

THE HIGH COURT

JUDICIAL REVIEW

[2009 No. 261 J.R.]

BETWEEN

A.M.A.A.

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Barr delivered the 1st day of October, 2014

Background

1. The applicant in this case claims that he was originally from the Darfur region in Sudan. He stated that he was a farmer and lived with his parents and four brothers until 2003, when members of the militia known as the Janjaweed attacked his village. The village was completely destroyed and the applicant's father died in the course of this attack.

2. The applicant claims that his two older brothers subsequently joined a group known as the Public Army for the Liberation of Darfur which was an armed group set up to take action against the government and their militia, the Janjaweed. After the attack on their village, the applicant went with his mother and two younger brothers to a village called Bran. He got work working in a grain depot. However, Bran was attacked by the Janjaweed on 13th March, 2004. The family then moved to Ajaja. That village was also attacked by the Janjaweed and his mother was killed in this attack which occurred on 24th March, 2004. The applicant then took his younger brothers to Nyala to stay with his aunt. After about a month, the applicant moved to Tais, another area of Darfur. The applicant did not have a job; however he used to help people when their area was attacked. He with other people in this group would move people in, particular the elderly and young people. He would also warn them of imminent attacks. The applicant states that he was arrested by members of the army on 22nd December, 2006. He was detained in Buram Prison for six or seven months. During this time, he was kept in a communal cell measuring about 6x4m with 14 other people, one of whom was a friend of his. The cell had no furniture or mattresses, no light (it was mostly dark) with the exception of a small opening high on the wall and a hole in the corner as a toilet. The applicant states that the prisoners were given food and water once a day only. There were no washing facilities in the prison.

3. The applicant states that the guards took him out for questioning on many occasions during his detention. This would happen without any particular pattern and often during the night. He states that during these sessions his hands were tied behind his back with ropes and he was blindfolded. He reports that the guards asked him questions about members of the Public Army and when he did not give them a satisfactory answer (as he denies having been a member of this armed group), they beat him and kicked him on the floor, using rubber hoses and burning him with something that he thinks was a branding iron, but he was unsure as he was blindfolded.

4. The applicant reports that these beatings left widespread swelling and bruising all over his body which took 10 - 15 days to resolve on each occasion. He reports that on one occasion he was beaten unconscious and that a deep laceration on his skull would not stop bleeding so he was taken to the prison surgery for suturing. He reports that on other occasions he was denied treatment for his injuries when he asked for it.

5. Some seven months after his arrest, the applicant together with other prisoners, was put in a vehicle and they were moved to another prison. The vehicle was attacked by members of the SLM and the applicant was released. He was asked if he wished to join the movement, but he was weak and ill and apologised that he was unable to do so. He then went to Nyala and was informed by his aunt's husband that everyone there knew about the attack on the vehicle and that it was not safe for him to remain in Sudan. He spent two days in the house and then an agent came and he was put in an animal truck which took him to Port Sudan. He was put on a ship and told not to talk or ask any questions and that he would be taken to a safe place. The applicant states that the journey took several weeks and that he was unaware that he was coming to Ireland. He arrived in Ireland on 25th September, 2007.

The SPIRASI Report

6. On 15th April, 2008, the applicant was assessed by Dr. Sabrina Vassia of the Centre for Care of Survivors of Torture. In the course of her report, she noted the physical examination of the applicant revealed the following abnormalities:-

"• There are two separate linear scars of 5cm each on his scalp, one longitude and one transverse; Mr. A. reports that these were caused by sharp objects which he was unable to identify and that one of them was bleeding profusely and needed suturing. Their appearance and location is consistent with the history;

• There are several other fine and linear scars, the largest one measuring 9cm on his upper anterior chest wall (external area), upper abdomen and left forearm. These are consistent with the history of beating and whipping with rubber hoses;

• Both knees have irregular scarring over the bony parts, which is consistent with the history of violent beating with blunt objects;

• Other scars on the pretibial area of both legs are non-specific and Mr. A. states that they are from accidental injuries;

• Several oval-shaped scars, the largest one about 2cm long, in different body parts; one on his right forearm, one of the dorsal aspect of his right hand, one on his upper back and one on the antero-medial aspect of his right arm; the

latter is overlying a linear scar and may have been caused by deliberately burning a previous injury. Mr. A. believes these were caused by hot metal but he is not certain as he was blindfolded. The appearance and distribution of the scars are consistent with the history of deliberately inflicted burns.

