Neutral Citation Number: [2008] IEHC 308

THE HIGH COURT

2006 No. 1065 J.R.

BETWEEN

B. N. N.

APPLICANT

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM and

THE REFUGEE APPLICATIONS COMMISSIONER

RESPONDENTS

JUDGMENT OF MR JUSTICE HEDIGAN, delivered on the 9th day of October, 2008

1. The applicant is a national of the Democratic Republic of the Congo ("DR Congo"). She is a Christian and a member of the Banyamulenge tribe. She has received a negative recommendation from the Office of the Refugee Applications Commissioner ("ORAC") and now seeks leave to challenge that recommendation by way of judicial review, on the basis that her interview with ORAC was flawed.

I. FACTUAL AND PROCEDURAL BACKGROUND

2. The applicant's claim for asylum was based on the following circumstances. She and her husband lived in Kinshasa. It appears that her husband was politically active in the DR Congo and experienced difficulties with the authorities. This led him to flee to Ireland, where he unsuccessfully sought asylum. The applicant remained in the DR Congo. For a year after her husband's flight, she stayed with a friend, but then returned to Kinshasa and applied for a job, posing as a single woman.

3. The applicant's evidence is that she worked at the *Agence Nationale de Renseignements* ("ANR") from February, 2004 to January, 2006, analysing national security reports. On a number of occasions, she passed confidential information to an adviser to Mr. Azarias Ruberwa, one of the four vice-presidents of the transitional government, concerning the ANR's inaction on security reports indicating that attacks were likely to be carried out upon the Banyamulenge community, of which both she and Mr. Ruberwa are members. Thereafter, in two attacks, many of the Banyamulenge community were killed. Mr. Ruberwa reacted vigorously and several members of the ANR were dismissed.

4. The applicant claims to have been arrested by the ANR on 31st January, 2006, and thereafter interrogated, tortured and abused in a variety of ways at an ANR premises until she confessed to having passed on the information. She claims that she escaped from detention on 8th March, 2006 and soon afterwards left the DR Congo, in fear of being charged with high treason and sentenced to death or life imprisonment. The applicant's children remain with their grandmother in the DR Congo.

5. The applicant appears to have travelled to Ireland in April, 2006 via Congo-Brazzaville and France. She applied for asylum in the ordinary way and was invited to an interview with an authorised ORAC officer on 6th June, 2006. It is the procedure that was followed at that interview that is challenged in the present proceedings. In compliance with section 13 of the *Refugee Act 1996*, the ORAC officer produced a report on 11th July, 2006. Negative credibility

findings were drawn in the report, which set out the recommendation that the applicant should not be declared a refugee. Country of origin information that the officer relied on was appended to the report.

6. The applicant was notified of the ORAC recommendation on 19th July, 2006. She lodged a Notice of Appeal to the Refugee Appeals Tribunal ("RAT") on 4th August, 2006, requesting an oral hearing. The within proceedings were issued on 31st August, 2006. It appears from the affidavit of Ms. Maura Herlihy of ORAC that the matters canvassed in the Notice of Appeal are broadly similar to the matters at issue in the present proceedings. This is relevant and I will return to it in due course.

II. THE SUBMISSIONS

7. As I have already noted, the applicant seeks leave to challenge the ORAC recommendation on the basis that the procedure at the ORAC interview was flawed. The applicant complains, in particular, of the following four flaws:-

i. That the ORAC officer failed to specifically put relevant information to the applicant;

ii. That the ORAC officer's assessment of credibility was flawed;

iii. That the ORAC officer gave insufficient consideration to section 11B of the *Refugee Act 1996* (as amended); and

iv. That the ORAC officer failed to call the applicant back to give her an opportunity to comment on materials that appeared to contradict her claim.

8. The first and second of the above are the primary bases on which this challenge is based. The applicant explains that the third and fourth, among a number of other subsidiary flaws, are merely unsatisfactory aspects of the interview that aggravated what she says are the primary, fundamental flaws. She claims that the cumulative effect of these flaws means that there was no proper hearing, and that this brought ORAC outside jurisdiction. Ultimately, the applicant contends that the ORAC decision / recommendation is defective and should be quashed.

