

**THE HIGH COURT
JUDICIAL REVIEW**

2006 No. 563 J.R.

J. L. AND J. M.

APPLICANTS

AND

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

RESPONDENTS

Judgment of Mr. Justice Gilligan delivered the 3rd day of July, 2008

Background

1. The first and second named applicants are husband and wife. They are both nationals of the Democratic Republic of Congo ("DRC"). They both sought asylum in Ireland on the 4th January, 2005. The first named applicant claims to be a Pentecostal preacher who is at risk of persecution based on the grounds of imputed political opinion. He claims to have given a sermon in September, 2004 which was religious in nature, but which, he claims, was misinterpreted by the authorities as a challenge to them. He claims that he was arrested on the 20th September, 2004 and detained for over a month. During this time he claims that he was both physically and sexually abused. He states that he managed to escape during an ambush and fled to Kinshasa.

2. His brother-in-law arranged for both applicants to travel from there to Belgium, where they spent approximately ten hours, and then on to Ireland. The first named applicant fears for his life should he be returned to DRC. The second named applicant bases the entirety of her application on the difficulties surrounding her husband.

3. The second named applicant claims that she deserted from the police force, that their house was raided and subsequently destroyed in Kinshasa. She alleges that she stayed at the farm of her brother-in-law while her husband was detained until she left for Ireland. She was not physically harmed at any time in the DRC.

4. The first named applicant submitted a purported DRC driving licence, together with a report from a Rape Crisis Centre, a referral letter from SPIRASI, two untranslated internet articles and a letter from a doctor who was treating him, to the Refugee Applications Commissioner as part of his application.

5. The first named applicant was refused refugee status by the Refugee Applications Commissioner by a decision dated the 19th and 30th August, 2005. The second named applicant was refused refugee status by a decision dated the 28th June, 2005 and the 25th July, 2005. The Commissioner refused to make a recommendation that the first named applicant be declared a refugee for the following reasons:

- a) Country of Origin information showed that there was religious freedom in the DRC;
- b) The first named applicant had claimed that his escape was highly publicised and had been on Congolese television and that it had been announced that he was a dangerous person. Notwithstanding that claim, a search of Country of Origin information could find no evidence relating to his alleged arrest and escape from detention;
- c) The various letters and reports submitted by the first named applicant in support of his claim were not corroborative of his story;
- d) The first named applicant had given a highly implausible account of how he came to be in possession of what he claimed was a genuine driving licence from the DRC; and
- e) The first named applicant had failed to provide a full and true account of his travel to Ireland and had failed to make an asylum claim in the first safe country in which he arrived, namely, Belgium.

6. A Notice of Appeal was lodged on behalf of both applicants by the Refugee Legal Service and they were both heard on the 25th October, 2005. The Refugee Appeals Tribunal ("RAT"), refused the application for asylum by decision dated the 14th March, 2006.

7. The tribunal member has set out in extensive detail an introduction to the applicants' application and the background to the claim. In particular, the tribunal member refers to the fact that the first named applicant confirmed that the message of his sermon was misinterpreted and that this was the root cause of his problem. Having referred to the law, the tribunal member sets out the basis of his decision, having considered all of the papers submitted to him for the purpose of the appeal and all the matters required to be considered under s. 16(16) of the Refugee Act 1996, as amended. The tribunal member states that he has considerable hesitation in believing the whole story of both applicants for the reasons as set out. He states that he is satisfied from the facts before him that the lack of credibility in this case fundamentally infects the subjective element of a well founded fear of persecution. He refers to the fact that, in assessing credibility, he has had the opportunity of seeing and hearing both applicants and observing the manner in which their evidence was given and the demeanour of the applicants generally. Furthermore, in assessing credibility, the Tribunal did have regard to the provisions of s. 11B and the subs. provided therein in the Refugee Act 1996, (as inserted) by the Immigration Act 2003, s. 7(f).

