Neutral Citation: [2013] IEHC 326

THE HIGH COURT

JUDICIAL REVIEW

[2009 No. 266 JR]

BETWEEN

M. R. C. S.

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Mac Eochaidh delivered on the 27th day of June 2013

1. This is a 'telescoped' application for leave to seek judicial review where the applicant is requesting, *inter alia*, certiorari of the decision of the Refugee Appeals Tribunal (the "Tribunal") dated 141h January 2009 refusing the applicant refugee status.

Background:
2. The applicant is an Angolan national, born on the 3rd of June 1976 who applied for asylum in the State on the 21st December 2005. At the time of issuing these proceedings, the applicant's husband was a refugee in the State and he is now a naturalised Irish citizen. The applicant was born in Lobito, Angola and lived there until 1993. She claims that her father was arrested, released and later killed by the Angolan authorities in the family home in 1993 owing to their belief that he was a member of UNITA (National Union for the Total Independence of Angola). The applicant thereafter moved to Luanda where she remained until 2003. During this time she became involved in selling munitions to FLEC-FAC (Front for the Liberation of the Enclave of Cabinda - Armed Forces of Cabinda), a rebel group who claim independence for the Province of Cabinda. In July 2003 the applicant claims she travelled to Kwongo-Shongo in Cabinda to sell munitions to FLEC FAC and she and fellow munitions traders were surprised by a raid by the Angolan army and fled. The applicant claims that she left behind her identity documents when she fled from the authorities and this is how her involvement with FLEC-FAC first came to their attention. It was also in Kwongo-Shongo where the applicant says she met her husband who was a member of FLEC-FAC.

3. The applicant claimed asylum on the basis of a fear of persecution on grounds of nationality, political opinion (including imputed political opinion), race and membership of a particular social group owing to her involvement with FLEC as a munitions dealer and later a sympathiser, as an Angolan in Cabinda and as the wife of a FLEC activist. The applicant's claims were rejected by the Tribunal primarily on the basis of a lack of credibility and it is that decision which is sought to be impugned in these proceedings.

Submissions:
4. The Tribunal decision relies on eight adverse credibility findings which it is claimed are based on errors of fact and I or are in respect of peripheral matters and I or are irrational or based on conjecture. Further it is claimed that the applicant's core claim was not considered. Thus, the applicant's case is that there was a failure to make findings of fact in relation to matters pertaining to the core claims of the applicant and by failing to adequately deal with these core issues, the impugned negative credibility findings, being based on peripheral or minor matters, cannot be legally sound.

5. The respondent contends that the applicant has strayed into the realm of dissecting the findings of the Tribunal Member contrary to the requirement to read the decision as a whole, as specified by Cooke J. in *I.R. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 353. It is the court's view that each finding must be reviewed as was the approach taken by both counsel in their written submissions and at hearing.

First credibility finding:
6. The first adverse credibility finding relates to the applicant's account of her travel from Angola to Ireland and the fact that she passed through immigration at Paris and Dublin airports on a false passport without being questioned by the authorities. In this regard the applicant gave evidence at the Tribunal hearing that the false passports under which she and her husband travelled had their photographs on them, that the authorities looked at the passports but did not ask any questions and further that the applicant's husband corroborated this evidence. He had given evidence that they "travelled without problems on false passports". It is submitted that the Tribunal failed to have due regard to the corroborative nature of this evidence. It is also submitted that this is a peripheral matter not going to the core of the applicant's claim in any event.

7. The respondent in reply states that to take this approach the applicant is essentially asking the Tribunal Member to ignore s.11B(c) of the Refugee Act 1996 whose provisions direct a decision maker to have regard to whether an applicant has given a full and true explanation of how he or she travelled to and arrived in the State. As such, the respondent claims that the veracity of the applicant's claim to have travelled to Ireland with her husband on false passports provided by priests and in the company of priests were matters the Tribunal was entitled to consider. In this regard the respondent submits that this finding was merely one of a number of factors that were found to undermine the applicant's credibility and that it is not open to the applicant to seek to eliminate credibility findings on the basis that they do not relate to her core claim and then assert that her core claim has not been considered at all.

8. I accept that the respondent was entitled to conclude as it did. I can find no legal error in the finding and though I might not have reached a similar conclusion, that is irrelevant in judicial review. The finding is not irrational and does not offend the duty to give reasons.

