Neutral Citation: [2015] IEHC 831

THE HIGH COURT

JUDICIAL REVIEW

[2011 No. 1210 J.R.]

IN THE MATTER OF THE REFUGEE ACT 1996 AS AMENDED

IN THE MATTER OF THE IMMIGRATION ACT 1999

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

M. N.

(A MINOR SUING BY HER FATHER AND NEXT FRIEND R. N.)

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 21st day of December, 2015

1. The applicant is a five year old girl who, while born in Ireland, is of Pakistani nationality. Her parents married in Pakistan in breach of their families' wishes, and accordingly fear retribution of some sort being visited upon them by the wife's family should they return.

2. As far back as 25th June, 2007, the father applied for a UK visa and was refused, according to documentation supplied by the UK Border Agency. That agency said nothing to the tribunal about any appeal in relation to such refusal. At the hearing before me, Mr. Garry O'Halloran, B.L., who appeared (with Mr. Mark de Blacam, S.C.) for the applicant, informed me that the father's instructions were that he appealed this visa refusal, that the visa was granted on appeal in 2008, that he used the UK visa for fifteen days and that he then returned to Pakistan.

3. On 16th August, 2010, the applicant's parents and brother were granted multi-entry visitor's visas to the UK. At the hearing, Mr. O'Halloran informed me that the applicant's father's instructions were that these were all arranged by a people-trafficker and that he had nothing to do with them. Before the Refugee Appeals Tribunal, however, the applicant's father appears to have stated that it had taken him a year to get the visa and that his cousin was of assistance.

4. Mr. O'Halloran informed me that the applicant's father explained the discrepancy by saying that this evidence before the tribunal in fact referred to the unrecorded (and hitherto unheard-of, as far as this case is concerned) 2008 permission which was said to have been obtained by way of appeal against the 2007 refusal.

5. On 3rd September, 2010, the applicant's parents and brother came to Ireland via Dubai and the UK, said to have been travelling on false British passports. Prior to leaving Pakistan they had lived initially in Jhelum in Punjab, then in Lahore and finally in Karachi.

6. However the UK Border Agency records the applicant's parents' fingerprints as showing up on their database in connection with their own genuine Pakistani passports. The applicant's parents contend that the only time they travelled to the UK (other than the alleged 15 day visit in 2008) was in transit on their way to Ireland. This would suggest that, contrary to what they told the tribunal, their genuine Pakistani passports were used to get as far as the UK.

7. Mr. O'Halloran informed me that the applicant's father explains the discrepancy by saying that the people-trafficker in this case had access to both the false British passports and the genuine Pakistani passports with British multi-entry visas, and used the genuine ones at the UK border. However it is not by any means clear to me (nor indeed has any explanation been put forward) as to why there was a necessity for false British passports if the family had access to, and indeed, used, genuine passports which were sufficient to gain entry to the UK.

8. On 4th September, 2010, the day after the parents arrived in Ireland, the applicant was born in the National Maternity Hospital.

9. In September 2010, the parents and the applicant's brother applied for asylum but these applications were withdrawn in October 2010. The ostensible reason for the withdrawal was that the applicant's uncle had been kidnapped and it was intended that the family would return to Pakistan to deal with the matter, but subsequently, matters were resolved without this being necessary. There was then an application for readmission to the asylum process under s. 17(7) of the Refugee Act 1996, which was refused.

10. On 4th July, 2011, an asylum application was submitted on behalf of the applicant. This was rejected by the Refugee Applications Commissioner on 28th July, 2011.

11. On 17th October, 2011, the applicant appealed to the Refugee Appeals Tribunal. This appeal was rejected on 25th November, 2011.

12. The present proceedings challenging this refusal were instituted on 20th December, 2011. This is slightly out of time but Ms. Anne Harnett-O'Connor, B.L., for the respondents has consented to an extension of time and I will make that order.

13. Mr. O'Halloran challenged the Tribunal decision under a number of headings, which I will deal with in sequence as follows.

Can the Tribunal rely on the situation of the parents where there has been no substantive finding in relation to them?
14. Regulation 5(1) of the 2006 Regulations, the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006), implementing Article 8(2)(a) of the Procedures Directive, Directive 2005/85/EC, requires that an application be "individually" assessed.

