THE HIGH COURT

JUDICIAL REVIEW

[2005/735 JR]

IN THE MATTER OF THE REFUGEE ACT 1996 (AS AMENDED), IN THE MATTER OF THE IMMIGRATION ACT, 1999 (AS AMENDED), IN THE MATTER OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT, 2000 (AS AMENDED), AND IN THE MATTER OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS ACT, 2003 SECTION 3 (1)

BETWEEN

GUYLAIN MANIATU BANZUZI

APPLICANT

AND

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

RESPONDENTS

AND

HUMAN RIGHTS COMMISSION

NOTICE PARTY

Judgment of Mr. Justice Feeney delivered on the 18th day of January, 2007.

1.1 The Applicant in this case is a national of the Democratic Republic of Congo (DRC) who was born on 21st November, 1984. His father was Congolese and his mother was a Rwandan Tutsi. The Applicant's late father was a solider in the army under former President Mobuto. The Applicant has averred that following President Kabila taking power that his father and many other soldiers who had operated under President Mobuto were sent to the interior of the DRC. His father subsequently died in early 1998.

1.2 In 1998 President Kabila ordered Rwandan soldiers to leave the DRC and thereafter there was a widespread killing of persons of Tutsi origin. At that stage the Applicant lived with his mother, brother and two sisters and their house was attacked on 6th August, 1998. The Applicant's mother was raped and the children including the Applicant were assaulted. It appeared that the family were to be murdered, by being set alight, but a friend of the Applicant's late father intervened. That friend, who had known the Applicant's late father in the army, brought the Applicant and his family to his own house and they lived with him and his family from August 1998 until March of 2001. At that stage the Applicant and his family believed it was safe to return to their home at N'Djili. The Applicant was then able to recommence his schooling for a period of approximately three months. In mid June 2001, the Applicant claimed, that his house was attacked by neighbours and the police. The Applicant and his family immediately fled to Brazzaville where they remained until July 2002. At that stage the Applicant and his family went to the Central African Republic. They were arrested in the Central African Republic due to a lack of proper documentation and the family became separated. The Applicant averred that he was released after one day and he was provided with accommodation by a man whom he had met. It was this man who ultimately organised a third party to assist the Applicant to flee to Ireland and the Applicant arrived in Ireland on 8th June, 2003 and immediately applied for asylum.

1.3 As part of the application for asylum the Applicant completed a questionnaire which was submitted to the Refugee Applications Commissioner and he also provided an identity document. The Applicant was interviewed as part of the asylum process on 16th June, 2004 and again on 14th October, 2004. He identified his fear of persecution based upon a fear that a person who was half Tutsi of Rwandan origin would be perceived as being of Rwandan Tutsi origin and therefore was at risk of being persecuted or killed by the government authorities, military factions or the Congolese people. The Applicant identified his fear of persecution in the following words namely:

> "Since 1998 the government in place and the media made an announcement inciting violence against the Tutsis and people of Rwandan origin. I am afraid of dying, this is why I fear persecution. … I am half Tutsi of Rwandan origins. Since the campaign that started in August 1998, they have tried to exterminate the Tutsis throughout the territory of the Democratic Republic of Congo."

At the second interview the Applicant was questioned about his knowledge of the existence of a transitional government in the DRC since around June, 2003, which included representatives of all political factions throughout the Congo and all ethnic groups and he confirmed that he knew about that but also expressed the view that he did not think that there had been any real improvement.

1.4 A report pursuant to s. 13(1) of the Refugee Act 1996 (as amended), was completed dated 26th January, 2005, including a conclusion that the Applicant had failed to establish a well founded fear of persecution. That recommendation was considered before the Refugee Applications Commissioner on 14th March, 2005 and a recommendation was made that the Applicant should not be declared a refugee.

1.5 A notice of appeal was filed on behalf of the Applicant on 15th April, 2005 and that appeal was heard on oral evidence by the Refugee Appeals Tribunal resulting in a written decision of 13th June, 2005. In that decision the member of the Refugee Appeals Tribunal determined that the appeal failed and affirmed the recommendation of the Refugee Applications Commissioner.