8. The tribunal member came to the view from the facts before him that the applicants did not provide a reasonable explanation for the absence of reliable identity documentation. An original DRC driving license produced in respect of the first named applicant is a counterfeit. In relation to the work ID cards submitted by the second named applicant, the tribunal member does not accept her reason as to why the card looked brand new even though it is supposed to be six years old. In this regard the tribunal member states that he arrived at his conclusion in respect of the documentation based on the answers provided by the second named applicant at the hearing before him.

9. The tribunal member did not accept that the applicants had provided him with a full and true explanation as to how they arrived in Ireland.

10. The tribunal member sets out that he is satisfied that Ireland was not the first safe country in which they arrived since departing from their country of origin.

11. The tribunal member refers to a SPIRASI report submitted post hearing, dated the 29th December, 2005, and that the content thereof was noted and considered in the light of the provisions of the Istanbul Protocol.

12. The tribunal member refers to the fact that a search of reputable Country of Origin sources fails to provide any evidence to substantiate the first named applicant's alleged arrest and escape from state detention.

13. Insofar as the second named applicant claims to have been a deserter from the police force, the tribunal member refers to the second named applicant's answer at question 29 of the original questionnaire wherein she stated "my return to the country would be same as handing myself over to slaughter at the hands of soulless leaders who have no respect for human rights or freedom of expression (my death)". This aspect is not being pursued in the application before this Court.

14. The tribunal member states that he considered all relevant documentation and came to the conclusion that the applicants are not refugees within the meaning of s. 2 of the Refugee Act 1996, as amended, and, accordingly, he affirmed the recommendation of the Refugee Applications Commissioner and dismissed the appeal.

15. Leave to apply for judicial review was granted by the High Court (McKechnie J.) on the 21st February, 2008. The 14 day time limit for leave to apply for judicial review under s. 5(2) of the Illegal Immigrants (Trafficking) Act 2000, was extended.

Grounds Upon Which the Relief is Sought

16. The applicants contend that the first named respondent, its servants or agents, acted without jurisdiction or alternatively in excess of jurisdiction and/or otherwise than in accordance with law and/or otherwise than in accordance with fair procedures in that it:

(i) Failed to give proper consideration to the core issue of risk of persecution.

(ii) Improperly made adverse credibility findings against the applicants, or each of them, on matters peripheral to the core issue of risk of persecution, insufficient to justify an overall adverse finding.

(iii) Made findings adverse to the applicants, or each of them, in reliance upon erroneous matters. In particular, improperly made an adverse finding on the basis that the English versions of internet reports submitted by the first named applicant did not refer to him, or to the events leading to his arrest, when the first named applicant made no claim to this effect.

(iv) Further, and in particular, improperly made an adverse finding on the basis that the British Home Office Report, the US State Department Report and the BBC news internet sites do not refer to the first named applicant, or to the events leading to his arrest, where the first named applicant submitted that the said reference to him, or to the events leading to his arrest, occurred on Congolese television.

(v) Failed to give any proper consideration to the submitted SPIRASI report and the grave and brutal matters contained therein. In the alternative, provided no basis, or no rational basis, for any finding in relation to the SPIRASI report.

(vi) Wrongfully classified the applicants' case as one where the objective element of well-founded fear assessment does not require to be made.

(vii) Failed to give any, or any proper, consideration to the objective element of the applicants claim.

Submissions

17. Mr. Beck, on behalf of the applicants, refers to the fact that the applicants, who are husband and wife, had their application for asylum considered jointly. The second named applicant's case is primarily based on the case of her husband, the first named applicant. Mr. Beck contends that the tribunal member failed to give proper consideration to the core issue of the risk of persecution and improperly made adverse credibility findings against the applicants or each of them on matters peripheral to the core issue of risk of persecution insufficient to justify an overall adverse finding. Mr. Beck contends that the tribunal member identified the core issue of persecution at p. 4 of his decision in the following terms "...the message of the applicants' sermon was misinterpreted and this was at the root cause of his problem". He contends that the tribunal member made no adverse finding on credibility in relation to this particular aspect which, it is submitted, is the core issue. Insofar as the tribunal member based his view of the applicants' lack of credibility primarily on the identification documentation supplied, the explanation of the applicants' travel to the State, the absence of reasonable explanation for failing to seek asylum in Belgium, the content of a SPIRASI report, the failure to substantiate the first named applicant's detention and escape from custody and the inconsistency in relation to the second named applicant's desertion from the police force, it is submitted by the applicants that none of these properly or adequately relate to the core issue at the heart of the applicants' asylum application which in fact is that a sermon as delivered by him was misinterpreted by the authorities and led to his arrest and detention.

