

**THE HIGH COURT**

**JUDICIAL REVIEW**

**2008 1214 JR**

**BETWEEN**

**A. A.**

**APPLICANT**

**AND**

**REFUGEE APPEALS TRIBUNAL AND**

**THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM**

**RESPONDENTS**

**JUDGMENT of Mr. Justice Cooke delivered the 12th day of October, 2011**

1. This is an application for leave to seek judicial review of a decision of the first named respondent made on the 3rd September, 2008, which affirmed the negative recommendation of a report by the Refugee Applications Commissioner pursuant to s.13 of the Refugee Act 1996, dated the 30th January, 2008, on the applicant's request for asylum in the State.

2. The applicant is a national from Morocco who comes from the city of B. M. She claimed asylum on the basis of a fear of persecution for reasons of religion if returned to Morocco. She claims to be a Muslim belonging to the Berber ethnic group. She said that her family are strict Muslims and that she suffered persecution as a result of her choice to live a less strict lifestyle including particularly of her refusal to wear the hijab. Against the wishes of her father she studied at university in B. M. for five years, graduating in 2003 and later obtaining a certificate as a teacher. She then obtained a post as a government-appointed teacher in a lower secondary school in a conservative Berber village called M.. While teaching there, she encountered the disapproval of school parents who objected to her liberal classroom environment and her failure to wear traditional Muslim attire.

3. During her university days she met and formed a relationship with a French friend by the name of Simon. She claims that while in M., Simon came to visit her. This visit incurred the antagonism of the villagers who surrounded and stoned her house. Simon had to hide and she tried to persuade the villagers that he had left. She had to hide Simon for two days until he could leave in disguise.

4. Simon again visited her in July 2007 and when he was seen the villagers attacked and abused him. She was then forced to flee with Simon to Marrakech where she tried unsuccessfully to find help. She hid in the house of a friend and in her sister's house, but was constantly afraid that her family would find her. Simon then arranged for the applicant to travel to Dublin with a man named Pierre. Pierre took her to France and after a brief stop she was taken by another plane to Dublin. She said that they experienced no problems entering the country at immigration and that Pierre put her in a taxi and brought her to the Department of Justice.

5. The applicant claimed to be unable to return to Morocco because her family would find her and she would be in serious trouble. She could not get married because she is not a virgin. She would also get into trouble for breaking her government contract as a teacher.

6. As already indicated, the s. 13 report of the Commissioner recommended that the applicant should not be declared to be a refugee having concluded that she has not established a well founded fear of persecution as required by s. 2 of the Refugee Act 1996. It found that her claim to fear persecution in Morocco on grounds of religion was not well founded.

7. Under the heading "Well Founded Fear" the Commissioner records the essential facts of the applicant's account of her personal history until she left Morocco. No doubt is expressed as to the veracity of the historical events given.

8. The report then considered the issue of the availability of domestic protection and pointed out that the applicant had not at any time sought police protection in Morocco. The report further considered the question of internal protection by relocation and thought it "reasonable to suggest that if the applicant were to stay away from B.M she would have not confrontations with her father or cousins and that if she were to relocate to Casablanca or Rabat she would be able to remain there as there would be a more open view of religion and women in those locations". Accordingly, insofar as the s. 13 report identifies a specific conclusion as to why the applicant had not established a well founded fear of persecution it is clear that it was on the basis that protection by means of internal relocation in Morocco would have been available. No specific conclusion appears to be expressed in relation to the question of State protection. The observation that she never sought State protection followed by references to country of origin information as to the constitutional prohibitions of discrimination on grounds of race, sex and so forth could be said to raise an inference that protection might have been available to the applicant had she sought it.

9. A notice of appeal was then lodged, but it is fair to say that the five particular grounds of appeal indicated were of a very general nature and they make no mention of the issue of internal relocation.

10. The Tribunal decision contains, in its sixth section, under the heading "Analysis of the Applicant's Claim," what might be said to be an unusually lengthy, detailed and balanced appraisal of the applicant's claim. It is to be noted that the Tribunal member makes the very positive observation: "The Tribunal does not take issue with the applicant's credibility. The applicant told her story in a clear and coherent fashion and she was able to answer any questions which the Tribunal put to her".

