Neutral Citation Number: [2008] IEHC 136

THE HIGH COURT
JUDICIAL REVIEW

2006 No. 915 J.R.

IN THE MATTER OF THE REFUGEE ACT 1996, (AS AMENDED),
IN THE MATTER OF IMMIGRATION ACT 1999 AND
IN THE MATTER OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000, AND
IN THE MATTER OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS ACT 2003 SECTION 3(1)

BETWEEN

N. A. A., N. M. O. [A MINOR SUING BY HER MOTHER AND NEXT FRIEND N. A. A.], H. M. O. [A MINOR SUING BY HIS MOTHER AND NEXT FRIEND N. A. A.]

APPLICANTS

AND

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

RESPONDENTS

AND

THE HUMAN RIGHTS COMMISSION

NOTICE PARTY

Judgment of Mr. Justice Herbert delivered on the 8th day of May, 2008.

1. This is an application for leave to seek judicial review. It is made by the first named applicant on her own behalf and on behalf of the second and third named applicants, her minor children. It is provided by s. 5(2)(a) of the Illegal Immigrants (Trafficking) Act 2000, that an application of this nature must be made within the period of 14 days commencing on the date on which the person was notified of the decision of the Refugee Appeals Tribunal, unless this Court considers that there is good and sufficient reason for extending the period. The application in the instant case was not made within the specified period. Therefore, a preliminary issue of whether the court should extend the time to enable the application to be made falls to be determined.

2. The material facts are as follows. The decision of the Refugee Appeals Tribunal, confirming the recommendation of the Refugee Applications Commissioner, that the applicant should not be declared a refugee, is dated 19th May, 2006. The applicant was represented by Junior Counsel instructed by the Refugee Legal Service at the oral hearing of the appeal before Member of the Refugee Appeals Tribunal. By a letter dated 25th May, 2006, sent to the applicant and also to her Solicitors, she was notified of this decision. The statutory 14 day period started to run on 28th May, 2006, and expired on 11th June, 2006. By a letter dated 23rd June, 2006 the applicant was notified that the Minister for Justice, Equality and Law Reform proposed to make a Deportation Order in respect of her and her two dependant children. It was accepted that this letter, sent by registered post, was received by the applicant on 26th June, 2006. On the 15th July, 2006 she appointed Sean Mulvihill and Company, Solicitors, of 6 Cornmarket Street, Cork, to act on her behalf. By a letter of equal date this firm wrote to the Refugee Legal Service enclosing the letter of authority to act and asking that the transfer of files be expedited as the applicant's case was out of time. The notice of motion in this application is dated 25th July, 2006 and is grounded on the affidavit of the applicant sworn on 24th July, 2006. The accompanying Statement of Grounds is dated 25th July, 2006.

3. The period of delay in making this application is therefore 43 days, a very serious delay having regard to the time allowed by the legislation.

4. At para. 18 of her affidavit sworn on 24th July, 2006 the applicant avers as follows:-

> "18. When I received the Tribunal Member's decision I sought to challenge this with the help of the Refugee Legal Service. However, by letter dated 23rd June, 2006, I was informed that the third named respondent proposed making deportation orders relating to the Applicants herein. I beg to refer to a copy of the said letter upon which pinned together and marked with the letter 'L' I have indorsed my name prior to the swearing hereof. I say that it was a refugee support group in Tralee who advised through a fellow Somali asylum seeker that I should try and contact my present solicitor. A Somali man residing in my accommodation centre called Abdulla accompanied me to Cork and we met my present solicitor. I signed an authority, and I beg to refer to a copy of this and related documents upon which pinned together and marked with the letter 'M' I have indorsed my name prior to the swearing hereof. My solicitor contacted the RLS, who indicated that they would assist me in making a leave to remain application I was still concerned about the Tribunal decision, and my solicitor agreed to obtain counsel's opinion once he received my file, even though I have no money. On receipt of counsel's opinion, instructions were given to institute the within proceedings immediately. I say it was always my intention to challenge the decision of the Tribunal Member insofar as it was within my power to so do."