Mental Health Assessment

- Mr. A. presents symptoms of anxiety, sleep disturbance and of a post traumatic state. During the course of the interview he became visibly upset while recalling details about his family members and appear to have difficulty concentrating at times. Recalling past events was understandably difficult and causing distress. He will need psychotherapy and support in order to come to terms with his traumatic experience.

Conclusion

- Mr. A. gives a consistent history of detention and ill-treatment during a six or seven month period in his home country. The physical and psychological findings are consistent with the history. In my professional opinion his present mental state indicates the need for psychological support. "

The Darfur Solidarity Ireland Letter

7. The applicant also submitted a letter dated 11th January, 2008, from a group known as Darfur Solidarity Ireland. It was in the following terms:-

"To whom it may concern

Sub: A.M.A.

Please note that Mr. A. is a member of our organisation 'Darfur Solidarity Ireland' and is well known to all of us. He is a native of Darfur, Sudan. He belongs to the Tunjor tribe, one of the ethnic groups, which are now targeted by the current Sudanese Government and its allies, the Janjaweed (Arab militia).

Please do not hesitate to ask for more information. This letter is issued upon his request.

Yours sincerely

Dr. Abdullahi Osman Eltom

Chairman of Darfur Solidarity- Ireland"

The Refugee Appeals Tribunal Decision

8. In her decision dated 22nd January, 2009, the Tribunal Member held that the applicant's account lacked credibility due to his lack of knowledge of distances between various villages in the Darfur region. The Tribunal also ruled that his account of his activities helping others over a period of years was greatly lacking in credibility. The Tribunal held that the applicant, as an intelligent person, should have been able to assist the Tribunal regarding his activities and the organisation to which he claimed to have belonged to in Sudan. It was noted that the applicant had no evidence of his identity or of his country of origin. The applicant had no travel documentation and the Tribunal did not know other than from the applicant's own account as to when or how the applicant actually arrived in Ireland.

9. The applicant told the Tribunal that he was not told where he was being taken other than that it would be a safe place. The applicant was unaware whether or not he changed ships on route to Ireland as he was moved from a room to a container. He did not know the name of the ship, nor the ships on which he travelled, nor did the applicant know where it was that the ship eventually docked in Ireland. The Tribunal held that on a cumulative basis, the applicant had not satisfied it of the veracity of his claim.

10. The Tribunal Member dealt with the SPIRASI Report in the following terms:

"The applicant has submitted a SPIRASI Report in relation to sequelae he claims to have suffered as a result of his time in captivity. Physical examination indicated two separate linear scars of 5cms each on his scalp. The applicant also has scars on his chest wall, both knees have irregular scarring over the bony parts and the applicant had other scars on both legs which the applicant told the examining physician came from accidental injuries. The applicant has other scars on a dorsal aspect of his right hand, one on his upper back and on his right arm. The conclusion is to the effect that the appearance and distribution of the scars are consistent with the history of deliberately inflicted burns. This analysis is at the lowest end of the Istanbul Protocol and the SPIRASI Report has to be considered in the light of the applicant's overall testimony. "

11. There was no mention in the RAT decision of the letter from Darfur Solidarity Ireland.

Application for Judicial Review of the RAT Decision

12. The applicant was granted leave to seek judicial review on a single ground as follows:-

"Further and without prejudice to the foregoing, the second named respondent erred in law and acted in breach of fair procedures and natural and/or constitutional justice by reason of the failure to have any proper regard or give appropriate weight to the combination of the SPIRASI Report and the letter from Darfur Solidarity Ireland and in failing to assess the applicant's credibility in the light thereof"

