

THE HIGH COURT**JUDICIAL REVIEW****[2013 No. 125 J.R.]****BETWEEN****R.A. (UGANDA)****APPLICANT****AND****REFUGEE APPEALS TRIBUNAL AND THE MINISTER FOR JUSTICE AND EQUALITY****RESPONDENT****JUDGMENT of Mr. Justice Robert Eagar delivered on 25th November, 2014**

1. This is an application for judicial review of the Refugee Appeals Tribunal's recommendation refusing refugee status to the applicant. The decision is challenged on the basis that little or no weight was given to the considerable medical evidence, including a medical legal report linking the applicant's injuries to her account and that the Refugee Appeals Tribunal erred in a question of fact in which the first named respondent (RAT) refers to the medical reports as consistent with the applicant's history, having identified considerable areas where the first named respondent found that the applicant's account was not credible. A further ground of complaint was that a previous Tribunal decision resulting in the granting of a refugee status to a Ugandan woman had not been taken into account by the first named respondent.

Background

2. The applicant was born on 15th December, 1992, in a town in south west Uganda. She was an only child. When she was fifteen on 24th November, 2008, her father asked the applicant to bring her friend, Rachael, to their house. Her father sent the applicant to the shops on an errand and when she returned Rachael had disappeared. Her body was found the next day and her father was suspected of having sacrificed Rachael as she was an albino. The villagers then threatened her family as they believed that her father was involved in the abduction and killing of children. Her mother was beaten by her father and she disappeared and was believed to have been killed by him. Following this her father brought her, in the middle of the night, to Kampala. She complained of rape by her father and was forced to have two abortions. When she was seventeen her father left the house and a week later soldiers came looking for him and found guns in the house. The applicant claimed that she was detained, tortured and raped by the soldiers who were looking for information as to where her father was as he was suspected of being involved in the abduction of many children. She was accused of being his accomplice. One of the soldiers eventually helped her and brought her to work for a man named, Nicholas. Nicholas initially took advantage of her sexually, but eventually helped her escape. She arrived in Ireland on 20th May, 2010, and was taken into care by the HSE as she was a child, being only seventeen.

3. An ASYI form was completed by the Refugee Appeals Commissioner (RAC) and her legal advisers (initially the Refugee Legal Service) and subsequently present solicitors sought medical reports which were submitted to the Refugee Appeals Commissioner. I will detail these reports later in my judgment. The applicant was interviewed by the RAC on 18th May, 2011, and on 5th July, 2011, the RAC recommended that she not be declared a refugee. This recommendation was appealed to the Refugee Appeals Tribunal. There was an abortive investigation by the Refugee Appeals Tribunal, but eventually on 24th October, 2012, an oral hearing took place with the first named respondent. The first respondent affirmed the decision of the RAC on 30th January, 2013, and these proceedings were initiated on 16th February, 2013.

4. The medical reports submitted on behalf of the applicant and the first named respondent were as follows:-

A. A report from Dr. Tag Saber, described as a locum in the practice. Dr. Taher noted the following:-

- (i) Two small scars on both palms about 0.5cm from kneeling on sharp stones.
- (ii) Two faint scars on left forearm on flexor surface from being injured with a jerry can.
- (iii) Whipped on back, a couple of areas of dark discolouration on back right side lumbar area.
- (iv) A few small areas of cigarette burns on upper back bilaterally and rear posterior lumbar area.
- (v) 10cm scar on right buttock on lateral side from being scorched with a heated jerry can.
- (vi) 5cm scar on left buttock on lateral side.
- (vii) 15cm scar on rear anterior shin with an area of old injury which was infected (stabbed in this area).
- (viii) Two scars on left pre-patellar area from being forced to kneel on stones and left front under big toe and goes to base of second toe when stepped on the edge of a stone when kept captive in a room.

B. A psychological report from Ms. Hannah Buckley dated 30th August, 2010, under the supervision of Ms. Irin McNulty, Psychologist of the Psychology Service for Refugees and Asylum Seekers. This repeated the history of the applicant and identified some psychological issues, including signs of traumatisation as a result of her experience of sexual abuse and violence in Uganda.