5. Some of the matters to be taken into account by this Court in determining whether or not to exercise its discretion to extend the time, are set out *in Re: Illegal Immigrants (Trafficking) Bill 1999*, [2000] 2 I.R. 360 at 393-4, Supreme Court; *"GK" v. The Minister for Justice, Equality and Law Reform* [2002] 1 I.L.R.M. 81 per. Finnegan J. High Court and, *"FA" and Another v. The Minister for Justice, Equality and Law Reform and Others* (Unreported, High Court, Peart J. 27th July 2007). These may be summarised as follows: whether there is evidence that the applicant had shown reasonable diligence in making the application, the period of the delay, the blameworthiness of the applicant and additionally or alternatively her lawyers, the *prima facie* strength of the case, the complexity or otherwise of the legal issues, whether there were language problems, whether third party rights were affected, the legislative policy evident and, any other material considerations arising.

6. As I have already indicated, the delay in this case is very serious, more than three times the length of the time limited by the statute for the making of the application. The legislative policy of the legislature is clearly evident in the stringency of the time limited by s. 5(2)(a) of the Illegal Immigrants (Trafficking) Act 2000. This very strict limitation period was considered by the Supreme Court at pp. 388 – 391 inclusive of the judgment in *Re: Illegal Immigrants (Trafficking) Bill 1999*, (above cited). Keane C.J., delivering the decision of the court noted that in *Brady v. Donegal County Council* [1989] I.L.R.M. 282, Costello J., (as he then was), found that the public interest in establishing, at an early date, certainty and the avoidance of unnecessary costs and wasteful appeals procedures could well justify the imposition of stringent time limits for the institution of court proceedings. The legislative intent that there should be early certainty and no unjustifiable delays in the determination of asylum claims, is further evident in the requirement that this Court must be satisfied that there is good and sufficient reasons for granting an extension of time.

7. No acceptable explanation or excuse is offered by the applicant in her affidavit as to why this application was not made within the period of 14 days allowed by the statute or, between the expiry of that period and the receipt of the letter of 23rd June, 2006, notifying her of the Minister's proposal to issue a Deportation Order. Only then did the applicant decide to take action. Even then, a further 28 days was permitted to elapse before she instructed her present Solicitor. I find the statement in para. 18 of her affidavit that when she received the decision of the Refugee Appeals Tribunal she sought to challenge it with the help of the Refugee Legal Service, altogether insufficient, since it is unsupported by any form of contemporaneous document or any affidavit evidence from a member of the Refugee Legal Service and, even lacks particulars of dates, persons and places which could have been supplied by the applicant herself. It falls far short of explaining or excusing the manifest inaction on her part from 28th May, 2006, to 24th July, 2006.

8. At para. 14 of her Affidavit the applicant avers as follows:-

> "14. I say the Tribunal Member had no regard to my physical or psychological injuries. I say I experience significant psychological difficulties as a result of my experiences and the persecution I have suffered. I say this psychological trauma was never considered by the Tribunal Member. I further say that the Tribunal wrongfully discounted the medical report and SPIRASI report as having no merit to our claims."

9. It is perfectly plain that these alleged psychological difficulties did not inhibit the applicant in any way from consulting her present or her former solicitors. In a medical report dated 26th February, 2006, from the Centre for the Care of Survivors of Torture the Examining Physician noted that the applicant had stated that, "although she worries about her husband and her children she says she has no other major problems – experiences pain in her chest from time to time and gets headaches occasionally". The Examining Physician concluded in this report that a mental state examination of the applicant demonstrated symptoms of constant worry but that otherwise her mental health appeared stable at present. No evidence was put before this court that the applicant's mental or physical health had significantly disimproved after the date of this report.