The SPIRASI Report

13. There was an error in the RAT report stating that causation of the injuries was "at the lowest end of the Istanbul Protocol". This was not correct as the designation "not consistent" is the lowest determination on that scale. The terms "consistent with" is the lowest positive finding in relation to causation of the injuries. I do not see that this error is material. It is clear that the member of the

Tribunal knew that she was dealing with injuries which were "consistent with" a history of deliberately inflicted burns. I would not quash the decision of the RAT on account of this error.

14. In *AMN v. Refugee Appeals Tribunal & Anor* [2012] IEHC 393, McDermott J. addressed the correct approach to medical evidence submitted in support of an asylum claim. He stated as follows at para. 7.11 of his judgment:-

"However, I am satisfied that the Tribunal erred in law in failing to describe what significance was attached to the medical report and if significance attached to it, why it was discounted as against other factors in the case. It was incumbent on the Tribunal to deal specifically with the medical report and state reasons as to why it was not accepted. The report is discounted on the basis of the applicant's 'overall account to the Tribunal'. The medical report was an objective piece of evidence that required more careful consideration. The mere recital of its terms does not amount to a sufficient consideration of its contents. I do not regard this case as one in which the primary findings of fact pertaining to the applicant's credibility were of such force as to outweigh the medico legal report to the extent that it could be dismissed in such a summary fashion. I am satisfied that in reaching its decision the Tribunal erred in law in failing to consider the medical report adequately and failing to give any adequate reason or explanation for rejecting the probative value of the report. The Tribunal failed to provide cogent reasons for rejecting a piece of evidence that was significantly supportive of the applicant's claim. The Tribunal's failure in this respect renders its decision fundamentally flawed."

15. In *NM (Togo) v. Refugee Appeals Tribunal & Anor* [2013] IEHC 436, Clark J. had the following to say in relation to how the Tribunal dealt with the medical evidence in that case:-

"Turning next to the medical report; while this report does not per se contain compelling findings in that it describes the applicant's two injuries as 'consistent with the applicant's description' of events in 1999 and therefore at the lower end of the probative scale in the Istanbul Protocol, when taken with the other documents it could form a small piece of a jigsaw which when completed was capable of supporting a positive recommendation. This is not to suggest that if the documents had been assessed as an integral series a different decision may not have been made, but such a decision would call for reasons to be given for disregarding the reports. Regulation 5(1)(b) of the ECs (Eligibility for Protection) Regulations 2006 (S.I No. 518 of 2006), which transpose Council Directive 2004/83/EC, require the Tribunal Member as a decision-maker to take into account 'the relevant statements and documentation presented by the protection applicant including information on whether he or she has been or may be subject to persecution or serious harm (sic)'. In light of the treatment of the letter and the medical report, the Court is satisfied that the Tribunal Member in this case acted in breach of that Regulation."

16. The respondents make the case that it is clear from the authorities that the extent to which reasons must be given for rejecting documentary evidence varies depending upon the circumstances of the case at issue. They point to the following dictum of McDermott J. in the *AMN* case:-

"A report which is general in terms has obviously little weight and requires no great explanation for its rejection. However, while medical reports are rarely capable of providing clear corroboration of a claim, it is well recognised that there are occasions when examining physicians report on objective findings and use phrases which attach a high probative value to those findings. Such reports are capable in an objective way of supporting the claim. Obviously, in such cases the need for reasons to be given for rejecting the probative value of the report must be more fully addressed."