1.6 The Applicant commenced judicial review proceedings by notice of motion dated 6th July, 2005 and on 28th March, 2006 the Applicant was granted leave to apply for judicial review in an order of the High Court of that date. The grounds upon which relief is being sought are set forth in five numbered paragraphs in sub paragraph E of the post leave statement of grounds delivered by the solicitors for the Applicant on the 7th April, 2006. A resumè of those grounds are set forth in the submissions delivered on behalf of the Applicant and they are as follows, namely:

> (1) The Tribunal failed to consider all the country of origin information. In particular, the Tribunal accepted country of origin information that the June, 2003, setting up of the transitional government effectively ended the five year conflict and thereafter failed to have any regard to more recent and conflicting country of origin information;
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> (2) The Tribunal made selective use of the country of origin information that it relied upon;
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> (3) That the Tribunal made adverse credibility findings without having made any reasonable assessment of the country of origin information;
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> (4) That the Tribunal made adverse credibility findings of a generalised nature without having made any reasonable assessment of substantial and central aspects of the Applicant's account;

(5) That the Tribunal refused to give the applicant the benefit of the doubt without having made any reasonable assessment of substantial and central aspects of the Applicant's account.

2.1 In relation to the ground that the Refugee Appeals Tribunal failed to have regard to all country of origin information, it is contended on behalf of the Applicant that the Tribunal's findings were demonstrably incorrect and irrational and were based on an incomplete assessment of the country of origin information. In this regard reliance is placed upon the judgment of Peart J. in the case of *da Silveira v. Refugee Appeals Tribunal and Others* delivered on 9th July, 2004, where he had stated (at p. 29), having reviewed the authorities:

> "…that the decision maker was not constrained by the rules of evidence that had been adopted in civil litigation, and was instead required to take account of all material considerations when making an assessment about the future, and that accordingly, the decision maker could not exclude from consideration any matters when assessing the future unless it felt that they could be safely disregarded because it had no real doubt that they had not in fact occurred."

2.2 In this case prior to the matter being considered by the Refugee Appeals Tribunal the Applicant's solicitor had forwarded by letter of 17th May, 2005, detailed country of origin information set forth in eleven different documents. In the letter dated 20th June, 2005 from the Refugee Appeals Tribunal to the Applicant informing him of the decision to refuse the application to be declared a refugee it was expressly stated that the decision was reached having considered the Applicant's notice of appeal under s. 16(3) of the Refugee Act 1996 (as amended) and the letter went on to indicate that the decision was reached having considered the evidence adduced, the representations made and having considered all documents including representations in writing and other information submitted to the Refugee Applications Commissioner in connection with the Applicant's case including documents which had been furnished by the Applicant and his legal representative. If that statement is correct then the first ground in respect of which relief is sought must fail. However it is appropriate for the court not only to consider the statement but also to have regard as to whether or not such statement might be a formula of words as part of the administrative process rather than a statement of the correct facts.

2.3 Section 13(1) report for the Refugee Appeals Commissioner contains a detailed reference to the country of origin information and extracts are set forth in chronological order quoting from a substantial number of country of origin documents from July, 1998, up to and including a document from the UK Home Office of October, 2004. As part of the appeal process written submissions were submitted on behalf of the Applicant which claimed that the RAC had failed to carry out adequate objective country research and that there had been a failure to make an informed decision and that there was a lack of detailed knowledge of the situation prevailing in the DRC. As part of the appeal process the Applicant's legal representatives submitted eleven documents detailing country of origin information. That information was clearly before the Refugee Appeals Tribunal and it is clear from that body's written decision of 13th June, 2005, that an analysis of the country of origin information included identification of the setting up of a transitional government on the 30th June, 2003, the composition of such transitional government and the consequence of such an event on the five year conflict that had commenced in August, 1998. The analysis went on to consider the fact that a new national assembly and senate of the transitional government was opened on the 22nd August, 2003, and that such assembly was made up of 500 members from numerous parties including persons from the political opposition and from former rebel groups. The analysis also identified that an agreement was reached in August, 2003, on the establishment of a uniformed armed forces command and identified the return of an opposition leader to the country in September, 2003, and commented upon the envisaged presidential and parliamentary elections due to take place in late 2005. In suggesting that such analysis was demonstrative of a failure to consider all the evidence considerable reliance was placed by the Applicant on a report from the U.S. Department of State released on the 28th February, 2005. However it is common case that that document was not before the Refugee Appeals Tribunal and therefore could not have been considered. Reliance was also placed on a document dated the 1st July, 2005, from human rights watch but again that document obviously could not have been before the Refugee Appeals Tribunal as it post dated the decision. In any event an analysis of that document, which in any event would not be relevant to this application, demonstrates that the continuing violence was in the eastern area of the DRC and not in the area where the Applicant resided. A similar position pertained in relation to the United Nations Security Council document of the 15th March, 2005, which identified events in a particular area of the DRC.