18. Mr. Beck relies extensively on the judgment of this Court, Peart J., in *Sango v. Minister for Justice, Equality and Law Reform and Ors* [2005] I.E.H.C. 395, wherein (at p. 6 of his judgment) Peart J. stated:-

"There is nothing in the decision of the Tribunal Member which suggests that this matter is found not to be established or found to be other than credible. There is no examination of that matter and there is no finding against credibility in the decision related to that core matter. In those circumstances, it seems to me arguable to the required standard that for the Tribunal Member to find that the applicant is not credible in relation to the question of his escape, the money which he saved, and the reason for not seeking asylum in Zambia, and then to go further and say that "for these reasons I find that the applicant is not a refugee..." is an error, since the three matters relied upon are arguably of [sic] too peripheral to the core issue to justify an overall adverse credibility finding."

19. Further, Mr. Beck argues that the tribunal member made findings adverse to the applicants or each of them in reliance upon erroneous matters. In particular it is submitted that the tribunal member improperly made an adverse finding on the basis that English versions of internet reports submitted by the first named applicant did not refer to him or to the events leading to his arrest when the first named applicant made no claim to this effect. And further that the tribunal member improperly made an adverse finding on the basis that the British Home Office Report, the US State Department Report and the BBC news internet sites do not refer to the first named applicant or to the events leading to his arrest where the first named applicant submitted that the said reference to him or to the events leading to his arrest occurred on Congolese television.

20. It is submitted that these grounds rely on fundamental errors of fact in that the first named applicant never indicated that the internet reports which he submitted contained information that references had been made to him on the television. In fact the first

named applicant indicated that he had heard from his brother in law that a mention of him and reference to the events leading to his arrest had been on the television.

21. Further, it is argued on the applicants' behalf that the tribunal member failed to give any proper consideration to the submitted SPIRASI report and the matters contained therein. In the alternative it is submitted that the tribunal member provided no basis or no rational basis for any finding in relation to the SPIRASI report.

22. Further it is contended that the tribunal member wrongly classified the applicants' case as one where "the objective element of the well founded fear assessment does not require to be made..." and further failed to give any proper consideration to the objective element of the applicants' claim.

23. Ms. Stack on the respondents' behalf submits that the tribunal member set out clearly the various reasons why the applicants' claim for refugee status was rejected. As regards the content of the SPIRASI report, she states that it is, in fact, of little probative value being just under two pages in length and, that the conclusion as reached in the report is, to say the least, guarded. It is submitted that the fundamental finding of the tribunal member was that neither of the applicants was personally credible such that the objective element of the well founded fear of persecution did not require to be assessed. It is contended on the respondents' behalf that it is well established that where personal credibility is absent it is not necessary to look at the objective element of the claim. It is further contended that there were issues as regards documentation, and a failure to provide a full and true account of travel to the State, the fact that the applicants did not apply for asylum in Belgium even though they spent some ten hours there and spoke the language, the fact that the applicant had indicated that his case was splashed on television and on radio, to the effect of a Pastor having escaped from prison and yet, against this background, the applicants' had flown out of the main airport in Kinshasa. It is contended on behalf of the respondents that if a person was wanted by the authorities having escaped from prison it is unlikely that he could simply leave the country on a commercial flight from the main airport.

24. In any event it is contended on the respondents' behalf *following P. and Anor v. Refugee Appeals Tribunal and Anor* [2007] I.E.H.C. 415, that an error of fact will only vitiate a decision of the first named respondent if it goes to jurisdiction.

25. Strictly without prejudice it is contended on the respondents' behalf that even if there is an error of fact it does not render the decision as arrived at irrational and judicial review does not lie.

