Neutral Citation Number: [2011] IEHC 301

THE HIGH COURT

2009 811 JR

BETWEEN

S. K.

APPLICANT

AND

REFUGEE APPEALS TRIBUNAL AND

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENTS

JUDGMENT of Mr. Justice Hogan delivered on 7th July, 2011

1. In these judicial review proceedings the applicant, Ms. K., seeks to quash a decision of the Refugee Appeal Tribunal of 30th May, 2009, whereby the applicant's application for asylum status was rejected on credibility grounds. I myself granted the applicant leave pursuant to s, 5(2) of the Illegal Immigrants (Trafficking) Act 2000, on 1st December, 2010.

2. The applicant is Ethiopian who is now aged in her early twenties. She contended that her father was a member of a political organisation called CUD and that he was abducted by police forces following protests against the outcome of disputed elections in 2005. Ms. K. says that her father was never seen again.

3. Ms. K. maintains that the schools were then in forment and that she organized protests against the regime. She says that she was one of about 20 students who was then arrested and brought to a police station. It is alleged that the students were detained for about 7 weeks. During this time, she was beaten with plastic sticks, given little food and questioned regularly.

4. She contends that while in detention she was beaten one day and that she bled through her nose and was rendered unconscious. She says that she was brought to the Raz Desta Hospital under armed guard. When the police authorities indicated that she would shortly have to return to jail, the applicant claims that she escaped from the hospital through a toilet window. She ran out of the hospital wearing hospital clothes, reached a public road and hailed a taxi to her godmother's house which was about twenty minutes away

5. She further contends that her godparents looked after her for a week at the request of her mother. Her godparents planned the journey together with an agent, Ato Nassar. The agent and her godfather brought her by car to Kenya where she stayed for one week. I pause here to observe that the Tribunal member stated that she had stayed for two days, but it is acknowledged that there was a translating error and that Ms. K. had always said one week. She then says that travelled with Mr. Nasser to Ireland via an unknown country and she arrived here on 20th September, 2006. Ms. K. said that she could not apply for asylum in any third country because she was under the control of Mr. Nasser. As she was under 18 at the time, she had no passport or identity card.

The Tribunal's analysis

6. The Tribunal member accepted that the country of origin information demonstrated that CDU members were targeted in the manner alleged. He further accepted that the medical reports submitted were consistent "with [Ms. K.'s] account of events in Ethiopia", given that these reports documented her post-traumatic stress disorder and that her back pain was consistent with the beatings which she alleges. The Tribunal member nevertheless found against the applicant on credibility grounds.

7. I have already dealt with the jurisdiction of this Court to review errors of fact in judicial review proceedings in a recent judgment which, coincidentally, happens to be another Ethiopian case with a very similar name, *SGK (Ethiopia) v. Minister for Justice, Equality and Law Reform,* High Court, 5th July, 2011. As is plain from that case (and many similar recent decisions), this Court can quash an administrative decision on this ground only where there have been serious errors of fact such that, taken cumulatively, they amount to a error of law or where the administrative body thereby effectively assumes a jurisdiction which it does not otherwise have.

8. Against this background, we may now consider the Tribunal's analysis so far it contained negative credibility assessments of the applicant's case. If these assessments were substantially accurate in substance, then providing that the reasoning is rational and cogent - in the sense that the inferences flow from the premises - then the Tribunal's decision is unimpeachable in law. In the present case, however, I have found that in at least two material respects, the inferences cannot fairly be drawn from the factual premises, so that this decision cannot be allowed to stand.

The applicant's medical condition

9. The first inconsistency identified by the Tribunal member was as follows:-

> "There are, however, inconsistencies in relation to the applicant's own evidence in this regard. During her section 8 interview when making an application in November 2007 the applicant was asked if she had any physical disabilities and replied that she had a heart condition and was on medication. Two weeks later she completed a questionnaire which asked if she had any disability or medical condition relevant to her application and she replied 'not applicable to me.' Both of these forms were completed by the applicant with the assistance of a social worker. These reports are read in conjunction with the Istanbul Protocol."

10. It must, however, be recalled that the applicant had arrived in Ireland in September, 2006 when an unaccompanied minor form was filled in by HSE officials upon her arrival The first set of comments are filled out in hand as follows:-

> "First language – Amharic. I have filled out as much as possible - no interpreter available. She states she was imprisoned in Ethiopia and her [mother] parents for her to leave. Arrival in Ireland today. Airport unknown."

11. Another official appears to have added the following comments in hand:

> "She left Ethiopia 7 days ago and has been in Kenya. States she has a heart condition - she may need to see a doctor - has not taken her medication for several days."

12. Pausing at this point, it may be observed that these notes were taken by HSE officials who appear to have been social workers. There is certainly nothing to suggest that they were taken by medical practitioners. Furthermore, the officials clearly struggled given the absence of an interpreter.

13. Next, so far as the questionnaire is concerned, there are two answers which are relevant. Question 20 asked the applicant to identify any documentation she intended to submit in support of her application. Ms. K. replied:-

> "For the time being, I do not have any medical documents at hand. But, after I got here, doctors told me that the anxiety attacks are the result of the beatings, the hard labour, malnutrition and the amount of blood I lost during the beatings in prison. They have also told me that, because I'm suffering from [illegible] there is a problem with my back. I will ask the doctors for documentation and I will submit it."

