Neutral Citation [2016] IEHC 676

THE HIGH COURT

JUDICIAL REVIEW

[2016] No. 395 J.R.

BETWEEN

D. N. G.

APPLICANT

AND

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

RESPONDENTS

EX TEMPORE JUDGMENT of Mr. Justice Colm Mac Eochaidh delivered on the 14th day of July, 2016.

1. This is an application for leave to seek judicial review in respect of a decision of the respondent which is dated the 23rd May, 2006, which affirms the recommendation of the Refugee Applications Commissioner that the applicant not be declared a refugee.

2. According to the respondent's decision, the applicant was born on the 7th July, 1991, in a place called Blantyre in Malawi, and it was said he was an only child and that his parents died in 1994 and that he was raised by his grandparents. The respondent records his evidence as being that he practiced witchcraft in a very minor way but that his grandparents were more experienced practitioners. Some time prior to 2013, the applicant's young cousin died and his grandparents were blamed. In 2013, his aunt died and the applicant and his grandparents were implicated in the death of his aunt.

3. In June 2013, his home was attacked by a mob who killed his grandparents and left him unconscious on the road. A priest came to his assistance and took the applicant to a place called Lilongwe. The applicant said he lived with the priest for nine months. Following a meeting with a man from his village, it is said that the priest started receiving threatening text messages from persons living in the village of Blantyre.

4. On the 1st April, 2013, it is said that the applicant went to Addis Ababa and then to Frankfurt arriving in Dublin on the 2nd April, 2014. The decision maker records that certain documents were submitted including a Malawian police report dated 28th June, 2013, Medical reports of the 15th July, 2013, and a medical legal report from SPIRASI dated the 11th November, 2014.

5. Section 5 of the respondent's decision is entitled "Analysis of Credibility." Having referred to the SPIRASI Report and having made quotations from it the decision maker says:-

> "Having considered the SPIRASI Report, I accept Dr. Hild's findings that the Appellant's scars are consistent with his account of having been the victim of a prolonged attack. However, the SPIRASI report does not constitute evidence of the circumstances of this attack and I am therefore required to proceed to consider the other aspects of the Appellant's claim."

6. At para. 5.2 the decision maker expresses dissatisfaction with the circumstances in which explanation is provided about inconsistency in explaining how it was that the priest, Fr. Adrian, started receiving texts from persons in the village of Blantyre.

7. At para. 5.3 the decision maker expresses dissatisfaction with the applicant's inability to account for discrepancies in relation to the age at which he left school, and as a consequence the decision maker says:-

> "In the circumstances, the Appellant has failed to account for a significant duration of his time in Malawi before he left for Ireland."

8. At para. 5.4 the appellant was questioned about the extent of his involvement in witchcraft. It was put to him that he was exaggerating the level of his involvement and he, in response, was adamant that he was not overstating this. Issues arose as to why the SPIRASI report reported his involvement with the Pentecost African Church which the applicant said was a mistake as he was a Catholic and the decision maker felt that his answers about Catholicism were not convincing. The decision maker concluded that:-

> "On the basis of the evidence before me I believe the Appellant is now exaggerating his involvement in witchcraft."

9. At para. 5.5 the decision maker said:-

> "The foregoing examination of the Appellant's claim indicates that a number of credibility concerns have arisen which have not been properly explained by the Appellant. The issues are of such a nature that while I accept the Appellant experienced difficulties as indicated by the very real injuries which are documented in the SPIRASI report, on the balance of probabilities I do not accept the Appellant's account of how he received these injuries. For the reasons outlined, I find that material aspects of the Appellant's claim are not credible."

10. At para 5.6 the decision maker says:-

> "It has also emerged in evidence that there is a portion of the Appellant's life which he has concealed from the Tribunal in that his educational history would indicate that he finished school long before the age of 23 as alleged. Furthermore, his account of how he was detected by the villagers when living in Lilongwe, as well as his evidence in relation to his level of involvement of witchcraft have been called into question. In such circumstances, I do not accept that the Appellant has made a genuine effort to substantiate his story. I find that the Appellant has failed to establish the credibility of material aspects of his claim. I will proceed to consider the well-foundedness of the Appellant's claim."

11. The decision maker then at para. 6 accepts that if the claims are credible the matters which he describes are capable as being viewed as persecution within the meaning of the asylum code.

12. In the case that is now made the applicant makes particular complaints at grounds e (1) which appear to be as follows:-

> "The First Named Respondent erred in law in failing to have proper regard to the medico-legal documentation from SPIRASI [in conjunction with the Malawian police report dated 28th June, 2013] furnished by the Applicant which raises a rebuttable presumption that the Applicant has suffered serious harm in the past."

13. The pleadings point to case law which is said to establish that where a higher probative value is attached to medical legal findings "the need for reasons to be given for rejecting the probative value of the report must be more fully addressed." Then three cases are referred to in support of that proposition and the pleadings then says:- "contrary to the test set out above the first respondent has provided no adequate reasons for rejecting the probative value of the SPIRASI Report other than making adverse credibility findings on peripheral issues."

14. The decision which I have just quoted from does not reject the SPIRASI report or any of its findings - quite the opposite. It fully accepts all of the findings of the SPIRASI report and says so in terms. In the section that I have just read from as the only basis of illegality advanced in this ground is that the first named respondent has provided no adequate reasons for rejecting the probative value of the report. This ground fails to meet the standard required to attract a grant of leave in cases such as this which is that substantial grounds have to be made out as to illegality. Taking the case at its highest, the ground appears to be one which proceeds on the mistaken understanding of what happened or what the basis of the decision was. There was no rejection of the SPIRASI Report and, therefore, there was no absence of reasons in the decision for rejecting the SPIRASI Report and this ground must fail.