15. In *J.O. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 478 at para. 8, Cooke J. accepted that the requirement for individual assessment did not necessitate a distinct inquiry into the child's personal circumstances where the child's claim was based on that of the parents. That was a case where there had been a previous report regarding the mother's application.

16. In *A.N. v. Refugee Appeals Tribunal* [2015] IEHC 699, at para. 43, it was accepted that a decision maker may have regard to *"findings"* made in respect of parents when dealing with an application by a child based on the same circumstances.

17. It is also relevant that the applicant's father told the Refugee Applications Commissioner that the daughter's claim was based *"entirely"* on his own and the mother's claim (Q. 8, p. 3 of the interview notes).

18. Even though there was no finding in relation to the parents, because the refugee applications were withdrawn, I consider that the tribunal was entitled to have regard to the situation of the parents in assessing whether the claim on behalf of the child was well-founded. There is no basis to overturn the decision under this heading.

Can the Tribunal make new credibility findings without referring matters back to the Commissioner?
19. Mr. O'Halloran argued that the tribunal is there to provide an effective remedy against a decision of the Refugee Applications Commissioner. He submits it therefore cannot come up with new adverse credibility findings without, at the least, referring matters back to the commissioner for investigation and report.

20. The power of the tribunal to request the commissioner to investigate matters was discussed in *H.I.D. v. Refugee Applications Commissioner* [2011] IEHC 33, where it was noted at para. 50 that that power reflects the obligation under Article 8(2)(b) and (3) of the Procedures Directive to obtain up to date country of origin information.

21. The applicant here is making the opposite case, namely that the tribunal is *prohibited* from making a fresh assessment of the credibility of the claim made, without referring the matter back to the commissioner. There is simply no basis in the Act, or in fair procedures, for such a contention.

22. Mr. O'Halloran relies on the decision of Charleton J. in M.A.R.A. v. Minister for Justice and Equality [2014] IESC 71 at para. 15, where it is said that an adverse finding of the commissioner challenged in a notice of appeal is displaced by the tribunal decision unless specifically affirmed. That proposition is not in question and does not rule out the tribunal making new findings of credibility in such an appeal.

23. The right to an effective remedy is not an endless hall of mirrors where any remedy, in turn, gives rise to a right to an effective remedy against that prior remedy. For example, Protocol No. 7 to the ECHR provides in Article 2 for a right of appeal in criminal matters. However, Article 2(1) goes on to state that this right does not apply where a person is *"tried in the first instance in the highest Tribunal or was convicted following an appeal against acquittal".* Applying this reasoning by analogy to the right to an effective remedy in respect of an asylum decision, it is clear that a tribunal which itself provides an effective remedy against a lower body may nonetheless significantly alter the decision made, without that in turn giving rise to a further right to an effective remedy against the decision of the higher tribunal.

24. Subject to complying with any other legal requirement, the tribunal is perfectly entitled to make new credibility findings without referring the matter back to the commissioner under s. 16(6) of the Refugee Act 1996. This is especially so in a case where it hears new evidence, as was the case here.

Allegation that the internal relocation finding was defective
25. While Clark J. in *K.D. (Nigeria) v. Refugee Appeals Tribunal* [2013] IEHC 481, was of the view that an internal relocation finding only arose when the applicant's claim was well founded and otherwise did not have to comply with the full strictures of Regulation 7 of the 2006 Regulations or Article 8 of the 2004/83/EC Qualification Directive, this view has not won universal acceptance.

26. Mac Eochaidh J. in *E.I. v. Minister for Justice and Equality* [2014] IEHC 27 and Faherty J. in A.N. were of the view that when an internal relocation finding was made, albeit on an *"even if I am wrong about there not being a well-founded fear of persecution"* basis, it must be *"full-blooded"* and comply with Article 8 of the directive and regulation 7 of the 2006 regulations.

27. I would respectfully agree with the approach in E.I. and A.N. rather than that in K.D. It seems to me that any other approach would undermine the effectiveness of Article 8 of the Qualification Directive.

28. Article 8.2 clearly provides that the decision maker in an internal relocation finding must identify a part of the country concerned to which the applicant can relocate, and must consider the *"general circumstances"* in that part of the country and the personal circumstances of the applicant.

