

**THE HIGH COURT**

**JUDICIAL REVIEW**

**[2011 No. 105 J.R.]**

**IN THE MATTER OF THE REFUGEE ACT 1996 (AS AMENDED), IN THE MATTER OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000 (AS AMENDED) AND IN THE MATTER OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS ACT 2003, SECTION 3(1)**

**BETWEEN**

**A.K. (A MINOR SUING BY HIS MOTHER AND NEXT FRIEND R.D.)**

**APPLICANT**

**AND**

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

**RESPONDENTS**

**JUDGMENT of Mr. Justice Barr delivered on the 26th day of November, 2014**

**Background**

1. The applicant is an infant who was born in Ireland on 23rd May, 2010. In order to understand his claim, it is necessary to set out some background to the asylum claims put forward by his parents.
2. In 2007, the applicant's mother started a relationship with Z, the applicant's father, and the couple decided to move in together. The couple's problems started shortly thereafter. Z's parents called to the house and told them that they should not be living together. When this did not have any result, Z's father sold the house, leaving the couple homeless.
3. In August 2008, the couple moved to Tbilisi, where they lived in an apartment. Although they had left Akhmeta, their problems continued. The applicant's mother said that, at first, Z's family could not find them. However, they did come to Tbilisi. She was threatened by Z's parents, who told her that she had to leave him. The applicant's mother stated that her mother-in-law hit her.
4. The applicant's mother stated that sometimes, when things would get noisy, the neighbours would call the police. The mother stated that the police would call around and help calm the situation. Although Z's parents would then leave, they would invariably come back to the apartment. The first time that the mother and Z were visited in Tbilisi, it was only Z's father and mother who came. The next time, the Z's brother was also present and he hit the applicant's mother.
5. The applicant's mother said that on one occasion in August 2008, she was the victim of another assault at her apartment. At the time she was up to three months pregnant. Z's parents and brother came to the apartment. Z was not present, as he was working in Tbilisi. There was a knock on the door of the apartment. At first, the applicant's mother did not open it but when she did, the people came into her apartment. The brother-in-law and father-in-law hit the applicant's mother. She fell down and injured herself. When they left the apartment, the applicant felt that she was in a bad way, so she called a neighbour who came and took her to hospital. At the hospital she learned that she had had a miscarriage.
6. After this event, the applicant's father and mother decided that they had to leave Georgia. The mother stated that she experienced about four visits from her in-laws to the apartment in Tbilisi. She stated that when her father heard that she had had a miscarriage, he asked her to join him in Ireland. The applicant's mother and father contacted an agent and made an arrangement to travel to Ireland for the sum of €6,000. The applicant's mother chose Ireland because her father was living here and he advised her to come to this country.
7. The applicant's parents travelled to Ireland by plane. They flew from Georgia to Holland and remained in the airport in Holland for about two hours. They then got on a second plane to Dublin.

**The Parent's Asylum Claims**

8. The asylum claims of the applicant's parents were unsuccessful both before the Refugee Applications Commissioner ("ORAC") and the Refugee Appeals Tribunal ("the RAT"). In essence, the parents had given contradictory accounts of whether they had passports, and whether they ever had possession of them during their trip to Ireland. The RAT found that the father gave three different explanations as to his passport. In the questionnaire, he claimed never to have had a passport at all. At interview, he claimed that the agent had all the papers, which the father never had in his hands, nor did he even see the documents. Finally, in submissions made at the appeal hearing, the father's legal advisers claimed that the father did travel to Ireland on his own Georgian passport, which the agent took back from the applicant's father. The Tribunal found that there was no credible explanation for these stark contradictions.
9. In relation to presenting the passport at Immigration Control at Dublin Airport, the father claimed that he had never had the passport in his hands. He alleged that the agent apparently showed all three passports to the officials. The Tribunal held that given the procedures relating to immigration and security applied in airports in Ireland and throughout the world, it was not credible that three people could pass through immigration together with one person holding the documents for all three without any questions being asked by security or by immigration officials. If the father was to be believed, the three travelled from Georgia to Ireland, via Holland, without the father once having a passport in his hands. The Tribunal did not find this credible.
10. The father also denied ever having applied for, or obtained, a visa for Ireland or for any other country. Documentation from the Irish Embassy in Sofia showed that the father had applied for and received visas into Poland, the Schengen States and Ireland. The Tribunal held that this documentation contradicted the father's statements in his questionnaire and at interview to the effect that he

had never had any visa. The Tribunal noted that the father had not provided any credible reason for this contradiction. The Tribunal concluded that the father had adduced manifestly false evidence in support of his application and had made false representations, both orally and in writing. The Tribunal concluded as follows in relation to the father's application:-