Second credibility finding:
9. The Tribunal Member felt that it was not capable of belief that two priests would risk criminal prosecution in providing the applicant with false documents and assisting her journey to Ireland. In this regard, counsel submits that this credibility finding lacks sufficient reasons and is premised on conjecture. The applicant gave evidence that after her husband escaped from prison two priests assisted them by bringing them by car from Cabinda to Kinshasa in DR Congo and that they were accompanied by two other priests to Dublin. Further it is contended that the applicant's husband corroborated this claim. The respondent argues that this was a finding which the Tribunal Member was entitled to make as she simply did not believe the applicant's assertions. The respondent also submits that such finding was not made in isolation and is linked to her disbelief that the applicant and her husband travelled to Ireland on false passports. It is clear to me that the reason for this finding is patent and thus express reasons are not required. I find no flaw in the approach adopted and in this regard I refer to my decision in *R.O. v. Minister for Justice* [2012] IEHC 573 where I address the legality of patent reasons for findings.

Third credibility finding:
10. This finding of the Tribunal was based on the failure of the applicant to give a reasonable explanation for failing to claim asylum in France and as to why she did not mention that she passed through this country in her initial ASY1 report. The applicant submits that this finding is premised on an error of law and on errors of fact. Counsel submits that the decision acknowledges that the applicant explained that the reason she did not apply for asylum in France was that the priests who accompanied her and her husband had told them that they were bringing them to a safe place. Further it was stated that she failed to give a reasonable explanation as to why she did not mention that she passed through France in her initial ASYI report. However, counsel notes that at the time that the applicant filled in her ASYI form she did not know what country she had passed through. Her ASY1 form under "Route travelled" indicated that she passed through "Cabinda/DRC/Unknown/Ireland". It is submitted that any supposed requirement that an applicant apply for asylum in a 'first safe country' is anathema to the principles of international refugee law as noted by O'Keeffe J. in *A.M.K (A minor)[Afghanistan] v. Refugee Appeals Tribunal* [2012] IEHC 479. The applicant also refers to the decision of this court in respect of the provisions of s. 11B(b) of the Refugee Act 1996 in *F.T. v. Refugee Appeals Tribunal* [2013] IEHC 167 in this regard.

11. The respondent challenges this claim of the applicant on the basis that in her Statement Grounding the Application for Judicial Review the applicant sought to challenge only the finding of the Tribunal in relation to the ASY1 form and yet has sought to broaden that challenge to include the finding that the applicant did not provide a reasonable explanation as to why she did not seek asylum in France. This attempt to advance additional grounds at this stage is contrary to *S.M v. Refugee Appeals Tribunal* [2005] IESC 27 it is claimed. In any event the respondent states that the Tribunal correctly states that the applicant had not mentioned that she passed through France in the initial ASY1 form and that she could not have been unaware of this fact only to become aware of it when she went to complete her questionnaire. Further, the respondent states that no challenge is made to the Tribunal finding that no reasonable explanation was given for failing to apply for asylum in France. The provisions of s. 11B(B) of the Refugee Act 1996 are not a matter before the court in the respondent's view and the Tribunal did not make reference to them in making its finding. Counsel for the respondent also noted that both O'Keeffe J. and this court acknowledged that a protection decision maker may have regard to the failure of an applicant to seek refuge in a safe country en route to Ireland.

12. My view is that the applicant is attempting to broaden the scope of the challenge by reference to the matters actually pleaded and I may only allow that in certain limited circumstances which do not apply here. In any event the approach of the tribunal member reveals no illegality. The Tribunal's findings made were not based on an asserted claim as to Ireland being the first safe country encountered but rather on a combination of factors relating to her failure to mention that she passed through France and failure to give a reasonable explanation for not having claimed asylum in France in circumstances where this finding is not challenged. I find no flaw in the Tribunal Member's approach.

Fourth credibility finding:
13. This finding is based on the Tribunal Member's view that the applicant was vague and inconsistent at the hearing as to where and from whom she purchased munitions and that she failed to clarify these matters when questioned in detail at the hearing by the Presenting Officer. In this regard the Tribunal states that at the interview the applicant stated that the Army sold them to her and that at the hearing she said that she did not know who sold them to her. Counsel for the applicant states that it is clear that the applicant has consistently asserted that the source of the munitions was the military and that the persons who sold the munitions were taking them from the armed forces. It is claimed that the applicant was neither vague nor inconsistent as regards from whom she purchased the munitions and that the perceived inconsistency as to whether she bought the munitions at the barracks or that Commander Camilo brought them to her house or that she bought them at the stalls came from a mistranslation at the hearing. The applicant avers in her grounding affidavit that throughout the asylum process she used a Portuguese word "Barracas", meaning 'stalls' at the local market. It is submitted by counsel that the applicant made every effort to clarify these matters and that this credibility finding is based on a misinterpretation of the applicant's evidence.