9. The respondents contend that the ORAC officer's treatment of the applicant's claim was not flawed. Moreover, they argue that even if there were flaws, which they deny, any such flaws are capable of being remedied on appeal to the RAT.

(i) Fair Procedures

10. The applicant contends that the ORAC officer failed to draw the applicant's attention to material upon which the officer subsequently made her decision, thereby denying the applicant the opportunity to dispel doubts in the officer's mind. The applicant contends that this contravenes the principles set out by Clarke J. in *Idiakheua v The Minister for Justice, Equality and Law Reform* [2005] IEHC 150, applied by Finlay Geoghegan J. in *Olatunji v The Refugee Appeals Tribunal & Anor* [2006] IEHC 113, and reiterated by Clarke J. in *Moyosola v The Refugee Applications Commissioner & Ors* [2005] IEHC 218.

11. In particular, the applicant complaints about the ORAC officer's reliance, in the section 13 report, on a report prepared by the Canadian Immigration and Refugee Board (IRB) on the DR Congo that referred to the appointment of Mr. Nyembwe as head of the ANR on 9th March, 2001. It appears that the report was not specifically shown to the applicant at the interview. The officer used this report to question the applicant's credibility, pointing to the applicant's

unfamiliarity with Mr. Nyembwe's name and position. The applicant contends that the ORAC officer should have shown her the report and given her an opportunity to comment on that material.

12. In addition, the applicant claims that the officer failed to bring to the applicant's attention any doubts as to the veracity of her ID card from the Congolese presidency. In the section 13 report, the officer notes:-

"This card does not serve to support the applicant's claim however, as its authenticity cannot be verified and it could have come from any source."

13. The respondents contend that the applicant's complaints are grounded on an incorrect interpretation of the law. They argue that it is not necessary for a decision-maker to put each and every piece of country of origin information to an applicant, and they point in this regard to *Anochie v The Refugee Applications Commissioner* [2008] IEHC 261, where Birmingham J. stated as follows:-

"The effectiveness of an interview would be set at nought if an examiner was required to furnish the candidate with the correct answers in advance."

14. The respondents also rely on *P.S. (a minor) v The Minister for Justice, Equality and Law Reform and Anor* [2008] IEHC 235, where McMahon J. accepted the general principle laid down in *Idiakheua* but went on to hold as follows:-

"It must be noted, however, as it is by Clarke J., that the obligation on the relevant body is an obligation to give "a reasonable opportunity" to the applicant and that the obligation arises only where the relevant matter is "important to the determination" so that the applicant will have the opportunity to respond. Clearly, not every matter must be put to the applicant or to her advisors. It is not incumbent on the Commissioner after every question is answered to say to the applicant:- "*I am not sure I believe your answer. It may be when I assess the matter fully and examine the evidence in its totality that I will reject your answer to this question. What do you say to that?"* It is quite clear to all who participate in this exercise especially where the applicant is assisted by legal advisors, that the application will be at risk if the applicant is not believed, and that the principal onus of proof lies on the applicant who is in appropriate cases to be give the benefit of the doubt."

15. The respondents further contend that the obligations of a decision-maker are aptly described by Herbert J. in *D.H. v The Refugee Applications Commissioner & Ors* [2004] IEHC 95, as follows:-

"The principle of *audi alteram partem* does not require the determinative body to debate its conclusions in advance with the parties."

(ii) Assessment of Credibility

16. The applicant contends that the ORAC officer's assessment of credibility was flawed with respect to the weight given to the applicant's unfamiliarity with the ANR's leaders, and the ORAC officer's doubts as to whether the applicant would have taken a job with the ANR.