10. This medical report was furnished by the Refugee Legal Service to the Refugee Appeals Tribunal on the 10th March, 2006. Though the oral hearing before the Refugee Appeals Tribunal took place on the 8th February, 2006, the Member of the Refugee Appeals Tribunal clearly had regard to this report and a letter submitted from a general medical practitioner in Ireland, and refers to them in the course of her decision. I am quite satisfied that illness could not be advanced as a reason for the applicant's delay in making this application.

11. The very extensive Notice of Appeal to the Refugee Appeals Tribunal, from the recommendation of the Refugee Applications Commissioner, was signed by Junior Counsel and, the applicant was represented by Junior Counsel instructed by the Refugee Legal Service at the oral hearing of her appeal by the Member of Refugee Appeals Tribunal. It is not suggested in any way that the services of the Refugee Legal Service ceased to be available to the applicant after the decision of the Refugee Appeals Tribunal was notified to the applicant and to them. No sufficient evidence was put before the court from which it could be satisfied that the applicant had sought assistance from the Refugee Legal Service to challenge this Refugee Appeals Tribunal after she was notified of it. In *"S.A." and Another v. The Refugee Appeals Tribunal and Others* (Unreported, High Court, 27th July 2007), Peart J., held that an applicant was not entitled to an extension of time just because he or she decided to, (in the instant case was advised by a fellow Somali asylum seeker to), change solicitors in order to get advice with which he or she could agree, because to permit that would set at nought the 14 day time limit. In any event the applicant did not consult Mr. Mulvihill until the 15th July, 2006, and has offered no acceptable explanation or excuse for her delay in the meantime.

12. The applicant in the Application for Refugee Status Questionnaire stated that she had no formal education and spoke only Somali. There is however, no indication in any of the voluminous material put before this Court that language difficulties were a consideration in this case. It is significant that the applicant in her affidavit makes no complaint in this regard. She was obviously able to instruct the Refugee Legal Service in the preparation and conduct of her appeal to the Refugee Appeals Tribunal.

13. I am satisfied that no complex legal issues and, no complex or difficult legislative provisions feature in this application.

14. Whether the applicant appears, on a *prima facie* basis, to have substantial grounds for contending that the decision of the Refugee Appeals Tribunal is invalid or ought to be set aside, is a matter of the utmost importance in deciding whether or not the court should exercise its discretion to extend the time.

15. The Member of the Refugee Appeals Tribunal stated in her decision that she was satisfied that the applicant had not given a truthful account of the facts relating to her application in both material and significant ways.

16. The Member of the Refugee Appeals Tribunal noted that the applicant had given contradictory evidence as to when she had left Somalia and gone to Kenya, at her Section 11 interview at qq. 120 to 123 inclusive. Having explained that it was in 1995, because she had gone to Herja in 1995, the applicant then said that it was on the 10th April, 2005, that she left Somalia because her father had died in October, 2003, and her youngest child was born on the 12th July, 2004. At q. 123 of the Section 11 Interview the applicant said that she was confused and that her brain was not working very well at that moment. However, the applicant insisted before the Refugee Appeals Tribunal that the interpreter at the Section 11 Interviews had interpreted incorrectly what she had said and had agreed with the applicant to correct the error. It was put to the applicant that the interview record was read over to her and that she had signed each individual page acknowledging that the contents had been read to her and that she agreed with them. It was submitted by Counsel for the applicant that the applicant had identified that the reference to 1995 was incorrect and that the Member of the Refugee Appeals Tribunal should have accepted her explanation and given her the benefit of any doubt.

17. The Member of the Refugee Appeals Tribunal noted in her Decision that in the Section 11 Interview the applicant had stated that the incident in which her daughter was, allegedly physically assaulted and she herself was physically assaulted and raped by four men had lasted two hours, after which the men had left the house. However, in the Application for Refugee Status Questionnaire the applicant had stated that the attackers were in the house for three days. When asked about this discrepancy at the hearing before the Refugee Appeals Tribunal, the applicant stated that she was confused and could not remember everything. It was submitted by Counsel for the applicant that this was a reasonable explanation and that the Member of the Refugee Appeals Tribunal had not made allowance for the trauma to the applicant in being asked to recall such terrible events.

