tribunal found that the applicant's mother's illness did not bring the minor applicant into the category of persons entitled to international protection. It also found that there is no evidence that family members of persons suffering mental illness are persecuted in Nigeria and the Tribunal said that stigmatisation or persecution of such family members was not condoned by the Government of Nigeria. Finally, the Tribunal found that psychiatric treatment is available in Nigeria and the Government pursues policies to deal with the mental health issue in Nigeria.

8. Leaving aside the issue of formal pleading, the grounds advanced at the hearing of the application for leave to seek judicial review were that, firstly, on a fair reading of the country of origin information, there is a likelihood of non-treatment of the mother's mental illness in Nigeria, and thus, that a fair and reasonable conclusion is that it is probable that the mother will not receive treatment for her illness.

9. Secondly, a complaint is made in respect of the manner in which the Tribunal addresses Article 3 of the UN Convention on the Rights of Children. Specifically, counsel for the applicant complains that though the provisions of the Convention are recited, the author of the Tribunal decision does not explain the manner in which those provisions affect the decision making process or the resulting decision in this case.

10. In support of the first ground of complaint, the applicant relies on a decision of Edwards J. in *D.V T.S. v. The Minister for Justice, Equality and Law Reform and the Refugee Appeals Tribunal* [2007] IEHC 305 as authority for the proposition that a decision maker must make a fair and reasonable conclusion on country of origin information. In *D.V T.S.* (a post-leave application), complaint was made as to the selective treatment of country of origin information. Edwards J., at p. 30 of his judgment, says:

> *"The second named respondent asserts in his ruling that he had regard to all of the relevant facts.*
>
> *However, the country of origin information before him contained conflicting information. He gives no indication as to how, or on what basis, he resolved the conflicts in the information before him. Moreover, he gives no indication as to*

the basis on which he elected to prefer the apparently anecdotal accounts of certain interviewees quoted in the US State Department Report on Cameroon, 2004 and the UK Fact Finding Mission report on Cameroon 2004. While this court accepts that it was entirely up to the Refugee Appeals Tribunal to determine the weight (if any) to be attached to any particular piece of country of origin information it was not up to the Tribunal to arbitrarily prefer one piece of country of origin information over another. In the case of conflicting information it was incumbent on the Tribunal to engage in a rational analysis of the conflict and to justify its preferment of one view over another on the basis of that analysis. The difficulty in the present case is that the second named respondent firstly, does not allude to the fact that the information is conflicting and secondly, does not give any indication as to why he was inclined to prefer the information contained in the US State Department Report on Cameroon, 2004 and the UK Fact Finding Mission Report 2004 to that contained in the reports submitted by or on behalf of the applicant."

11. What is the applicant's true complaint? When the applicant complains in these proceedings that the Tribunal failed to reach a fair and reasonable conclusion on the country of origin information, in truth, the applicant is saying that the Tribunal's decision that no disadvantage would befall the applicant's mother arising from her mental condition was irrational. The matter might be expressed as a complaint that the decision maker failed to take account of relevant material and/or took account of irrelevant material in reaching the decision.

12. I have read the country of origin information submitted. A hypothetical decision maker would readily conclude that psychiatric and mental health services are available in Nigeria. The objective of the Government of the State is to provide services in suitable clinics and medical facilities across the country. These services are available free of charge. Medication, such as that required by the applicant, is also available in Nigeria.

13. The failures attributed to the Tribunal in the *D.V.T.S.* case did not arise in this case. The country of origin information did not contain conflicting accounts of the availability and the non-availability of the services, with the Tribunal selectively choosing the information that indicated that the services were available and ignoring the opposite information. I find that the decision as to the availability of the relevant services to be rational and I reject the complaint made that the country of origin information was only capable of supporting an interpretation to the effect that it is probable that the minor applicant's mother will not receive treatment.

14. Even if it were to be established on the evidence that, as a matter of probability, the applicant's mother would not receive treatment for her mental illness, this, in my opinion, would not, of itself, lead to her being entitled to the status of refugee.

15. The second ground of complaint is that the decision maker recites provisions of the Convention on the Rights of the Child and then does not come to express conclusions as to how the provisions of the Convention affect the outcome of the process.

16. This was not a case where the Convention is invoked in the Notice of Appeal and called in aid to produce an effect. If this were so, it might indeed be incumbent on the Tribunal to engage with the submission and to give a decision thereon. It seems to me that the Tribunal was, unilaterally, setting a legal context in which the decision was to be taken. There was no requirement on the decision maker to tie each strand of the legal context into a particular part of the ultimate decision or to come to individual conclusions on how each such strand affected the outcome. In other words, the general statement by the Tribunal as to the terms of the Convention did not trigger a requirement that a conclusion be expressly made as to the manner in which it affected the outcome of the case.

17. In any event, even a full blooded application of the Convention, assuming it had been implemented in Irish law, could not direct the result of an asylum application on behalf of the child. At full force, the Convention could not have the effect of mandating refugee status be granted to a non qualified person. Whether it is in Testimony's best interest or not to be refused asylum status and/or to be returned to Nigeria, can have no impact on whether or not she is, as a matter of law, entitled to the status of refugee. The Convention might, in appropriate circumstances, have positive effects on child-migrants.

18. Substantial grounds have not been made out in support of the grant of leave in this case and I therefore refuse the reliefs sought in the notice of motion.