Neutral Citation Number: [2009] IEHC 329

THE HIGH COURT

2007 1540 JR

BETWEEN/

S. S. S.

APPLICANT

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM AND

REFUGEE APPEALS TRIBUNAL

RESPONDENTS

JUDGMENT of Mr. Justice Cooke delivered on the 14th day of July, 2009

1. By a judgment of 3rd February, 2009 and an order of 10th February, 2009, Birmingham J. granted leave for the bringing of the present application to seek an order of *certiorari* with a view to quashing a decision of 21st August, 2007 made by the Refugee Appeals Tribunal rejecting an appeal by the applicant against a report of the Refugee Applications Commissioner of 28th February, 2007, in which it was recommended that the applicant be not declared to be a refugee.

2. The single ground upon which leave was permitted was as follows:

"The second named respondent failed to have regard to relevant considerations and/or made unreasonable findings. The second named respondent found that the applicant did not have a detailed knowledge of Islam and in particular of the Koran at her interview and for this reason it was not credible that she was a member of the Ashraf clan which is reported to be a very religious clan. The second named respondent failed to consider that the applicant had made no claim that she herself was particularly religious and/or failed to consider that the applicant's explanation that she had no formal education at all and that her religious education was interrupted by the fighting in Somalia, in the premise it the Tribunal member placed over reliance upon and over interpreted limited country of origin information about the Ashraf clan and failed to consider the particular circumstances of the applicant as described in her evidence."

3. The applicant arrived in the State in 2006 as an unaccompanied minor who claimed to have fled Somalia. She claims she was a member of the minority Ashraf clan, which has suffered badly at the hands of militias in the conflicts which have ravaged that country in recent years. Her family have been repeatedly attacked by militias and several times forced to flee to flee their home. Two of her brothers have been killed and she herself has been abducted by militias and mistreated on two occasions.

4. It does not appear to have been doubted by either the authorised officer of the Commissioner or the Tribunal member in this case that the account she gives of the suffering of her family and her own mistreatment at the hands of the militias would constitute a basis for a fear of persecution for a Convention reason if it was found to be credible. The treatment of the Ashraf clan she describes is consistent

with country of origin information. The report of the Commissioner of 28th February 2007, however, did not find her credible, largely on the basis of her answers to questions about the area in which she claimed to live, her knowledge of the Islamic faith and of the Koran and of her account of her travel from Somalia to Ireland.

5. The Tribunal member came to the same conclusion and the single ground of the present application is directed at one particular aspect of that assessment of the applicant's credibility namely, the appraisal made of her answers to the questions as to her knowledge of the Islamic faith and the Koran. The Tribunal member does not appear to rely on the questions put by the authorised officer in relation to her knowledge of the area she lived in or in relation to the composition and characteristics of the Ashraf clan.

6. This, therefore, is a challenge to the Tribunal member's treatment of the issue of credibility. The case law in this regard is well known and many of the relevant judgments have been referred to in the written submissions and in oral argument. It is therefore unnecessary to address that case law in detail. Without being exhaustive, it appears to the Court that the guiding principles which emerged from the case law might be usefully summarised as follows:

1) The decision on credibility is to be made by the Commissioner at first instance and on appeal by the Tribunal member.

2) Provided a finding on credibility is based on an objective appraisal of all relevant evidence and information and free from any material infringement of applicable law or the principles of natural or constitutional justice, it will be immune from challenge by judicial review.

3) This Court is not concerned with the issue of credibility itself and must not fall into the trap identified by Peart J. in the *Imafu* case of substituting its own assessment of credibility for that of the decision makers during the asylum process.

4) The Court is only concerned with the legality of the process by which these decision makers have reached a negative conclusion on credibility and once the Court finds itself querying whether or not a decision maker has perhaps been too harsh in assessing the answers given to questions put in order to test credibility, where the questions are otherwise logical and appropriate in the testing process, the Court is in danger of substituting its own view.

5) The Court must also be wary of acceding to an invitation to deconstruct a decision on credibility by isolating individual parts of the appraisal and subjecting particular findings to distinct analysis.

6) In most instances a decision maker reaches a single overall conclusion on credibility based on a cumulative impression gleaned from the applicant's responses to questions on various parts of the claim and on the personal history as given, including the way in which the story is told, the applicant's demeanour and his or her reactions when doubt is expressed or discrepancies or contradictions are highlighted.

7) The decision maker must, of course, consider all pertinent evidence and information and must weigh the material objectively and not selectively.

