

THE HIGH COURT
JUDICIAL REVIEW

2007 1315 JR

BETWEEN

M. H. (A MINOR SUING BY HER NEXT FRIEND, M. K.)
APPLICANT

AND

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

RESPONDENTS

JUDGMENT delivered by Mr. Justice McMahon on the 17th day of July, 2009

Background

The minor applicant is a citizen of Eritrea. She was born in Addis Ababa, Ethiopia on the 12th December, 1989 and lived there until she was ten. Her family then moved to Eritrea during the war between Ethiopia and Eritrea because her parents were Eritrean. She asserts that she and her family were persecuted in Eritrea because of their religious beliefs (pentecostal protestant) and that she herself was detained and beaten for practicing her religion.

The applicant arrived in this State in September, 2006 as an "unaccompanied minor" seeking international protection and has applied for refugee status.

She completed the required questionnaire on the 10th October, 2006 and attended for interview on the 16th November, 2006 at which time she was a month short of her seventeenth birthday.

In January, 2007, the Refugee Applications Commissioner recommended that the applicant should not be declared to be a refugee. Leave to bring judicial review proceedings was granted by Clark J. The case came before me on the 9th July, 2009 for determination.

The amended grounds for which leave was granted are set out here in full:-

1. The second named respondent failed to apply a liberal benefit of the doubt to the minor applicant and/or to take into account the age and individual circumstances of the minor applicant.
2. Further, or in the alternative, the second named respondent erred in purporting to apply "a liberal interpretation on the rules governing an asylum

application" at the end of his appeal decision having already rejected the minor applicant's credibility without applying a liberal (or any) benefit of the doubt.

3. In deciding that the minor applicant did not display an adequate knowledge of Assab in Eritrea and that this fundamentally undermined her claim, the second named respondent failed to consider the accurate evidence about Eritrea and Assab provided by the applicant at her interview and/or took into account an irrelevant or factually incorrect consideration which is that the Hanish Islands can be seen from the shore.

4. In deciding that the minor applicant's claim that her father had been imprisoned for expressing his religious beliefs was not credible because her father's name was not on a list of approximately 30 pastors and senior religious figures detained in Eritrea which was provided by the Commissioner, the second named respondent failed to consider that the applicant had not claimed that her father was a pastor or senior religious figure and/or failed to take into account other more relevant country of origin information, i.e. the Christian Solidarity Worldwide Report also provided by the Commissioner, which refers to a list of 883 persons detained for religious reasons.

Counsel for the respondents treated grounds 1 and 2 together, being of the view that they were merely two aspects of the same argument. I agree with that submission and adopt it as the appropriate approach also in my judgment. The third ground asserts that the tribunal member acted unfairly in drawing an adverse conclusion against the applicant on the basis of her perceived lack of knowledge about Eritrea and Assab, places in which she claimed to have resided. Ground 4 also criticizes the tribunal member's finding that because her father's name was not on a list of senior religious figures detained in Eritrea, the applicant's evidence in respect of her father's imprisonment for his religious beliefs was not credible.

I propose to deal with grounds 3 and 4 first before addressing the "liberal approach" argument which, according to counsel for the applicant, should have been applied to her case.

Ground 3

I reproduce hereunder the answers (and summaries where appropriate) which the applicant gave at interview. At question 10 she was asked to tell a bit about Assab and about the area she lived in. The applicant's answer was as follows:-

"I lived in Campo Sudan – other place is called Assab Kebir – Campo Sudan is in the town – Campo Sudan and Assab Kebir are separate parts of the town –

I live in Campo Sudan but there are other parts of the town – Assab Kebir and Assab Sekir – most of the people living in Campo Sudan are soldiers – Eritrean soldiers – they have a barracks there."

At question 14 she was asked if there was a church or chapel in Campo Sudan. She answered, "yes – only one – it was Pentecostal – it is the one I was a believer of – both of my parents were Pentecostal...". The interview continued:-

"Q. 38 Can you write the names of three Eritrean newspapers in Tigrinian?"

A. (Applicant's Tigrinian writing) I remember only Hedus Eritrea 'new Eritrea 1'.

Q.39 Can you write the names of three Eritrean radio stations in Tigrinian please?

A. (Name in Eritrean) Radio Zehara (another name in Tigrinian) Radio Hafash. I only remember two.

Q. 46 What is the main source of work or industry in Assab?

A. There is an oil refinery there – because it is very hot there, people come and go, drivers coming in and out – some people live in Assab – many work as drivers for the refinery.