*"Given the myriad contradictions and manifestly false statements made by the applicant at questionnaire, at interview and at his appeal, the Tribunal also concludes that the applicant has not complied with section 11C of the Act, and has regard to this, and to the provisions of section 11B(i) of the Act.*

*These contradictions and manifestly false statements must detract from the applicant's credibility to such an extent that the Tribunal cannot accept that his claim to be a refugee is well founded. This finding in relation to his credibility must undermine the other claims the applicant makes, in relation to the difficulties he allegedly faced in Georgia."*

11. The Tribunal's findings in the mother's claim were in similar terms. The RAT stated that she had given three completely contradictory accounts in relation to her documentation: in her questionnaire, she said that she had never had a passport; at interview she stated that she had travelled on a false passport; and at the appeal, she said that she travelled on her own passport.

12. The mother claimed that she and her partner were accompanied on their journey to Ireland by an agent. The agent, known only as "Dariiko", apparently had possession of all tickets and travel documentation at all times. When it was put to the mother that the rules would require each of them to present their passports individually to the immigration officials, the mother claimed that she never had the passport in her hands. She said that the agent showed all three passports to the officials. Later she changed her evidence to the effect that she was given the passport by the agent to show to immigration, but that the agent took back the passports once they had gone through immigration. Given the contradictions in the mother's evidence, the Tribunal did not accept this account.

13. There were also similar issues in relation to visa applications. In her questionnaire, the mother stated that she had never applied for an Irish visa. At the hearing before the RAT, she stated that she had never applied for a visa before. She denied ever applying for a visa to enter Poland and she could not recall applying for a visa to enter Germany. The visa documentation from the Irish Embassy in Sofia was put to the mother. She accepted that both these visas and the application for an Irish visa showed a picture that the mother agreed was of her. The mother also agreed that the signature on the Irish visa application looked like hers but denied that it was in fact her signature. When asked for an explanation, the mother suggested that perhaps the agent that facilitated her travel to Ireland had arranged for this documentation. The Tribunal did not find the mother's explanation credible. It found that it was not credible that a trafficker would forge two visas on a passport and also forge an application form (including a forgery of the applicant's signature). The Tribunal went on to hold as follows:-

*"The documentation supplied by the Irish Embassy in Sofia is plainly contradictory to the applicant's statements in her questionnaire, at interview and then at the appeal hearing to the effect that she never had, nor had she applied for, any visa. The applicant has not provided any, or any credible reason for this contradiction. The Tribunal accordingly concludes that the applicant has adduced manifestly false evidence in support of her application and has made false representations both orally and in writing. The Tribunal is satisfied that s. 11B(f) of the Act applies and has regard to this in assessing the credibility of the applicant.*

*Given the myriad contradictions and manifestly false statements made by the applicant at questionnaire, at interview and at this appeal, the Tribunal also concludes that the applicant has not complied with s. 11C of the Act, and has regard to this, and to the provisions of s. 11B(i) of the Act in assessing her general credibility."*

14. The Tribunal also went on to find that the mother had not shown that State protection would not be available to her. Furthermore, the Tribunal did not consider that the mother was credible when she claims that internal relocation was not an option for her.

### **The Applicant's Claim**

15. In the s. 11 interview, the applicant's father was asked the following questions in relation to the applicant's claim:-

*"Q.8 From the information in the questionnaire and your initial application for him, it appears that his claim is based solely on the same reasons that both you and your wife have sought asylum. Is this correct?"*

*A. Yes*

*Q.9 Your claim for asylum and that of your wife have been deemed not well founded by this office, both decisions were upheld by the RAT. This may affect the outcome of your son's claim. Are there any other reasons that you are seeking asylum on behalf of your son?"*

*A. No other reasons."*

16. There were, however, two areas that were new in that they did not appear in the parent's asylum applications. The first was the four month delay in bringing forward an application on behalf of the applicant after his birth. The Tribunal noted that when asked about the delay, the applicant's father first said that the application was not made sooner as it was difficult for the parents to travel with the child in order to make the application. He stated: "it was not possible to travel with a newborn baby and a taxi does not serve me and I am not able to travel long distances". When it was put to the applicant that only one parent was needed to apply, the father said "I did not have any knowledge about it". The Tribunal Member stated as follows in relation to this aspect of the claim:-

