Neutral Citation: [2014] IEHC 28

THE HIGH COURT

JUDICIAL REVIEW

[2010 No. 144 J.R.]

BETWEEN

M. A. (A MINOR SUING BY HER MOTHER AND NEXT FRIEND F. A.)

APPLICANT

AND

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

RESPONDENTS

AND

THE HUMAN RIGHTS COMMISSION

NOTICE PARTY

JUDGMENT of Mr. Justice Colm Mac Eochaidh delivered on the 30th day of January 2014

1. This is a telescoped application for judicial review seeking to quash the decision of the Refugee Appeals Tribunal in respect of the applicant. The applicant is a national of Nigeria who was born in Ireland on 15th February 2006. Her mother and next friend arrived in Ireland on 15th December 2005. Her claim for refugee status was refused.

2. The applicant's mother says she was raped by her father and that the applicant was conceived thereby. The applicant's mother said her father raped her because she claimed to be a lesbian. The mother's claim was refused on a finding of lack of credibility. The asylum claim presented on behalf of the minor applicant in this case was advanced on the basis of a fear of persecution which could befall the applicant because she was incestuously conceived and because the applicant suffers from Kawasaki disease for which she would be unable to receive treatment in Nigeria. With respect to the claim of exposure to persecution on account of her medical circumstances, the Tribunal Member said:

> "I find, having considered [the country of origin information] that the applicant would not be denied access to medical facilities in Nigeria in relation to the follow up treatment for her Kawasi [sic] disease on the grounds that her mother would not be able to afford such treatment. The applicant's mother has failed to establish that having regard to the level of resources in Nigeria that the applicant would suffer discriminatory treatment in relation to her access to follow up treatment for this disease of such a substantially prejudicial nature as to amount to persecution within the meaning of the Convention."

3. With respect to the claim that the applicant would suffer persecution by virtue of her parentage, the Tribunal Member found:

> "The applicant's mother also fears that the applicant would be sacrificed at the shrine because she was born as a result of this incestuous rape. I am mindful of the fact that neither her father nor the people at the shrine knew she was pregnant when she left Nigeria. The applicant's mother believes that if she were to return to Nigeria, they would be aware through their powers and would ask as to who is the father of the applicant."

4. The Tribunal Member's conclusion is stated as follows:

> "I find that it would be reasonable for the applicant's mother to relocate internally within Nigeria to live with the applicant away from where she lived before she left to the country to large cities such as Lagos or Abuja where she would be able to live in safety away from any such fears that she may be traced by her father or the people at the shrine. I find that any such fears that they would know that she is around and could trace her through their powers or through juju in vast cities of this nature are not capable of belief and are not supported on an objective basis. I am mindful of the fact that the applicant's mother is an independent and resourceful lady who has lived in a foreign country away from Nigeria for over four years. She has acquired extensive office skills in Ireland and with these skills should be able to re-establish and provide for herself and the applicant in one of those cities. I find that any fears that the applicant's mother may have that she would find it difficult to obtain a job in Nigeria during the recession are economic in nature and are not linked to any Convention ground."

It was on the foregoing basis that the Tribunal Member declined to make a recommendation of refugee status in favour of the applicant.

5. Against the background of rather general pleadings, the first complaint advanced at oral hearing in respect of the Tribunal's decision is that the relocation finding failed to take account or overlooked the personal circumstances of the applicant. In addition, complaint is made about the manner in which the Tribunal Member expressed the relocation finding inasmuch as the Tribunal Member said that the applicant and her mother could relocate internally within Nigeria "to live with the applicant away from where she lived before she left the country". As there was no evidence as to where she lived before she left the country, it was suggested that it was not open to the Tribunal to make such a finding.

6. It is clear from the face of the Tribunal's decision that the personal circumstances of the applicant were considered at length. The purpose of the consideration of the country of origin information related almost exclusively to consideration of the applicant's healthcare needs. This complaint is therefore not made out.

7. The second complaint in respect of the absence of knowledge on the part of the Tribunal Member as to the place of origin of the applicant's mother could not, in the circumstances of this case, invalidate an otherwise lawful relocation decision. There are circumstances in which a decision maker would be required to ascertain whether it is physically possible or otherwise practical for a person to relocate from place X to place Y. There may be reasons of geography or circumstances such as political unrest or armed conflict which would militate against such a possibility and therefore precise knowledge as to place of origin might well be important. No such circumstances apply in this case. The simple finding made by the Tribunal must be seen in the context of a claim of persecution emanating from a shrine and from the applicant's father in a country of almost 170 million people. The Tribunal Member was saying that the applicant's mother and the applicant could remove themselves from the source of harm by relocating in Lagos or Abuja. I reject this ground of challenge.

8. In written submissions, the applicant's counsel take issue with the Tribunal Member's use of country of origin information in respect of the availability of healthcare in Nigeria for the applicant's disease. It will be recalled that the Tribunal found that the applicant would not be denied access to medical facilities in Nigeria merely because payment could not be afforded. Reference is made to the country of origin information which says:

> "Nigerians will remain increasingly dependent on private healthcare, as the current state of public healthcare in the country suffers from low standards and inaccessibility."

It is also argued that "The finding that should have been made - and that is pertinent to his subsequent application on the child's behalf to the Minister - is that [the applicant] will not receive the medical treatment she needs if sent to Nigeria".

9. No argument has been advanced to persuade me that the Tribunal Member's conclusion based on the country of origin information was irrational. There was adequate material before her to support the conclusion. In relation to the argument that the Tribunal Member ought to have found that the applicant will not receive the medical treatment she needs if she returns to Nigeria, it seems to me that even if such a finding had been made, it would not have assisted with a claim for asylum because it is well established that the absence of medical care cannot be the basis for an asylum claim unless the absence of care can be associated with a discriminatory practice directed against a social group of which an asylum claimant if a member. No such case was made or sought to be made either at the Tribunal stage or at hearing *(M.E.O (Nigeria) v. Minister for Justice Equality & Law Reform* [2012] IEHC 394]).

10. In this regard, I note that the Tribunal Member referred to the decision of the Court of Justice of the European Union in *N. v. UK* (265/65/05) to the effect that a person does not have an entitlement, in principle, to remain in a country in order to benefit from medical treatment. This decision has been followed by Herbert J. in *Agbonlahor v. The Minister for Justice, Equality and Law Reform* [2006] IEHC 56.

11. Finally, counsel for the applicant submitted that it is a well established practice for subsequent decision makers to refer to the findings of the Refugee Appeals Tribunal. There was concern that the findings in relation to the medical care issue would be relied upon in subsequent decisions. As I have found no fault with the manner in which the Tribunal approached the issue of the availability of medical care in Nigeria, I do not feel compelled to grant a remedy to the applicant which would prevent subsequent decision makers from having regard to these findings.

12. I dismiss the application.