

THE HIGH COURT

JUDICIAL REVIEW

[2011 46 J.R.]

BETWEEN

R.S. (SIERRA LEONE)

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Eagar delivered on the 4th day of March 2015

1. This is a telescoped application for an order of *certiorari* by way of judicial review quashing the decision of the second named Respondent dated the 13th December 2010 and an injunction restraining the first named Respondent from deporting the Applicant therein pending the outcome of these proceedings.

The Claim

2. The Applicant is a citizen of Sierra Leone and travelled to the State in or around the month of July 2006. She states in her affidavit that she applied for asylum in Ireland at that time and attended for an interview under s. 11 of the Refugee Act 1996 (as amended) on the 7th February 2007. The Refugee Applications Commissioner's recommendation was that her application should be refused and this recommendation was subsequently appealed and later upheld by the Refugee Appeals Tribunal following a hearing held on the 29th November 2010.

3. The Applicant told the second named Respondent that her difficulties started in Kambia in Sierra Leone when the people she believed were her parents told her to marry their son. The Applicant states that in 1997 rebels invaded her village and the people she believed were her parents were killed. According to the Applicant she believes she was 21 years of age at the time. The Applicant said she was taken to the bush by rebels, beaten and raped. She states she was in the bush for many months when she states she was then taken by another rebel group. She was forced to become the wife of a rebel called L.S. She said she had three children with this man and that after the birth of each of these children they were taken from her. The Applicant said she tried to escape on two occasions from this man but she was caught.

4. The Applicant said she would go to the market to do hair when L.S. was not around. She stated she had plaited the hair of a white woman called "Sisi" in the market a few times. One day when Sisi saw the Applicant crying the Applicant told her the story and Sisi told the Applicant to follow her. The Applicant said she went on to a bus but does not know where the bus took her. They slept somewhere and later entered a big boat that brought the Applicant and Sisi to Ireland. The Applicant said it took one month to get to Ireland and did not know what country the boat stopped in as she did not want to ask Sisi where she was going. The Applicant said she could speak Krio and that she learnt English in Ireland when she was at the hostel and at school.

5. When asked who she was afraid of the Applicant said she was afraid of her adopted husband as he had told her that if he caught her he would kill her. She said that she could not move elsewhere in Sierra Leone as she had no family or relatives and she had no one to look after her. When asked if L.S. would have difficulties from the police if he killed her, the Applicant said that L.S. had killed people before and that the police were afraid of him. When asked why the police were afraid of L.S. the Applicant said that this man was a rebel. She said that people hate her as they believed that she does the same thing as her husband's rebel group.

6. The Applicant said she had a scar on the back of her heel and on her left hand due to knife marks from L.S. and the markings were shown to the Tribunal and the presenting officer. The Applicant confirmed that she had no medical reports in relation to these markings. The Applicant said that L.S. treated her like a slave and he raped her.

7. The Applicant in cross examination agreed that L.S. was unpopular in Sierra Leone and that if people saw him they would run as he had a bad character. She was asked which rebel group the man belonged to and the Applicant said she did not know. She said she had not been given a chance to know this man's secrets or to know anything about him. She said that people were afraid of her because of her relationship with L.S. The Applicant said she would go to market in Buedu and this was where she met Sisi. The Applicant said that Sisi worked in the market as she was in the diamond business. When asked how frequently she went to the market the Applicant replied "not every Friday".

8. When asked if everyone in Sierra Leone knew L.S. the Applicant confirmed they did. When asked if he had been on TV the Applicant said they did not have a TV and was not aware if L.S. was mentioned in newspapers. She said that everyone knew this man as he was a rebel. He had many in his group and people were scared of him. She said that the people in the area were aware that she was connected with L.S. as they lived together and he was her "adopted" husband. The Applicant said that Sisi was nice and friendly towards her and she confirmed that she had not enquired about her destination and that there were many people on the boat who she travelled to Ireland with. She followed Sisi to a car and they went to the Department of Justice.

9. She was asked about the dominant ethnic groups and she named them. She also correctly named the river in which Kakuna was located on. When asked why she had not enquired about where she was to travel to, particularly as she was pregnant, the Applicant said that she did not ask and had made up her mind to accept all that was happening. When asked if she could report L.S. to the authorities were she to return the Applicant said she would not go back. She said she could not locate to Kenema or Freetown as she would be located and the NGOs would not assist her as they would need money. The Applicant said she was using L.S.'s surname as she lived with him and the people she believed were her parents were dead.

