Neutral Citation Number: [2007] IEHC 287

THE HIGH COURT

Record Number: 2006 No. 322 JR

BETWEEN:

G. T.

APPLICANT

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENT

Judgment of Mr Justice Michael Peart delivered on the 27th day of July 2007:

The applicant is from the Cameroon, and on her arrival here on 29th April 2002 applied for a declaration of refugee status which was in due course refused. She appealed to the Refugee Appeals Tribunal and a decision was made by that body on the 16th February 2006 affirming the recommendation of the Refugee Applications Commissioner that she should not be declared a refugee.

The Decision of the Refugee Appeals Tribunal is very detailed and runs to some twenty pages. Nevertheless the applicant seeks leave to quash this decision on the grounds that in arriving at an adverse credibility conclusion there are errors of fact apparent on the face of the decision which, in her submission, are of such significance as to undermine the decision in its entirety. Apart from seeking to quash that decision, she seeks an order also by way of mandamus remitting the appeal back to a different tribunal for determination.

The basis of her application for asylum was that when her husband died in the Cameroon she, along with her three young children, were required to move to the home and farm of her late husband's older brother, where there were already his five wives and thirty children, and to become his sixth wife. In her affidavit grounding the present application it is stated that her fear was of being forced to marry this man and have sexual relations with him. She refused to do this but says that eventually she and her children were forced to move there. She stated that her children were prevented by him from attending school and that he required them to work on his farm instead if they wanted food. She stated also that he was supposed to support her and her children after her husband's death but that he did not do so. She stated also that she was not liked by his wives, and was treated badly by them and their children, and that if she refused to have sex with him she would be beaten by him and that he threatened to kill her.

She stated also that in the Cameroon it is customary that upon the death of a husband the widow must marry her husband's younger brother and not the older brother. She could not state at interview how it was that where the custom was that she must marry a younger brother, she was being forced to marry the elder brother. The older brother in question in the present case is apparently aged in his 70s. At interview she stated that in fact her late husband had only one brother. Neither was she aware of any other woman in her village who had been required to marry the deceased husband's brother.

At any rate she decided to run away, and left her children with her parents.

She stated at interview that fortunately she met a man who helped her come to this country. However she arrived here on her own stating in her interview that her three children remain in Cameroon and were living with her parents there. At interview she stated that since her arrival here she had not been on contact with her parents, and had not written to them either. That was in September 2002. However the decision of the Tribunal Member states that when cross-examined during the course of her appeal it emerged that her children were now in this country since September 2004, but that the applicant stated that she had had no contact with them and that they did not know that she was here in this jurisdiction.

In relation to her travel arrangements she stated that she knows that she left the Cameroon by air, and that she stopped in a country where she heard people speaking French. She herself speaks French and English. She stated that they remained in that place for thirty minutes. Her questionnaire form completed on her arrival describes her route to here as being "Cameroon/England/Ireland". She stated that she did not know by whom or how her travel was paid for as she had no money, and that she had no identification documents with her and was at no stage asked to produce any on her route to this country or on arrival here.

In her grounding affidavit the applicant states that her appeal hearing was unsatisfactory in several respects, but particularly as to the manner in which the issue of her own credibility was determined. In this regard she states that the Tribunal when rejecting her appeal placed reliance on what she describes as " a number of immaterial and exaggerated inconsistencies" in her evidence, and also on a number of clear misstatements of her evidence. She identifies the matters she relies upon, and I will set them out hereunder in accordance with her affidavit:

Inconsistencies/errors relied upon by applicant:

1. Reference to mistreatment of, and risk to her children by her late husband's brother:
In her decision the Tribunal Member has stated the applicant left her children with her parents in the same village where her late husband's brother lived and "she was not afraid to do so albeit she has alleged that the same brother in law mistreated her children…." (my emphasis). The Tribunal Member went on to state in this regard at paragraph (h) of the decision on page 19 thereof:

> "It is considered by this Member that no natural mother might quit her country of origin leaving behind her three children who she has suggested to this Tribunal are at risk from this brother in law and leave the jurisdiction on the 29th April 2002 thereby, as suggested, saving herself". (my emphasis)

These matters are stated by the Tribunal member to form part of the bases for finding the applicant not to be personally credible, as stated at page 20 of the decision.

