

THE HIGH COURT

[2010 No. 303 MCA]

BETWEEN

MOHAMMED HUSSEIN ABD ULLATIF HUSSEIN

APPELLANT

AND

THE MINISTER FOR JUSTICE AND LAW REFORM

RESPONDENT

JUDGMENT of Mr. Justice Mac Eochaidh delivered on the 18th day of March 2014

1. This is an appeal from a decision of the Minister revoking the appellant's refugee status granted to him on 9th February 2007. The appellant completed a questionnaire in support of refugee status on 26th November 2006, which indicates that his name was Mohammad Hussein Abdul Latif Hussein and that his date of birth was 27th May 1980. Question 20 on the Questionnaire asked whether he had any documents in support of his application and the answer to this was 'No'. Asked to explain why he had no documents, he said "I do not have any documents with me because I escaped from the village when it was attacked". He claimed to have lived in a village in south Darfur and to have been arrested on suspicion of supporting the opposition. He stated that he was released after seven days in custody on a pledge that he would not leave the village. He claimed that the village was attacked by Janjaweed militia and Government forces on 28th August 2006 and that he escaped the village by car, fleeing to Hullufah town. The appellant claimed that he was told that his brother had been arrested and would not be released unless he returned to the village. Fearing that the authorities would kill him if he returned, he fled Sudan with the assistance of an agent ('smuggler'), leaving by ship from Port Sudan. The appellant claimed to have hidden on a truck on board the ship until he arrived in Ireland on 22nd November 2006. Having set out in the questionnaire why he had left Sudan, the appellant stated that he "met the smuggler with the help of my friend . . . and he smuggled me out in return for the car which was worth 5 million Sudanese Guineas. I also paid him 2.5 million. The total amount I gave the smuggler was 7.5 million Sudanese Guineas". Question 32A asked 'Were you ever issued with a passport?' to which the answer was given 'No'. Question 33 asked 'Did you have a visa to enter any country?' to which the answer was 'No'. Question 36 asked 'Do you have any documents to enter Ireland?' to which he answered "I did not use any documents". The appellant said that he left his country on 27th October 2006. Question 46 asked whether the applicant is satisfied that all the information in the questionnaire is true and accurate and this is answered 'Yes'. The appellant did not reply to the question as to which countries he had travelled through en route to Ireland.

2. A report pursuant to s. 13(1) of the Refugee Act 1996 was produced by the Refugee Applications Commissioner on 24th January 2007, which recommended that the appellant should be declared a refugee. This report records the appellant's name as 'Mohammed Hussein Abd Ullatif Hussein'. (This is the name of the appellant in this appeal and is stated by the appellant, on affidavit, to be his correct name.)

3. On 2nd June 2009 the appellant received a warning letter from the Minister saying that he was considering the possible revocation of the appellant's declaration of refugee status. The letter was in the following terms:

"It has come to the attention of the Minister that you have returned to your country of origin - Sudan - since the granting of [the refugee] status. This would indicate that you no longer require the protection of this country and the Minister would be fully within his rights to revoke your status under s. 21(a) of the Refugee Act 1996 (as amended) see copy enclosed.

The information provided from the UK (see copy enclosed) indicates that you provided ORAC with a false identity when you first arrived in this country. It also indicates that you have returned to your country of origin contrary to the terms under which you were granted refugee status. The provision of false information to the Refugee Applications Commissioner is an offence and the Minister is of the view that your refugee status could be revoked under s. 21(1)(h) of the said Act (copy enclosed) which states that the Minister may, if he considers it appropriate, revoke the declaration if he is satisfied that a person to whom a declaration has been given on the basis of information furnished to the Commissioner, or as the case may be, the Tribunal, which was false or misleading in a material particular. In spite of this, the Minister is prepared to offer you one final opportunity to comply with your obligations as a recognised refugee in this country, providing you comply with the following requirements:

Explain your conduct.

Establish your true identity and submit your Sudanese passport to this office as you are not entitled to hold a Sudanese passport and also be recognised as a refugee in this country."

4. The attachment to that letter from the UK Border Agency states that "Mohammad Hussein Abdelatouf 21/05/1981 Sudanese, applied for a UK visa in Khartoum on 27/9/2006. He applied to go on honeymoon to the UK with his wife, Abeer Awad Mohammed Abdoun 08/06/1986, Sudanese. Both applicants were granted a visa valid from 28/09/06 to 28/03/07". The UK Border Agency also indicated that the same person had applied for a further visa in Khartoum on 26th September 2007, which was granted and yet a further application was made on 18th January 2009 which was refused. The letter indicated that "on 5th February 2008, a person using the name Mohammad Hussein Abd Ulatif Hussein 27/05/1980 was stopped at Heathrow Airport, travelling on an Irish 1951 Convention document". The UK letter says that the appellant was refused entry in transit to Ireland and his fingerprints were taken. The letter states that when application was made for a visa on 18th January 2009, for a person using the name Mohammad Hussein Abd Ulatif Hussein born on 21st May 1981, fingerprints were taken and these proved to be a match to the fingerprints taken from a person bearing the name Mohammad Hussein Abd Ulatif Hussein born on 27th May 1980.