26. It is further contended on the respondents' behalf that there is no obligation on the tribunal member to make findings and assessments in respect of each and every piece of evidence. In essence, the respondents contend that in circumstances where the first named applicant claimed that his escape was highly publicised in the DRC, the tribunal member's findings are rational on the basis that there is no independent evidence that any publicity was given to the applicant's escape from custody.

Conclusion

27. The first named applicant provides as his sole ground for leaving the DRC that a religious sermon as delivered by him was misinterpreted as an incitement to people to rise up against the Government. It is this fact and only this fact, which led the first named applicant to leave his country of alleged birth and domicile and seek refugee status in this State. The onus rests on the applicants to satisfy this Court as regards the grounds in respect of which leave was granted to apply for judicial review.

28. There is no corroborating evidence in relation to the actual sermon itself other than that the first named applicant says that he delivered the sermon and he believes that the message of his sermon was misinterpreted and this was the root cause of his problem. The onus is on the applicants to provide such evidence. It is clear that the tribunal member can only look to the surrounding circumstances. I do not consider that there can be any basis for making the case that the circumstances of the first named applicant's arrest and detention, his escape from detention and the general circumstances of his travel to this State can be regarded as being too peripheral to the core issue of the delivery of the sermon which the applicant says was misinterpreted and led to his subsequent arrest and detention.

29. It is also clear that the tribunal member gave careful consideration to the various matters which he concluded undermined the applicants' credibility and, in particular, he had the benefit of having both the applicants appear before him and of being in a position to assess their demeanour and credibility.

30. I do not consider that there is any substance in the submission that the tribunal member made findings adverse to the applicants or either of them in reliance upon erroneous matters. Mr. Beck submits that, in particular, the tribunal member improperly made an adverse finding on the basis that the English versions of internet reports submitted by the first named applicant did not refer to him or to the events leading to his arrest, when the first named applicant made no claim to this effect. Even if there is room for a potential misunderstanding in this regard, the reality of the situation is that there is no independent corroboration whatsoever from any number of Country of Origin information reports that the first named applicant was arrested, detained in prison and escaped from prison, or that he was regarded publicly as a dangerous person to be arrested. The first named applicant says that there was a reference to him on Congolese television, but no independent report corroborates that fact.

31. Insofar as Mr. Beck, on the applicants' behalf, relies on the tribunal member having no basis or no rational basis for any finding in respect of the SPIRASI report, it is clear that the SPIRASI report was submitted after the hearing on the 29th December, 2005, and the tribunal member says he has noted and considered the report. This Court is satisfied, having had an opportunity to read and consider the content of the SPIRASI report, that its content is of little probative value to the applicants' case.

32. It is further submitted that the tribunal member wrongfully classified the applicants' case as one where the objective element of the well founded fear assessment does not require to be made and, further, failed to give any or any proper consideration to the objective element of the applicants claim.

33. In the circumstances of this case, the objective element relates to the situation in the DRC for persons perceived to be in opposition to the authorities. While there is a general obligation on the tribunal member to consider the conditions as set out in the Country of Origin information, this obligation does not exist where personal credibility is absent as has been found in this case.

34. Peart J., in *Ojelabi v. Refugee Appeals Tribunal & Anor* [2005] IEHC 42 succinctly considered this aspect, concluding:-

"The lack of credibility fundamentally infects the subjective element of a well founded fear of persecution. The applicant was simply not believed, as I have said. In such a situation, the objective element of the well-founded fear assessment does not require to be made, since without a credible subjective element, the objective element does not become relevant."

35. It is clear that the applicants were simply not found to be believable to any reasonable extent and the tribunal member came to the conclusion that credibility was absent. This Court sees no reason to fault the manner in which the credibility aspect was assessed. The reasons for the decision arrived at are clearly set out in the tribunal member's detailed and reasoned decision. In these circumstances there is no onus on the tribunal member to consider the objective element of the applicants' claim.

36. I have come to the conclusion that the applicant does not make out a case for judicial review for the reliefs as sought upon the grounds set out in the post leave statement required to ground an application for judicial review and, accordingly, the application fails.