17. The first alleged flaw arises in the following situation. At the interview, the ORAC officer asked the applicant to name the director of the ANR. The applicant, who began working at the ANR in 2004, said that Mira Nzoku was General Administrator, but she was unable to name the previous director. The applicant was unfamiliar with the name of Kazadi Nyembwe, who was named in a Canadian IRB report as having been appointed in 2001, and she declined to comment on her unfamiliarity with this name. In the section 13 report, the officer noted as follows:-

"Despite an extensive search of country of origin information, no information could be found on the current Director of ANR. Nor could the name Mira Nzoku be found. Information suggests that Lando Lurhakumbirwa was the Director of ANR in 2005, despite the applicant's claim that Mira Nzoku was appointed in 2004 […]."

18. The officer drew negative credibility findings from this apparent discrepancy. The applicant submits that the officer concluded that Mr. Nzoku did not exist or was not connected to the ANR. It is argued that a perfunctory Google search of Mr. Nzoku's name produces information supporting the applicant's claim. In particular, reliance is placed on an APARECO (*Alliance des patriots pour la Refondation du Congo*) document in the French language dated 16th May, 2006 - submitted in the present proceedings - which makes reference to events occurring in the office of "*Mr. Nzoku Mira de l'ANR*". Mr Nzoku is referred to as "*le patron des barbouzes*", which appears to translate as 'leader of the spies'. This, it is contended, is the most fundamental of the flaws identified.

19. The respondents argue that not only was this not an error that meant that ORAC lost jurisdiction, it was not an error at all. They argue that the burden of proof is on the applicant in relation to making out an asylum claim, and they question why the applicant did not put the APARECO report before the ORAC officer. In this regard, the respondents cite *P.S. (a minor) v The Minister for Justice, Equality and Law Reform and Anor* [2008] IEHC 235, where McMahon J. held that "the principal onus of proof lies on the applicant". The respondent further submits that it is unknown when the APARECO document became available online, and that there is no evidence to suggest that it was available to the ORAC officer at the time of making the interview or when the officer was preparing the section 13 report. The respondents argue further that in any event, this is a matter capable of being dealt with on appeal.

20. The second complaint made as to the assessment of credibility relates to the ORAC officer's comment, in the section 13 report, that doubts were cast over the applicant's credibility by the fact that she claims to have taken a job with the very authorities that her husband had fled only a year previously. The applicant contends that the officer's conclusion in this regard borders on the absurd, and notes that the applicant explained that she had hoped to cover up the connection with her husband by applying for a job as a single woman.

21. The respondents contend that it was open to the ORAC officer to reach the credibility findings that she did, and that those findings were reasonable in the circumstances and based on the evidence available. They contend that in any event, these alleged flaws are capable of being - and should be - dealt with on appeal.

(iii) Section 11B

22. The applicant contends that the ORAC officer gave insufficient consideration to the matters set out in section 11B of the *Refugee Act 1996* (as amended), which sets out a number of factors to which a decision-maker is required to have regard when assessing the credibility of an applicant.

23. Towards the end of the section 13 report, the ORAC officer noted that he had had regard to section 11B, and that section 11B (b) – which relates to the provision of a reasonable explanation to substantiate the applicant's claim that the State is the first country in which he or she has arrived – was "particularly relevant in this case." The applicant relies on *Ajoke v The Refugee Applications Commissioner* (unreported, High Court, 30th May 2008), where Hanna J. granted leave to challenge a decision-maker's mere reference to section 11B, as follows:-

"Again, one does not expect an exhaustive and detailed judgment from an Applications Commissioner but I do seriously query whether or not the bald statement that due regard has

been had to everything in section 11B is of itself enough, perhaps because they are such important credibility pointers and because they are mandatory considerations should something more not have been included."

