Neutral Citation Number: [2008] IEHC 19

THE HIGH COURT

JUDICIAL REVIEW

[2006 No.381 J.R.]

BETWEEN

C. D. AND E. A. (A MINOR SUING BY HIS MOTHER AND NEXT FRIEND C. D.)

APPLICANTS

AND

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

RESPONDENTS

Judgment of Mr Justice Brian McGovern delivered on the 24th. day of January, 2008

1. This is an application for leave to apply for judicial review for an order of *certiorari* quashing the decision of the first named respondent made on the 26th January, 2006 to refuse the applicant's refugee status which said position was notified to the applicants not earlier than the 3rd February, 2006. The applicant also seeks an order of *certiorari* by way of application for judicial review quashing the decision of the first named respondent made on the 26th January, 2006 to affirm the recommendation of the Refugee Applications Commissioner and notified to the applicants not earlier than the 3rd February, 2006. The applicants also seek ancillary relief including an order of *mandamus* directing the first named respondent to remit the appeal of the applicant for a hearing *de novo* before a separate member of the Refugee Appeals Tribunal and for a declaration that the decision of the first named respondent made on the 26th January, 2006 and notified to the applicants not earlier than the 3rd February, 2006 refusing the applicant's refugee status and/or affirming the recommendation of the Refugee Applications Commissioner is *ultra vires*. The applicant seeks an order of prohibition against the third named respondent from proceeding with this proposal to make a deportation order in respect of the applicants. Other ancillary relief is set out in the notice of motion furthering the statement of grounds on foot of which the application is based.

2. On the commencement of proceedings, counsel for the applicant withdrew the claim of the second named applicant, as a child of the first named applicant, to be dealt with separately.

3. The applicant seeks, *inter alia*, an order extending the time for bringing the application. The statutory provisions relating to the right to challenge a finding of the Refugee Applications Commissioner (RAC) or the Refugee Appeals Tribunal (RAT) provide that the application shall be made within a period of fourteen days commencing on the date on which the person was notified of the decision " . . . unless the High Court considers that there is good and sufficient reason for extending the period within which the application shall be made".

4. There is no doubt that the applicant was out of time for bringing the application. The decision of the RAT was made on the 26th January, 2006 and notified to the applicants not earlier than the 3rd February, 2006. A notice of motion challenging the decision to refuse the applicant's refugee status was dated the 28th March, 2006. The applicant says that when she received the decision of the RAT, she believed the Refugee Legal Service (RLS) was going to challenge the decision by way of judicial review. By letter of the 6th February, 2006 she was informed that her legal representative was examining the decision and she says that she kept in touch with the RLS throughout February and early March. She was told that the RLS were awaiting a decision from their Judicial Review Unit and as she was concerned she made an appointment to attend the offices of the solicitor who represents her in this application. As she continued to await the decision of the RLS, she signed a document dated the 3rd March, 2006, authorising her solicitors to act on her behalf and collect all files from the RLS. The letter of authority refers to her solicitors being authorised to " . . . pick up all files regarding my judicial review proceedings". On the 6th March, 2006, she was told that the RLS would not be instituting proceedings on her behalf and she immediately notified her solicitor. On the 8th March, 2006 she was informed that the third named respondent proposed making a deportation order in relation to the applicants. On the 15th March, 2006, the RLS forwarded the applicant's file to her current solicitors.

5. I am satisfied, on the evidence, that the applicant intended to appeal the decision to refuse her refugee status and that she did so as soon as the decision was made. It is true that the RLS were awaiting legal advice on the matter, but it seems to me that the applicant had formed the intention to appeal even though the RLS were awaiting legal opinion in that matter. In any event, the matter appears to have been largely out of the applicant's hands while the RLS were dealing with it, and I believe that her current solicitors acted promptly when they got the papers. In the circumstances, it seems to me there is good and sufficient reason for extending the time within which to bring this application for leave to apply for judicial review.