The findings of the Tribunal

10. The Applicant states that she lived with her adopted husband for 9 years in Buedu and she states that other people hate her as they believe that the Applicant is associated with L.S.'s rebel group. The Applicant states that L.S. was well known to the people and the police were afraid of him.

11. The second named Respondent found a number of issues of credibility:

The Applicant was unable to name the rebel group that L.S. belonged to. She also states that she lived with him for 9 years. The finding in relation to credibility is put as follows:

"(a) Considering the Applicant's testimony and the length of time she states she was forcibly detained by L.S. it is difficult to understand why she would not know what rebel group L.S. was associated with.

(b) The second named Respondent said it was not credible that a person who was not well known to the Applicant would organise and pay for the Applicant's travel to Ireland with the Applicant by boat.

(c) If L.S. was a well known rebel whom the authorities feared it would be reasonable to assume that some information about this man would be available and the fact that no such report had been produced or submitted calls into question the Applicant's claim that the man was well known and a feared rebel who is still operating after the war.

(d) The Applicant had a scar and discoloured skin on her heel and a scar on her left hand which states were knife marks inflicted by L.S. No medical reports had been submitted however and having considered the credibility issues it is difficult to associate these markings with the asylum claim as accounted by the Applicant."

12. The second named Respondent considered para. 37 of the Handbook on Procedures and Criteria for determining Refugee Status of the UNHCR (HPCDRS). She also quotes Peart J. in the case of *Imafu* and she states that having regard to the credibility issues that arose the Applicant could not be given the benefit of the doubt.

13. She then proceeded to deal with the issue of state protection. The Applicant states she never reported her problems to the authorities in Sierra Leone as she did not think the authorities would help. The second named Respondent said that the government of Sierra Leone established a special court to bring justice to those who were involved in war crimes and atrocities however only a total of 13 people had been indicted since the year 2002. She also quoted Birmingham J. in a case of *Bamidele v. The Minister for Justice Equality and Law Reform*, 3rd June 2008 where Birmingham J said:-

"I feel I must also have regard to the accepted principles both domestically and internationally that absent clear and convincing proof to the contrary a state is to be presumed capable of protecting its citizens."

14. She then dealt with internal relocation and suggested Freetown would be a viable alternative for the Applicant to escape the non state agent she fears. She quotes a number of authorities and states the law provides for the freedom of movement within Sierra Leone and the government generally accept this right. In those circumstances the appeal warrants a conclusion that the recommendation be overturned.

Submissions

15. Counsel on behalf of the Applicant quoted from *I.R. v. The Minister for Justice Equality and Law Reform* [2009] IEHC 353 a decision of Cooke J. and stated that the second named Respondent in this instance failed to adhere to the standards contained in the judgment. The Applicant submits that the credibility findings were based upon gut feeling and conjecture. None of the credibility findings are in the nature of an impossibility and are not matters which could not have happened. In relation to state protection the conclusion reached under the issue of state protection was unlawful and that test applied was not the test prescribed and quotes the Reg. 2 of the European Communities (Eligibility for Protection) Regulations 2006.

16. In relation to internal relocation counsel for the Applicant said that the second named Respondent argued that internal relocation was utilised to exclude a finding where there is a well-founded fear of persecution in an appropriate case and quoted Reg. 7 (1) of the European Communities (Eligibility for Protection) Regulations 2006. He submitted that the second named Respondent had unlawfully determined the appeal.

17. In reply counsel for the Respondent said that the findings on credibility were substantial and identified that there was no breach of fair procedures in assessing the Applicant's claim and in particular credibility and there was no evidential basis for failure to give reasons or conjecture on the part of the decision maker.

18. In relation to the issue of state protection she stated that having found against the Applicant on credibility the second named Respondent did not have to consider state protection but she did carry out such an assessment based on Country of origin information and secondly she also accepted that second named Respondent did not have to deal with the issue of internal relocation.

19. She submitted that if the court were to find that the second named Respondent had failed in her assessment of internal relocation and/or state protection the findings could be severed and she cited the decisions of *I.G. v. The Refugee Appeals Tribunal* [2014] IEHC 2007, a decision of MacEochaidh J. and *A.M.G. v. The Refugee Appeals Tribunal* [2014] IEHC 379, a decision of Barr J.