5. The appellant denied the contents of the warning letter of 2nd June 2009 and the contents of the UK Border Agency letter of 18th

March 2009 in the course of lengthy correspondence with the respondent.

6. In view of these denials on 15th July 2009 the Minister's officials wrote to the appellant's solicitors inviting the appellant to submit his fingerprints to be compared with those taken by the British authorities. The appellant submitted his fingerprints.

7. On 8th April 2010, the Minister's officials wrote to the appellant's solicitors informing them that the appellant's fingerprints "proved to be a positive match to fingerprints taken by the UK authorities on three different occasions: (1) taken in Khartoum on 26th February 2007; (2) taken in Heathrow on 5th February 2008, and taken in Cairo on 12th January 2009". The letter went on to say:

"This establishes beyond doubt that your client was present in Khartoum on 26th September 2007 and was in possession of a valid Sudanese passport, after his being granted refugee status in this country. It also proves beyond doubt that he was in Cairo on 12th January 2009, again in possession of a valid Sudanese passport."

Notwithstanding the positive fingerprint match, the appellant's solicitors wrote back to the Minister on 18th May 2010, further contesting the Minister's allegations and seeking greater opportunity to address the allegations.

8. On 8th July 2010, the Minister formalised the proposal to revoke the appellant's refugee status. In relevant part, the letter is as follows:

"You are the holder of a Sudanese passport number B0917026. Despite being given numerous opportunities, you have failed to submit this passport. Therefore, it can only be concluded that you wish to retain the protection of your country of origin - Sudan. According to the evidence provided by the UK authorities (copies previously provided), you have returned to Sudan since you have been granted refugee status in Ireland, this would indicate that you have no fear in relation to your country of origin.

You would appear to have given **false and misleading information** during the course of your asylum application in the following matters [emphasis in original]:

You have failed to disclose the fact that you are in possession of a valid Sudanese passport.

You have failed to disclose the fact that you had made a number of visa applications to the UK prior to your claiming asylum in Ireland.

You provided a different name to that on your passport.

You provided a different date of birth to that on your passport.

On the basis of the above, you would seem to have rendered yourself liable to revocation of your refugee status.

Also, s. 11(2) of S.I. 518 of 2006 refers:"

9. By letter of 19th August 2010, the appellant's solicitors, in a detailed submission, again denied the allegations contained in the Minister's letter proposing to revoke refugee status. In effect, the appellant's solicitors suggested that the person who had applied for these visas and who had entered the United Kingdom was somebody other than the appellant.

10. Further correspondence ensued, leading ultimately to the decision by the Minister and his officials of 18th October 2010, which informs the appellant of the revocation of his refugee status for the reasons previously described. These reasons are summarised as follows:

"You provided the Office of the Refugee Applications Commissioner with a different identity to that on your Sudanese passport and you failed to disclose you had a Sudanese passport.

You applied for UK visas on three separate occasions, using your Sudanese passport."

The Appellant's Evidence on Affidavit

11. The appellant, in his affidavit of 22nd July 2011, confirms that his denials in correspondence were incorrect. The appellant avers that all of the information he provided about his life in Sudan given in his asylum application was correct. However, he confirms that he did have a false passport obtained through an agent in Sudan and which he retained when he claimed asylum in Ireland. He also states that the narrative of his journey to Ireland was incorrect. On affidavit he says, for the first time, that he operated a shop in his village which was seized after he was detained by the Government. He claims that he had borrowed S£8,000 from a criminal gang in order to invest in his business which he was unable to pay back owing to the loss of his business. He claims that an agent arranged a passport and a visa to the United Kingdom for him and that his uncle paid some \$3,000 for this. The appellant claims that while the picture on the passport was him, the other details were incorrect in order to hide his true identity from the Sudanese authorities. He claims that he lied to the Irish authorities about the manner in which he came to the State as he feared he would be returned to Britain and that the British authorities would then deport him to Sudan where he fears he would be killed.