The applicant complains, however, that she never stated in her questionnaire, interview or in her evidence at the appeal hearing that her brother in law mistreated her children, and never stated that her children were at risk of him. She states in her affidavit that at the interview she was asked if he was good to her children and that she replied by saying that he did not send them to school and that he had treated her badly in front of her children. She states that she was also asked if she was afraid that something would happen to them if she left them behind on the first occasion on which she left his house for Mamfe, and that she said that she was not so afraid on that occasion.

In her questionnaire she stated in this regard that this man stopped her children from going to school and that he said that they had to work on the farm if they wanted to eat. In her interview she stated again that he would not let her children go to school (p. 7 thereof)

It is therefore submitted that the Tribunal member has reached an adverse credibility finding based upon an error as to what the applicant's evidence was, and that this contaminates the credibility finding, especially when there are other such errors to be found also.

Siobhán Stack BL for the respondent herein however submits that it is relevant to look at what the Tribunal Member stated earlier in the decision in this regard at page 16 in paragraph 1 (a) where it is stated:

> "She said that she was beaten and mistreated by her brother in law and forced to have sexual relations with him and when she refused to marry him she continued to be beaten. She said her children were mistreated as they were not allowed go to school. She said she feared this brother in law ……".

Ms. Stack submits that it is not appropriate that the applicant should just pick a sentence and read it in isolation, but rather the entire decision should be read as a whole when considering whether there has been in fact any error by the Tribunal Member which infects the finding as to credibility. She submits that the use of the term 'mistreat' in paragraph (h) of the decision on page 19 must be interpreted by reference to the meaning in which that word was used on page 16, and that when that is done it is quite clear that the mistreatment referred to by the Tribunal Member was the act of stopping the children going to school and nothing else.

2. Failure to seek assistance from her family and villagers:
At page 17 in paragraph (c) the Tribunal Member has stated:

> "She stated that at no time did she seek the assistance of her family and/or the villagers notwithstanding the fact that Mbi George was flaunting customary law given that it might be expected of her that she might have conjugal relations with her deceased husband's younger brother as per traditional rite recognised in her village."

The applicant states in this regard that during her evidence to the Tribunal she was asked by her Counsel why she could not have returned to her parents, and that she had stated that that he had gone there first, but that her brother in law had threatened to sue her parents for keeping her, since his family had been paid a 'bride price', and that they could not have afforded to repay this sum to him. In her affidavit she states also that in her questionnaire and at her interview she had been asked about the possibility of assistance from her parents or staying with them, and that she had answered that she could not have done so on account of the traditional custom. It has been submitted by her therefore that the Tribunal Member is again in error in stating that she did not seek assistance from her family, and has failed to address the reasons given by her as to why she considered it impossible to get assistance from them.

Ms. Stack has drawn attention to the answers which the applicant gave at interview at Qs. 26-28 thereof. At Q. 26 she was asked if she could have got assistance from her parents to which the applicant replied "No – they could not help me". In Q. 27 she was asked if she could have stayed with her parents to which she replied "No – it was a traditional custom that I go and live with my husband's junior [sic] brother after my husband's death". In Q. 28 she was asked what her parents had thought of her situation, to which she replied "They had nothing to say – they are illiterate".

Ms Stack refers also to page 3 of the decision where it is stated that the applicant had stated that her family could not help her but that she had also stated that they did not try.

2. "… a country where French was spoken":
When concluding that the applicant lacked credibility, the Tribunal member states at page 18 of her decision that "it is incredible that the Tribunal might be asked to believe that this lady travelled from Cameroon, through England according to her ASY 1 Form, and on to this jurisdiction without being asked to produce any documentation whatever on her own behalf and without being questioned in any way. It is noted in this regard that the applicant, at hearing, stated that she travelled through France or, as she put it 'a country in which French is spoken'."