Discussion

20. Regulation 5 of the European Communities (Eligibility for Protection) Regulations 2006 is as follows:-

"5. (1) The following matters shall be taken into account by a protection decision-maker for the purposes of making a protection decision:

(a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application for protection, including the laws and regulations of the country of origin and the manner in which they are applied;

(b) the relevant statements and documentation presented by the protection Applicant including information on whether he or she has been or may be subject to persecution or serious harm;

(c) the individual position and personal circumstances of the protection Applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the Applicant's personal circumstances, the acts to which the

Applicant has been or could be exposed would amount to persecution or serious harm;

(d) whether the protection Applicant's activities since leaving his or her country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for protection as a refugee or a person eligible for subsidiary protection, so as to assess whether these activities will expose the Applicant to persecution or serious harm if returned to that country;

(e) whether the Applicant could reasonably be expected to avail himself of the protection of another country where he or she could assert citizenship.

(2) The fact that a protection Applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, shall be regarded as a serious indication of the Applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated, but compelling reasons arising out of previous persecution or serious harm alone may nevertheless warrant a determination that the Applicant is eligible for protection."

(3) Where aspects of the protection Applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation when the following conditions

are met—

(a) the Applicant has made a genuine effort to substantiate his or her application;

(b) all relevant elements at the Applicant's disposal have been submitted and a satisfactory explanation regarding any lack of other relevant elements has been given;

(c) the Applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the Applicant's case;

(d) the Applicant has applied for protection at the earliest possible time, (except where an Applicant demonstrates good reason for not having done so); and

(e) the general credibility of the Applicant has been established.

21. The decision of Cooke J. in *I.R. v. The Minister for Justice Equality and Law Reform & Anor* [2009] IEHC 353 sets out the role of the judicial review refugee judge in determining whether or not a decision of the Refugee Appeals Tribunal should be sustained or set aside. Cooke J. stated:-

"1. In most forms of adversarial dispute the assessment of the credibility of oral testimony is one of the most difficult challenges faced by the decision-maker. The difficulty is particularly acute in asylum cases because, almost by definition, a genuine refugee will be someone who has fled home in circumstances of stress, urgency and even terror and will have arrived in a place which is wholly strange to them; whose language they do not speak and whose culture may be incomprehensible.

He continued:-

"2. In such circumstances the decision-makers at first instance have the unenviable task of deciding if an Applicant can be believed by recourse to little more than an appraisal of the account given, the way in which it was given and the reaction of the Applicant to sceptical questions, to the highlighting of possible discrepancies or to contradictory evidence from other sources. Recourse will also be had in appropriate cases to what is called "country of origin information " but in most cases this will be of use only in ascertaining whether the social, political and other conditions in the country of origin are such that the events recounted or the mistreatment claimed to have been suffered, may or may not have taken place."

He further continued:-

"3. It is because in such cases the judgment of the primary decision-maker must frequently depend on the personal appraisal of an Applicant, that it is not the function of the High Court in judicial review to reassess credibility and to substitute its own view for that of the decision-maker. Its role is merely confined to when a finding of lack of credibility is attacked, to ensuring that the process by which that conclusion has been reached is legally sound and not vitiated by any material error of law."

22. Cooke J. considered the case law with regard to principles which he says emerge from the case law as a guide to the manner in which evidence going to credibility ought to be treated and the review of the conclusions and credibility to be carried out. I am going to set out the ten points:-

"1) The determination as to whether a claim to a well founded fear of persecution is credible falls to be made under the Refugee Act 1996 by the administrative decision-maker and not by the court. The High Court on judicial review must not succumb to the temptation or fall into the trap of substituting its own view for that of the primary decision-makers.

2) On judicial review the function and jurisdiction of the High Court is confined to ensuring that the process by which the determination is made is legally sound and is not vitiated by any material error of law, infringement of any applicable statutory provision or of any principle of natural or constitutional justice.

3) There are two facets to the issue of credibility, one subjective and the other objective. An Applicant must first show that he or she has a genuine fear of persecution for a Convention reason. The second element involves assessing whether that subjective fear is objectively justified or reasonable and thus well founded.

4) The assessment of credibility must be made by reference to the full picture that emerges from the available evidence and information taken as a whole, when rationally analysed and fairly weighed. It must not be based on a perceived, incorrect instinct or gut feeling as to whether the truth is or is not being told.