6. The burden of proving that she is a refugee lies on the applicant. The statutory provisions relating to applications for judicial review in asylum matters state that

> " . . . leave shall not be granted unless the High Court is satisfied that there are substantial grounds for contending that the decision, determination, recommendation, refusal or order is invalid or ought to be quashed". The Supreme Court has held that the phrase "substantial grounds" is equivalent to "reasonable", "arguable" and "weighty" and that such grounds must not be "trivial or tenuous" (see In *Re Article 26 of the Constitution and the Illegal Immigrants (Trafficking) Bill*, 1999 [2000]

2 I.R. 360, 394-5) adopting the views of Carroll J. in *McNamara v. An Bord Pleanála* (No.1) [1995] 2 1.L.R.M. 125

7. In her submissions made to the court, the applicant argues that if the court (a) is satisfied that on the facts as found it would have raised different inferences and conclusions, or (b) it is satisfied that the case against the decisions was stronger than the case for them, the decisions should be quashed. In my view, that is a misunderstanding of the role of the court in reviewing decisions made in the asylum process. The court does not sit as an appellate forum. The court is not entitled to substitute its view on the facts for that of the RAC or the RAT. The function of the court is to examine the decision with a view to establishing whether or not it was made *intra vires* or in a manner which has regard to natural and/or constitutional justice and fair procedures. The legislature has decided that decisions in respect of asylum seekers should be made by the Refugee Applications Commissioner and, on appeal, by the Refugee Appeals Tribunal. The legislation gives no role to the court to act in an appellate jurisdiction and quite specifically provides that a person shall not question the validity of a decision made in the asylum process or a deportation order made thereon, otherwise than by way of an application for judicial review. The position couldn't be clearer.

Report of Second Named Respondent, The Refugee Applications Commissioner
8. I have read this report and considered it in the light of the submissions made by counsel. The second named respondent accurately sets out the way in which the application should be assessed. It was pointed out by the RAC that this is a case where the applicant maintains she was receiving threats from her partner's family. The threats were not coming from the State or any agency of the State. The applicant was receiving threats because her partner's family did not agree with their relationship due to the fact that she was a member of a Christian faith and of the Fanti tribe and had not been circumcised, whereas her partner's family are Muslims. In that context it is worth pointing out that her partner's father was a Muslim but his mother was an adherent to the practices of voodoo. There is only one matter in the report of the RAT which might warrant further examination and that is the statement which refers to the fact that the Ghanaian constitution provides clear protection against female genital mutilation (FGM). The RAC states "the law is reportedly being enforced". There is evidence to suggest that African countries which have recently banned female circumcision do not enforce the law. An extract from a publication produced to the court states "no other African country that has recently banned female circumcision, including Egypt, Ghana and Burkina Faso, dares enforce the law".

9. But the applicant's claim is not that she fears she will be subject to FGM or circumcision. It is clear from the interviews with her, that her partner would not permit this nor does she intend to undergo the procedure. Furthermore, in the course of the hearing, it was conceded that the greatest problem with regard to FGM in Ghana is in the north of the country whereas the applicant is from the south. Therefore, even if the statement of the RAC to the effect that "the law is reportedly being enforced", is something that might warrant further investigation this would only arise if it was material to the applicant's claim. I hold that this is not a material matter since the applicant's claim for asylum is not based on the fear of FGM or female circumcision. I find nothing else in the RAC report which would establish a substantial ground for contending that it is invalid or ought to be quashed.

The Decision of the RAT
10. The court has to consider whether the applicant has established substantial grounds for contending that this decision or refusal is invalid or ought to be quashed. The Tribunal member recites the fact that the father of the applicant's partner was a staunch Muslim whose mother was a traditionalist who worshipped the voodoo shrines. She also recites that the family of the applicant's partner did not approve of their relationship on religious grounds and due to the fact that she was not circumcised. The Tribunal member proceeds to outline the facts and in doing so appears to have recorded the account given by the applicant. I find nothing in the account as set out by the RAT which indicates any error or significant error on the facts. The RAT has correctly, in my view, set out the burden and standard of proof and the law as it applies to refugees and has also correctly dealt with the issue of persecution.