*"I have regard to the fact that both of the applicant's parents have been through the asylum process in Ireland, having both made applications in 2008, which applications proceeded fully, through to appeal stage. I do not accept that the applicant was unaware of how to apply for asylum and I do not accept that the applicant's father provided a plausible or reasonable explanation for not applying at a sooner date. This is a matter to which I have regard, in assessing the general credibility of the applicant's claim."*

17. I am satisfied that the Tribunal Member was entitled to have regard to this evidence in the way that he did in the decision and that he was entitled to have regard to this evidence in assessing the general credibility of the applicant's claim.

18. The second area that was new in the applicant's claim was the statement made by the applicant's father at the s. 11 interview in response to the question as to why they could not go to the police if they felt that their son was under threat. The father gave the

following explanation:-

*"First, everyone, the police knew everything in relation to our child and the police did nothing. My older brother, he is a policeman, and he will prevail in every way."*

19. The Tribunal Member viewed this answer with considerable scepticism due to the fact that neither the father nor the mother had raised in their own applications the issue of the father's brother being in the Georgian police force and that therefore, police protection would not be forthcoming. The Tribunal Member held that this omission from the parents' application led him to doubt the credibility of the assertion made by the applicant's father at the applicant's s. 11 interview.

20. I am satisfied that this was a reasonable conclusion to reach in relation to the late entry of this evidence into the applicant's asylum application. If the father's brother was in the police force and if, as a result, the applicant's father felt that police protection would not have been available to them, this was something which one would have expected would have been mentioned in the parent's applications. The Tribunal was entitled to reach the conclusion it did in relation to the emergence of this evidence.

21. The applicant put forward the argument that in making the findings based on the lack of credibility of the parents' applications, the Tribunal was not making any finding on the "core" claim of the applicant. It was argued that the findings in the parents' applications were based on a lack of credibility in respect of peripheral matters, such as the issues in relation to the passports and the visa applications, but had not dealt with the core claim which was in relation to attacks on the parents from the father's family. The applicant submitted that while the Tribunal was entitled to have regard to the decisions in the parents' cases, it erred in simply following the decisions without making any attempt to address the core claim.

22. The respondent submitted that the applicant's submissions were based on a misunderstanding of the reasoning of the Tribunal in the decisions relating to the parents. They submitted that it was an error to characterise the Tribunal's findings in the earlier decisions as relating to matters peripheral to the "core claim". The respondent submitted that it was clear from a reading of those decisions that the Tribunal did not believe the parents' claims to be in danger from their family in Georgia, because of the contradictions in their evidence about having passports and visas, the contradictions in the evidence about how they passed through immigration control, and the implausibility of their assertion that they were able to pass through immigration controls with the passports held by a trafficker. While they initially denied ever having held passports, both parents had in fact applied for and had been granted visas to enter Ireland as part of the Georgian martial arts team. In the mother's decision, the Tribunal also adverted to the omission to produce birth certificates or other documents to prove kinship to the applicant's father.

23. The Tribunal held as follows with reference to the applicant's father:-

*"These contradictions and manifestly false statements must detract from the applicant's credibility to such an extent that the Tribunal cannot accept that his claim to be a refugee is well founded. This finding in relation to his credibility must undermine the other claims that the applicant makes in relation to the difficulties he allegedly faced in Georgia."*

24. The Tribunal made a similar finding in the decision relating to the applicant's mother. The respondent submitted that it was clear that the Tribunal rejected the veracity of the applicant's parents' claims that they were in danger of persecution from their family in Georgia. The parents sought to advance precisely the same claim in the course of the application on behalf of the applicant. The same credibility issues were equally applicable. It was submitted that the reality was that this was not a discrete or novel ground of application on behalf of the infant applicant. Rather, his parents re-litigated the same claims in the form of an application on behalf of the applicant. The parents were the only source of evidence and the credibility findings that told against them in their applications were necessarily equally relevant to the claim made on behalf of the applicant.

25. I am satisfied that the submissions of the respondent on this issue are correct. The Tribunal in the parents' cases held that the contradictions in the evidence regarding the existence of passports, the holding of the passports and the visa applications, all detracted from the applicant's credibility to such an extent that they affected the whole of the applicant's story, including the core claim in relation to persecution by the father's family.