5) A finding of lack of credibility must be based on correct facts, untainted by conjecture or speculation and the reasons drawn from such facts must be cogent and bear a legitimate connection to the adverse finding.

6) The reasons must relate to the substantive basis of the claim made and not to minor matters or to facts which are merely incidental in the account given.

7) A mistake as to one or even more facts will not necessarily vitiate a conclusion as to lack of credibility provided the conclusion is tenably sustained by other correct facts. Nevertheless, an adverse finding based on a single fact will not necessarily justify a denial of credibility generally to the claim.

8) When subjected to judicial review, a decision on credibility must be read as a whole and the court should be wary of attempts to deconstruct an overall conclusion by subjecting its individual parts to isolated examination in disregard of the cumulative impression made upon the decision-maker especially, where the conclusion takes particular account of the demeanour and reaction of an Applicant when testifying in person.

9) Where an adverse finding involves discounting or rejecting documentary evidence or information relied upon in support of a claim and which is *prima facie* relevant to a fact or event pertinent to a material aspect of the credibility issue, the reasons for that rejection should be stated.

10) Nevertheless, there is no general obligation in all cases to refer in a decision on credibility to every item of evidence and to every argument advanced, provided the reasons stated enable the Applicant as addressee, and the court in exercise of its judicial review function, to understand the substantive basis for the conclusion on credibility and the process of analysis or evaluation by which it has been reached."

The challenge to the findings of the Tribunal on credibility

23. There is a useful quotation in the decision of MacEochaidh J. in *R.O. (an infant suing by her mother and next friend A.O.) v. The Minister for Justice Equality and Law Reform & Margaret Levey (sitting as the Refugee Appeals Tribunal)* [2012] IEHC 573. In the course of a similar case where there were some credibility findings MacEochaidh J. said as follows:-

"In view of the foregoing, I approach the review of the adequacy of reasons in this case by asking the following questions:

(i) Were reasons given or discernible for the credibility findings?

(ii) If so, were the reasons intelligible in the sense that the reader/addressee could understand why the finding was made?

(iii) Were the reasons specific, cogent and substantial?

(iv) Were they based on correct facts?

(v) Were they rational?"

24. The first credibility finding of the second named Respondent was that the Applicant was unable to name the rebel group in which she states she was detained by her husband for nine years and which she states her husband belongs to. Considering the Applicant's testimony and the length of time she states she was forcibly detained by L.S. it is difficult to understand why she would not know what rebel group L.S. was associated with. Her lack of knowledge in this regard seriously undermines the credibility of her stated account.

25. Clear reasons are expressed for this belief. The second named Respondent opined that it was unlikely that the Applicant would share accommodation for nine years with a man who she accuses of seizing her children and her lack of knowledge of the name of the group is unintelligible and a reader may regularly understand the reason for the disbelief. The reason is specific and cogent in that it is logical and clear. It is substantial as much as it relates to a central part of the Applicant's narrative. There is no suggestion that the finding is based on anything other than correct facts and on any analysis the reason is entirely rational.

26. The second credibility finding related to the white woman called Sisi whom the Applicant met at the Friday market who appears to have organised and paid for the Applicant's travel to Ireland. The Applicant stated that Sisi was not from Sierra Leone, she does not know where she comes from. The Tribunal said that it was not credible that a person who was not well known to the Applicant would organise and pay for the Applicant's travel to Ireland and travel to Ireland with the Applicant by boat. Again clear reasons are stated for the incredulity of the Tribunal. The reasons given are intelligible in that a reader or addressee can readily understand why the Tribunal is incredulous. The reasons are specific and cogent being clear and logical. They are substantial in the sense that they relate to a central part of the Applicant's narrative. The reasons are based on correct facts. The reason for the disbelief is entirely rationed.

27. The third credibility finding is according to the Applicant a lot of people know L.S. He raped and killed many people. The police are afraid of him and he continued to own a house in Buedu and returned to Buedu after the war had ended. When asked if there were media reports, newspaper reports or any country report in relation to L.S. the Applicant replied there was not. The Tribunal held that if L.S. was a well known rebel whom the authorities feared it would be reasonable to assume that some information about this man would be available and the fact that no such reports have been produced or submitted calls into question the Applicant's claim that this man was well known and a feared rebel and still operating after the war.

28. The reasons for the credibility findings are clearly stated, reasonably intelligent, specific, cogent, clear and logical. It is substantial that it relates to a central part of the Applicant's narrative and her failure to answer this question and the reason for questioning the credibility of the Applicant is entirely rational.