24. The respondents contend that the reference made to section 11B in the section 13 report was a sufficient indication that the statutory obligation imposed thereunder upon her was observed. They stress that the matters identified in section 11B will not necessarily be relevant in any given case, and they argue that decision-makers should not be required to adumbrate the matters listed in section 11B in order to confirm their irrelevance to a given case. The respondents point out that the *Ajoke* decision was considered in *Akpata v The Refugee Applications Commissioner* (unreported, Birmingham J., High Court, 9th July, 2008). *Akpata* was a case where no negative credibility findings had been made in respect of the applicant, while negative credibility findings were at issue in *Ajoke.* Birmingham J. held as follows:-

"It does not seem to me that the *Ajoke* case is authority for the proposition that in every case, the manner in which section 11B was considered and the weight attached to the various subsections must be spelt out. There may well be cases where the importance that is being attached to issues such as the absence of documentation is such that it requires an elaborate exposition but I certainly do not accept that it is even arguable that that is required as a matter of ritual, as it were, in every case. More particularly in cases which do not turn on credibility."

25. The respondents suggest that the reasoning employed in *Akpata* should be applied to the present case. It is their position that it is not necessary, in cases where credibility is in issue in the decision, for the decision-maker to engage in what essentially amounts to a ritualistic assessment of the factors set out in section 11B.

(iv) Failure to Call Back the Applicant

26. A further alleged subsidiary flaw highlighted by the applicant is that at the end of the interview, the ORAC officer told the applicant that information would be checked against country of origin information and that the applicant would be called back, if necessary. The applicant was not called back. The applicant suggests that as country of origin information relied upon appears to flatly contradict the applicant's claim, the applicant should at least have been called back and given an opportunity to comment on that material. The applicant contends that if *certiorari* is granted, she will have the opportunity to demonstrate that country of origin information bears out what she told the ORAC officer.

27. The respondents reiterate their arguments with respect to the applicant's complaint that country of origin information was not specifically put to her.

III. Extension of Time

28. A preliminary matter that might appropriately be dealt with at this juncture is the applicant's request for an extension of the time. Section 5(2)(a) of the *Illegal Immigrants (Trafficking) Act 2000* allows the applicant a period of 14 days to seek judicial review, commencing on the date of notification of the ORAC decision. The applicant received notification of the decision on 19th July, 2006. The within proceedings were commenced on 31st August, 2006, some four weeks after the expiry of this statutory time-limit and so, this Court must consider whether there is good and sufficient reason for extending time. In *O'Connor v Private Residential Tenancies Board* [2008] IEHC 205, the Court held as follows:-

"The obligation of the Court to enforce time limits is based upon the need to have some finality in those proceedings which may be the subject of judicial review. It is very important that the courts do not readily grant such extension when the issue is raised at the hearing."

29. It is claimed that the applicant was not aware of the possibility of bringing judicial review proceedings until she came to be represented by her present solicitors on 17th August, 2006. In her affidavit, the applicant seeks to explain the delay by attesting that she was suffering from ailments arising from her alleged experiences in the DR Congo and therefore had difficulty attending to her affairs. A letter from the Mayo Rape Crisis Centre, dated July 28th, 2006, appears to support the claim that she was, indeed, suffering many symptoms indicative of post-traumatic stress disorder, and was intensely distressed. The applicant also submitted that the delay occurred during the month of August, at which time the Courts were not sitting. It was suggested that it is difficult to find lawyers during this time.

30. The respondents do not consent to the extension of time. They have noted that the applicant was represented by the Refugee Legal Service (RLS) at the time at which she should have initiated the proceedings herein. The respondents rely on the decision in *Azabugu v The Refugee Appeals Tribunal & Ors* [2007] IEHC 290 as authority for the contention that where there is no adequate explanation for the delay, this Court can infer that no adequate explanation exists at all. The respondents further point to the absence of an affidavit from the RLS corroborating the applicant's assertion that she was not aware of the possibility of taking judicial review proceedings, something which the respondents say might have been produced in light of the decision in *Akujobi & Anor v The Minister for Justice, Equality and Law Reform* [2007] IEHC 19.

31. I have not found convincing any of the grounds advanced by the applicant in respect of the extension of time. The applicant was represented at the time by the RLS and the Court may infer that she was informed of the avenues open to her. Presumably, her then legal advisors took the view that the correct way for her to proceed in the case was by way of an appeal to the Refugee Appeals Tribunal ("RAT"), and this they did on her behalf. In my view, that was clearly the correct course for her to follow. However, I will extend the time in this case because I consider that an important legal point arises in this case in relation to the availability of judicial review in respect of ORAC decisions.