8) The decision must, therefore, be read as a whole and an error in respect of one or more specific factors identified as undermining credibility will not invalidate the entire decision if the negative conclusion is adequately sustained by the remaining factors relied upon by the decision maker.

7. Applying those principles to the present case it is clear to the Court that the annulment of this Contested Decision would not be warranted. The ground upon which the challenge is made is directed exclusively at the reliance by the Tribunal member on the responses given by the applicant to questions about her Islamic faith and her knowledge of the Koran. It is argued that, having regard to the applicant's young age, her limited education at home by her father and the circumstances in which for effectively her entire life she has lived in an area of conflict, the Tribunal member's finding that she should have a better knowledge is clearly unreasonable and irrational. She did, in fact, show quite a good knowledge and got most of the questions right.

8. It is said that the Tribunal member exaggerated the significance of the description of the Ashraf clan as a religious group in the country of origin information in effectively building an expectation of a more detailed familiarity with Islamic doctrine on the part of a teenage girl with no formal education. As against that, the respondent argues that what was clearly significant to the Tribunal member was that she had described her father, from whom she received that instruction, as a Koranic teacher who kept a small Koranic school.

9. In the Court's judgment those arguments go to the question of the appraisal made by the Tribunal member, rather than to the legality of the process. The argument is effectively that the Tribunal member was being unduly harsh and therefore unreasonable in the criticism of her answers. That might well be a valid criticism but that is a matter of judgment as to what should be expected and it is necessary to distinguish the appraisal itself and its conclusion from the process employed by the Tribunal member. The process is that of testing the applicant by questions arising out of her own account of her education, the Islamic instruction by her father who was a Koranic teacher. As such, the approach was clearly relevant and logical. To take issue with the assessment of the responses is to invite the court to say that it would have taken a different view.

10. Given the account given by the applicant, the questions put were clearly logical and relevant but there is a second important reason why the assessment in this case could not be annulled. The questions as regards religion were only one of the factors identified by the Tribunal member in reaching the overall conclusion on credibility. Far more significant perhaps is the attention given to the applicant's account of the arrangements for her flight from Somalia and her travel to Germany and Ireland, a factor which the Tribunal member is required to take into account under section 11B(c)of the 1996 Act.

11. The specific points identified by the decision in this regard include the following:

a) Her family were repeatedly attacked, two of her brothers were killed; they had been in a position to pay some ransom money. Many members of the Ashraf clan had already left Somalia, yet only the applicant was sent abroad. Why did the family as a whole not leave?

b) She was to be taken by an agent arranged by her mother and an uncle to her uncle in Canada, yet she had no idea whereabouts in Canada the uncle lived and expected to ask around for him when she got there. She had neither been given

nor apparently asked for any contact address or phone number for her uncle in Canada.

c) She was to say she was the agent's daughter if questioned during the flight but she appears not to have known his name as it is nowhere mentioned and she knows of no details of the passport under which she travelled. Her account of how she passed through controls at airports in Germany and Dublin with the agent and was put, by him, in a taxi and abandoned is said to be vague and not credible.

12. These findings, unlike the questions on her religious knowledge, do not lend themselves to the type of judgmental appraisal applied to the questions on religion. They are common sense queries based upon the undisputed description given by the applicant herself and are clearly cogent, relevant and almost inevitable. Contrary to the submission that is made, they arise out of what she herself had said and cannot, therefore, be said to be speculative simply because they are queries. Thus, if these were the only findings to underpin the overall conclusion on lack of credibility they would clearly be sufficient on their own to sustain that finding.

13. Finally, it was argued that the particular Tribunal member had been inconsistent when this conclusion is contrasted with an opposite conclusion reached by her in an earlier and similar case involving an Ashraf applicant submitted to the Tribunal. However, a reading of that decision in fact highlights why the present decision cannot be interfered with and why the opposite conclusion was tenable in that case. That case, number 69/1262/65 was a case of a minor in which the benefit of doubt was expressly extended. It turned entirely on the credibility of the applicant's description of persecution of the Ashraf clan and no issue arose equivalent to those of the present case concerning the fact that the applicant's family had not fled, though they had apparently the means to do so, or her description of being taken to Canada to an uncle she had no means of locating.

14. For all of these reasons the court considers that this is a clear case in which the limited jurisdiction of the Court in relation to findings of credibility cannot permit it to overturn a conclusion which is adequately based upon findings other than those which are sought to be impugned in the single ground for which leave has been permitted. The application for relief, therefore, must therefore be refused.