11. The applicant challenges the conclusions of the RAT. One conclusion is that the Tribunal doesn't consider it " . . . capable of belief that the applicant would be able to pass through various immigration authorities on a false passport, bearing in mind current strict procedures for checking the validity and authenticity of passports and other identity documents". There is nothing irrational about that conclusion. It is an inference drawn by the RAT and one which is probably not capable of exact proof. But it is merely one of a number of matters taken into account in assessing the credibility of the applicant. I don't ascribe any particular significance to the findings of the RAT in relation to the failure to produce travel documents. The Tribunal member did not consider it capable of belief that if the father of the applicant`s partner was a staunch Muslim and was insisting that the applicant change her religion if she was to marry his son, that he would not have forced his own wife to change her religion after they got married. The Tribunal didn't consider it plausible that this man would continue to allow his wife to believe in voodoo during their marriage if he was such a staunch Muslim and, as such, would have strict views about people who believe in voodoo, or worship idols. The applicant argues that the reason the father of her partner would have insisted on her becoming a Muslim or being circumcised before she should marry his son was because he was the first son. I don't find that argument particularly convincing. On the face of it, it seems to me that the conclusion of the RAT on this point is entirely reasonable and the applicant does not raise substantial grounds for contending that this decision is invalid or ought to be quashed. The Appeal Tribunal's decision that the letter from the applicant's friend, Ms B. M., adds nothing more to the applicant's case, seems reasonable. The same is true of the tribunal's assessment of the letter from the former MP in the Parliament of Ghana. The RAT quite correctly points out that while the letter from the former MP states that the applicant was running away from a Muslim marriage into which she was being forced, this was not the case being made by the applicant and therefore the Tribunal does not attach any weight to it. Indeed, this letter seems to have been a basis for suspicion as to the true nature of the applicant's claim. The applicant has not raised any substantial grounds for contending that this decision is invalid or ought to be quashed. The applicant never reported her problems to the police in Ghana because she says she was scared they would leak the information to her partner's family. There is country of origin information to show that within Ghana there is considerable suspicion of the police and that they are perceived not to be effective. Be that as it may, the applicant did not complain to the police or seek police protection. The report of the RAT states " . . . while the Tribunal accepts that there may be some police corruption in Ghana, the Tribunal is of the view that as the applicant did not seek police protection, she is not in a position to state that the State was unable or unwilling to offer her protection". It seems to me that having regard to the country of origin information, there may be an arguable case that the applicant had a good reason for not seeking State protection but I have to decide whether, in the overall context of this case, this is of any materiality.

12. The RAT states that it is aware that FGM has been banned by the Ghanaian constitution. The tribunal's view that reports referred to by it, do not refute the fact that FGM has been banned or suggest that it is still widespread in Ghana, may paint less than the full picture. However, the applicant in this case has not claimed that she apprehends that she would be subject to FGM, and it simply does not form part of her application. Therefore, it is irrelevant whether or not the RAT was factually correct on this point or whether their conclusions on that point were supported by the evidence. Any such error would not, in my view, raise a substantial ground for contending that the decision ought to be quashed as it is not made on a material issue.

13. An important issue in this case was the question of internal relocation. The applicant claimed that she moved to three different places in Ghana to avoid the problems she was having with the family of her partner. She said that in 1997 she was told by members of her partner's family that she brought bad luck to the family and that she should leave her partner. She fled the area and went to Nankese-Suhum. She stayed there for about nine months. She denied having any physical problems there but said that she became afraid due to things that were said to a friend with whom she was staying. She then got herself a job in Koforidua and she lived there for about three and a half years. She was teaching in a catering school and got a house help who minded the children for her when she was working. She was asked if she had any difficulties there and said no, but that in 2001 or 2002 she got a note saying

> "Don't think you are hiding because we know where you are. You must be careful; you cannot keep bringing bad luck". She had been seeing her partner every two weeks while she was there. She said that after that, she went to Cape Coast to live with her sister . . that was in 2002. She lived there until March 2005 when she moved to Accra. She was asked if she had any problems in Cape Coast and said that she didn't have any physical problems but was living in fear. She said in interview "I was afraid someone would hit me or something. I was desperate. It was when I was in Cape Coast that I decided to leave the country".

14. Her description of the threats and the fear she felt were somewhat vague and non-specific. It is clear from her own evidence that

she didn't suffer any physical harm in these places. The Tribunal held the view that she had successfully relocated internally to avoid the problems she was having with the family of her partner and that she had the support of friends and family in these places for almost eight years from 1997. The Tribunal accordingly held that she was not in need of international protection and therefore was not a refugee.

15. In my view, the RAT was quite entitled to come to that conclusion on the evidence of the applicant herself. In those circumstances, the applicant would not be entitled to refugee status and that matter alone would defeat her claim. This finding would overcome any of the other matters I have referred to where the first or second named respondents may have been in error or where their findings of fact might otherwise have warranted some enquiry. Furthermore, I have already concluded that those other matters were not material to the claim being made by the Applicant.

16. In all the circumstances I am satisfied that the applicant has not made out "substantial grounds" for contending that the decisions of either the first or second named respondent are invalid or ought to be quashed and in the circumstances is not entitled to leave to apply for judicial review.