

**THE HIGH COURT**  
**JUDICIAL REVIEW**

**2007 1294 JR**

**BETWEEN**

**O. A. O.**

**APPLICANT**

**AND**

**THE MINISTER FOR JUSTICE, EQUALITY, LAW REFORM AND**

**THE REFUGEE APPEALS TRIBUNAL (MICHELLE O’GORMAN)**

**RESPONDENTS**

**JUDGMENT OF MS. JUSTICE M. H. CLARK, delivered on the 13th day of February, 2009.**

1. The applicant is seeking leave to apply for judicial review of the decision of the Refugee Appeals Tribunal (RAT), dated the 21st August, 2007, to affirm the earlier recommendation of the Office of the Refugee Applications Commissioner (ORAC) that she should not be declared a refugee. Mr. Ian Whelan B.L. appeared for the applicant and Ms. Sinéad McGrath B.L. appeared for the respondents. The hearing took place at King’s Inns in Court 1 on the 5th February, 2009.

**Factual Background**

2. The applicant is a national of Nigeria of Yoruba ethnicity. Her account of events is as follows: she was born in 1976 and grew up in Lagos State. She was an only child and was raised in a strict Muslim family. She has had thirteen years of education, having attending primary and secondary school from 1982 to 1994 and having commenced study for a marketing qualification at a Federal Polytechnic in 2005. Between 1994 and 2005 she worked at her mother’s clothes shop. She says she attended the Mosque until 2004.

3. The applicant says her problems began when she converted to Christianity in January, 2005, after a friend convinced her to attend church. Her parents were angry when her father found her reading the Bible and she told them of her conversion. Some months later she met a Christian man at her church and entered into a relationship with him. She says she saw him weekly, mostly at church. Her parents did not approve of the relationship but she says they could not prevent it.

4. In September, 2005, she moved into student accommodation in Ilara, an hour from her parents’ house, and began to study marketing. From then on, she returned home once a month and her parents also visited her in Ilara. She only saw her boyfriend when she went home. In July, 2006, she became pregnant by him. When she told her parents her father told her she would not marry a Christian and demanded that she have an abortion. He then told her that a 60-year old Muslim Imam, who already had three wives, had paid a dowry to the

applicant's parents in respect of his envisaged marriage to her. The applicant became very angry with her parents.

5. The applicant's mother died of a heart attack on the 2nd September, 2006. Two days later the applicant and her boyfriend went to Ibadan to stay with a friend of his. On the 20th September, 2006, her father tracked her down with the help of police officers. The applicant's boyfriend was arrested by the police on charges of kidnapping; she has not seen him since. She says she was forced to return to her father's house but locked herself in her room and refused to have an abortion or to go through with the arranged marriage to the Imam.

6. Two months after his arrest the applicant received a phone-call from her boyfriend's friend, who told her the police had released her boyfriend. She says he ran away after being released and she does not know his whereabouts. On the 3rd December, 2006, she received another phone-call from that friend, telling her to meet him at a bus stop five minutes from her house. She went to the bus stop and was met there by the friend and an agent. The friend paid for the agent to accompany the applicant by plane from Nigeria to Ireland via Paris; she does not know how much he paid or any further details about the agent and she did not know if the same plane from Nigeria to Paris continued from Paris to Ireland. She says the agent gave her a red passport which did not have her photo on it. It bore a French name but she could not remember if it had a visa in it. She gave it back to her agent after coming through immigration. The agent answered questions when they were asked.

### **Procedural Background**

7. The applicant was six months pregnant upon arrival in the State. She made an application for asylum on the 4th December, 2006. She filled in an ORAC questionnaire in which she claimed to fear persecution on the basis of her religion. She stated that she fears being forced to marry a Muslim Imam and that she and her baby would be at risk of being killed by her father who believes in honour killings, or by the Muslim Imam who is influential.

8. On the 4th April, 2007 she gave birth to a daughter. She indicated to ORAC that she wanted her daughter to be included under her application for asylum. Her s. 11 interview took place on the 17th May, 2007. She did not submit any travel or identification documents and said this was because her journey was unplanned and her agent took all of her travel documents. When it was put to her that as an educated woman she surely would know whether she took the same plane from Nigeria to France and on to Ireland, she replied "I don't know if it was the same plane." It was noted that when asked how often she saw her boyfriend the applicant was very vague. It was put to her that COI indicates that it would be very unusual for a Muslim arranged marriage to occur at the age of 29; she said she didn't know when they started arranging the marriage and that in Nigeria "they wait for the right person".

9. The applicant told the interviewer that, although the Imam was her father's close friend and had visited their home while she was pregnant, he did not find out she had converted to Christianity, that she was in a relationship with a Christian man, or that she was pregnant. When it was put to her that neighbours talk and that communication in Nigeria is very effective, she had said the Imam was a well connected man and knew influential people in town but not her neighbours. When the interviewer said she found it hard to believe the applicant was afraid the Imam would find her elsewhere in Nigeria if he was unable to find out such basic information, the applicant pointed out that someone told her father where she was in Ibadan.