17. In *PE v. Refugee Appeals Tribunal* [2013] IEHC 253, Clark J. stated as follows at para. 29 of the judgment:-

"It appears to the Court that the Tribunal Member disregarded the corroborative potential of the medical evidence too readily simply because he had made credibility findings based mainly on discrepancies in the applicant's evidence rather than putting the medical reports, especially the SPIRASI report, into the totality of the evidence to be assessed. The medical reports had not [been] before the Commissioner and were capable of making a difference to the Tribunal's assessment of credibility and of causing a fair minded assessor to pause and ask how else a young Hutu girl from Rwanda with her accepted history could have such a wide distribution of marks and scars, if not from the type of maltreatment described. The inconsistencies in her evidence were minor and some findings were made in error and must surely have been counterbalanced by the medical reports on the applicant's emotional state and multiple scars on her body. For this reason alone the decision cannot stand."

18. The respondent submitted that in the *P.E.* case it was clear from the judgment of Clark J. that the medical report contained relatively strong findings, whereas the adverse credibility findings relied upon by the Tribunal were not equally strong and some were incorrect.

19. I am satisfied that the Tribunal Member did not properly consider the content of the SPIRASI report when considering the credibility of the applicant. It was a significant piece of objective evidence which supported the applicant's account of having been tortured in his home country. The Tribunal Member failed to describe what significance was attached to the medical report. If she was going to discount the report, it was incumbent upon her to state clearly her reasons for so doing. The Tribunal Member merely recited the terms of the SPIRASI Report and stated that it was "discounted on the basis of the applicant's overall account to the Tribunal". I am satisfied that the Tribunal Member erred in law in failing to consider the medical report adequately and failing to give any adequate reasons or explanation for rejecting the probative value of the report. I would quash the decision of the Tribunal on this ground.

The Letter from Darfur Solidarity Ireland

20. As already noted, the applicant submitted a letter from Darfur Solidarity Ireland which confirmed the applicant's membership of a tribe in the Darfur region. There is no reference to this letter in the Tribunal's decision. We do not know what weight, if any, was given by the Tribunal to this document.

21. The applicant submitted that the Tribunal Member erred in law and failed to have regard to relevant considerations and acted in breach of fair procedures and in breach of natural and constitutional justice by reason of the failure to have proper regard to the said documentary evidence submitted by the applicant in support of his appeal. They point to the dictum of Finlay Geoghegan J. in *AMT v. Refugee Appeals Tribunal* [2004] 2 I.R. 607, which is to the following effect:-

"applying the same well established principles relating to the obligation to exercise the power of adjudication conferred by statute in accordance with the principles of constitutional justice, which includes an obligation to consider relevant

evidence, it appears to me that the decision must be considered to be invalid. The evidence not considered is potentially relevant to the conclusion reached on the credibility of this part of the applicant's story. The conclusion on this issue is an integral part of the overall conclusion on credibility. "

22. The applicant also relies on the criteria or guiding principles set out by Cooke J. in *IR v. Refugee Appeals Tribunal* [2009] IEHC 353, and identified the following principles as being relevant to this case:-

"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

5) A finding of lack of credibility must be based on correct facts, untainted by conjecture or speculation and the reasons drawn from such facts must be cogent and bear a legitimate connection to the adverse finding.

6) The reasons must relate to the substantive basis of the claim made and not to minor matters or to facts which are merely incidental in the account given.

...

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 should be stated "

23. The duty to give reasons in respect of independent objective evidence submitted in refugee claims was dealt with in the case *MK (Pakistan)* [2013] UKUT 641. The Tribunal held that there was a duty to provide a reasoned judgment. This was necessary for two reasons: firstly, the parties, and in particular the losing party, needed to know the reasons for a decision reached by the decision maker; and secondly, the appellate court or the court exercising a review function needed to know the reasons why a particular decision had been reached at first instance. In the course of its judgment, the Tribunal referred to the decision of Buckley L.J. in *Capital and Suburban Properties v. Switcher* [1976] Ch. 319, where he stated at p. 326:-

"Litigants are entitled to know on what grounds their cases are decided. It is of importance that the legal profession should know on what grounds cases are decided, particularly when questions of law are involved. And this Court is entitled to the assistance of the Judge at first instance by an explicit statement of his reasons for deciding as he did. "