14. It is the respondent's view that the applicant was vague as to the identity of the persons from whom she had purchased the munitions. Simply put she had said she did not know who sold them to her, having previously said that the Army had sold them to her and then at the Tribunal hearing she said she didn't know who the vendors were but they came from the military base. This, in the respondents view, is an inconsistency in her evidence. Further, the respondent contends that any claims that a perceived mistranslation occurred at the hearing would have to have been raised far more clearly with the Tribunal Member . In any event, the respondent states that the Tribunal correctly stated that the applicant failed to clarify these matters when questioned in detail about them by the Presenting Officer at hearing.

15. This complaint - like many others pursed in these proceedings - bears the hallmark of an ordinary appeal point rather than the sort of matter properly pursued in judicial review. In order for me to accept the applicant's complaint I would be required to ask whether the findings of inconsistencies and vagueness 'flew in the face of fundamental reason and common sense' and plainly in my view, this finding could not be so characterised. It way well be arguable that a different conclusion is possible on the facts but more egregious fault must be attributable to the decision or finding in order for the High Court to set it aside in judicial review proceedings.

Fifth credibility finding / Sixth credibility finding:
16. While the applicant deals with these individually, counsel for the respondent contends that these findings are unified. The Tribunal states that it is simply not capable of belief that if the authorities were pursuing the applicant that she would have avoided them in the year and a half that she lived in Kwongo Shongo and that it is reasonable to assume that if the authorities intended to arrest the applicant that they would have done so during this time that she resided in Cabinda. Counsel for the applicant contends that the applicant was in hiding when she was in Kwongo-Shongo and that it was a FLEC controlled area. As such, it is submitted that this credibility finding is irrational as it flies in the face of common sense. Further, counsel claims that the Tribunal failed to draw a distinction between the eighteen months the applicant spent in Kwongo-Shongo and the three months she spent in Seva. It was after the applicant moved to Seva that she believes that local people denounced her as she was regarded as an outsider, an Angolan who was married to a local person. She claims that it was after three months there that the authorities came looking for her but that she

and her husband managed to escape to Cabinda city after they were warned.

17. My view is the Tribunal Member was entitled to find it difficult to believe that the applicant could have avoided the Angolan authorities for a year and a half if they were in fact pursuing her as she alleged. The Tribunal Member quoted from a UK Home Office report to the effect that the Angolan forces occupied Cabinda during 2004 and that they pursued FLEC supporters. It is my view that the court is once again invited to arrive at a different conclusion on the facts and again I must reiterate that the conclusions here do not offend rationality and therefore I cannot interfere with them.

Seventh credibility finding:
18. The seventh credibility finding of the Tribunal is based on the fact that at the hearing the applicant said she was a sympathiser whereas in the questionnaire she had said she was a member of FLEC. The Tribunal decision goes on to state that it is difficult to believe that she failed to make a distinction between being a member and a sympathiser of FLEC when she filled in her questionnaire. In this regard, counsel for the applicant submits that this credibility finding is premised on an error of fact and fails to take account of the entirety of the applicant's regardless of whether she was a sympathiser or a member it was incumbent on the Tribunal Member to analyse whether she was at risk as a result of her association with them. I agree with the respondent's submissions. The issue is not whether in fact the applicant was a member, activist or sympathiser. The issue is whether there was an inconsistency in the manner in which the applicant described her association with this group at various stages of the processing of her asylum claim.

19. The Respondent correctly states that the applicant had described herself as a member of FLEC in her questionnaire. The Tribunal was entitled to consider the difference between the evidence at hearing and the version set out in her questionnaire. Further, I accept was no obligation on the Tribunal to recite every aspect of her evidence or parse and analyse her words . It is clear on the facts that there was a difference between versions and the Tribunal Member was entitled to weigh this in the balance as one of many factors used to assess credibility.