Q. 47 Is Assab on a hill, a river?

A. It is near the Red Sea.

Q. 48 Is it on the coast?

A. Yes.

Q. 49 Is there any interesting, unusual feature on the coast near Assab or is there any Island off of the coast?

A. I know only the Red Sea.

Q. 50 If you walk down to the sea front of Assab, can you describe it?

A. There is a port – it is big – there is nothing else on the coast.

Q. 51 What are the religious holidays celebrated in Eritrea?

A. Easter, New Year, Christmas – that is all I can remember.

Q. 60 Is there a prison in Assab?

A. Yes there is but it is far away – it is outside the town.

Q. 61 Who is in charge of Assab town – Is there a mayor or governor?

A. There is an administrator – S. I. Bhat Efrem – appointed by Government."

In the report made by the authorised officer for the Refugee Applications Commissioner pursuant to s. 13(1) of the Refugee Act 1996 (as amended), para. 5.9 contains the conclusion reached by the authorised officer on the basis of the above interview and documentation available to her.

"5.9 The applicant when queried about Assab did not display any knowledge it would be reasonable to expect of a resident who had lived there for six years. The applicant claims that the engagement party she attended in June 2006 was in Assab Sakire (Seghir) which appendix C shows it on the shoreline. The applicant when asked if there were any Islands off the coast of Assab stated that she only knows the Red Sea (ss. 49/50, pp. 21/22 of interview notes). Appendix D shows

that there are several Islands a few kilometres off the coast of Assab which considering the distances involved are visible from the shore. Appendix C shows that the Islands are considered as adding to the attractions of the bay. The applicant's lack of knowledge of the existence of these Islands will lead one to believe that Assab is not her place of habitual residence."

Appendix C, to which the authorised officer refers is a page downloaded from a website entitled home.planet.nl/hands.mebrat/eritrea/assab.htm. This would appear to be a page taken from a tourist site since it also contains a résumé of hotel accommodation in Assab. Describing the town of Assab, the downloaded document states:-

"The town is divided into three parts. Assab Seghir (small Assab) on the shoreline, Assab Kebir (big Assab) in the centre of town, containing the port and the city centre and nestling behind it is the rather ramshackle Campo Sudan, former domain of Ethiopian residents. There are extensive salt flats around Assab. There are 30 Islands in the bay of Assab, which can be visited."

Appendix D contains a map of the area which is apparently downloaded from the internet also. The scale of the map is such that it does not give any detail of the town of Assab itself, but simply shows that it is on the coast and that there are some broken islands in the bay in front of the city. At the top of the map there is a reference to the Hanish Islands which, from the scale of the map would appear to be some 70 kilometres from the city.

Considering the answers given by the applicant in her interview, I have great difficulty in agreeing with the conclusion which the authorised officer was prepared to make from the scanty information downloaded from the internet. First of all, the map itself gives no detailed outline of the topography of the city. Secondly, the conclusion drawn from the map that the islands off the coast of Assab "considering the distances involved are visible from the shore" is seriously suspect. I do not know how this conclusion can be drawn with any certainty. It borders on the verge of conjecture. Moreover, that some of the islands can be visible from some parts of the city is not relevant. What is relevant is whether they were visible from where the applicant lived. There was no evidence of the applicant's residence, whether it was in a high-rise building facing towards the sea or whether it was in a basement apartment facing inland. It must also be recalled that when the applicant lived there she was between ten and fifteen years of age and had come there as a stranger. The fact that there are 30 islands which can be visited has nothing to do with their visibility.

Given the level of answering which the applicant gave in relation to the other questions posed to her about Assab, I think it is unreasonable for the authorised officer to conclude from this that "the applicant's lack of knowledge of the existence of these islands would lead one to believe that Assab is not her place of habitual residence". The relevant paragraph in the tribunal's report on this issue is as follows:-

"The applicant claims that she lived in Assab but during the course of her interview it appears that she did not display knowledge that would be reasonably expected of a resident who lived there for six years. This fundamentally undermines the applicant's claim that she was living there for six years prior to coming here."

It is clear from this that the tribunal member based his conclusion also on the answers furnished by the applicant at interview.

The criticisms which I levelled against the Commissioner's findings are equally applicable to the conclusion apparently reached by the member of the tribunal. The only objection to the information given by the applicant in relation to Assab, related to her failure to mention in her answer that there were islands in the bay. No criticism was levelled to any of her other answers in respect of Assab, i.e. that there was only one chapel or church, that there was a big refinery, that the prison was outside the town, that there were different parts of the city, that there was an administrator, and giving his name etc. I am of the view for these reasons that to come to a conclusion that the applicant was not telling the truth in the circumstances is unreasonable and irrational. Moreover, it is significant to note that the tribunal member states that this fact alone "*fundamentally undermines*" the applicant's story that she lived in Assab for six years. This was a very significant factor in the tribunal member's conclusion that the application must fail.