29. While the circumstances of the applicant are, perhaps indirectly contemplated by the tribunal in having regard to the circumstances of the family, there is no sufficient consideration, or indeed, any real consideration, of the general circumstances in the part of the country to which the applicant is expected to relocate, namely Karachi. The only statement made about Karachi is that it has a population of twenty million people. The extent of honour killings or tribal persecution in Karachi against females generally, or children, particularly girls, is not discussed.

30. On that basis, I consider that the internal relocation finding cannot stand.

31. However, that finding seems to me to be severable from the decision rejecting the claim of a well founded fear of persecution. In *A.M.G. (Pakistan) v. Refugee Applications Commissioner* [2014] IEHC 379, a credibility finding was held to be unsustainable, but the rejection of the claim was upheld on the basis of valid internal relocation and state protection findings. If that approach can lawfully

be taken, which it can, then the reverse also applies, and an invalid assessment of internal relocation can be severed from a rejection of credibility, all other things being equal.

Alleged failure to consider country of origin information properly
32. Mr. O'Halloran submits that the country of origin information shows unacceptable conditions for women and girls in Pakistan where there is a threat of honour killings. He relies on the US State Department Report for 2010 which refers generally to honour killings and also says that these can apply to girls, and to a lesser extent boys, although no details are given in this regard. The report refers to information compiled primarily in northern areas of Pakistan going back to 2001. Thus, the information is up to 14 years out of date, and applies to a part of Pakistan that is at a very far remove from Karachi and, in any event, is considerably lacking in detail.

33. In any event, the applicant faces the more fundamental difficulty that her story, as conveyed by her father, was essentially held to be incredible for a whole host of reasons. The father's evidence was viewed as *"confused, ambiguous and fragmented"* (p. 14 of the tribunal decision), *"illogical"* (p. 15) and *"evasive and contradictory"* (p. 17). The tribunal member said that *"he was circumloquatious (sic) and long-winded in answering direct questions and attempted to confuse the Tribunal even when giving answers to very simple questions. The inconsistencies, contradictions and ambiguity in the evidence to further undermine the applicant's claim".*

34. Apart from these general observations, the Tribunal had a whole series of difficulties with the substance of the evidence offered. It appears that Mr. N. generally came across to the tribunal as a man with an (implausible) answer to everything, an impression that was by no means inconsistent with the confusing and contradictory instructions he conveyed to his lawyers in response to queries from me during the hearing.

35. I have already held in *R.A. v. Refugee Appeals Tribunal* [2015] IEHC 686 that where an applicant's credibility is rejected generally, there is no need for narrative consideration of country of origin information. Ms. Harnett-O'Connor submits that *"if the matrix of facts falls, it falls for everybody"*, including a child applicant. It seems to me that this conclusion must follow from *R.A.* In circumstances where the child's claim is so heavily dependent upon the father's evidence being accepted, I therefore take the view that there was not, in this case, an obligation to engage in narrative discussion of the country of origin information, because the father's credibility was comprehensively rejected.

36. In any event, the country of origin information would only seem to provide quite light support for the claim, given the matters already referred to.

The allegation that credibility findings were not put
37. Mr. O'Halloran alleged that various credibility findings were not put to the applicant's father. This ground might possibly come within the general ground of relief at ground 3 of the applicant's statement of grounds, and Ms. Harnett-O'Connor sensibly made no objection to the argument being advanced, and indeed, accepted that the applicant could advance all of the other grounds, referred to above, within the case as pleaded. Mr. O'Halloran complains that the tribunal did not call the mother as a witness to address the issue of whether the relationship between the parents really could have been carried on for a year and a half without coming to the attention of the wife's father.

38. It seems to me that this complaint has not been factually sustained. The major elements of the tribunal's decision, where the father's evidence was not accepted, were put to the father. It was a matter for the applicant, or more specifically lawyers on her behalf, to call the mother as a witness if that was considered appropriate. The duty of co-operation with the applicant should not be construed in the wide manner suggested by Mr. O'Halloran.

Order
39. For the foregoing reasons, I will order that:-

(i) time be extended on consent for the making of the application up to the date on which it was made;

(ii) leave be granted to the applicant in accordance with the statement of grounds but that the substantive relief be refused; and

(iii) I will hear the parties on any consequential applications and any party intending to make such application must give the other party advance written particulars in that regard.