11. It is clear that the conclusion reached by the Tribunal member to affirm the negative recommendation of the Commissioner's report is based upon an appraisal of the two factors of the availability of State protection and the ability of the applicant to relocate to an area where the threat of persecution would no longer exist. The relevant part of the analysis commences: "The issue of protection is crucial in assessing whether it is safe for an applicant to return to their country of origin". The Tribunal member notes

that the applicant never sought protection from the authorities and notes also her explanation for that failure; that the police would return her to her family. This was not, however, supported by any objective evidence that the Tribunal could find as to police policy in this regard and the Tribunal member then concludes that the applicant's failure to seek protection was not objectively reasonable. The Tribunal member concluded: "It is understandable why the applicant did not seek assistance from the police as she may have had a subjective fear; however, there is no evidence before the Tribunal to show that this is the policy of the Moroccan police. In fact it appears that there is criminal legislation against assault and there is now a national strategy relating to the prevention of violence against women". The Tribunal member concludes: "In the applicant's case there is no evidence to suggest that the police would not have helped her out in relation to her problems with the villagers. . . . The applicant did not make even one attempt to seek assistance in her country of origin and there is no evidence that she was at risk when she was in Marrakech having left M. The applicant did not decide herself to flee, but left on the instruction of a man called Pierre whom she did not know that well. In the circumstances I am simply not in the position to conclude that the applicant has provided 'clear and convincing' evidence of the failure of State protection".

12. The Tribunal member then examined the question as to whether the applicant's reluctance to obtain protection by relocation within Morocco was objectively reasonable. The Tribunal member points out that the applicant is a 28 year old woman with a third level education and a teaching certificate as well as qualifications and experience in the tourist business. It is noted that Morocco is a country with a population of over 34 million and that "it would not be unduly harsh to expect the applicant to take the step of relocating within her own country to be out of range of her family and the people whom she had problems with in the Berber village". The Tribunal member then concludes: "but even if the applicant has subjective fears of persecution these fears are not objectively well founded and that there is 'nothing to suggest that she could not relocate safely elsewhere in the country'."

13. In the judgment of the Court this entire analysis is a thorough, rational and balanced one and the conclusions reached in relation to the availability of State protection and internal relocation are clearly conclusions which the Tribunal member was entitled to reach on the basis of the account given and the manner in which the applicant presented herself before the Tribunal at the hearing.

14. In seeking leave to quash these conclusions, the applicant now endeavours to advance substantial grounds as to flaws in the appraisal of State protection and internal relocation as available domestic protection rendering international protection unnecessary.

15. In relation to the issue of State protection it is submitted that the Tribunal member applied an incorrect test in looking for a policy at official level which fails to protect women. The correct test, it is said, is that articulated in Regulation 2 of the European Communities (Eligibility for Protection) Regulations 2006, which requires an examination of whether "an effective legal system [is in place] for the detection, prosecution and punishment of acts constituting persecution or serious harm, where the applicant has access to such protection".

16. It is submitted that extensive country of origin information corroborated the applicant's case that protection would not have been available to her as a woman who went against social norms and that there could be no confidence in the availability of an effective legal system to investigate, try and punish perpetrators of violence against women.

17. The test quoted above is drawn from the definition of "protection against persecution or serious harm" in Regulation 2 which provides that such protection is to be "regarded as being generally provided where reasonable steps are taken by a state or parties or organisations including international organisations, controlling a state or a substantial part of the territory of that state to prevent the persecution or suffering of serious harm, *inter alia*, by operating an effective legal system for the detection, persecution and punishment of acts constituting persecution or serious harm, where the applicant has access to such protection".

18. It is clear to the Court, however, from the analysis made in the decision that the Tribunal member was very much aware of the sort of difficulties to which the applicant referred and which are illustrated in the various reports and documents submitted by way of country of origin information. Extracts from some of that material are examined in some detail at pp. 20 – 22 of the decision. It is equally clear that the Tribunal member was very much alive to the approach which fell to be adopted in these circumstances. The decision says: "it is incumbent upon the Tribunal to assess objectively the situation in Morocco in relation to Muslim women being subject to domestic abuse and religious persecution and whether or not the applicant could have been or will be persecuted in this manner. The Tribunal has done extensive research in this regard and has taken into account each document which the applicant has submitted". Having regard to the remaining passages in the decision which followed this declaration, it is clear that the Tribunal member has done precisely that. The Tribunal member has not misunderstood or misapplied the appropriate test.

