THE HIGH COURT

JUDICIAL REVIEW

[2017 No. 983 J.R.]

BETWEEN

B.D.C. (NIGERIA) AND A.M.C.D (A MINOR SUING BY HIS MOTHER AND NEXT FRIEND B.D.C.)

APPLICANTS

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL, THE MINISTER FOR JUSTICE AND EQUALITY, THE ATTORNEY GENERAL AND IRELAND

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 20th day of July, 2018

1. The first named applicant is a Nigerian national, born in 1979. She claims to be a Christian and claims that her family moved from Lagos to Mafa town in Borno State in 2004 to escape violence caused by her uncle relating to a property dispute. She claimed to have had a relationship with a Muslim man who she persuaded to convert to Christianity. She says that she had two children with this man, that he was subsequently kidnapped and disappeared and that this was perpetrated by members of Boko Haram. She then says she moved to Lagos and began a relationship with another man and became pregnant, that on informing him of this she was evicted, and that she then fled Nigeria in fear of her life and freedom.

2. In 2010, she applied for a U.K. visa with her then partner. She had denied in her asylum questionnaire here that she had ever applied for any other visa. In the U.K. application, she gave an incorrect date of birth and an altered name for her partner. She gave inadequate or inconsistent answers in relation to these matters.

3. She arrived in Ireland on 21st September, 2014 and sought asylum. Her child, the second named applicant, was born on 9th December, 2014 and an asylum application was made on his behalf. On 31st July, 2015, she was informed that both applications had been rejected.

4. Those decisions were appealed to the tribunal and on 2nd November, 2017, in decisions by Mr. Mark Byrne, the tribunal rejected the appeals. The applicants were so notified by letters dated 3rd November, 2017. I granted leave in the present proceedings on 14th December, 2017, the primary relief sought being *certiorari* of the IPAT decisions, and an extension of time was also granted. The statement of opposition was filed on 14th February, 2018 and no objection to the extension of time is raised.

5. I have received helpful submissions from Mr. Garry O'Halloran B.L. for the applicants and Ms. Cathy Smith B.L. for the respondents; and without in any way taking from the material submitted on behalf of the applicants I might be permitted to observe that Ms. Smith's written submissions were exceptionally comprehensive, clear and logically organised.

Complaint regarding adverse creditability findings

6. Mr. O'Halloran says that if ground one fails he cannot succeed on the other grounds. Ground one is: "*the finding at para. 4.10 of each decision with respect to the first named applicant's residence in Mafa Northern Nigeria wherein the Tribunal found that 'this aspect of the appellant's claim to be uncertain' was made without regard to the totality of the evidence and was lacking in cogency. This element of the protection claim was of such materiality that an unambiguous finding was required*."

7. Peart J. in *G.T. v. Refugee Appeals Tribunal* [2007] IEHC 287 (Unreported, High Court, 27th July, 2007) made the critical point that "*the whole of the decision must be read and considered*": see also *X.E. v. International Protection Appeals Tribunal* [2018] IEHC 402 (Unreported, Keane J., 4th July, 2018). The applicants' focus on para. 4.10 alone is misplaced. That is part of a wider set of findings from paras. 4.1 to 4.23. In para. 4.23 all material facts asserted by the applicants are rejected; that includes those at para. 4.10. Thus there is an unambiguous finding.

8. The tribunal considered a whole range of issues across the claim. It was entitled to consider the issue of the U.K. visa as part of the overall situation: see *I.E. v. Minister for Justice and Equality* [2016] IEHC 85 [2016] 2 JIC 1505 (Unreported, High Court, 15th February, 2016) and the similar approach taken by Keane J. in *N.N. v. Minister for Justice and Equality* [2017] IEHC 99 (Unreported, High Court, 15th February, 2017).

9. Mr. O'Halloran submits that the country information is consistent with the claim, but in circumstances such as these, such a submission is reminiscent of the familiar plaintiff whose claim is strong on quantum but weak on liability. Merely because the story *could have* happened, does not mean it *did* happen. Mr. O'Halloran submits that the tribunal could have taken a more favourable view, but even if that was so, an applicant does not have the right to have the most favourable view taken. At best, an applicant can in certain circumstances seek the benefit of the doubt; but that is subject *inter alia* to the tribunal member having a significant doubt at the end of the day, which is not the case here. Indeed, the approach taken was possibly overgenerous given that para. 204 of the UNHCR Handbook provides that the benefit of the doubt only applies if an applicant's general credibility has been established, which is not the case here.

Alleged failure to consider UNHCR guidelines and other grounds

10. It seems now that ground 2 is subsumed within ground 1, but in any event it is of no substance. I rejected an identical point in *S.A. (Ghana and South Africa) v. International Protection Appeals Tribunal* [2018] IEHC 97 (Unreported, High Court, 1st February, 2018), a case unfortunately not referred to in the applicant's submissions. Failure to refer explicitly to UNHCR guidelines is not equivalent to ignoring such guidelines and is not a ground for judicial review. Paragraph 2.11 of the decision says the documents provided have been considered.

11. For completeness I have also had regard to the other grounds, but nothing has been made out there. Assessment of evidence is primarily and indeed, subject to legality, exclusively, a matter for the decision-maker: see *Koffi v. Refugees Appeals Tribunal* [2007] IEHC 148 (Unreported, McGovern J., 22nd May, 2007); *S.B.E. v. Refugees Appeals Tribunal* [2010] IEHC 133 (Unreported, Cooke J., 25th February, 2010). As it was put by Stewart J. in *E.Y. (Pakistan) v. Refugee Appeals Tribunal* [2016] IEHC 340 (Unreported, High

Court, 17th June, 2016), each finding by the tribunal member was open to that member on the evidence before the tribunal; and as Birmingham J. said in *M.E. v. Refugee Appeals Tribunal* [2008] IEHC 192 at para. 27 "*the assessment of whether a particular piece of evidence is of probative value, or the extent to which it is of probative value, is quintessentially a matter for the Tribunal Member".*

12. Overall, the tribunal member saw and heard the first named applicant, and was best placed to assess whether her account was credible. A legalistic exercise such as the present challenge has not demonstrated clear or indeed any grounds on which that assessment should be disturbed.

Order
13. So the order will be that the application be dismissed.