26. The respondent submitted that this Court should follow the decision delivered by Cooke J. in *D.M. v. Minister for Justice and Equality* [2012] IEHC 225, where he stated as follows:-

*"14. The central issue, however, which is raised by this application to dismiss is directed particularly at the essential characteristic of the case namely, that the claim made by these minor applicants is based exclusively upon the previously rejected asylum claims of the parents. These minors were born here and have never been to Cameroon. They have never personally suffered any past persecution. If their parents' claims to asylum have been definitively rejected as lacking all foundation because of disbelief, is there any possible basis upon which these minors could mount any stateable challenge to the decisions of the RAT they seek to impugn?"*

...

*17. Secondly, it was expressly conceded by each parent that the claim made for the minors was based entirely upon the claims they had made for themselves. Those claims have been definitively rejected in each case for lack of credibility and in the case of the mother by the same Tribunal member as decided the appeals of the minors. In other words, the basic facts and events upon which the parents' claims for asylum were based, have been found incredible and have been rejected on the basis that those facts and events are considered never to have happened as the parents described."*

27. The respondent also submitted that the Tribunal was entitled to follow the decisions made in relation to the applications made by the applicant's parents based on the identical set of allegations. The respondent cited the following passage from the judgment of Cooke J. in *J.O. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 478 at paras. 8 – 9:-

*"8. The Court does not however consider that this Section 13 report can or should be quashed for a number of reasons. First, it is not strictly true that the applicant's case has not received individual consideration or investigation by reason only of the fact that no distinct investigation into the child's personal circumstances was carried out. The child's personal circumstances were perfectly clear and straightforward. She was born on the 12th June, 2008. She has never been to Nigeria. She has never met her father's family and knows nothing of it or of their threats. Her life now and for the next few years at least is bound up with and dependent upon that of her parents and on the decisions and choices that they may make for the family. The child's only case for claiming asylum is the case made by her parents for themselves and for her sisters. Had she been born earlier she would have been included, no doubt, in the mother's claim*

and thus be in precisely the same position as she will be if this Section 13 report is allowed to proceed to appeal before the Tribunal and joined with the mother's pending appeal.

9. It has not been suggested that there is any other fact, circumstance or consideration peculiar to the child's claim to asylum that is not part of the mother's claim. Her prospect of being declared to be a refugee is entirely dependent upon the fate of her mother's claim. It is true that each claimant is entitled to have his or her claim to asylum subjected to individual examination and decision but that does not mean in the Court's judgment that the Commissioner is obliged to conduct some sort of pro-forma separate investigation into the potential claim of a three month old child when the claim explicitly made on the child's behalf is that of her mother and no distinct fact or consideration is put forward as to how or why the child's risk of persecution is in any way different from that of the parent. This is particularly so where the claim to a fear of persecution is not based on some external threat or on the general conditions in a country of origin to which members of some ethnic or social group are exposed but on the purely domestic, private source of potential harm, in this case, the threats of the father's family."

28. It was submitted that where the applicant's father had expressly confirmed that the applicant's claim was based solely on the same reasons for which the applicant's parents had claimed asylum, it was entirely appropriate that the Tribunal should follow its earlier decisions in relation to the parents' cases.

29. I agree with the submission made on behalf of the respondents. Where an application is put forward on behalf of a minor and it is stated to be based on the same circumstances as were put forward by the parents, it is logical that the decision maker will have regard to the decisions put forward on behalf of the applicant's parents. This approach is in accordance with the dictum of Cooke J. in *J.O. v. Minister for Justice, Equality and Law Reform* (supra).

30. However, in this case, the Tribunal did not only have regard to the evidence and decisions in the parents' cases but also had regard to the further issues, namely the issue of delay in making an application and the issue of the father's brother being a member of the police force such that State protection would not be available. The Tribunal had regard to the additional factors which were unique to the infant's case. The Tribunal considered those issues and reached conclusions on them. In the circumstances, I am satisfied that the Tribunal looked at the individual circumstances of the applicant.

31. The applicant submitted that two fresh credibility findings made by the Tribunal were made for the first time by the Tribunal and had not been considered or adduced by the Commissioner. Where the appeal was on the papers only, it was submitted that the Tribunal acted in breach of s. 16 of the Refugee Act 1996, as amended, in failing to ask the Commissioner to make further inquiries, or alternatively that the reliance on such findings without affording the applicants an opportunity for rebuttal constituted a breach of fair procedures.