Eighth credibility finding:
20. This Tribunal finding states that it is difficult to believe that if the applicant played such an important role in FLEC, in attending meetings and providing food for the troops that she would be considered an outsider by the people and betrayed by them to the authorities and that she would be denounced in Seva because she was from Angola and not welcome there. Counsel for the applicant submits that this credibility finding is irrational as once again, the Tribunal Member fails to distinguish between the eighteen months the applicant spent in hiding in Kwongo Shongo and the three months spent in Seva it is claimed. In this respect, counsel contends that the applicant did not play an important role in FLEC nor did she ever claim to play an important role in FLEC. Rather, she claimed she was in hiding in Kwongo-Shongo among FLEC supporters and working with them in the fields. The applicant wanted to show these people that she was not the enemy and that was why she went to FLEC meetings..

21. The respondent again denies that the Tribunal committed any error in reaching the conclusion that it would be difficult to believe that a person who had provided assistance to FLEC would be seen as an enemy and betrayed as was claimed. The respondent notes that it was put to the applicant at the Tribunal hearing by the Presenting Officer that it was not plausible that she would be betrayed given all she had done for these people and that the applicant could only say that the authorities had come looking for her. In this regard it is submitted that there was no confusion in the Tribunal's finding and that the finding was rational and within the jurisdiction of the Tribunal to make.

22. In my view the court is again asked to make a finding of irrationality merely because a different conclusion on the facts might be possible. This not the basis on which this court can intervene. It is yet another example in this case of an appeal point dressed up as an attack on rationality.

Claim of imputed political opinion:
23. Following the making of the above findings on credibility, the Tribunal Member also went on to address the applicant's claim of a fear of persecution on the basis of an imputed political opinion based on her husband's position as an activist in FLEC. The Tribunal, having considered the applicant's husband's evidence, was of the view that he failed to establish that his political opinion would be imputed to his wife. In this regard, the Tribunal Member was aware that the applicant had admitted in her evidence that she did not know whether the authorities were aware of her marriage, that they did not arrest her when they came to take her husband to prison in 2005 and that she had not provided any documentary evidence of her marriage at any stage in her asylum claim.

The applicant states that at the hearing she said that the authorities probably felt she was more involved [with FLEC] because she lived with a member and contends that the reason she was not arrested at the time that her husband was arrested was because she was not with him at the FLEC gathering. Further the applicant claims that there was no indication at the hearing that the Tribunal Member did not believe that the applicant and her husband were married and counsel highlights that a UN Travel document issued from the Irish Naturalisation and Immigration Service in September 2008 to permit the applicant to travel to Spain with her husband for medical treatment. Counsel states that a copy of the correspondence in respect of this travel document was faxed to the Tribunal but that it is unclear if it was before it at the hearing.

Counsel for the respondent contends that the Tribunal did not disbelieve the applicant's claim to be married to her husband, but rather that there was no objective basis on which to accept that the there was any reason why the Angolan authorities would be aware of the marriage. The respondent is of the view that the applicant has failed to show why her husband's opinions would be imputed to her by the Angolan authorities or that they would even be aware of the marriage and that there was no error of law in the Tribunal's decision. I agree with this analysis and therefore accept that the findings as to imputed political opinion are robust. It is irrelevant that Irish Authorities may consider the applicant and her husband to be married.

Failure to consider the applicant's core claim:
24. It is submitted on behalf of the applicant that the Tribunal decision is flawed on the basis that the Tribunal Member has reached credibility findings on specific issues without adequately considering the core of the applicant's claim. It is claimed that certain credibility findings are reached on errors of fact and further that the Tribunal Member gave no explanation for discounting the entirety of the corroborating evidence of the applicant's husband, who was recognised as a refugee in the State in 2006. Counsel also contends that the findings on credibility relate to minor and peripheral matters such as the applicant's travel arrangements or are based on conjecture rather than an objective analysis. The applicant claims that some of the findings are irrational and that the matters which go to the core of the applicant's specific claim, namely her fear of persecution in Angola owing to her involvement with FLEC and as a seller of munitions have not been properly considered and adjudicated on, and have been accorded no weight. In this regard, the applicant makes reference to the decision of this court in *A.A.S. v. Refugee Appeals Tribunal* [2013] IEHC 44, where I quashed the Tribunal decision because of its opacity on the core issue of whether it rejected the applicant's Somali ethnicity. The applicant also claims that there was a failure on the part of the Tribunal Member to comply with the provisions of Reg. 5(1) of the European Communities (Eligibility for Protection) Regulations 2006.