IV. THE COURT'S ASSESSMENT

(i) Fair Procedures

32. With respect to the issue of fair procedures, I agree with the submissions of the respondents. It is noteworthy that in *Anochie v The Refugee Applications Commissioner* [2008] IEHC 261, Birmingham J. noted that the changes to the existing structure brought about by section 10 of the *Immigration Act 2003* mean that an applicant no longer has an entitlement, prior to the production of a section 13 report by ORAC, to seek all of the documents on which ORAC might rely. The deletion of section 11(6) of the *Refugee Act 1996*, as originally enacted, means that the right to request such documents now arises only after the section 13 report is produced.

33. It would be completely impossible to reach an expeditious conclusion if a decision-maker was required to debate with the person who is to receive the decision each and every one of the conclusions on credibility that he was going to reach. Moreover, if a decision-maker was to say to a person, in respect of each dubious comment, "I don't believe that is true", the person telling the story would lose the nerve to tell their story, true or false. It is important to bear in mind that the ORAC officer is not conducting a criminal trial. Rather, he or she is conducting an investigative procedure, on an inquisitorial basis.

(ii) Assessment of credibility

34. There is a long line of authorities in relation to the Court's limited role when credibility findings are challenged, which indicate that the Court must be very slow indeed to interpose its

views for those of an ORAC officer or a Tribunal Member. Those decision-makers, having had the opportunity to observe the demeanour of an applicant, are best-placed to make assessments as to credibility (see e.g. *Imafu v The Minister for Justice, Equality and Law Reform* [2005] IEHC 416; *Bujari v The Minister for Justice, Equality and Law Reform & Ors* [2003] IEHC 18; *Banzuzi v The Minister for Justice, Equality and Law Reform* [2007] IEHC 2). There is nothing unreasonable about the conclusions on the credibility findings of the respondent herein.

(iii) Section 11B

35. Whilst I think it would have been desirable to explain why he thought section 11B to be "particularly relevant" in this case, I do not consider this to be fatal to the ORAC decision. Moreover, this is an easily remediable matter capable of being dealt with on appeal.

(iv) Failure to Call Back the Applicant

36. The question of whether ORAC may call back an applicant after an interview was considered by Clarke J. in *Moyosola v The Refugee Applications Commissioner and Ors* [2005] IEHC 218. It should be noted that Clarke J.'s comments in that case were specifically confined to the situation where the ORAC officer had determined that section 13(6) of the *Refugee Act 1996* (as amended) applied to the applicant, with the effect that the applicant would not be entitled to an oral hearing on appeal and would not have any further opportunity to comment on the country of origin information relied on. This differs significantly from the situation in the within proceedings, where an oral hearing would be available to the applicant at the RAT stage, and indeed she has requested an oral hearing in her Notice of Appeal.

37. The question of whether or not ORAC should have called back the applicant is intrinsically related to the question of whether or not the ORAC officer breached fair procedures by failing to put the relevant material before the applicant at the interview. I have already considered this question, above, and I have found that it is not incumbent upon the respondent to put each and every piece of country of origin information to the applicant. The respondent's duty is, rather, to consider the country of origin information.

V. THE AVAILABILITY OF JUDICIAL REVIEW

38. Having assessed the merits of the applicant's case, I now turn to consider whether judicial review is the appropriate remedy in this case, or whether the more appropriate course of action would be to leave the applicant to her remedy on appeal.

39. In addition to commencing the within proceedings, the applicant has lodged a Notice of Appeal to the RAT, therein requesting a full oral hearing. The applicant argues, however, that judicial review is the appropriate remedy because there has been a fundamental flaw in the procedure followed, thereby bringing ORAC outside of jurisdiction. The respondents argue that all of the matters raised in the present proceedings are capable of being dealt with on appeal, and that the applicant would, in fact, be in a better position before the RAT than before this Court, as she would be able to give evidence herself at the RAT oral hearing. The respondents accept that applicants are entitled to fair procedures at every stage of the process, but suggest that a breach of fair procedures at the ORAC stage does not, *per se*, entitle an applicant to judicial review. Rather, they submit that in order for judicial review to be available in respect of an ORAC decision, it would be necessary for an applicant to demonstrate flaws that are far more fundamental than those alleged in the within proceedings.