32. The respondent submitted that the findings that the applicant describes as the "two fresh credibility findings" related to the delay in making an application for asylum on behalf of the applicant, and the father's new allegation that his brother was a policeman, and that each matter was evidentially within the knowledge of the applicant's parents when appealing to the Tribunal. The applicant's parents were aware of the time when they applied for asylum on the applicant's behalf, and the applicant's father was specifically questioned about the delay in applying for asylum on behalf of the applicant at interview. He claimed alternatively that he could not travel with a young baby, that he had no babysitter, and that he did not have any knowledge about it.

33. The respondent submitted that there was no obligation on the Tribunal to raise with the applicant the possibility of an adverse finding arising from the contradictions in the evidence adduced on his or her behalf or from the matters within his or her own knowledge. The respondent referred to the decision of Mac Eochaidh J. in *T.A. & O.J.O. (a minor suing by his mother and next friend, T.A.) v. Refugee Appeals Tribunal* [2014] IEHC 204, and in particular to paras. 18 and 19 thereof:-

"18. The second substantive complaint raised on behalf of the applicants is that there was a breach of fair procedures as the Tribunal Member is said to have relied on adverse credibility findings which were not put to the applicant to give her an opportunity to explain herself. Counsel contended that the first named applicant did not have the opportunity to explain adverse credibility findings in relation to: being thrown out of her house by her husband; her movements prior to leaving Nigeria; and her difficulties remembering who sourced the statutory declaration of age. I dismiss the applicants' complaint in respect of this ground of challenge also. There is a line of jurisprudence, as highlighted by counsel for the respondent, which makes clear that while the Tribunal Member is conducting an inquisitorial function and is required to give a reasonable opportunity to the applicant to know the matters likely to affect the judgment, it is not required to enter into a debate with an applicant. As McMahon J. stated in *P.S. v. Refugee Applications Commissioner* [2008] IEHC 235:-

'Clearly, not every matter must be put to the applicant or to her advisors. It is not incumbent on the Commissioner after every question is answered to say to the applicant:- 'I am not sure I believe your answer. It may be when I assess the matter fully and examine the evidence in its totality that I will reject your answer to this question. What have you to say to that?' It is quite clear to all who participate in this exercise especially where the applicant is assisted by legal advisors, that the application will be at risk if the applicant is not believed, and that the principal onus of proof lies on the applicant who is in appropriate cases to be given the benefit of the doubt.'

19. Further, I concur with the dicta of Hedigan J. in *B.N.N v. Refugee Applications Commissioner* [2008] IEHC 308, who stated that:

'[33] It would be completely impossible to reach an expeditious conclusion if a decision-maker was required to debate with the person who is to receive the decision each and every one of the conclusions on credibility that he was going to reach. Moreover, if a decision-maker was to say to a person, in respect of each dubious comment, 'I don't believe that is true', the person telling the story would lose the nerve to tell their story, true or false. It is important to bear in mind that the Office of the Refugee Applications Commissioner officer is not conducting a criminal trial. Rather, he or she is conducting an investigative procedure, on an inquisitorial basis.'"

34. I am satisfied that the delay issue had been raised with the applicant's father at the s. 11 interview and he had been given ample opportunity to deal with it. The issue about the father's brother being a police man was raised by the applicant's father himself in the course of the s. 11 interview. The Tribunal was entitled to consider such pieces of evidence; indeed, it was bound to consider them. The Tribunal did so and reached conclusions on these matters. It acted fairly and properly in so doing.

35. The applicant further submitted that the findings made in respect of State protection were made without any proper consideration in practical terms of the circumstances in which the applicant finds himself. Furthermore, it was submitted that reliance on the failure

of the applicant's parents to contact the police was misconceived in circumstances where the police had been called by their neighbours.

36. The Tribunal found that it was evident from the country of origin information appended to the s. 13 report that Georgia is a democracy, with a functioning police force, subject to appropriate checks and balances and appropriate policing of the police themselves. Even if the applicant's father's brother was a police man (which the Tribunal doubted) it was not accepted that the Georgian State was unable to provide protection to the applicant. I am satisfied that this was a finding which was open to the Tribunal and should not be disturbed.

37. The Court is satisfied that the Tribunal's decision has been lawfully arrived at and is sound in substance. Accordingly, I refuse the applicant's application for relief herein.