C. A report of Dr. Mona Sayegh, examining physician from the Centre for the Care of Survivors of Torture, was signed on 5th January, 2011, but that should read 5th January, 2012. This report outlined in more detail the circumstances of the applicant in Uganda and the results of a physical examination of the applicant as follows:-

- (i) On her wrist there were marks typical of ligature marks as signified by the hyper-pigmentation laterally.
- (ii) She had hypo-pigmented patches on her shins which are consistent with the history of being kicked and beaten in that area.
- (iii) She had a 14cm longitudinal incision on her right shin which is typical of a wound that was caused by a sharp object and that had healed without suturing.
- (iv) She had an 8cm hypo-pigmented linear scar on her back which is highly consistent with an injury from a whip.
- (v) She had two irregular scars on her left and right knee which are highly consistent with the history of a cut from a sharp object as described in the history of crawling on sharp stones.
- (vi) On examination of her back there were multiple round hypo-pigmented 1cm lesions which are typical of her history of cigarette burns to the area.
- (vii) She had altered pigmentation on her right forearm which is consistent with the history of a superficial burn, which has healed with resulting hypo-pigmentation.

She also gave the results of a mental health assessment and her conclusions were that the applicant was suffering from a depressive disorder of moderate severity by virtue of the fact that she is suffering from pervasive low mood. She felt worthless and was feeling dirty and guilty about what had happened to her. Dr. Sayegh also detailed that the applicant was suffering from post traumatic stress disorder by virtue of the fact that she was exposed to highly traumatic events and experienced daily flashbacks and nightmares of the abuse. She concluded that the applicant was a young woman from Uganda, that the applicant exhibited scars which were typical of a history of being burnt by cigarettes and also exhibited scars consistent with her reported experience of being bound with ligatures, burns and cuts with a knife and being whipped.

It was clear that Dr. Sayegh, when preparing her report had in her mind the Istanbul Protocol Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, issued by the Office of the United Nations High Commissioner for Human Rights 2004. Paragraph 187 of the Istanbul Protocol describes the degree of consistency between the pattern of lesions and the attribution given by the patient:-

- (a) not consistent – the lesion could not have been caused by the trauma described.
- (b) consistent with – the lesion could have been caused by the trauma described but it is non-specific and there are many other possible causes.
- (c) highly consistent – the lesion could have been caused by the trauma described and there are few other possible causes.
- (d) typical of – this is an appearance that is usually found with this type of trauma but there are other possible causes.
- (e) diagnostic of this appearance could not have been caused in any way other than that described.

Dr. Sayegh's report noted three typical marks and two scars in which she describes as highly consistent.

D. Finally, a report from Angela McCarthy, Head of Clinical Services of the Rape Crisis Centre, which appears to be undated (which is a considerable error in these cases), but details the therapeutic issues including post traumatic stress disorder, describing the applicant as a vulnerable young person who is trying hard to lead a normal life, but is still very badly affected by the traumatic experiences she underwent – witnessing her mother's violent beating, her subsequent abuse by her father and her treatment at the hands of soldiers and others. The signs of post traumatic stress have been evident in the course of her therapy and she will, in the view of Angela McCarthy, need to continue in therapy for a considerable length of time.

5. On 14th September, 2011, the applicant's solicitors sent to the first named respondent a previous Tribunal decision in support of the applicant's appeal. The applicant in that case was a Ugandan woman who had been arrested and severely maltreated as her husband was a member of the army who was suspected of supplying information and weapons to the rebels. On her release after a week, she went in search of her husband in Kampala and was again taken into custody and severely ill-treated, beaten and raped. She went to the United Kingdom where she applied for asylum but was refused and deported to Uganda, where she was placed in custody, interrogated, beaten and raped. She again went to the UK and eventually made her way to Ireland. The Tribunal found that the applicant had given false information, *inter alia*, concerning her travel to Ireland and her previous application for asylum in another EU jurisdiction. However, the Tribunal accepted that the medical evidence presented by the applicant confirmed her account of past persecution that the country information reports confirmed that returnees to Uganda are treated in the manner stated by the applicant, and that the applicant's account is accordingly credible and that she, therefore, had a well founded fear of persecution because her husband was suspected of providing information and weapons to the rebels.

