Neutral Citation Number: [2007] IEHC 273

THE HIGH COURT

JUDICIAL REVIEW

[2004 No. 1016 J.R.]

IN THE MATTER OF ARTICLE 40.3 OF THE CONSTITUTION AND IN THE MATTER OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS ACT 2003 SECTIONS 2, 3, 5 AND 6

BETWEEN

J.B.

APPLICANT

AND

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM
REFUGEE APPLICATIONS COMMISSIONER
IRELAND
AND
THE ATTORNEY GENERAL

RESPONDENTS

AND

THE HUMAN RIGHTS COMMISSION

NOTICE PARTY

Judgment of Mr. Justice Hedigan delivered on the 18th day of May, 2007.

1. In this case the court was first of all asked to extend the time to proceed in respect of the decision of the Refugee Appeals Commission. The report of the RAC was made on the 10th January, 2004. It was notified to the applicant on the 21st January, 2004 and the time limited within which to seek judicial review commenced to run from the latter date. The limitation period is fourteen days. It was not until the 9th November, 2004, that the notice of motion issued, this being well outside the time limit. The applicant must apply for leave to extend. In order to do this, the court must be satisfied pursuant to s. 5 of the Act that there are "good and substantial reasons why this should be done".

2. It is conceded that from January, 2004, the applicant was legally represented. Two reasons to extend are advanced. Firstly, that the applicant was very distressed and secondly, that any failure on the part of her legal representatives should not be held against her. I do not consider either of these to be good and substantial reasons and consequently must refuse the leave to extend. This therefore disposes of the first ground which is that she was interviewed by a male officer instead of by a female officer. I must note in passing that the applicant at the beginning of her interview by the Commissioner was informed she could have a female interviewer if she wished but declined. A form attesting to this was signed by her at the time. In the light of this even were the time extended I would have found it difficult to accept this particular ground. The second ground advanced on the applicant's behalf is that the Tribunal applied an incorrect test in relying on English case law, i.e. *Adan v. Secretary of State for Home Department* [1999] 1 A.C. 293 to the effect that the test of persecution in a civil war must be over and above that inherent in the civil war itself. In particular it is submitted on her behalf that the Tribunal erred in establishing as a test the requirement that the applicant should have suffered from persecution in such a way that she was "differentially at risk from other women in general". When considering this aspect of the case I note that the Tribunal member in her decision observed that even if she accepted the applicant's evidence she would not have found her to have fallen in with the *Adan* principle as she was not in her view at any differential risk over and above that inherent in a civil war. However she goes on to note that as she cannot accept the applicant has provided a coherent and believable account, she is not in a position to give her the benefit of the doubt in any event. I can find no error on the Tribunal's decision in this regard and therefore I reject this ground also. The next ground is what I consider to be the heart of the applicant's case i.e. that the Tribunal erred in finding the applicant not credible. It is clear that the Tribunal found great difficulty in accepting the applicant's credibility in this case. The member says exactly this on p. 10 of her decision, she cites:

> "The failure of the applicant to mention in her questionnaire her alleged abduction and holding in virtual sexual slavery for two weeks. She had made reference to the widespread rape of women by the Charles Taylor Police and also to an incident where she was raped by two gunmen from the *ATU (Anti Terrorist Unit).*"

3. Her conflicting accounts of the loss of her passport are also relied upon by the Tribunal in questioning his credibility. In approaching this aspect of the case I consider that the courts role is very much a restricted one. I adopt the views expressed by Peart J. in *Imafu v. The Tribunal* (Unreported, 9th December, 2005) where he stated:

> "This Court must not fall into the trap of substituting its own view on credibility for that of the Tribunal Member. The latter, just as a trial court is…, in the best position to assess credibility based on the observation and demeanour of the applicant when she gives her evidence. These are essential tools in the assessment of credibility, and it is always essential to remember that what appears as the spoken word in a transcript or in a summary of evidence contained in any written decision cannot possibly convey the necessary elements for the assessment of credibility. That is why a court will be reluctant to interfere in a credibility finding by an inferior tribunal, other than for the reason that the process by which the assessment of credibility has been made is legally flawed."

4. I also adopt the view expressed by Gilligan J. in *Roman v. The Tribunal* (10th July, 2003), in which he referred to

> "presumptive judicial reluctance to interfere with the findings of the Tribunal with regard to the witness's oral evidence".

5. I note that Gilligan J. went on to state

> "an appellate Tribunal or the court of review is in no position to comment on the demeanour of a witness this is the rationale for the general reluctance of the court to accept findings based on oral evidence."

6. Furthermore, in relation to the assessment of credibility, I consider it well settled that the assessment of credibility is a matter for the relevant decision maker. The court will intervene only in rare circumstances where there is a breach of fair procedures or a lack of jurisprudence. I apply in this regard *Kamara v. The Minister of Justice* (Unreported, 26th July, 2000) a decision of Kelly J. Applying both these tests to the present case I do not find any breach of fair procedures nor any lack of jurisdiction. Indeed I consider the Tribunal had reasonable grounds to doubt the credibility of the applicant.

7. The last ground advanced on behalf of the applicant was that the respondents erred in embarking on an examination of the

applicant's application for asylum without making a definitive decision on the issue of the applicant's nationality. In particular in circumstances where the third named respondent had cast doubt on the applicant's nationality, the second named respondent acted without jurisdiction in deciding on the applicant's appeal without making a finding as to the applicant's nationality.

8. I cannot accept the proposition upon which this submission is based. That is that the refusal of asylum was based upon her failure to establish that she is from Liberia. It seems clear to me that in fact the Tribunal proceeded to its findings on the basis that she was from Liberia. She in fact produced a Liberian birth certificate. It seems to me the questioning of the applicant in relation to her knowledge of the geography of Liberia was directed at her credibility as to where in Liberia she actually came from rather than whether she came from that country at all. For this reason I must reject this ground also. In summary I must refuse the applicant leave and I must make an order for costs in respect of the respondents.