12. The appellant claims he received a threatening call from the criminal gang to which he owed money saying that they would kill his mother if he did not repay the money he owed. He claims that they were holding his mother hostage at the time. The appellant states that he explained that he did not have the money to repay the debt owed, but made an agreement with the gang to transfer some land he owned to them. The appellant claims that in order to effect the sale of land he had to attend to a transfer in Sudan and could not organise a power of attorney through Sudanese embassy in London as he was a refugee. He claims that he travelled through the UK on his false passport to Sudan and made the transfer. The appellant claims he returned using the same trafficker who had organised his travel on the first occasion.

13. The appellant claims that he married his second wife in Damascus on 17th January 2008 and travelled on his Irish Geneva Convention Travel Document. He states that on his return through the UK after the wedding he was stopped at Heathrow airport on 5th February 2008, refused entry in transit to Ireland and his fingerprints were taken.

14. He claims his daughter was born on 1st November 2008 and his second wife became ill during childbirth and died soon after on

23rd December.

15. The appellant claims it was necessary for him to go to Sudan to sign a consent form for his daughter, who was also ill in hospital, and to see her for the first time. He once again travelled to Sudan on his false passport in January 2009. After his daughter's operation her health improved and she was left in the care of her maternal aunt. The appellant again sought to use the trafficker to organise his travel and sought to obtain a visa through Cairo. However, owing to a visit to the post office next door by the security forces he decided to flee. The forces had been asking questions about the occupants of the house in which the appellant was hiding. On this occasion the appellant fled to Ethiopia and he obtained a second Sudanese passport to enable his travel to Syria.

16. The appellant states in his affidavit that he understands that the visa which he applied for in January 2009 with his fake Sudanese passport was refused. He states that he no longer has a copy of that Sudanese passport. He claims that he does not have in his possession any passport, whether real or fake and that while he should not have retained the false passport while he was a declared refugee in Ireland, he did so out of fear. He claims he used the passport only because of his serious concern for his mother and his wife and child.

Oral Evidence

17. The appellant elected to give oral evidence with the aid of an interpreter. During the course of both examination-in-chief and cross-examination, a number of inconsistencies became apparent between the content of the appellant's affidavit and his oral evidence.

18. The appellant was asked by his own counsel to describe how he travelled to the State. The appellant explained that he travelled with an agent on a fake passport through the U.K. before coming to Ireland. When asked whether he had kept possession of the fake passport when he arrived in 2006, he replied that the agent had taken the false passport from him. This evidence contradicted paragraph 12 of his affidavit where he stated "I confirm that I did have a false passport obtained through an agent in Sudan and that I retained same when I claimed for asylum in Ireland".

19. On cross-examination by Mr. Devally S.C., the appellant accepted that he had not told the Irish authorities that he had a UK visa when he came to Ireland, that he told a lie in his questionnaire in this regard and that he had not told his interviewer about his debt to the local money lenders. When asked how he got to Sudan in 2007, the appellant replied that he had gone through the UK using the same false passport he had used to get to Ireland. The appellant gave evidence that he had an agreement with the agent to get the passport back and that the agent had sent him the passport in the post from Sudan.

20. The appellant was then asked how long he had spent in the U.K. en route to Ireland. His evidence was that he left the airport in the U.K. before being driven for some eight or nine hours, that he arrived in Ireland and that he kept the passport for some time thereafter. At this point, it was suggested to the appellant by counsel that he had this fake passport at all times, knowing that it would get him back to Sudan. The appellant denied this and stated that he was telling the truth and had nothing to hide.

21. The appellant was questioned further about the manner in which the U.K. visas were procured. The appellant claims that the passport was a false document that belongs to someone born in Saudi Arabia, which carried his photograph but did not carry his name. The name on the passport is Mohammed Hussein Abdelatif Hussein whereas the appellant's name on his UN Convention Travel document is Mohammed Hussein Abd Ullatif Hussein. The appellant was then asked how the agent got the false passport back from him and he stated that he posted the false passport back to him. The appellant was questioned as to why he had earlier said that the agent had accompanied him and taken the passport back then, to which he replied that he hadn't paid attention to the question.

22. Counsel continued by asking the appellant about the application for a visa in Khartoum in 2006 and whether he remembered filling out the form for that visa. The appellant replied that he didn't fill out the form but that everything was done through the agent. It was put to the appellant that the reason for travel recorded on the first visa was stated to be for a honeymoon and that the appellant had presented at ORAC claiming asylum with a woman who ended up as the very next applicant registered at ORAC on the same day. The appellant claims that he assumed that it was the agent who had applied for the visa for the woman. Counsel put it to the appellant that the U.K. visa applications records that the application was made in person. The appellant stated that the first time an application was made he wasn't involved but that on the second and third occasions he had to attend to give his fingerprints. The appellant also confirmed that certain handwriting on the application was his own. It was put to the appellant that he had in fact made out the application himself. The appellant denied this and stated that the agent brought him the form to fill in anything which the agent could not do himself.