2.4 It is apparent from the foregoing that in relation to the documentation which was before the Refugee Appeals Tribunal that there was a detailed chronological consideration of same and the fact that only certain documents are quoted in the decision does not and cannot lead to a determination that all the documents were not considered. The decision expressly states on p. 7 that the member of the Refugee Appeals Tribunal had considered all the evidence and went on to state at p. 8 that the member was satisfied from all country of origin information that it was not the correct position that there was no protection available to Tutsis in any part of the DRC. This is not a case therefore in which it could be in any way suggested that the reference in the letter of the 20th June, 2005, to consideration of all the evidence and documents and the similar references contained in the decision of the 13th June, 2005, could in any way be considered a mere formula of words. It is contended for on behalf of the Respondents that there is no obligation on a decision maker to refer to every aspect of evidence or to identify all documents within its written decision. That is a correct statement of the law. What is manifest on the facts of this case is that there was detailed consideration of the country of origin information resulting in a considered view and the court is satisfied that when the decision maker confirmed in his written decision that he had considered all the evidence and had regard to all the country of origin information that such is the true position. What is required of the decision maker is that reasons must be given and the court is satisfied that it is clear from the written decision of the 13th June, 2005, that reasons are identified and that an up to date analysis of the country of origin information was carried out by the member of the Tribunal. Nor is this a case in which use is being made of selective portions of country of origin information which are inconsistent with the overall tenure or content of such documents.

2.5 As indicated above the Applicant's solicitors forwarded extensive and up to date country of origin information to the Refugee Appeals Tribunal including a document dated as recent as the 6th May, 2005. This court is satisfied that those documents were not only submitted but on the evidence available were considered. It is claimed that there was a failure to consider more recent and conflicting country of origin information. It is also claimed that the Tribunal made selective use of the country of origin information. In the case of *Idiakheua v. The Minister for Justice, Equality and Law Reform and the Refugee Appeals Tribunal* (judgment 27th May, 2005) Mr. Justice Clarke determined that there were arguable grounds for judicial review if the decision of the Refugee Appeals Tribunal relied on selective quotations from a report contrary to the overall conclusions or if the Tribunal relied on an isolated example of State protection to justify a finding of adequate State protection (see p. 6).

2.6 A reading of the entire country of origin information which was available to the Tribunal clearly demonstrates that the findings and conclusions contained in the decision are not dependant upon selective quotations nor do they rely on isolated statements but are consistent with the overall content of the country of origin information. Indeed an analysis of the documentation relied upon by the Applicant, in this court, demonstrates that such documentation is being used in a selective manner by highlighting isolated examples of conflict in regions of the country remote from the Applicant's home area. This court is satisfied that the Tribunal did not make selective use of country of origin information and that therefore there is no basis for granting any relief in relation to the second of the five grounds in respect of which relief is sought.

3.1 The third ground for consideration by this court is that the Tribunal made adverse credibility findings without having made any reasonable assessment of country of origin information. This ground can properly be considered along with grounds four and five which are that the Tribunal made adverse credibility findings of a generalised nature without having any reasonable assessment of substantial and central aspects of the Applicant's account and that the Tribunal refused to give the Applicant the benefit of the doubt without having made any reasonable assessment of substantial and central aspects of the Applicant's account.

3.2 It is clear that there were adverse credibility findings made in relation to the Applicant. In a judicial review application it is not for the court to impose or transplant its view in relation to credibility. Finlay Geoghegan J. in *Bujari v. The Minister for Justice, Equality and Law Reform and Others* (judgment delivered the 7th May, 2003) stated at p. 5 thereof:

> "The assessment of the credibility of the applicant is a matter for the examiner at the first instance and on appeal by the member of the Tribunal."

This court cannot transplant its view in relation to credibility but it can and is entitled to have regard to the process by which such credibility was assessed.

3.3 It is clear from the decision that it was accepted that the Applicant had established that he was from the DRC and it is also expressly acknowledged that his mother was Rwandan and his father Congolese. In relation to a substantial number of matters identified by the Applicant there is no adverse finding of credibility and the adverse findings are limited to a number of areas and are expressly identified in the written decision. Those adverse findings related to the Applicant's account of how he was separated from his mother and siblings and the alteration of that account, the fact that the Applicant indicated that he did not attempt to locate his family once he was released and the fact that the Applicant did not seek asylum in Brazzaville or in the Central African Republic. There is also a significant adverse finding of credibility in relation to the Applicant's account concerning his meeting up with a stranger who gave him accommodation for almost a year and then gratuitously arranged for his travel to Ireland. Those adverse findings of credibility and the facts upon which they are based are set out with sufficient clarity and it cannot be said that there is a defect in the process relating to such findings.