The Court's Assessment

40. It is well established that the existence of an alternative remedy does not *per se* prevent the High Court from granting *certiorari.* Rather, it is a factor that must be considered by the Court. As stated by Denham J. in *Stefan v The Minister for Justice, Equality and Law Reform* [2001] 4 IR 203, "[i]t is clear that whilst the presence of an alternative remedy, an appeal process, is a factor, the court retains jurisdiction to exercise its discretion to achieve a just solution."

41. Guidance as to how the Court is to approach the question of alternative remedies may be gleaned from the decided caselaw on the subject. While the law in this area has recently been subject to refinement, particularly with respect to its application in the area of asylum and immigration law, the decision of the Supreme Court in *The State (Abenglen Properties Ltd) v Dublin Corporation* [1984] IR 381, remains particularly instructive. In that case, O'Higgins J. stated that "while retaining always the power to quash, a court should be slow to do so unless satisfied that, for some particular reason, the appeal or alternative remedy is not adequate." In *Abenglen*, Henchy J. – with whom Griffin and Hederman JJ. concurred – noted that in the Planning Acts, the legislature has envisaged "the operation of a self-contained administrative code, with resort to the Courts only in exceptional circumstances." He further held, in this regard, that:-

"[W]here Parliament has provided a self-contained administrative and quasi-judicial scheme, postulating only a limited use of the Courts, certiorari should not issue when, as in the instant case, use of the statutory procedure for the correction of error was adequate (and, indeed, more suitable) to meet the complaints on which the application for certiorari is grounded."

42. The statutory scheme established by the Oireachtas in the area of asylum and immigration may be compared to that established under the Planning Acts and the observations of Henchy J. may be said to apply thereto by analogy. In this regard, in *Kayode v The Refugee Applications Commissioner* [2005] IEHC 172, O'Leary J., refusing to grant leave on the basis that the matters complained of could be dealt with by way of an appeal to the RAT, expressed the view that:-

"[T]he application of the correct legal principles to this and similar applications will lead to speedier decisions which will assist in maintaining the integrity of the statutory scheme established by the Oireachtas."

43. Further, in *Z v The Minister for Justice, Equality and Law Reform* [2008] IEHC 36, McGovern J. observed as follows:-

"The Oireachtas has put in place a statutory scheme for dealing with asylum applications which includes a right of appeal from decisions of the RAC. While there may be circumstances in which an error made by the RAC should properly be dealt with by an application for judicial review, the Courts should only grant leave to an applicant where the issues cannot adequately or conveniently be resolved before the RAT."

44. The Courts must, of course, engage in the weighing of the relative merits of an appeal as opposed to judicial review, as is required under the test first established in *McGoldrick v An Bord Pleanála* [1997] 1 IR 497. The weighing of the relative merits – both in asylum cases and otherwise – is, in the words of O'Leary J. in *Kayode v The Refugee Applications Commissioner* [2005] IEHC 172, "a matter for the Court's discretion and will depend on the facts of the case." Guidance may be gleaned, however, from the significant number of asylum cases in recent years in which the Court has refused to grant *certiorari* (or leave) on the basis that the matters raised were of the type that might be raised in the course of an appeal, relating – by and large – to the quality of the decision rather than the defective application of legal principles. In this regard, see *Kayode v The Refugee Applications Commissioner* [2005] IEHC 172; *Akpomudjere v The Minister for Justice, Equality and Law Reform and Others* (unreported, Feeney J., High Court, 1st February, 2007); *Chukwuemeka v The Minister for Justice, Equality and Law Reform*

and Another (unreported, Birmingham J., High Court, 7th October, 2007); *Olayinka v The Minister for Justice, Equality and law Reform* (unreported, Birmingham J., High Court, 27th May, 2008); *Anochie v The Refugee Applications Commissioner* [2008] IEHC 261; *Akpata v The Refugee Applications Commissioner* (unreported, Birmingham J., High Court, 9th July, 2008).