23. The appellant also produced a form which he stated was evidence of the transfer of land to the money lenders whom he claimed were holding his mother hostage and which necessitated his return to Sudan to deal with the problem. The content of the form was put in evidence and the appellant was examined in this regard. Counsel for the respondent questioned the appellant as to why he had sworn in his affidavit at paragraph 17 that he was not provided with a copy of the transfer documents. The appellant stated that he had made efforts to procure the documents following the swearing of the affidavit on 22nd July 2011. The appellant claimed he got in contact with a relative who was in contact with the lawyer involved in the transfer of the land and managed to procure a copy of the document.

24. The land transfer document noted the appellant's Identity Card Number and I questioned him as to where he had obtained this card. The appellant stated that he had called his brother who had sent the card to Khartoum. I asked him as to the current whereabouts of the card and he stated that he had returned it to his brother as it would put his life at risk if he carried it.

25. I also asked the appellant if the agent accompanied him to Ireland and walked him through Dublin Airport. The appellant stated that he did not come by air but that they came by car, the agent, a driver and the appellant. The appellant stated that he made his application for asylum on the same day he arrived here. I asked the appellant whether someone checked his passport when he arrived in Ireland and he stated that he arrived in Belfast and that no one checked his passport between Belfast and Dublin. I asked the appellant did he keep the false passport on his arrival in London and he confirmed that he did. I then asked did he keep the passport as he travelled to Ireland and, again, he confirmed that he did. I asked when the agent asked for the passport back. The appellant stated it was after a while and that he did not simply hand it back to the agent. The appellant confirmed that he knew the agent's address in Sudan. I then asked how the appellant obtained the passport when he returned to Sudan when his daughter required an operation. The appellant responded that he simply telephoned the agent who sent him the passport by express courier which arrived two days later.

Appellant's Submissions

26. Counsel for the appellant submits that it is for the respondent to demonstrate to the court that the declaration of refugee status should be revoked and consequently that the onus of proof rests on the respondent in this case. In support of this view, the

appellant quotes Clark J. in *Adegbuyi v. Minister for Justice and Law Reform* [2012] IEHC 484 where she states: "42. Bearing in mind the contents of the UNHCR Note together with the terms of s. 21(1) (h) and its sister provision Regulation 11(2), it seems that the question to be determined is whether the Minister has satisfied the Court that Mr. Adegbuyi provided the asylum authorities with information which was false or misleading in a material particular; that there was a link between the falsity of the information and the grant of refugee status; and that he furnished the false information to the asylum authorities with the intention of misleading them." It is also submitted that the provisions of Art. 14(2) of the Qualifications Directive place the onus of proof on the respondent in this regard: "Without prejudice to the duty of the refugee in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his/her disposal, the Member State, which has granted refugee status, shall on an individual basis demonstrate that the person concerned has ceased to be or has never been a refugee in accordance with paragraph 1 of this Article".

27. It is submitted that it is for the respondent to establish to the satisfaction of the court whether the appellant voluntarily re-availed himself of the protection of his country of origin. Counsel quotes paragraph 119 of the UNHCR Handbook, to the effect that certain matters must be established for this to be made out, namely: "(a) voluntariness: the refugee must act voluntarily; (b) intention: the refugee must intend by his action to re-avail himself of the protection of the country of his nationality; (c) re-availment: the refugee must actually obtain such protection". The appellant states that the Minister does not appear to have considered any of these matters. Counsel submits that although the appellant used a fake Sudanese passport to return to Sudan in 2007 and 2009 for necessary and exceptional emergency reasons and further used a fake passport to apply for a visa to the United Kingdom he did not by these actions, voluntarily re-avail himself of the protection of his country of nationality.

28. The appellant cites *dicta* from Hathaway in '*The Law of Refugee Status*' (1991) to the effect that (at p. 139) "the diplomatic request must be made as an act of re-availment of protection, thus implying an intention to have one's interests defended by the issuing state". And further (at p. 195) that "since there is no automatic linkage between the issuance or renewal of a passport and the granting of protection, it is critical that the real reason it is being sought form part of the determination authority's considerations. Unless the refugee's motive is genuinely the entrusting of her interests to the protection of the state of her nationality, the requisite intent is absent. Third, the clause does not apply unless diplomatic or consular protection is actually given". These passages are quoted in support of the submission that the fact of holding a fake Sudanese passport is not sufficient, of itself, to establish that the appellant has voluntarily re-availed himself of the protection of the country of his nationality.

