

THE HIGH COURT
JUDICIAL REVIEW

[2011 No. 294 J.R.]

BETWEEN**MPA (CAMEROON) OA (CAMEROON) (A MINOR SUING BY HER MOTHER AND NEXT FRIEND MPA)****APPLICANT****AND****REFUGEE APPEALS TRIBUNAL, MINISTER FOR JUSTICE EQUALITY AND LAW REFORM ATTORNEY GENERAL IRELAND****RESPONDENTS****JUDGMENT of Ms. Justice Stewart delivered on the 19th day of January, 2015**

1. This is a telescoped hearing for judicial review seeking orders of *certiorari* to quash a decision of the Refugee Appeals Tribunal dated the 28th February, 2011, and remitting the matter a *de novo* consideration by a different tribunal member.

Background

2. The applicants are mother and daughter, and are nationals of Cameroon. The mother was born on the 11th February, 1982, and the daughter was born on the 12th September, 2007. The following is the mother's account of the events giving rise to the alleged persecution faced by her and her daughter in Cameroon. The mother states that the second applicant was conceived as a result of the mother's rape by her own father. This was considered an abomination and the mother lived in a shed at her grandmother's home from May, 2007 to April, 2010. The mother's own father committed suicide in February, 2008, and, as a result, she was accused of witchcraft. Her daughter was demanded for sacrifice. The shed where both the mother and daughter lived was burnt down in April, 2010. The mother states that a taxi driver then provided herself and her daughter with shelter for a three-month period during which time he regularly had sexual intercourse with her. The mother and daughter travelled to Ireland by sea with the help of a nun, Sister Mary, and arrived in this State on the 5th August, 2010, arriving in a southern part of the country. They presented at the offices of the Refugee Application Commissioner in Dublin on the 6th August, 2010.

3. The mother attended a Dublin hospital on the 2nd September, 2010 when she was diagnosed HIV positive and is in receipt of regular treatment in respect of same since that time. The Refugee Applications Commissioner interviewed the mother on the 18th November, 2010, and, by letter and report dated 30th December, 2010, made adverse credibility findings followed by findings in respect of state protection, internal relocation and a lack of nexus to the Geneva Convention. A notice of appeal was submitted to the Refugee Appeals Tribunal on the 14th January, 2011, and the hearing in respect of said appeal was held on the 7th February, 2011. The applicant was advised in a letter dated 28th February, 2011, and received by the applicant no earlier than 3rd March, 2011, that the application for refugee status was refused. The decision of the Refugee Appeals Tribunal was enclosed with the letter. The tribunal affirmed the adverse credibility findings made by the Commissioner and further held that the discrimination facing HIV sufferers in Cameroon did not amount to persecution.

Impugned Decision

4. The reasons for the refusal of refugee status are contained in the decision of the 28th February, 2011. The applicant's account in regard to the family wanting to sacrifice the baby, her daughter, was held not to be credible or coherent. Further, according to the tribunal member, the country of origin information available in relation to obtaining a birth certificate in Cameroon was not congruent with the first applicant's account of how she obtained the birth certificate for her daughter. Additional findings in respect of the applicant's credibility were also made by the tribunal member.

5. Additionally the tribunal member considered the potential discrimination that the applicant might suffer as a HIV positive woman in Cameroon, finding that this did not amount to persecution in the conventional sense. The tribunal pointed to country of origin information as evidencing the treatments available in Cameroon for those afflicted with the disease. Counsel on behalf of the applicant, Mr. Michael Conlon S.C., conceded at the hearing before this Court that the complaint in respect of this aspect of the case was not being pursued and it was conceded that there is not sufficient discrimination in Cameroon in respect of AIDS/HIV sufferers that would sustain a claim before this Court.

Submissions

6. In addition to the written submissions filed by both the applicants and the respondents, oral submissions were advanced at the hearing before this Court. Mr. Conlon S.C., on behalf of the applicant, submits that the tribunal acknowledged that under reg. 5 of the EC (Eligibility for Protection) Regulations 2006 (S.I. 518 of 2006), it was bound to take into account "the individual position and personal circumstances of the protection applicant" and to have regard to Article 3 of the UN Convention on the Rights of the Child 1990. However, the applicant submits that the tribunal failed to comply with the said regulation in that, by rejecting the applicants' claim on the basis of credibility findings, it failed to give any consideration to the individual circumstances pertaining to the second named applicant, the child. Further, in respect to the child, an assessment of the circumstances of the applicants should include an assessment of what is in the best interests of the child as required by the UN Convention on the Rights of the Child 1990.

7. The applicants argue that the claim was exclusively refused by reason of adverse credibility findings made on the basis of conjecture, repeating the adverse credibility findings made by the Commissioner in the s.13 report. It was submitted that it was incumbent on the tribunal to have reasonable regard to all significant documents, including country and medical reports when considering credibility as set out in *I.R. v. Minister for Justice, Equality and Law Reform & Refugee Appeals Tribunal* [2009] IEHC 353, and to give reasons for the rejection of significant aspects of the evidence given by the applicants or elements of their claims, as in *E.R. v. Refugee Appeals Tribunal* [2013] IEHC 165.