Decision

45. It is clear in the light of this series of recent decisions that it is only in very rare and limited circumstances indeed that judicial review is available in respect of an ORAC decision. The investigative procedure with which ORAC is tasked must be properly conducted but the flaw in that procedure that entitles an applicant to judicial review of an ORAC decision must be so fundamental as to deprive ORAC of jurisdiction. The Courts, the applicants themselves, and the general public have a right to expect that no such fundamental flaw should ever occur in such an application. An applicant must demonstrate a clear and compelling case that an injustice has been done that is incapable of being remedied on appeal to the RAT. If such a clear and compelling case is not demonstrated, the applicant must avail of the now well established procedure that has been set up by the Oireachtas, which provides for an appeal to the RAT.

46. By way of example, I would note that a clear and compelling case that an injustice at ORAC is incapable of being remedied on appeal to the RAT might be demonstrated where the ORAC officer's findings include one or more of the findings specified in section 13(6) of the *Refugee Act 1996* (as inserted by section 7(h) of the *Immigration Act 2003*). These findings include, *inter alia*, that the applicant failed to show a minimal basis for the contention that he or she is a refugee; made false, contradictory, misleading or incomplete statements leading to the conclusion that the application is manifestly unfounded; or failed to make an application as soon as reasonably practicable after arrival in the State, without reasonable cause. Any appeal against an ORAC report that includes such findings must be determined without an oral hearing, in accordance with section 13(5) of the Act of 1996. As noted by Clarke J. in *Moyosola v The Refugee Applications Commissioner* [2005] IEHC 218, "[t]he combined effect of sections 13(5) and 13(6) is to impose significant limitations on the extent of the appeal that will be available to an applicant to the RAT". For that reason, an injustice complained of may be incapable of being remedied on appeal and this may constitute one of the rare and limited circumstances where the applicant may be entitled to judicial review of an ORAC decision.

47. The procedure established by the Oireachtas envisages in the first place an application to ORAC. It is the role of that body to conduct an administrative investigation to determine if the State should extend its assistance and protection to a person in flight from danger. It is imperative in the interest primarily of such persons that the State provides a decision in as expeditious a manner as is possible, consistent with a fair and thorough investigation. If ORAC makes a positive recommendation, then the matter is concluded. If ORAC makes a negative recommendation, then the system put in place by the Oireachtas provides for an appeal to the RAT. In situations where sections 13(5) and (6) of the Act of 1996 do not apply, this stage of the process provides a dissatisfied applicant with a more elaborate procedure involving legal representation and the right to an oral hearing.

48. The Court is of the view that the existence of a statutory right of appeal to the RAT – with the exception of cases where sections 13(5) and 13(6) of the Act of 1996 apply – is a fundamental reason not to grant judicial review. This Court should not intervene until the statutory asylum process has been completed. To do otherwise would be to usurp the authority that has been granted to the RAT by the Oireachtas. The Oireachtas has put in place a process that aims to ensure that asylum applications are decided upon with all due expedition. The purpose of this process will necessarily be defeated if each and every applicant can issue judicial review proceedings before the process has been exhausted. Judicial review proceedings can take a year or longer to come on for hearing. This has the effect that applicants are deprived of a definitive and expeditious decision, and are thereby left in a legal limbo, unable to progress their lives. This is an undesirable state of affairs, which does justice to no-one.

VI. CONCLUSION

49. In light of the foregoing, I am of the view that there are no substantial grounds for contending that the ORAC decision / recommendation is invalid or ought to be quashed. Moreover, the applicant has not demonstrated that any injustice has been done that is not capable of being remedied on appeal to the RAT. I therefore refuse to grant leave to apply for judicial review.