25. I cannot conclude that there has been a failure to adjudicate on the applicant's core claim. The respondent notes that the applicant's claim is that if returned to Angola she would be in danger of future persecution. As such, it is contended that the Tribunal had to assess her claim based on the account that she had given of events in Angola which the applicant claimed had led to her fleeing that state. This was done in accordance with Regulation 5(3) of the 2006 Regulations. I agree with the submissions that the matters considered by the Tribunal were not minor or peripheral. It is clear that the Tribunal did not believe the applicant's claim that she was involved in selling munitions to FLEC, did not believe her account of her association with the group and did not believe her claim to have been betrayed by its members. The applicant's core claim was assessed and dismissed for want of credibility.

Fair procedures issues:
26. Counsel for the applicant also makes a variety of complaints which could be said to broadly come under the umbrella of 'fair procedures'. In this regard the applicant makes complaint in respect of a failure of the Tribunal member to put its concerns to the applicant adequately or at all in breach of fair procedures. Counsel applicant also claims that there was a failure on behalf of the Tribunal Member to consider adequately or at all the documentary materials submitted by the applicant. In this regard, the applicant felt that the Tribunal had reached its decision owing to a selective reliance on country of origin information and had failed to consider relevant Tribunal decisions submitted by the applicant. Counsel also claimed that there was a failure on behalf of the Tribunal to assess the credibility of the applicant in the context of the available country of origin information.

27. The applicant also claims a breach of fair procedures in the making of its decision by the Tribunal Member. In particular, the applicant claims: that the Tribunal Member has failed to take account of material evidence or matters of material importance; has taken irrelevant matters into account; has failed to take account of the language/interpretation difficulties at the hearing; has failed to make clear determinations in respect of factual matters; has failed to afford the applicant the benefit of the doubt; and has failed to apply the correct burden and standard of proof. Finally, it is submitted that the Tribunal has failed to properly consider the issue of persecution.

28. Counsel for the respondent cites the decision of *B.N.N. v. Refugee Applications Commissioner* [2008] IEHC 308 to the effect that a decision maker is not required to debate with the person who is to receive a decision every one of the conclusions on credibility that might be made and that there was no obligation on the Tribunal Member to ask the applicant to clarify her whereabouts at the time of the husband's arrest or to put county of origin information to the applicant. Further, the respondent claims that the issue of whether the applicant's husband's political beliefs would be imputed to her was a matter to be decided by the Tribunal and that the Tribunal was entitled to find that she did not establish that this had occurred.

29. The respondent rejects the claim that the Tribunal failed to consider any aspect of the evidence before it. In this regard, the respondent notes that there is no obligation on the Tribunal to refer expressly to each aspect of the evidence, rather the respondent is of the view that the reasons for the Tribunal decision are clear from the face of the decision. Further, the respondent states that the applicant's husband's evidence could not be considered to be independent corroborating evidence but that it was nonetheless considered by the Tribunal and referred to in the decision.

30. The respondent also notes that the Tribunal decision expressly states that the country of origin information on the applicant's file was considered and refers in particular to one of the more recent reports by Amnesty International which had been submitted by the applicant. However, the respondent also notes that the contents of country of origin information could not prove the veracity of the applicant's claims and refers to the decision of *B.F. v. Minister for Justice, Equality and Law Reform* [2008 IEHC 126 in this regard to the effect that: "Once a fundamental lack of credibility is found, the Tribunal is not obliged to refer to country of origin information to see whether her story could be true". Further, the respondent claims that there was no selective or biased use of country of origin information in a manner adverse to the applicant.

31. The key finding in this decision of the Tribunal is the fundamental rejection of the applicant's credibility based on numerous findings. Strenuous attempts have been made in these proceedings to overturn each of these findings. I have found all of these findings to be well within the bounds of rationality. Against this background it is difficult to find space for the complaints of want of due process which effectively seek to reiterate the complaints as to credibility under other heads of complaint. I accept the respondent's submissions in this regard and can find no basis for any finding of want of fairness or due process or anything unfair that might have led to unjust result.

32. Extremely detailed and well-written submissions were delivered by the applicant in this case running to some 32 pages of single spaced text . The industry of the applicant's counsel has to be admired but ultimately the points raised cannot overcome a clear and careful Tribunal decision despite every conceivable criticism being raised against it. This was a classic example of an attempt to deconstruct a decision of the Tribunal and to avoid reading it as a single decision which Cooke J. counselled against in *I.R. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 353.. I have no hesitation upholding this decision of the Tribunal. Leave to seek judicial review is refused.