14. Question 30 asked:-

> "Do you have a disability or medical condition which is relevant to or affects your application or which would necessitate the provision of special facilities during your interview?
>
> A. Not applicable to me."

15. The phraseology of this latter question is somewhat ambiguous, because it could give the casual reader the impression that it relates to the provision of interview facilities, such as, for example, wheelchair access for the disabled. In any event, however, the fundamental premises posited by the Tribunal member on this point are plainly wrong for the following reasons.

16. First, there was no inconsistency in the manner suggested, even if no allowance is made for the possible ambiguity in Q. 30. Ms. K. had clearly indicated in the very same questionnaire - admittedly in answer to Q. 20, rather than Q. 30 – that the medical problems which she contended were induced by beatings and hard labour while in prison.

17. Second, the Tribunal member overlooked the fact that the first interview had been conducted without the benefit of an interpreter. While the reference to a heart condition may seem over dramatic, it is perfectly possible that Ms. K. was intending to refer to heart palpitations and anxiety attacks and, in the absence of an interpreter, this was the best that she could convey. The key point, however, is that the HSE officials could only record the bare gist of the applicant's case in the absence of an interpreter and no fair inference can be drawn about a subsequent alleged inconsistency in such circumstances.

18. Third, there is no possible basis for invoking the Istanbul Protocol in these circumstances. That Protocol is intended to assist medical practitioners preparing medico-legal reports in respect of the alleged victims of torture to assess the patient's medical conditions and, specifically, to give guidance on whether the conditions are consistent with the applicant's narrative. It has absolutely no relevance whatever to interviews conducted by social workers or questionnaires completed by the applicant herself.

19. Given that these premises are simply not factually sustainable, it follows that the negative credibility inference drawn by the Tribunal member cannot be regarded as a reasonable one: cf. the comments of Henchy J. in *The State (Keegan) v. Stardust Victims Compensation Tribunal* [1986] I.R. 642.

School activities and detention of students

20. The Tribunal found that the applicant's account of the school protests and her detention was both inconsistent and implausible. The Tribunal member first stated that:-

> "There are a number of problematic inconsistencies with the applicant's account of her father's involvement in CUD. In her interview, she states she only became aware of his involvement the day he was arrested. However, she told the Tribunal that she became aware when she overheard a conversation between her mother and father before the demonstration. She also give inconsistent evidence in relation to her own activities. She told the Commissioner that she and others would demonstrate and shout at school when the court dates were announced. In her evidence to the Tribunal she said [that] she and other sympathizers were operating in a clandestine fashion and distributed leaflets seeking the release of prisoners. She said that this activity was forbidden and it was done in secret. She was asked if the school meted out any punishment for such activities and she told the Tribunal that they did not know who was doing it. This is highly implausible."

21. The Tribunal member continued:-

> "She claims that about 20 students were arrested, but the families did not know where they were detained. Whilst country of origin information suggests the authorities have targeted centres of learning, the Tribunal finds it implausible that 20 children from middle-class families could be imprisoned somewhere without anybody knowing where they were held."

22. While I agree that, judged by contemporary Western European standards, much of this account seems unlikely and perhaps even inherently implausible, the country of origin information sadly attests to the regrettable fact that the targeting by the Ethiopian authorities of school children in this manner was not uncommon. Thus, the country report for Ethiopia from the Committee on the Rights of the Child which was published in November, 2006 stated:-

> "….the Committee is seriously concerned over restrictions placed upon civil society since the elections in 2005 and, in particular, regrets the arbitrary mass detentions, including of children, that place severe restrictions upon the freedom of expression which is a fundamental element of a free civil society….The Committee is also seriously concerned at information according to which children continue to be victims of torture, cruel and degrading treatment by police and military. The Committee is especially concerned at the situation of vulnerable groups of children, such as those belonging to ethnic minorities, and is alarmed at the fact that students have been targeted while attending school…"

23. In this regard, the conclusion is unavoidable that in this respect the Tribunal member inadvertently breached two of the nine

fundamental principles enunciated by Cooke J. in his seminal judgment in *IR v. Refugee Appeals Tribunal* [2009] IEHC 353:-

> "…(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, correct instinct or gut feeling as to whether the truth is or is not being told…..
>
> (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 must be stated."

24. Here the country of origin clearly supported the applicant's account in a material particular, yet the rejection by the Tribunal member of her account did not address this country of origin information. Indeed, it might be said that the fact that the applicant's account of specific events - which might otherwise strike the outsider as improbable - is independently corroborated by country of origin information lends in its own way an air of verisimilitude to the account which it might not otherwise enjoy.

25. Given the centrality of this particular negative credibility assessment to the Tribunal's overall conclusions, these breaches of the *IR* principles are such that the decision cannot therefore be allowed to stand.

Conclusions

26. For the reasons just stated, therefore, I must therefore quash and set aside the decision of the Tribunal. I propose, accordingly, to remit the decision to the Tribunal for re-hearing.