18. The Member of the Refugee Appeals Tribunal found that a letter submitted by a general medical practitioner in this State and a medical report from the Centre for the Care of Survivors of Torture (SPIRASI) were entirely inconclusive as to how the applicant had sustained the scar on her left buttock, (the applicant claimed she had been beaten and stabbed), how the second named applicant had sustained the scarring on her back and abdomen, (the applicant claimed that she had been tied up and cut and burned), or how the third named applicant had suffered the loss of the lower part of a leg, (the applicant stated the he had been shot and his leg had been severed by bullets). The applicant told the examining physician at the Centre for the Care of Survivors of Torture, that some of

the scars on her body were injuries which she had sustained while in police custody in Kenya. The medical report of the Centre for the Care of Survivors of Torture noted that the applicant had multiple scars scattered over her body. The Examining Physician concluded that "these could be as a result of the physical ill-treatment that she reports sustaining in her own country". Counsel for the applicant submitted that this conclusion of the examining physician supported the applicant's story and that the conclusion of the Member of the Refugee Appeals Tribunal that the report of the general medical practitioner and this report did not advance the applicant's claim was unreasonable and in the face of common sense and therefore unfair.

19. The Member of the Refugee Appeals Tribunal found that the applicant's account of her travel to this State was seriously suspect. The Member of the Refugee Appeals Tribunal found that it was unbelievable that the applicant and two sick children could have transited through Dublin Airport by an agent who accompanied them showing and handing to the Immigration Control Officer a passport which did not have her name or photograph on it. Counsel for the applicant submitted that asylum seekers such as the applicant and her two dependant children, cannot be expected to have proper travel documents, particularly, as the country of origin information showed that no documentation is available in Somalia, and that a negative inference as to credibility ought not to have been made on such an incidental matter as the use of a false passport by a refugee attempting to obtain asylum in a safe country. Counsel for the applicant submitted that Section 11B, only required that the Member of the Refugee Appeals Tribunal "should have regard to" such matters, in assessing credibility and the Member of the Refugee Appeals Tribunal adopted an unfair procedure by placing undue emphasis on this matter which was not related to any of the key issues in the applicant's story.

20. Counsel for the respondents submitted, correctly in my judgment, that it was open to the Member of the Refugee Appeals Tribunal to conclude, that these matters undermined and did not advance the plausibility of the applicant's story and her personal credibility. Counsel for the respondents submitted and, demonstrated by reference to the decision of the Member of the Refugee Appeals Tribunal, that the foregoing conclusions which the applicant seeks to impugn were only some of a large number of reasons given by the Member of the Refugee Appeals Tribunal for her decision, on the totality of which, Counsel for the respondents submitted, it was reasonably and rationally open to the Member of the Refugee Appeals Tribunal to conclude that the applicant had not given a truthful account of matters relating to her claim that she had a well-founded fear of persecution in Somalia because of her race (ethnic origins). Counsel for the respondents referred to the court to these other reasons which are as follows:-