10. The applicant was also asked why her father had not forced her to have an abortion when she was at his house between August and December, 2006. She said she locked herself in her room for most of the time but was able to come out to eat. She didn't know why her father didn't break the door down even though he abducted her from Ibadan or why he hadn't killed her even though he had ample opportunity to do so, and she said she didn't know what he had planned.

11. In the s. 13 report compiled on the 22nd May, 2007, it was recommended that the applicant and her daughter should not be granted declarations of refugee status. A number of negative credibility findings were made with respect to the following aspects of the applicant's claim:-

- That the Imam would not have found out about her circumstances;
- That the applicant would not have informed the police that the charge of abduction levied against her boyfriend was a mistake as she had gone willingly with him to Ibadan;
- That her father had ample time to force her to have an abortion if that was his aim, that she was able to lock herself in her room and emerge for food when she needed it, and that her father had not broken the door down;
- That the Imam would not have insisted on a definite marriage plan before paying a dowry; and
- That the applicant said she travelled through France on her way to Ireland but did not claim asylum there. It was found that s. 11B (b) of the Refugee Act 1996, as amended, was particularly relevant in the circumstances.

12. Four pieces of country of origin information (COI) were appended to the s. 13 report, namely a report from the Women's International Health Coalition (WIHC) entitled *Nigeria – The Context: A Brief Overview of Nigeria* of 2004, a list of Nigerian women's rights organisations and information taken from a web-page about BAOBAB, and two excerpts from a U.K. Home Office Report of 2006 (the second referencing a British-Danish FFM report). These four documents comprise the only COI that was before the Tribunal Member at the appeal stage: no additional documentation or COI was attached to the Form 1 Notice of Appeal and covering letter submitted, and nothing further was submitted at the appeal hearing.

13. An oral appeal hearing took place at which the applicant was legally represented. No attendance note of the hearing is before the Court; the Court is therefore reliant on the summary contained in the Tribunal Member's decision. This summary indicates that no documents were submitted and no submissions were made by or on behalf of the applicant at the hearing. A negative decision issued from the RAT on the 21st August, 2007. It is that decision that is challenged in the within proceedings.

### ***The Impugned Decision***

14. The RAT decision first sets out the applicant's claim and recorded the evidence given by the applicant and the questions asked of her at her appeal hearing. It next addresses various legal principles and provisions, and it then turns to assess the applicant's claim. In the analysis section, the Tribunal Member

found that "credibility issues arise which undermine the Applicant's account". She went on to address:-

- (1) The applicant's knowledge of the Muslim faith;
- (2) The period between her boyfriend's arrest and her departure; and
- (3) The applicant's travel to Ireland.

15. On the applicant's faith, the Tribunal Member found that the applicant's knowledge of the Muslim faith was "very vague" and that when she was asked in any detail about the faith she was "generally very hesitant". In particular, the Tribunal Member noted that the applicant had named only four of five pillars of Islam, was unable to name the five daily Muslim prayers, was unaware that Bilal is one of Mohammed's companions, incorrectly stated that Ileya is the first month of the Islamic calendar, was unaware of the name of the festival that starts on the first day of that month, and incorrectly stated that Ramadan sometimes occurs on the fourth month of the Muslim calendar. She concluded that:-

*"Considering the Applicant's age, education [...] and the fact that she lived with Muslim parents and attended a Mosque until 2004, it is difficult to believe that she would not have a more comprehensive knowledge of the Muslim faith. The Applicant's hesitancy and lack of knowledge when questioned on the Muslim faith undermines her credibility."*

16. On the subject of the events between the arrest of the applicant's boyfriend and her departure for Ireland, the Tribunal Member noted as follows:-

*"The applicant states that her father demanded that she have an abortion. The Applicant remained in her home from September 2006 to December 2006 when she left for Ireland. The Applicant locked herself in her room to avoid her father. She was able to receive phone calls from her partner's friend and get food. The Applicant's father did not force the door or insist she have an abortion during this time, considering the Applicant states he chased her to Ibadan with police officers."*

17. On the subject of travel, the Tribunal Member noted that the applicant says she travelled on a red passport but did not know if it contained a visa, did not know the nationality of the passport, and was not told where she was going. She was told that if questioned, she was to tell immigration officials that she was "going visiting". The Tribunal Member drew a negative credibility finding in that regard, and then stated that he found that s. 11B (c) of the Refugee Act 1996, as amended, was relevant to the applicant's claim. She concluded by stating that she had considered all relevant documentation, and affirmed the ORAC recommendation.