The Tribunal Member noted also that the applicant speaks French, English and Banyang languages. She goes on to say:

> "It is considered from the information she had given at pre-hearing that she was fully competent to know that she was in a French speaking country and not an English speaking country as is suggested at pre-hearing. The Member deduces from such inconsistency that the applicant is not being wholly truthful in the telling of her story to this Tribunal on this point and in many other aspects herein set out."

In her ASY 1 Form it is stated that the route travelled was "Cameroon/England/Ireland".

The applicant states in her grounding affidavit that the Tribunal Member has failed to have regard to the fact that at her interview at Q. 30 she had stated when asked to tell about her journey to Ireland:

> "I know that I left Cameroon by air – we stopped in a country and I heard them speaking French. We were only there for 30 minutes".

The applicant complains that the finding that what she said to the Tribunal is inconsistent with what she stated at pre-hearing is not warranted given the fact that at Q. 30 she "clarified" that she had stopped off at a country where French is spoken.

The Tribunal Member in her decision commenced the assessment part of the decision by addressing the question of the applicant's personal credibility. She stated at the outset that available country of origin information suggests that what she says happened to her could have happened. But she then went on to set out a number of credibility difficulties, three of which have been impugned by the applicant as I have already set forth, but there are four other matters which also were taken into account in the assessment of credibility, and these four are not contested by the applicant. However the applicant submits that since there is no indication as to what weight the Tribunal Member gave to any one of these factors, the Court cannot say what the conclusion would have been if the three impugned findings are taken out of the equation, and that accordingly the adverse finding of personal credibility is faulty overall, thereby contaminating fatally the entire decision.

The Tribunal Member has stated in her decision and by in reliance on the various matters referred to in the assessment, that "the applicant has not made an effort to establish the truth in relation to what she alleges" and that in such circumstances the Tribunal "is obliged to rely upon her testimony and her testimony only". It is however noted that the available country of origin information has been noted and considered, and that such information is not doubted, and that the doubts which exist are in relation to the application of that information to the applicant. The member goes on:

> "in short the member does not find this particular applicant personally believable notwithstanding the fact that the basis for the right inferences have been laid and that is known country of origin information".

The conclusion reached is that the applicant cannot be afforded the benefit of the doubt and that she has presented to the Tribunal "a rehearsed story made to fit well the documented country of origin information as to the plight of women in Cameroon". This lack of personal credibility is stated to go to the heart of her claim and detrimentally affects the thrust of her claim.

In relation to the findings to which the applicant has referred and which are said to be erroneous I would comment as follows:

1. "mistreatment" of children and they being "at risk":

The reference to mistreatment of the children by her brother in law must be read in the context of the specific reference earlier in the decision to that term referring to his stopping the children from attending school. That is the context in which the term is used later in the decision and it cannot be said therefore that there is any error made in that regard by the Member. It is important to have regard to the whole decision in order to see if in fact a finding has been arrived at by the use, in part, of a fact which is incorrect. That has not happened in this regard, even if mistreatment, taken out of context or in general, is capable of a wider meaning.

2. Failure to seek assistance from family or villagers:

Ms. Stack has drawn attention to what is contained in page 3 of the decision in this regard and I have set out that above, in addition to the applicant's answers to Qs. 26-28 of the Interview and I have set out these questions and answers given. While it is possible to discern a slight difference in meaning between the applicant not seeking assistance and that she could not be assisted by them so for the reasons she gave, I am not satisfied that that this slight distinction has any substance when considered in the light of the overall evidence and finding on credibility. The Tribunal Member considered the question of whether it was reasonable to suppose that she could not be assisted by her family and the villagers. That is what was considered, and a conclusion was reached that it was not credible, and it was open on all the relevant evidence to reach such a conclusion, and the reference to not seeking assistance does not contaminate the finding in any way. That is to be distinguished clearly from the error identified by Ms. Justice Finlay Geoghegan in *AMT v. Refugee Appeals Tribunal* [2004] 2 IR. 607, and it is important to recall that in her judgment the learned judge went on to state at p. 615:

> "In reaching the above conclusion I do not wish to suggest that every error made by a tribunal member as to the evidence given will necessarily render the decision invalid. It will, obviously, depend on the materiality of the error to the decision reached. The error must be such that the decision maker is in breach of the obligation to assess the story given by the applicant or the obligation to consider the evidence given in accordance with the principles of constitutional justice."

3. "… a country where French was spoken":

The applicant is submitting that in relying on an inconsistency between her story to the Tribunal as to her route to this country, and that contained in her ASY 1 application form, the Tribunal Member has overlooked the fact that the applicant made reference at her interview by the Refugee Appeals Commissioner to stopping off in a country where French was being spoken for thirty minutes. In the ASY 1 form she stated her route as Cameroon/London/Ireland. At the Tribunal. The Tribunal Member states in page 2 of the decision that: "she said she left Cameroon from Yaounde and followed Peter and came to Ireland. They stopped in another country where they spoke French and when she arrived in this jurisdiction she went to the police and applied for asylum". There was no mention of London, and the French speaking stop was never referred to in the application form.

In my view the fact that the applicant mentioned this at her interview and also at the Tribunal hearing, and that the decision does not refer specifically to the fact that it was mentioned at interview, does not mean that the Tribunal Member was not entitled to have regard to the difference between what is in the ASY 1 form and what was said at the Tribunal hearing. The fact that it was mentioned at interview does not resolve the inconsistency with the ASY 1 form, and the Tribunal Member was perfectly within her rights to have regard to this matter when assessing personal credibility. There is no substance to the argument that the finding of credibility is invalid as a result, even if taken cumulatively with the other matters referred to.

In my view the Tribunal Member has not relied upon facts which are incorrect or irrelevant in any real sense. Neither did she fail to take account of relevant evidence. There is no possibility that the matters adverted to by the applicant arising from the way in which the decision has been worded that the decision maker would ever have reached any other conclusion. For a variety of reasons, not confined to the three matters by which the decision is sought to be impugned herein, this applicant was not personally believable. It is not desirable that a decision be parsed and analysed word for word in order to discern some possible infelicity in the choice of words or phrases used and to hold that a finding of credibility adverse to the applicant is invalid, unless the matters relied upon have been clearly misunderstood or mis-stated by the decision maker. The whole of the decision must be read and considered in order to reach a view as to whether, when the decision is read in its entirety and considered as a whole, there was no reasonable basis for the decision maker reaching that conclusion. If a decision maker makes a significant and material error in how the evidence has been recorded, or other serious error of fact, then of course the process by which credibility has been assessed falls short of the required to meet a proper standard of constitutional justice. But such an error must go beyond a mere possible ambiguity arising from the words used. The error must be clear and it must go to the heart of the decision making process, and fundamentally undermine it.

This Court should not lightly interfere with an assessment of credibility, since it is quintessentially a matter for the decision maker who has the undoubted benefit of seeing and hearing at first hand the applicant giving her evidence. This Court cannot substitute another view simply by a reading of words on the page and by way of the summary contained in the documents, unless an error is a clear and manifest error, without which a different decision might well have been reached. The present case is not such a case.

I am not satisfied that substantial grounds have been made out, even by reference to a test less arduous that the O'Keeffe test'. For completeness I should add that in considering the question of substantial grounds in the present case I have not confined that consideration to the standard of that test, but have given very careful consideration to the possibility that the matters referred to by the applicant may have infected fatally the process by which the decision on credibility was arrived at. Some refer to such level of consideration as anxious or heightened scrutiny, but for the moment I content myself my stating that I have taken very great care in my consideration, given what is at stake for the applicant.

I therefore refuse leave to apply for judicial review.