8. In particular, the case advanced by the applicants was that the tribunal failed to perform the fundamental task of making an

assessment in respect of the evidence before it and thereafter expressing in clear terms and making specific findings in relation to the following matters:

- 1) Whether it was accepted that the mother suffered rape at the hands of her own father, which alleged rape resulted in the conception of her daughter;
- 2) Whether such an issue is regarded as an abomination in Cameroon;
- 3) Whether the mother was subsequently subjected to sex slavery to ensure her survival and that of her daughter; and
- 4) Whether the mother was infected with the HIV/ AIDS virus as a result of her rape by either her own father and/or the taxi driver.

9. Consequently as a result of the lack of findings in respect of the aforesaid matters the applicants claim that their core claim has never been lawfully assessed nor has any clear determination been made in respect of them.

10. The applicants submit that the tribunal member having determined the claims on the basis of adverse credibility findings, but without making specific findings on the claim of rape, and resulting conception, by the applicant's own father and the society's reaction to such an event as noted in the country of origin reports, the tribunal failed, according to the applicants, in its duty to consider the possibility of exposure to persecution in the future based on the particular circumstances of the applicants' case.

11. On behalf of the respondents, Ms. Cindy Carroll, B.L. submits that all matters put forward on behalf of the applicants were considered by the tribunal member and that there is no evidence to suggest otherwise. Further she submits that the tribunal member had regard to the position of the child. The first named applicant was specifically given the option of having her daughter's application for asylum considered along with her own. The respondents further submit that the position of the daughter is inextricably linked with that of her mother and that no separate fear of persecution is identified on her behalf. Counsel refers the Court to the decision of Peart J in *Nwole & ors. v. Minister for Justice, Equality and Law Reform & anor.* [2004] IEHC 433; *Z.Z. & ors. v. Minister for Justice, Equality and Law Reform & anor.* [2007] IEHC 236; and *S.E. (a minor) v. Refugee Appeals Tribunal & ors.* [2014] IEHC 240 to support the proposition that persons who are given an opportunity to have their child's application included in their own application must be treated differently from those to whom no such opportunity is afforded.

12. The respondents further submit that the assessment of credibility is entirely in line with Mr Justice Cooke's decision in *I.R. v. Minister for Justice Equality and Law Reform and the Refugee Appeals Tribunal* [2009] IEHC 353 and the decision of *R.O. v. Minister for Justice, Equality and Law Reform & Refugee Appeals Tribunal* [2012] IEHC 573.

13. The respondents submit that looking at the impugned decision that any third party reading the decision would not be of any doubt as to why the first applicant was found not to be credible on a number of points.

14. The respondents assert that it is unclear as to what points the applicants are making in relation to a failure to assess the core claim. All of the circumstances as submitted were considered; however, the respondents concede that there is no finding on the veracity of the claim that the first named applicant was raped by her father as a result of which she conceived her daughter, the second named applicant, nor is there a finding in respect of the claim that she was a sex slave to the taxi driver who initially offered her assistance. However, the respondents contend that it is clear that the tribunal member did not believe her on a number of fundamental matters which were related to these claims.

15. The respondents submit that without DNA evidence establishing the paternity of the second applicant on medical and /or SPIRASI reports following the alleged rape that it is difficult to assess how a claim of rape in 2006 could be assessed by any decision-maker in 2011.

Findings

16. It is worth pointing out at this juncture that these are judicial review proceedings. The function of this Court in judicial review is not to determine the veracity or otherwise of the applicant's case made before the tribunal. The Court's sole function is to ensure that fair procedures were adhered to and that the ultimate findings of the tribunal member can be upheld in that they constitute a reasoned decision.

17. The seminal case of *I.R v. Minister for Justice, Equality and Law Reform & Refugee Appeals Tribunal*, a decision of Mr. Justice Cooke, makes it clear that where documentary evidence is put forward by an applicant, that if the Refugee Appeals Tribunal, the decision-maker, is going to ignore and/or reject that documentary evidence it must state reasons for doing so. In this case the applicant in the initial application form, the ASY1 form, gives the name of her own father as her daughter's father. In the absence of a rejection of this finding it must be presumed that this is accepted by the tribunal member. Country of origin information supports the proposition that a child born in incest would be regarded as an abomination in Cameroon. Again, there was no finding in relation to this matter by the tribunal member nor was there any finding in relation to the birth certificate of the daughter which was produced before the tribunal.

18. On p.23 of the booklet of pleadings furnished to the Court, UA, the first named applicant's father was named as the father of the second named applicant, i.e. the daughter. On p.42 UA was named as the applicant's own father and on p.49 UA was named as the applicant's father. None of these matters were addressed by the tribunal member. Further the tribunal member did not make any findings, adverse or otherwise in relation to the veracity or otherwise of the applicant's story of initially being assisted by a taxi driver who then subjected her to months of sex slavery before her eventual escape with the assistance of the nun known only as Sister Mary.

19. It seems to me that on the basis of the failure on the part of the tribunal member to make findings in respect of parts of the application set out heretofore, the findings in respect of credibility cannot stand. I therefore propose to grant leave and to grant orders of *certiorari* as sought at para.1 of the notice of motion and I will further make an order remitting the matter for a *de novo* consideration by a different tribunal member.