29. The fourth finding of credibility is that the Applicant had a scar/discoloured skin on her heel and a scar on her left hand which she stated were knife marks inflicted by L.S. No medical reports had been submitted in relation to how these scars were obtained. Having considered the credibility issues that arise it is difficult to associate these markings with the asylum claim as recounted by the Applicant. Again the reason for the credibility finding is clearly stated, intelligible, specific, cogent and being clear and logical. It is substantial in that it relates to an important part of the Applicant's narrative. There is no suggestion that the finding is based on

incorrect facts and it is an entirely rational decision.

30. It was sufficient for the second named Respondent to deal with the appeal on the basis of these findings. However the Tribunal Member did then consider the question first of state protection and secondly on internal relocation. In considering the issue of state protection the second named Respondent indicated that the Applicant stated that she never reported her problems to the authorities in Sierra Leone as she did not know where to go. She did not think the authorities would help her. The second named Respondent indicated that the United Nations and the government of Sierra Leone established a special court for Sierra Leone to bring to justice those who are involved in war crimes and atrocities. The court opened in March 2004 and up to now a total of 13 people have been indicted from all sides of the conflict. This seems somewhat paltry in view of the serious charges that would have arisen from the civil war. The second named Respondent quoted from *Bamidele v. The Minister for Justice Equality and Law Reform* (Unreported, 3rd June 2008) where Birmingham J. indicated that absent clear and convincing proof to the contrary a state is to be presumed capable of protecting its citizens. Whether the Country of origin information establishes this in relation to Sierra Leone raises some issues in my view. The question of internal relocation is dealt with by Reg. 7 of the European Communities (Eligibility for Protection) Regulations 2006:-

Internal protection

"7. (1) As part of the assessment of protection needs, a protection decision maker may determine that a protection Applicant is not in need of protection if the Applicant can reasonably be expected to stay in a part of his or her country of origin where there is no well-founded fear of being persecuted or real risk of suffering serious harm.

(2) In examining whether a part of the country of origin accords with paragraph (1), the protection decision-maker shall have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the Applicant."

31. It appears to me that the decision of the second named Respondent that internal relocation to the capital Freetown would be a viable alternative for the Applicant appears to me to be clear and cogent and in accordance with Reg. 7 of the European Communities (Eligibility for Protection) Regulations 2006.

The Courts decision

32. Counsel on behalf of the Respondent has urged on me that in the event that this Court was unhappy with the decision of the Tribunal on the issues of state protection or internal relocation, that the court could sever these from the rest of the decision. In *I.G. v. Sean Bellew (sitting as the Refugee Appeals Tribunal) & the Minister for Justice Equality and Law Reform* [2014] IEHC 207:-

"The Tribunal Member's assessment of his ability to relocate in Egypt is predicated on the fact that, quite simply, he does not believe that the Applicant has shown that Egypt would not be a safe country for him. In any event, the Tribunal Member does proceed to make a separate and distinct finding in respect of internal relocation even though he did not find that the Applicant had a well-founded fear of persecution. In carrying out this task, it is my view that the Tribunal Member was required to identify a particular area to which the Applicant could have relocated if the particular provisions of Reg. 7(1) of the Protection Regulations are to be strictly followed. The Tribunal Member's failure to identify such an area within Egypt can be seen as a flaw in respect of his finding on internal relocation in that context. However, I do not deem the perceived flaw in the Tribunal's internal relocation finding to be of such consequence as to condemn the overall decision reached in this case. Although the Tribunal Member may have erred, it cannot be said to be a flaw substantial enough to justify an order of certiorari in the circumstances of this case."

In any event, it is possible to sever the internal relocation finding made in this case from the various separate credibility findings made by the Tribunal Member. In my view, the various credibility findings and the findings on internal relocation are distinct and are not dependent on each other. As such, a flaw in the finding on internal relocation does not infect the credibility findings made by the Tribunal in this case as it is severed from the other robust findings."

33. It is the court's view that the finding on internal relocation is quite justified but the court is not completely satisfied with the findings of the Tribunal in relation to state protection. Nevertheless it is my view that in following the decision of MacEochaidh J. in *I.G.* I believe it is possible to sever the state protection finding made in this case in the context of the various separate credibility findings made by the Respondent.

34. In these circumstances having regard to the credibility findings made by the second named Respondent I refuse an order of *certiorari* in this case.