Finally, if such an adverse finding was to be made against the applicant, it should have been explicitly put to the applicant to give her an opportunity of rebutting it. This was not done in this case.

Ground 4

The applicant's argument under this heading is set out in her counsel's submission in the following language:-

"The negative credibility finding that the Commissioner had put a list of 'those detained in Eritrea in evidence' and the applicant's father was not on it, does not accurately reflect the country of origin information before the Tribunal. That list, for which no reference is provided, has 30 people on it who are pastors. The applicant did not claim her father was a pastor. Other country of origin information (the Christian Solidarity Worldwide Report provided by the Commissioner) refers specifically to a list of 883 detainees although these are not named. It is clear that the list which the Tribunal member is referring to is not a list of all the people detained in Eritrea for religious reasons.

In the circumstances, the second named respondent failed to have proper regard to information set out in the country of origin documentation as attached to section 13 report herein.

Further or in the alternative, the second named respondent used country of origin information in a selective manner which failed to accord with the requirements of natural and constitutional justice."

The relevant paragraph in the report pursuant to s. 13(1) of the Refugee Act 1996 is set out at para. 5.8, which I quote in full:-

"5.8 The applicant when queried as to whether her father's detention was reported to any human rights group or to any international organisation stated that it was not (Q. 29, p. 14 of interview notes). The applicant when queried as to whether the church authorities reported to any religious organisations about her father stated that most of the pastors are in prison (Q. 30, p. 14 of interview notes). Many human right groups and religious groups collect information on, and list the names and suspected locations of people jailed for practicing their religion – appendices A and B. Such organisations assist in putting pressure on the government to release the prisoners. It does not add to the credibility of the applicant's claim that she is unaware of any information given to such groups about her father, particularly as she claims that church members visited him in prison."

Appendix A appears to be an extract from the Christian Solidarity Worldwide Report, entitled "Briefing. Eritrea. Catalogue of Religious Repression since 2003 (updated May 2006)". As its name suggests this document purports to catalogue, the many incidents of harassment and oppression carried out against various persons attending religious meetings of various kinds by groups not tolerated by the authorities. In the course of the narrative, the following paragraph occurs:-

"In April, Compass Direct reported that evangelical sources in Eritrea had issued a list containing the names of 883 people detained in Eritrea. 16 of them are pastors."

In appendix B, a list of 27 persons who are known to be prisoners in Eritrea is exhibited of whom 15 are described as pastors. (Downloaded apparently from a website called Prison List, Eritrea, 31st January, 2006, page 12)

I do not accept the interpretation of counsel for the applicant that the authorised officer in putting the list of 27 names into evidence was suggesting that since the applicant's father's name was not on the list, her credibility was undermined for this reason alone. That would be to attribute too much to it. Neither did the tribunal member state that this was an exhaustive or comprehensive list and I am not willing to infer that the tribunal member supposed that this was the case.

I reject the applicant's argument under this heading.

Grounds 1 and 2

The final two grounds (grounds 1 and 2) relied on by the applicant emphasised that the tribunal member failed to apply a liberal benefit of the doubt to the minor applicant or failed to apply a "liberal interpretation of rules governing an asylum application" to her.

It should first be noted that the applicant was nearly seventeen years of age when she was interviewed as part of the process. She was not a very young person or a person who could not speak English. She was an articulate young woman who was progressing well in the Irish legal system and did not need an interpreter to engage with the process. Having said that, I am conscious of the distinction already made between assessing the answers relating to present events, on the one hand and her perception of events when she was a much younger person on the other hand. The tribunal member noted in his conclusion that he applied the liberal test where he said:-

"As the applicant presents as an unaccompanied minor, the Tribunal has applied a liberal interpretation of the rules governing an application for refugee status. The Tribunal has also taken into consideration the International Convention on the Rights of the Child."

I have no reason to believe that he did not do so. The onus in these circumstances falls on the applicant's legal team to show otherwise. In this regard, I acknowledge the argument advanced by the applicant that it was not sufficient for the tribunal member simply to utter these words in some formulaic fashion by way of lip service only; they must reflect the reality of the decision making process also. I repeat, however, that one must accept the tribunal member's word until the contrary is shown.

Because of my finding in ground 3, it is not necessary for me to elaborate further on this issue.

The significance which the tribunal member attributes to the matter raised in ground 3, where he says his determination on the issue "fundamentally undermines the applicant's claim..." and which I hold was unreasonable and irrational, cannot be ignored, or cured by the rest of the findings. It is so basic in my view, that it must taint the whole process. For this reason alone, I will grant an order of *certiorari* quashing the decision of the second named respondent to reject the applicant's refugee appeal issued to the applicant on the 27th June, 2007.