3.4 The UNHCR Handbook gives guidance in relation to how an assessment should be carried out by examiners when considering an application for asylum. In para. 196 of the UNCHR Handbook it is stated that it is a general legal principle that the burden of proof lies on the person submitting a claim. At para. 197 it is identified that the requirement of evidence should not be too strictly applied in view of the difficulty of proof inherent in the special situation in which an Applicant for refugee status finds himself but that allowance for such possible lack of evidence does not however mean that unsupported statements must necessarily be accepted as true if they are inconsistent with the general account put forward by the Applicant. It is clear that the guidelines at para. 195 identify that it is for the person charged with determining an Applicant's status to assess the validity of any evidence and the credibility of the Applicant's statements. A significant adverse finding of credibility related to the Applicant's account concerning his meeting up with a stranger who gave him accommodation for almost a year and then gratuitously arranged for his travel to Ireland. That account was found to be implausible. That finding is not dependant upon any cross analysis relevant to country of origin information. It is important to recognise that it was made after the Applicant was given the opportunity of an oral hearing and where the person carrying out the interview had the capacity to assess and consider the Applicant's credibility. It cannot be said that the adverse finding made in relation to such events is irrational or inconsistent with a proper or any consideration of country of origin information.

3.5 Paragraph 196 of the UNCHR Handbook states that the burden of proof lies on the person submitting a claim. The courts in this jurisdiction have also highlighted the central role of the Applicant. There is no doubt that whilst the burden of proof falls on an Applicant for asylum that such Applicant will frequently not be in a position to prove elements of his claim and it is also the case that many statements of an Applicant will not be susceptible of proof and that in those cases if the Applicant's account appears credible, he should, unless there are good reasons to the contrary be given the benefit of the doubt. That is identified at para. 196 of the UNHCR Handbook. The significant finding of lack of credibility in relation to the Applicant's account concerning his meeting up with a stranger who provided him with accommodation for almost a year and who gratuitously arranged for his travel to Ireland was found to be incredible.

3.6 In para. 204 of the UNHCR Handbook it is stated:

> "The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts."

On the facts of this case it is clear that a process was followed whereby the Applicant had the opportunity of putting extensive and up-to-date country of origin information before the Tribunal and where the Applicant was fully heard at an oral hearing. The adverse findings of credibility do not run counter to generally known facts and are not inconsistent with the country of origin information and are based upon a determination by the person who had the benefit of assessing the demeanour of the Applicant that his account in certain regards was neither coherent nor plausible. For this court to impose a different view or finding in relation to credibility would be for the court to fall into the trap identified by Mr. Justice Peart in *Imafu v. The Minister for Justice, Equality and Law Reform and Others* (judgment delivered on the 9th December, 2005) where he stated (at p. 11):

> "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 judge is at trial rather than the appellant court, 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."

3.7 This court is satisfied that the consideration of the Applicant's credibility and the adverse findings made thereon were made by a process which was not legally flawed and arose in circumstances where the Applicant's account was found to be neither coherent nor plausible. This is not a case in which it can be said that the process by which the assessment of credibility was made was legally flawed rather it is a case in which statements made by the Applicant were found to be neither coherent nor plausible. Nor is there any basis for contending that the Tribunal made adverse credibility findings without having made reasonable assessment of country of origin information. The adverse findings identified are not inconsistent with any country of origin information and in a number of instances are not in any way dependent upon country of origin information.

3.8 In the light of the adverse findings concerning the Applicant's credibility including his credibility in relation to the circumstances of

his departure from the DCR it cannot be said that such findings are peripheral to the Applicant's claim. Central to the Applicant's claim to be a refugee is that he was in fear at the time of his departure from the DCR. A finding of lack of credibility in relation to the circumstances in which he lived in the 12 months prior to his departure and to the actual circumstances of his departure are central to the Applicant's claim for refugee status. In those circumstances this is not a case in which the Tribunal made adverse findings of a generalised nature without having made any reasonable assessment of substantial and central aspects of the Applicant's account. The Applicant was found not to be credible in relation to how he lived in the 12 months prior to his departure from the DCR and in relation to the actual circumstances of his departure. It follows that in a central and critical area of the Applicant's claim to be a refugee the Applicant's account was implausible. That finding in relation to a lack of credibility is not dependent upon assessment of the country of origin information nor is it peripheral nor can it be said that it was made in circumstances where the Applicant was not given an appropriate benefit of doubt. There was sufficient and appropriate evidence before the Tribunal to support the decision it made and no defect in the process has been identified.

4.1 In the light of the above findings the court therefore refuses the reliefs sought.