29. Counsel for the appellant also submits that pursuant to the provisions of Art. 14(3)(b) of the Qualifications Directive that a declaration of refugee status can only be revoked where the "misrepresentation or omission of facts, including the use of false documents, were decisive for the granting of refugee status". As such, it is submitted that in exercising its discretion the court cannot confirm the Minister's decision to revoke unless there was misrepresentation or omission of facts, including the use of false documents which were decisive for the granting of the declaration of refugee status. In this regard, it is submitted that the Refugee Act 1996 must be interpreted harmoniously with the Directive (*Von Colson v. Land Nordrhein-Westfalen* [1984] ECR 1891 and Case 106/77 *Simmenthal* [1978] ECR 629).

30. Counsel for the appellant submits that while this ground was rejected by Cooke J. in *Gashi v. Minister for Justice, Equality and Law Reform* [2010] IEHC 436, that he in effect held that in deciding whether certain misrepresentations or omissions were 'decisive' the matter could be dealt with by asking whether the application would have been determined differently. The appellant submits that while this may be a useful way to rephrase the requirement that the misrepresentation be decisive it is not the appropriate question to ask when what is at issue is information relating to a material particular. It is submitted on behalf of the appellant that it is perfectly possible for a particular to be material to a decision without it necessarily being a matter which would have resulted in a different decision.

31. Finally, while the appellant admits that he gave incorrect information to the Commissioner as to the manner in which he travelled to the State and that he failed to disclose he had a false Sudanese passport which he had used to obtain a visa and enter the United Kingdom, it is submitted that none of these matters were decisive for the granting of the declaration of refugee status.

Respondent's Submissions

32. In the first instance, the respondent maintains that the jurisdiction of the court on an appeal pursuant to s. 21(5) of the Refugee Act 1996 is limited to either confirming the decision of the Minister or directing him to withdraw it. It is submitted that insofar as a party wishes to question the validity of a decision of the Minister to revoke a declaration of refugee status, he may only do so by way of judicial review. As the appellant in this case has not chosen to pursue this course it is stated that the court cannot quash and remit the decision for reconsideration and as such the court could not appropriately direct the Minister to withdraw his decision solely because the court considered it flawed as to its validity. As such, it is submitted that the court has to be satisfied that this is not an appropriate case in which to revoke the declaration of refugee status if it decides to direct the Minister to withdraw his decision. It is contended that the appellant is not entitled to impugn the legal validity of the Minister's decision in line with the decision of *Ali v. Minister for Justice, Equality and Law Reform* [2012] IEHC 149. Counsel for the respondent is also of the view that the issue of the absence of a personal interview is being advanced as a challenge to the validity of the Minister's decision, and that it is not one which can properly be advanced in these proceedings. Without prejudice to that position, the respondent notes that the appellant lied throughout the course of the revocation process leading to the Minister's decision and only belatedly admitted the truth of the matters raised long after he had commenced his appeal. As such, the respondent is of the view that the appellant would have maintained the false position that he had not applied for UK visas or held a passport and that he had not returned to Sudan even if he had been interviewed at the time.

33. The respondent submits that he does not bear the onus of proof in respect of the matters relied on to revoke the appellant's refugee status. Rather, the respondent contends that it is for the appellant to persuade the court that it is appropriate to direct the Minister to withdraw the revocation of refugee status. Further, the respondent states that in similar statutory appeals the onus lies on an appellant to establish that the decision subject to the appeal is flawed or incorrect per *Ulster Bank v. Financial Services Ombudsman* [2006] IEHC 323. However, in any event, counsel submits that owing to the fact that the appellant provided false and misleading information in the course of his application for refugee status, the issue of the onus of proof may be academic.

34. Counsel for the respondent notes that while under the provisions of s. 21(1) of the Refugee Act 1996 the Minister had a discretion to revoke a declaration of refugee status, Reg. 11(2) of the EC (Eligibility for Protection) Regulations 2006 (the "2006 Regulations") specify that the Minister shall revoke a declaration of refugee status where s. 21(1)(a)-(h) (excluding (g)) is applicable. In relation to the submission of false information as a basis for revocation of refugee status, counsel refers to the decision of Cooke J. in *Gashi v. Minister for Justice, Equality and Law Reform* [2010] IEHC 436, where the court rejected the argument that to justify revocation pursuant to Reg. 11(2)(b) of the 2006 Regulations, the information shown to be false must constitute the particular information on which refugee status was established, namely, the facts relating to the fear of persecution and the other components of the definition of a refugee. On the other hand, Cooke J. found that the provision was not intended to be so narrowly construed and that

"the provision covers the misrepresentation or omission of facts which are directly relevant to the assessment of the application for international protection". Cooke J. also noted the obligation on an applicant under Art. 4.1 of the Qualifications Directive to "submit as soon as possible all elements needed to substantiate the application for international protection" and stated that "it is on the basis of these 'elements' that the facts and circumstances upon which the application for protection is based will be assessed. In other words, the decision to grant or refuse refugee status is based upon such information. The information in question forms the basis on which the decision is made and is 'decisive' in that sense".