19. It must be borne in mind that Morocco is not a country in which there has been any general or widespread breakdown of law and order or in which there are substantial areas where there is no functioning police or security forces or no judicial systems. What might be said to emerge from the various reports and sources of information is that attitudes of the population and therefore of those locally in authority, may be different in rural or remote tribal areas as compared with that country's large urban areas and the more cosmopolitan tourist locations. That is, in the view of the Court, precisely the consideration relied upon by the Tribunal member in concluding that the reactions to the applicant's way of life in the conservative areas where her family lived and she had worked were as she described, she would not face the same risk of violent reaction and discriminatory treatment elsewhere and that, if she did, the authorities elsewhere would be available to protect her.

20. It must also be pointed out that much of the information relied upon in the documentation as to conditions in Morocco in this regard is concerned particularly with the social status of women and their rights and entitlements in the face of domestic violence. In particular, the surveys are concerned with the availability of protection to women suffering violence within their own families at the hands of a father or a husband. In the view of the Court that information does not directly corroborate the complaint that applicant is making. It is notable that the applicant overcame the conservative attitudes of her own father and family and was able to strike out on her own to obtain a third level education and qualification and then embark upon a career as an independent woman away from her family. Her problem was not domestic violence but the reaction of the school parents and villagers in the conservative rural area where she worked as a teacher and this was directed at what was, for them, her non traditional lifestyle and her unacceptable relationship with her friend Simon. The conclusion reached by the Tribunal member is that if the applicant returned to Morocco she could continue in that way of life without risk of persecution: "Morocco is a country with a population of over 34 million. Even if the applicant has subjective fears of persecution, these fears are not objectively well founded and there is nothing to suggest that she could not relocate safely elsewhere in the country". In the judgment of the Court the conclusion that state protection would be available to the applicant even in relation to her problems with the school parents and villagers having regard to the fact that she had never actually sought such assistance at the time, was one which was open to the Tribunal member.

21. On the question of the Tribunal's assessment of internal relocation, the applicant points to the two issues by way of test in this regard as set out by Clarke J. in *E. v. Minister for Justice, Equality and Law Reform and Another* (Unreported, High Court, 24th June 2005), namely, first, whether there is an alternative location that is practically, safely and legally accessible to the asylum seeker and

whether the agent of persecution is the State itself; and secondly, whether the claimant could lead a relatively normal life without undue hardship in that location. It is argued that the second limb of this test is not met in that it could not be reasonably expected of the applicant to relocate internally as internal relocation would cause her undue hardship. The applicant would live in constant fear of her family finding her and she would have no option but to work as a prostitute.

22. In the judgment of the Court the flaw in the challenge to this decision is that it ignores the holistic assessment the Tribunal member has made of the personal circumstances of the applicant as the basis of her claim. It addresses each of the two issues of State protection and internal relocation independently. As already pointed out, the Tribunal member fully accepts the personal history given by the applicant including the exigencies of her family circumstances. The Tribunal accepts her description of her conservative religious background; the opposition of her parents; the antagonism of the villagers and parents of the school in M. The Tribunal member accepts, in effect, that her problems originate in these background facts and in her own choice to lead a particular lifestyle unacceptable to those communities. The central thrust of the answer given by the Tribunal member is that, in those circumstances, there is an available solution for the applicant in that she can relocate elsewhere in Morocco where her choice of lifestyle will be unexceptional, will not incur the same opposition or antagonism; where she is unlikely to be pursued on that account by those who have threatened her in the past and where, even if they do, it can be reasonably expected that she will no longer have reason to fear seeking appropriate State protection if necessary with the aid of organisations who provide assistance in such circumstances.

23. In other words, this is a case in which it is a mistake to seek to dissect and deconstruct the component parts of the Tribunal analysis and decision with a view to attempting to test each component part by reference to country of origin information. What the Tribunal member has done in this case is to take the applicant's story as she told it and to make an assessment based on common sense as to the reality in objective terms of her fears of this particular form of persecution being realised if she returns to Morocco and avoids the remote and conservative locations which were the source of her subjective fears. This conclusion was amply justified, in the view of the Court, by the country of origin information available to the Tribunal member in making the assessment.

24. For these reasons the Court is satisfied that no substantial ground has been raised which would warrant the grant of leave in this case. The application for leave is refused.