6. The first named respondent on 30th January, 2013, stated that the application for refugee status by the applicant was refused and the recommendation of the RAC affirmed. The first named respondent stated that the Tribunal had considered all the documentation in connection with the appeal, including the notice of appeal, country of origin information, the applicant's asylum questionnaire and the replies given in response to questions by or on behalf of the Commissioner on the report made pursuant to s. 13 of the Act.

However, she failed in her concluding remarks to refer to the medical reports or to the previous Tribunal decision.

7. The medical reports provide substantial evidence of serious injuries consistent with the applicant's account and the Tribunal is obliged to consider the medical evidence to explain why in the view of the Tribunal Member, the applicant was not telling the truth and her credibility was undermined.

8. The first named respondent made the following credibility findings:-

1. That in the circumstances where the applicant's family were being accused of the murder of a young girl in their village, it was not credible that her father would send the applicant out for water, go to work himself and arrive home at 9.00pm intoxicated and unharmed.
2. That despite being left alone in the house for the day, the applicant had remained unmolested by the villagers she now claimed posed a danger to her.
3. It was not credible that if the people wanted to attack her with pangas, they were deterred from doing so simply because she was in the house.
4. That if the applicant's father, and indeed the whole family were suspected of involvement in the murder by the entire community, it was not credible that the villagers would not have informed the authorities or attacked themselves.
5. The evidence claiming that the applicant's father had gone to work, got drunk without being arrested or apprehended by anyone in the official or unofficial capacity was then able to return home, murder his wife, dispose of the body and flee to Kampala where he escaped the attention of the authorities for another fourteen months, was simply not credible or capable of being believed.
6. It was not credible that having been brutalised by her father, suspecting him of murdering her friend and knowing that he had killed her mother, the applicant would have informed her father of her intention to notify the police instead of merely making her escape when the opportunity arose.
7. It was not credible that a teenage girl left on her own for protracted periods could not have escaped from an ordinary dwelling house, especially where, motivated by the fear of being brutalised and raped by her father, she knew to be a murderer.
8. It was not credible that the fact that a minor was brought to the same clinic (as was the applicant's evidence), for abortions by the same man twice in such a short period would have given rise to suspicion on the part of the staff there.
9. That given the past history of the applicant's father and the applicant implied that he was still engaged in murderous activities after they moved to Kampala and was beating and raping her on a regular basis, it was highly unlikely that such an individual would have brought the applicant for any kind of medical treatment in the first place.
10. That when the government troops arrived at the house on 10th January, 2012, the applicant claimed she was frightened because she thought they were thieves, it was not credible that the applicant who was presumably desperate for deliverance from her ordeal would have chosen to hide rather than trying to find out who was at the door, since the applicant would reasonably be expected to have felt secure enough to check the identities of the callers, given that the impenetrability of the house was such that the applicant was unable to escape from it.
11. Having been presented with a full and frank statement by the applicant incriminating the suspect whom they had come to arrest, the soldiers had allegedly come to a somewhat illogical conclusion that the applicant was "hiding information".
12. Despite having located the applicant's father house and receiving damning evidence against him from his own daughter, the soldiers allegedly spent three months trying to force the applicant to confess to crimes to which she was innocent instead of merely for her father to return as she presumably told them he was in the habit of doing.
13. That having located the applicant's father's residence along with a cache of weaponry the applicant claims the soldiers told her she had to tell them where he was hiding and it apparently had not occurred to them that they had in fact discovered his hiding place and evidence against him, and a witness who could implicate him in murder and this evidence made no logical sense nor was it credible.
14. It was not credible that a soldier whom she hardly knew and whom she claimed she did not torture her as much as the others with whom she became a bit close would have arranged the applicant's escape or that other individuals, none of whom were known to her, would have gone to so much trouble and expense on her behalf, one of them accompanying the applicant to Dublin and then disappearing into the ether and that all of this happened within in a short time span.
15. It was not credible that the applicant could have passed through four international airports using a passport which was not hers and in the ignorance of the name it bore.

Counsel for both the applicant and the respondents prepared helpful written submissions and books of authorities.