> "During the processing of her claim for refugee status, the applicant gave three different accounts of how long her daughter was allegedly held captive by kidnappers – one year – eighteen months – three years. This kidnapping was said to be one of the reasons why the applicant and her family fled from Somalia to Kenya.
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> The applicant claimed that she and her family had been surrounded by Kenyan Police in a rural part of Kenya. She and the first and second named applicants were arrested, but her husband and their seven other children, including a one year old infant evaded arrest by hiding in the bush.
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> A Somalian man, who worked in a hospital in Nairobi where she had been taken, told the applicant that she would be arrested by the Kenyan Police on her discharge from hospital. This man arranged to meet her outside the hospital and provided accommodation for her and the first and second named applicants in a house for three weeks and, collected US$4000 at a mosque to enable her to leave Kenya.
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> During this period of three weeks the applicant had not sought asylum in Kenya. She made no attempt to contact her husband and her seven other children through the Somali community in Nairobi or through the Red Cross or any other non government agency in Kenya.
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> The applicant stated that a nephew of her husband in the United States, whose telephone number she had, sent money to an agent in Kenya to assist her travel. Since her arrival in this State the applicant had not contacted this person or any family member. The applicant did say that she had gone to the Red Cross in this State to search for her family, but gave no details of this alleged visit to the Irish Red Cross.
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> The applicant was asked about the weather in Somalia over the previous four years. She stated that sometimes it would rain and sometimes it would be sunny. The applicant was asked specifically if it had been mainly rainy or sunny over this period and she stated that they had rain during the rainy seasons as usual. Country of origin information indicated that the seasonal Dayr rains of 2004/2005 ended four years of severe drought in Somalia.
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> The applicant could not recall the severe flooding and displacement of people in the Shabelle River area in 1997 and 2000 even though she claimed to have lived in the lower Shabelle region. The Member of the Refugee Appeals Tribunal considered that the applicant should have been able to recall the most recent floodings that had taken place.
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> The Member of the Refugee Appeals Tribunal found that the applicant was seriously evasive as regards any fighting that had occurred during the two years before she claimed she and her family left Somalia. The Applicant recalled a lot of fighting in the Lower Shabelle Region in 1992 and in 1993 and, "during the two years before she left Somalia", the date of which being a matter in respect of which there was serious doubt"

21. I accept that some of these matters are more germane to the key elements of the applicant's claim than others and, that some are undoubtedly more material than others. However, taken together, I cannot see how there could be substantial grounds for contending that these inconsistencies, evasions, contradictions and implausibility's, were insufficient to enable the Member of the Refugee Appeals Tribunal to rationally and reasonably decide that the applicant had not lived in Somalia in recent years and had not given a truthful account of events.

22. Counsel for the applicant submitted that having been identified by the Member of the Refugee Appeals Tribunal as something "of great concern to the Tribunal", the applicant ought, as a matter of fair procedures, to have been invited to explain why she recalled during her Section 11 interview that the Shabelle River had flooded twice, once in 1992 and again, on an occasion during the war, though she could not recall the year.

23. I agree with Counsel for the applicant that as a general principle, an applicant should be asked "to explain contradictions and clarify confusions". (G.S. Goodman – Gill, "*The Refugee in International Law*", 2nd Ed., Oxford University Press). I also agree with Counsel for the applicant that a Member of the Refugee Appeals Tribunal was obliged to bring to the attention of an applicant any matter of substance or importance which the Member of the Refugee Appeals Tribunal regarded as having potential to effect the decision of the Tribunal. (*Nguedjdo v. The Refugee Applications Commissioner* (Unreported, High Court, White J., 23rd July, 2003)). However, in my judgment, the proper application of these principles in the instant case, did not require the Member of the Refugee Appeals Tribunal to ask the applicant why she had not mentioned the very severe flooding of the Shabelle river in 1997 and 2000. She

had been asked by the Authorised Officer of the Refugee Applications Commissioner at the Section 11 Interview, if she could remember any flooding of the Juba or Shabelle Rivers that had caused serious damage over the previous ten years (that is prior to 6th October, 2005). This was a fair and very specific question. The applicant had identified two floods which she said had occurred in the Shabelle River and, I would have been concerned, if conclusions adverse to the applicant had been reached on the sole basis of a failure on her part to nominate correct dates. However, this was not so in this case.