24. The applicant also relied on the decision of Clark J. in *NM (Togo) v. Refugee Appeals Tribunal* [2013] IEHC 436, where the decision of the Tribunal was quashed, inter alia, because of the defective manner in which the Tribunal dealt with independent documentary evidence submitted in support of the appeal. Clark J. stated as follows at para. 30:-

*"Of greater significance is the letter which is stated to have emanated from UFC headquarters, from the administrative secretary of the UFC in Lome. The author was named by the applicant in his questionnaire and at his interviews as the person who approved the content of his political leaflet and therefore this letter is in a different category of documents. It could, if found authentic, not only have been helpful but actually corroborative of the applicant's claim and is a document which on its face was in the nature of 'evidence of potentially significant probative weight in corroborating key facts and events' as outlined by Cooke J in *IR v. The Minister & Refugee Appeals Tribunal* [2009] IEHC 353. However, once again this is simply not mentioned in the Tribunal decision. In the Court's view this document required serious assessment and reasoning before discounting its validity or content. Had the document been accepted for its content, there is every likelihood that the benefit of the doubt would have applied cumulatively to the medical reports, the COL the identity documents and the claim in relation to the detentions and escapes. The applicant's lack of knowledge of the relatively minor issues on which so much reliance was laid might then have been seen in a different light."*

25. In relation to the *MK* case, the respondents submitted that the approach of the Tribunal did not conflict with the principles relied upon by the applicant. In the decision in the *MK* case, it was noted that the applicable principles include:-

"The weight to be given to a particular item of evidence is a matter of fact which will be decided, largely on the basis of common sense, in the light of the circumstances of the case and of the views formed by the [tribunal] on the reliability and credibility of the witnesses and exhibits.

There is a related duty to explain the tribunal's assessment of the more important pieces of evidence and to provide reasons for choosing to give (as the case may be) no, little, moderate or substantial weight thereto. "

26. The respondents submitted that in the instant case, the Tribunal relied on a number of identified discrepancies in the applicant's evidence, his inability to explain same and inability to answer certain questions regarding the organisation of which he claimed to be a member and the lack of knowledge of distances he claimed to have travelled. They stated that the applicant herein had not been granted leave in respect of the credibility findings. It was not the case that the applicant did not know the reasons why he was found to lack credibility or not to be a refugee, as appears to have been the case in *MK (Pakistan)*. Accordingly, the principle in *Capital and Suburban Properties v. Switcher* [1976] Ch. 319 and *Flannery v. Halifax Estate Agencies* [2000] 1 All E.R. 373, that a litigant is entitled to know the grounds on which their case was decided, has not been infringed.

27. The respondents submitted that the letter from Darfur Solidarity Ireland fell into the category which did not require explanation for its rejection, particularly having regard to the clear, unchallenged adverse credibility findings made against the applicant.

28. The respondent submitted that it was clear from the authorities that the assessment of the weight, if any, to be attached to any evidence before the Tribunal was a matter for the decision maker. In support of this, they cited the following passage from *DK v. Minister for Justice, Equality and Law Reform* [2006] 3 I.R. 368, from the judgment of Herbert J.:-

"It is the function of the first respondent and, not of this court in a judicial review application, to determine the weight, (if any), to be attached to this country of origin information and other evidence offered by and on behalf of the applicant in this case. "

29. Having considered the submissions made on behalf of the parties and the authorities referred to therein, I am satisfied that the failure of the Tribunal Member to have any proper regard, or to give appropriate weight to the combination of the SPIRASI Report and

the letter from the Darfur Solidarity Ireland and in failing to assess the applicant's credibility in the light thereof, the decision of the Tribunal ought to be quashed. Accordingly, I will make an order quashing the decision of the Refugee Appeals Tribunal dated 22nd January, 2009 and I will direct that the matter be referred back to the Tribunal to be heard by a different Tribunal Member.