9. In *I.R. v. Refugee Appeals Tribunal* [2009] IEHC 353, Cooke J. held that nine principles emerged from case law as a guide to the manner in which evidence going to credibility ought to be treated:-

- "1. The determination as to whether a claimant has a well founded fear of persecution is credible falls to be made under the Refugee Act 1996, by the administrative decision maker and not by the court. The High Court on judicial review must not succumb to the temptation or fall into the trap of substituting its own view for that of the primary decision maker.
2. On judicial review the function and jurisdiction of the High Court is confined to ensuring that the process by which the determination is made is legally sound and is not vitiated by any material error of law, infringement of any applicable statutory provision or any principle of natural or constitutional justice.

3. There are two facets to the issue of credibility, one subjective and the other objective. An applicant must first show that he or she has a genuine fear of persecution for a Convention reason. The second element involves assessing whether that subjective fear is objectively justified or reasonable and thus well founded."

Thus, the court's role is not to substitute its view for that of the Refugee Tribunal, but to test whether or not in this case to ensure that the process by which the determination is made is not vitiated by any principle of natural or constitutional justice.

10. In *Khazadi v. The Minister for Justice*, Gilligan J. on 19th April, 2007, held:-

"I take the view in the circumstances that arise that the Tribunal member in considering any assessment of the applicant's credibility who is required to consider as part of his deliberations, the medical evidence in total that was there before him and obliged as part of a rational analysis to explain having considered the medical evidence along with the other evidence that was before him why in the view of the Tribunal member the applicant was not telling the truth and his credibility was undermined...My overall conclusion is that the medical evidence that was before the Tribunal should have been considered, weighed in the balance and a rational explanation given as to explain why it was being rejected in circumstances where the tribunal member was making a finding that the applicant was not credible."

11. In *J.M. (Cameroon) v. The Minister for Justice, Equality and Law Reform & Paul Christopher sitting as the Refugee Appeals Tribunal (respondent)*, judgment delivered on 16th September, 2013, Clark J. states that

"The law in relation to the treatment of medical reports is clear. If the report is relevant it must be considered and evaluated with the other evidence and a clear explanation provided if its contents are rejected. That is not to say that the contents must be accepted at face value. There has never been any doubt that findings in medical reports can be rejected if they have no or low evidential value. For example, a report could describe injuries of such a general nature that they could have been sustained in the vagaries of everyday life or they could be of such vintage that although consistent with torture on the facts claimed they have become irrelevant to the claim made. However, relevant inquiries must be made before such a decision is reached and reasons must be provided."

12. The first named respondent dealt first of all with the credibility of the applicant. She noted, however, that the applicant submitted a number of medical reports which were referred to in submissions at hearing, and which have been carefully considered by the Tribunal. There are various reports, including reports from the Rape Crisis Centre and SPIRASI amongst others which unanimously indicate that the applicant displays physical and psychological symptoms consistent with those which would be expected in the case of a person who has suffered the kind of trauma she claims to have endured in her country of origin. However, even if this is the case given the serious credibility issues which arise from every aspect of her evidence as outlined above, the Tribunal does not accept that the applicant suffered this trauma in the manner claimed by her or in the circumstances which have given rise to a well founded fear of persecution for a Convention reason.

13. I am satisfied that the first named respondent in dealing with the issue of credibility first and in failing to follow the clear direction of Clark J. in *J.M. (Cameroon) v. The Minister for Justice, Equality and Law Reform & Paul Christopher sitting as the Refugee Appeals Tribunal*, acted without the benefit of the medical reports confirming that the applicant's injuries were typical or highly consistent with the torture she described.

14. In conclusion, the court stresses that this judgment is not concerned with the validity or otherwise of any credibility findings made, but the Tribunal did not engage in an assessment of all the evidence before deciding on the applicant's credibility.

15. There is no evidence that the Tribunal carried out an assessment of the medical evidence and the Tribunal failed to consider the possibility that the findings made in the medical report could displace the credibility findings made by the Tribunal.

16. For all these reasons, the decision of the court will, therefore, grant an order of *certiorari* quashing the decision of the first named respondent and remitting the matter for consideration by another tribunal member.