24. The applicant was also asked whether it had been mainly rainy or sunny in Somalia over the previous four years. Her reply was that there was rain as usual during the rainy seasons. Country of origin information showed that the seasonal rains of 2004/2005 had ended four years of severe drought in Somalia. I agree with Counsel for the respondents that the applicant cannot sever isolated parts of a clearly interrelated series of questions and answers in this fashion. Taken individually and collectively the applicant's answers are, in my judgment sufficient to enable the Member of the Refugee Appeals Tribunal to conclude reasonably and rationally that as the applicant had no recall and was vague as regards these most basic facts regarding weather conditions in Somalia, she had not lived in Somalia or if she had lived there, it was not in the Lower Shabelle Region, at least in recent years and that this undermined the basic elements of her story. In my judgment, I do not see how this ground could be said to be reasonable, arguable and weighty. *Prima facie* it does not appear to me to be a substantial ground as required by the provisions of s. 5(2)(b) of the Illegal Immigrants (Trafficking) Act 2000.

25. The Member of the Refugee Appeals Tribunal in her Decision reached the following conclusions:-

> "The UNHCR stresses that the importance of ascertaining and verifying an applicant's identity and nationality becomes more crucial, relative to the security and human rights situation in their stated country of origin. Applicants claiming to be from Somalia requires this attention. It is difficult to establish that an applicant is in fact a Somali national and the Tribunal has had to rely on general information questions to attempt to establish the applicant's nationality. There are no reliable forms of documentation available to nationals of that State at the moment. It is also difficult to establish any identity on a balance of probability test on the grounds of language as there are many ethnic Somalis who are not Somali nationals living in neighbouring countries. The UK Home Office Immigration and Nationality Directorate, Somalia, November, 2004, reports that many non-Somali applicants pose as Somalis in the UK.
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> Furthermore, while a person claims the Somali and can speak the Somali language, it does not automatically follow that they are Somali from a stated area of Somalia or that they were forced to flee for reasons related to their particular clan. Reliable sources have indicated that aside from being spoken in Somalia, the Somali language is also spoken in Ethiopia, Kenya and Djibouti where many ethnic Somalis live."

26. It was submitted by Counsel for the applicant that the Member of the Refugee Appeals Tribunal was in breach of the requirement to adopt fair procedures, in that she did not put this UK Home Office Report of November, 2004, to the applicant and afford her an opportunity, if she so wished, of commenting on this aspect of that Report. Counsel for the applicant further submitted that the Member of the Refugee Appeals Tribunal failed to identify the "reliable sources" to which she refers and the applicant was afforded no opportunity of considering these alleged "reliable sources" and, if she wished, of commenting on them or of offering other country of origin information expressing a different view.

27. Counsel for the respondents correctly makes the point, that this ground is not included as a ground in the Statement of Grounds and is not even the subject of a complaint in the applicant's verifying affidavit. But even if the court granted the extension of time sought by the applicant and permitted the applicant to amend her Statement of Grounds to include this ground, I have come to the *prima facie* conclusion that it is still not a substantial ground.

28. In *Idiakheuau v. The Minister for Justice, Equality and Law Reform and The Refugee Appeals Tribunal*, (Unreported, High Court, 10th May, 2005), Clarke J. at p. 4 pointed out that it was at least arguable that there must be some reasonable proportionality between the extent to which attention is drawn to an issue and the importance which the Tribunal was likely to attach to it. In *Nguedjdo v. The Refugee Applications Commissioner* (above cited), White J. found that the matter which was not put was "crucial to the determination". In *Idiakheuau* (above cited) Clarke J. stressed that the obligation to put matters arises only in respect of matters which are of substance and significance in relation to the determination of the Tribunal.

29. The Member of the Refugee Appeals Tribunal, in the instant case was considering what weight, if any, in considering the claim of the applicant that she was from Somalia, she could give to the fact that the applicant spoke the Somali language. The Member of the Refugee Appeals Tribunal concluded that it would be difficult to establish identity on this ground alone. It is important to note that the Member of the Refugee Appeals Tribunal did not make any adverse finding against the applicant on this ground: she simply found that the fact that the applicant spoke the Somali language was not in itself sufficient to establish that she was a Somali National of the Begedi Clan who had lived in the Lower Shabelle Region of Somalia. Contrary to what was submitted by Counsel for the applicant, the Member of the Refugee Appeals Tribunal did not ignore the fact that the applicant spoke the Somali language.