35. The respondent notes that, similarly, in the case of *Adegbuyi v. Minister for Justice and Law Reform* [2012] IEHC 484, Clark J. held that the concealment of information in relation to previous visits to the UK, the possession of a passport and the issuing of UK visas constituted false and misleading information which had been decisive in the granting of refugee status. In that regard, counsel for the respondent notes that in this case the appellant accepts that he gave false and misleading information, which he claims is not decisive, and that it is now clear that: (a) the appellant provided a false account of how he travelled to and arrived in the State; (b) contrary to the appellant's account, he had travelled through at least one other safe country (the UK) before coming to this State; (c) the appellant falsely denied having ever been issued with a passport and did not disclose that he held what he alleges to be a false Sudanese passport; (d) the appellant falsely denied having had a visa to enter any country; and (e) the appellant falsely claimed that he did not use any documents to enter this country.

36. Counsel for the Minister submits that these matters must be regarded as having been decisive for the decision to recommend the granting of a declaration of refugee status and that if the correct information had been provided an entirely different assessment of the appellant's credibility would have been made. In this regard, the respondent notes that the Commissioner expressly had regard to the provisions of s. 11B of the Refugee Act 1996 in making her recommendation. Counsel submits that it is not necessary for the court to decide whether or not the Commissioner would have made a negative recommendation if she had been supplied with the information now available but that it is sufficient for the court to be satisfied that the Commissioner would have had to assess the claim in a substantially different manner. The respondent notes that were the court to accede to the appellant's request and accept the account that he now puts forward in directing the Minister to withdraw the revocation of refugee status, the court would in effect be acting as a first-instance asylum decision maker. The respondent submits that the court cannot decide whether or not the appellant is entitled to refugee status, which is in effect what the appellant is urging it to do.

37. The Minister contends that he takes the position expressed by the High Court in *Gashi* and *Adegbuyi* that there is no essential difference in meaning between Art.14(3)(b) of the Qualification Directive (as implemented by Reg. 11(2)(b) of the 2006 Regulations) and s. 21(1)(h) of the Refugee Act 1996. Without prejudice to that position, in so far as it may be necessary for the court to consider the matter, counsel denies that the appellant is entitled to rely on the terms of Art. 14(3)(b) of the Qualification Directive to argue that s. 21(1)(h) of the Refugee Act 1996 or Reg. 11 of the 2006 Regulations are inapplicable or limited in their application, or that either provision must be interpreted otherwise than in accordance with their natural meaning. In this regard, the respondent denies that Article 14(3)(b) of the Directive is directly effective in Irish law. Rather, it is submitted that the said provision has been implemented in Irish law by Reg. 11(2) of the 2006 Regulations. The respondent notes that Art. 14(3) of the Directive does not confer any right on a person who holds a declaration of refugee status but requires the Member States to revoke refugee status in the circumstances set out, including where it is established that the person's misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of refugee status.

38. Finally, counsel notes that the information before the Minister provided by the UK Border Agency established that the appellant had applied for a UK visa in Sudan on two occasions using a Sudanese passport following the granting of his declaration of refugee status in Ireland. It is submitted that the Minister was fully entitled to decide that the appellant had voluntarily re-availed of the protection of his country of origin in those circumstances. While the appellant is said to have provided a reconstructed narrative purporting to provide explanations as to why he returned to Sudan and as to why the applications for visas were made to the British Embassy, the respondent submits that it is for the court to assess the credibility of the viva voce evidence in this regard given by the appellant at the hearing.

Assessment of Evidence

39. The appellant has, at various times, given different accounts of his possession of a Sudanese passport. During his asylum application process, he stated that he did not have a passport or any identifying documents and that he entered Ireland without such documents. In his affidavit grounding this appeal, he stated that he did have a false passport obtained through an agent which he retained when he claimed asylum in Ireland. He contradicted this in his oral evidence by saying that the agent who had travelled with him from Sudan had taken the passport from him. Later, under cross-examination as to how he had re-entered Sudan in 2007, the appellant said that he had travelled through the United Kingdom using the same false passport he had used to enter Ireland which had been posted back to him by the agent, from Sudan. He indicated that he had posted the passport back to the agent. Later, in 2009, when he needed to visit his infant daughter he says that he used the same false passport which had been posted to him by the agent in Sudan.