15. The next ground appears to be in the following terms:-

> "The first named respondent unfairly disregarded the supporting documentation including the Malawi police report dated 28th June, 2013."

16. It is well established that where it is sought to be argued that a matter has not been considered that ought to have been considered the basis upon which that allegation is made needs to be established when referring to the decision of the Supreme Court in *G.K. v. the Refugee Appeals Tribunal* [2002] 2 IR 418 and the decision of Hardiman J. in this regard. The decision maker in this case lists the reports as a matter which was submitted and expressly states that "everything that was submitted was considered" and, therefore, this ground insofar as it is a separate ground must fail.

17. The third ground advanced as to the illegality of the decision is based upon the content of Regulation 5(2) of the European Communities (Eligibility for Protection) Regulations 2006 which says that pursuant to para. 5.2 of the Protection Regulations:-

> "…where the Applicant has provided credible evidence of past persecution and/or serious harm, as well as direct threats of persecution or serious harm, this shall be regarded as a serious indication of his real risk of suffering serious harm, unless comprehensively rebutted." (emphasis in original)

The role of the statute sets out that:-

> "Compelling reasons arising out of previous persecution or serious harm alone may nevertheless warrant a determination that the applicant is eligible for protection."

18. The rules which arise under para. 5.2 of the Protection Regulations have no application in circumstances where the applicant's narrative or claim is disbelieved on credibility basis. In this regard, Mr. Doran (B.L.) for the applicant says that:-

> "in a case where serious harm has been found to have been inflicted upon the applicant the rules apply."

19. This submission does not take account of the fact that the term "serious harm" in the regulations is a term of art which has a very particular definition relating to the protection available in what is known as subsidiary protection applications and in order to have suffered serious harm within the meaning of these regulations and within the meaning of the Eligibility for Protection 2006 Regulations a cause of the harm as defined in those regulations must be made out and no such argument is advanced in this case so therefore the entirety of that ground is misconceived and cannot attract a grant of leave.

20. The third matter advanced in favour of the grant of leave and arguing for the illegality or infirmity of the underlining decision relates to the manner in which the decision maker dealt with the issue of internal relocation and case laws referred to in the pleadings which sets out the rules in this respect. The allegation of illegality appears to be in the following terms:-

> "The First Named Respondent identified only one locus for relocation, namely in a town called Chen were the Applicant's uncle lived, which was outside Blantyre. The first named respondent determined that this venue was safe because the Applicant's uncle did not practice witchcraft. This finding on the remedy of internal relocation is unlawful as irrational and internally inconsistent."

21. The findings in relation to internal relocation as set out in para. 6.8 of the decision are in the following terms:-

> "In order to assess whether, or not, an internal protection alternative exists for the Appellant in Malawi, I have to take into account the Appellant's personal circumstances. In this regard, I note the Appellant's level of involvement in witchcraft was on his own evidence on a very minor scale. It is also the position that the persons who the Appellant fears reside in Blantyre and they have no realistic prospect of finding him if he relocates to another town or city in a country of over 15 million people. AThe ppellant is young, single and educated man with family members living in Malawi who are not involved in witchcraft and who would have no difficulty in relocating to a different town. On the evidence before me, I found that there is no serious possibility of the Appellant being persecuted outside of the village of Blantyre and that relocation is practically, safely and legally accessible to the Appellant."

22. The first reason I reject this third or fourth, depending on how one reads the pleadings, allegation of illegality is that the pleading is based on a mistake of fact. The decision maker in this case did not decide that the place for internal relocation was the village where his uncle lived and whilst that prospect was one of a number of prospects canvassed with the applicant during the hearing it was not the decision of the decision maker that that is the place that would be identified as a place of internal relocation for the applicant in the case.

23. What is clear from the decision is that the decision maker was saying that the applicant could live somewhere other than his home

village and that would mean anywhere in the entirety of the country, and no complaint is made about that in these proceedings as to whether that is a lawful or an unlawful approach, so I reject the third/fourth ground for alleging that this decision is unlawful. But before leaving that point and for the sake of completeness I refer to my own decision in a case called *J.O. and O.O.* [2015] IEHC 451 which was given on the 13th July, 2015, and where at para. 11 of the decision I said:-

> "As has been said many time by this Court, the degrees of specificity required in internal relocation findings depends on the facts and circumstances of each case. Where a fear is localised, the idea that relocation to another part of a country of any size, much less a country with a population of more than 150 million people, does not seem to be unreasonable. However I do accept that best practice does involve identifying a part of the country where the applicant might live though in some cases it will be perfectly plain that the suggestion relates to any part of the country other than the place of the feared harm. In so far as there is an error in these internal relocation findings it is not of such gravity as to warrant intervention with the court."

So it seems to me that the decision made here which was one that the applicant could live in any place except his home village was lawful and, in any respect, no challenge is made to that decision rather that which is sought to be challenged is that the decision of the appellant that he should live in a particular named village was irrational. But as no such decision was made the ground must be rejected.

24. Those being all of the grounds advanced in favour of the proposition that the decision is unlawful and those substantial grounds exist for so contending and that leave to be granted, I am compelled to refuse the application.