30. In my judgment it would be utterly futile putting to the applicant a UK Home Office Report recording that many non-Somali applicants pose as Somalis in the UK, (with the inference that these non-Somali persons spoke the Somali language). Provided that this is a complete and accurate citation of the UK Home Office Report in this regard and, it is significant that Counsel for the applicant did not submit that it was not, – what, one must ask, could the applicant usefully have responded to its being put to her, other than to continue to assert that unlike the people referred to in this Report she was a member of the Begedi clan and live in the Lower Shabelle Region of Somalia.

31. While I agree with Counsel for the applicant, that the Member of the Refugee Appeals Tribunal should have identified the sources which she was referring, I consider that it would have been an entirely futile exercise putting to this applicant that the Somali language was also spoken in Ethiopia, Kenya and Djibouti and that many ethnic Somali lived in these countries. Would the applicant, – a woman who had no formal education, – dispute this statement, and could she reasonably be expected to produce documentation to establish that it was untrue or was an overstatement. Significantly, Counsel for the applicant referred to no such documentation. It was not submitted by Counsel for the applicant that this material ought to have been furnished by the Refugee Appeals Tribunal to the Solicitors for the applicant pursuant to the provisions of s. 16(8) of the Refugee Act 1996, (as amended).

32. It was submitted by Counsel for the applicant that the Member of the Refugee Appeals Tribunal, unlike the Refugee Applications Commissioner, had failed to apply the "forward looking test". In my judgment, Counsel for the respondents is correct in submitting that where the applicant's claim to future fear is based upon alleged past persecution and that has been rejected and the applicant is in addition found to be lacking in personal credibility, it is not necessary to consider the future risk of persecution. I cannot see how this ground could be said to be a substantial ground.

33. For the foregoing reasons I have reached the *prima facie* conclusion that the applicant has not shown any substantial grounds for contending that the decision of the Refugee Appeals Tribunal is invalid or ought to be quashed.

34. Counsel for the applicant submitted that in this instance, the rights of third parties - namely the applicant's dependant children, the second and third named applicants, – would be affected if the court should refuse to extend the time. I believe that Finnegan J. was referring to persons or bodies other than the parties to the particular application.

35. The interests of dependant accompanied minors are represented by the parent who brings the application for asylum. In *Nwole and Others v. The Minister for Justice, Equality and Law Reform and Another* [2004] I.E.H.C 433, Peart J. held that the claims of such dependant minors are properly and correctly treated as subsumed and incorporated into the claim of the parent. He held that:-

> "A constitutionally harmonious interpretation of the legislative framework in relation to the interests of a minor accompanied by a parent is that the parent is the person who continues to carry the responsibility for looking after the minor's interests, and as a consequence, continues to have the responsibility, in the capacity of active participant in the asylum process, for setting out in an appropriate way any grounds for the application, …."

36. Paragraph 213 of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, provides that where a minor is accompanied by one (or both) of his parents … who requests refugee status, the minor's own refugee status will be determined according to the principle of family unity (paras. 181-188 above). The effect of this is that the dependant childrens' claims to refugee status becomes dependant on whether or not refugee status is afforded to the accompanying parent. However, it is expressly provided in para. 185 of the UNHCR Handbook, that "the principle of family unity operates in favour of dependants and not against them". Therefore, if there were otherwise substantial grounds for contending that the decision of the Member of the Refugee Appeals Tribunal is invalid or ought to quashed, it would appear wrong that the interests of the minor dependants should not be taken into account by the court in deciding whether or not the time ought to be extended. It could be argued that not to so do would offend against the spirit if not against the letter of Article 22(1) of the Convention on the Rights of the Child, which has been ratified by this State, even if it has not yet been made part of domestic law. I do not decide this point as it was not argued before the court.

37. The first named applicant has not brought any other special circumstances to the attention of the court.

38. The court is therefore not satisfied that there is good and sufficient reason for extending the period to enable this application to be made and will therefore dismiss the application.