40. The appellant accepts that he has made false statements in his application for refugee status and during the revocation process. That however is not where the falsehoods stop. He has made false statements in his affidavit grounding this appeal. His evidence in relation to whether he possesses a Sudanese passport is not capable of being believed. His explanations for his return visits to Sudan stretch credulity. I do not believe that he was required to be personally present in Sudan to consent to a health care procedure for his daughter. No credible explanation was given as to why his personal presence was required. I also reject the narrative concerning the sale of land to pay debts and thereby rescue his mother. If this were a genuine tale he would have offered it, along with the story about his daughter's health issues, as an explanation for his travels as soon as the Minister's officials sought such explanation. In short, the appellant is a wholly unsatisfactory witness. He has lied when applying for asylum. He lied to his solicitors and to the Minister's officials during the refugee revocation process. He has lied on affidavit in these proceedings and he has lied when giving oral evidence.

Conclusions

41. The appellant can only succeed if he persuades the court that the Minister must withdraw the revocation of refugee status because he incorrectly decided to revoke that status. The burden is on the appellant to demonstrate that the Minister's conclusion is incorrect. I reject the appellant's argument that the Minister bears a burden to establish that his decision is correct. In any event, this debate about where the burden lies is somewhat artificial in view of the fact that the appellant went into evidence and in view of the findings I make. If I am mistaken as to who bears the burden, I find that the Minister has, in any event discharged that burden.

42. I agree with the description of the court's function on this appeal given by Clark J. in *Nz.N. v. The Minister for Justice and Equality* [2014] IEHC 31. The learned judge said:

"31. The powers of the Court on an appeal against a revocation of refugee status is to determine whether the decision to

revoke the declaration was correctly made and should be confirmed, or whether the decision was wrong and should be withdrawn. The Court can consider all the evidence which was before the Minister and hear oral evidence from the appellant and any witnesses called by either party in determining the appeal. The Court can come to its own view as to whether the decision to revoke is appropriate or should be withdrawn

. . .

The Court is not empowered to ask the Minister to re-consider the decision and the Court must come to its own decision confirming the Minister's original decision to revoke the appellant's refugee status or restoring the appellant's status by directing the Minister to withdraw the revocation of the declaration. The Court does this on the evidence which was before the Minister and any additional evidence presented on the appeal."

43. In *Gashi v. The Minister for Justice, Equality and Law Reform* (Unreported, Cooke J. High Court, 1st December 2010), the appellant was declared to be a refugee following a positive recommendation by the Refugee Appeals Tribunal which accepted that he had fled from Kosovo. Subsequently, the UK authorities informed the Irish authorities that he had applied for a UK visa, presenting as an Albanian national. The appellant failed to make any representations on the allegations and the Minister revoked the refugee status pursuant to s. 21(5) of the 1996 Act, based upon the information from the UK Border Agency. In a discussion as to the nature of the court's jurisdiction on an appeal such as the present one, the learned judge said:

"There is no doubt, however, that this proceeding is not confined by the judicial review rules as it is a statutory appeal in which the court can 'as it thinks proper' either confirm the respondent's decision to revoke or direct that he withdraw it. The court is not, therefore, limited to judging the legality of the process by which the decision was made by reference only to the information before the respondent at the time. It can decide on the basis of the evidence now available whether the respondent was correct in finding that the original declaration had been given on the basis of information 'which was false or misleading in a material particular' . . ."

Later in the judgment, the judge said:

"In the view of the court, the expression 'decisive for the granting of refugee status' is used so as to require refugee status to be revoked where it is clear that the decision to grant it would not have been made had the true full facts been known. Thus, the provision covers the misrepresentation or omission of facts which are directly relevant to the assessment of the application for international protection."

Having assessed the difference in language versions of the Qualifications Directive, the judge said that:

"The question to ask is whether the application for protection would have been determined differently had the information not been misrepresented or concealed."

44. In my view, the various *dicta* of Cooke J. to which I have referred describe the function of the Minister when assessing whether or not to revoke a declaration of refugee status where the provisions of regulation 11 of the 2006 Regulations are invoked. It is clear from the decisions in *Gashi* and in *Nz.N.* (Clark J.) that this court is entitled to consider whether the Minister's decision to revoke was correct based not only on the material which the Minister reviewed but also based on the evidence adduced by the appellant orally and on affidavit. In my view, I am required on this appeal to seek to identify false and misleading information and if found to enquire as to the effect of that on the application for refugee status. I must be satisfied that the false or misleading information would have produced a negative asylum recommendation had such been known to ORAC. In my view, it is not sufficient that the false or misleading information would have caused a different analysis of the asylum application but the same result. In other words, it seems to me that the effect of the false or misleading information must persuade the court that the declaration as to refugee status would not have been obtained. I fully accept what Cooke J. said at para. 23 in *Gashi* that the expression "'decisive for the granting of refugee status'" is used so as to require refugee status to be revoked where it is clear that the decision to grant it would not have been made had the true full facts been known". The function of the court on an appeal from a decision of the Minister taken under regulation 11 of the 2006 Regulations is to ask whether the Minister was correct (that false/misleading information was decisive) and I can only do this by asking the same question which the Minister was obliged to ask. I must seek to identify the false or misleading facts, ask would these have been decisive in the sense that they would have produced a negative asylum decision if known and then decide if the Minister was correct to revoke refugee status, even if the court has additional material unavailable to the Minister.

46. Numerous falsehoods underpinned the application for refugee status in this case. It will be recalled that the appellant informed ORAC that events transpired on about 28th August 2006 which caused him to fear for his life and to flee Sudan. The appellant's story was that he was smuggled out of Sudan and into Ireland with no papers. This was untrue. I find as a fact that the appellant applied for a UK visa on 26th September 2006 in Khartoum. He entered the United Kingdom some time between September and November, and he entered Ireland carrying the same Sudanese passport on 22nd November 2006. I find that he retained the passport after entry to the State and that he has never returned this passport by post or personally to any third party. Whatever schemes might be employed by 'agents' and their 'clients' in the nefarious business of people smuggling, the idea that a trafficked person would regularly post a false passport back to an 'agent/smuggler' defies logic and stretches credulity. In any event, nothing the appellant says in relation to his dealings with this Sudanese passport is believable because he has changed his story so often. My finding is that the appellant at all material times has had and probably still has a valid Sudanese passport with which he has travelled internationally extensively. In addition the appellant never informed the Irish authorities that he had a difficulty with "loan sharks and criminal gangs" in Sudan. If there was any truth to this story, he would surely have informed the Minister about this during the revocation process when he was asked to explain his presence in Sudan after the grant of refugee status. The fact that he did not do so when he had an opportunity suggests to me that the story is fabricated and I reject it. Equally, I reject the explanation provided as to why the appellant returned to Sudan to sign a consent form in respect of health care for his daughter. My view is that the appellant has travelled back to his home country on his own passport on a number of occasions since he was declared to be a refugee in Ireland for reasons he has not disclosed to the court. He has given untruthful evidence about the purpose of these trips. One of the more astonishing facts to emerge during his oral evidence is that he still has a Sudanese Identity Card. This emerged by an examination of a land transfer deed which notes the existence and details of the card. The card is said to be in the safe keeping of his brother who lives in Sudan. The card has not been shown to the court. The appellant has known for a number of years that he is accused of using a false identity when seeking asylum in Ireland. A valid identity card would assist with overcoming the allegation of using a false identity. I draw an adverse inference from the fact that the identity card has never been produced for the Irish authorities or for this court though he was able to obtain a copy of the land transfer document from Sudan for use in this appeal.

47. The return trips post-date the grant of asylum and the mendacity associated with these so-called events could not have had any effect, much less a decisive effect on how he obtained refugee status. But this court now has a much fuller picture of the appellant's

life and circumstances than that which was available to ORAC or to the Minister when revocation was decided. The lies he has told about these return trips, about his possession of a passport and the manner in which he arrived in Ireland, taken together, persuade me that the picture he painted of himself on his application for refugee status was false.

48. He was granted asylum on the basis of a false identity and therefore it is possible to conclude that he was granted a declaration of refugee status on the basis of information which was false or misleading in a material particular and that the false information or misleading information was decisive in the sense that had it been known at the time, the application for asylum would have been decided differently. My view is that it would have been refused. In simple terms, if the Irish authorities had discovered that he was using a false identity to apply for asylum he would have been refused the status. Such a conclusion would also have been merited by other facts, had they been known: that he had, contrary to his assertions, a Sudanese passport and that he had obtained a honeymoon visa to enter the UK immediately prior to seeking asylum in Ireland.

49. In those circumstances, I am satisfied that the Minister's decision to revoke the appellant's refugee status was correct and I reject this appeal.

50. For the sake of completeness I wish to add that it is not necessary for me to decide whether the Minister was correct in deciding that the appellant, by returning on a number of occasions to Sudan on his own passport had thereby availed of the protection of his country of origin such that refugee status was no longer warranted.