#### **THE APPLICANT'S SUBMISSIONS**

18. The applicant's complaints in respect of the decision may be summarised as:-

- a. Flawed treatment of credibility;
- b. Making a bald finding under s. 11B (c) of the Refugee Act 1996;
- c. Failure to consult COI; and

d. Failure to consider the risk faced by the applicant's child.

**(a) Treatment of Credibility**

19. In respect of the findings made in relation to her lack of knowledge about her asserted faith, counsel for the applicant complains that the Tribunal Member failed to take into account that the applicant knew some details about the Islamic faith. He also complains that the Tribunal Member had regard to "*highly technical and highly specialist areas of knowledge*" in relation to the Muslim faith - relating for example to the role of Bilal, the months in the Islamic calendar and the duration of those months - without first furnishing to the applicant any indication as to what sources the Tribunal Member had consulted in that regard, in breach of s. 16(8) of the Refugee Act 1996, as amended.

20. In respect of the second negative credibility finding relating to the period after her boyfriend's arrest that the applicant spent at her father's house, counsel contends that the manner in which the Tribunal Member addressed the issue amounts to no more than a statement of fact under a general, catch-all heading relating to credibility, and that it fails to indicate why the applicant's credibility is undermined.

**(b) The s. 11B Finding**

21. Counsel contends that it is unclear upon what basis the Tribunal Member decided that she would have regard to s. 11B (c) of the Refugee Act 1996, as amended, and that she failed to engage in any rational analysis of the applicant's travel to the State such that an assessor is left to speculate and draw inferences as to her thinking. Reliance is placed on *Ajoke v. The Refugee Appeals Tribunal* (Unreported, High Court, Hanna J., 30th May, 2008), where Hanna J. granted leave on the following basis:-

"[O]ne 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 incredibility pointers and because they are mandatory considerations should something more not have been included."

**(c) Treatment of COI**

22. Counsel for the applicant contends that the Tribunal Member erred by failing to consult COI when assessing the applicant's credibility. He submits that this is not one of the "exceptional cases" referred to by Peart J. in *Imafu v. The Refugee Appeals Tribunal* [2005] I.E.H.C. 416 where the credibility findings made were sufficiently strong that the potential value to be derived from consulting COI is rendered nugatory. He accepts that the applicant submitted no COI in support of her appeal and that her knowledge of the Muslim faith is weak, but notes that there is a shared burden of proof on the Tribunal Member to seek out all facts and information and that there is an obligation under Regulation 5 of the European Communities (Eligibility for Protection) Regulations to consult relevant COI.

23. He also argues that it is clear that no COI was considered by the Tribunal Member because she makes no reference to COI at the end of her decision where she states that she had considered "all relevant documentation".

**(d) Consideration of the risk faced by the applicant's child**

24. Counsel submits that the Tribunal Member failed to give consideration to the risk that would be faced by the applicant's child if she were to be deported to

Nigeria. Reliance is placed on *Ojuade v. The Refugee Appeals Tribunal* (Unreported, High Court, Peart J., 2nd May, 2008).

### **THE RESPONDENTS' SUBMISSIONS**

25. Counsel for the respondent submits that the grounds put forward on behalf of the applicant are trivial and tenuous and do not meet the requirement for leave. The Court's attention is drawn to the fact that in the Notice of Appeal, the applicant did not seek to address any of the credibility findings made by ORAC in the s. 13 report nor did she make any submissions or furnish any objective COI, and that no oral submissions were made by or on her behalf at the oral appeal hearing. Counsel for the applicant describes the applicant's appeal as "bald".

#### **(a) Treatment of credibility**

26. It is contended that the Tribunal Member acted in accordance with fair procedures insofar as she questioned the applicant at the appeal hearing, at which the applicant was legally represented, and that she was entitled to make a note of the applicant's demeanour and hesitancy at the oral hearing. It is argued that the first of the three matters on which the credibility findings were made (i.e. her apparent lack of knowledge about the Muslim faith) was central to the applicant's claim. With respect to the second and third credibility findings, it is contended that although these are weaker than the first they do bear a legitimate nexus to the applicant's core claim and that that this Court must be very slow to interfere with the Tribunal Member's findings in this regard.

#### **(b) The s. 11B Finding**

27. Counsel submits that the s. 11B finding made by the Tribunal Member in *Ajoke v. The Refugee Appeals Tribunal* (Unreported, High Court, Hanna J., 30th May, 2008) can be distinguished from the finding made by the Tribunal Member in the present case on the basis that the finding in this case was not "bald" as was the case in *Ajoke* but rather bore a clear and legitimate nexus to the applicant's core claim.

#### **(c) Treatment of COI**

28. It is contended that there was a fundamental finding made with respect to the applicant's credibility in this case and that there was therefore no obligation to consult COI. It is contended that the obligation to assess credibility in the light of objective COI does not apply at all cases and at all times and reliance is placed on *S.M. v. The Refugee Appeals Tribunal* (Unreported, High Court, Hedigan J., 2nd December, 2008) and *Imafu v. The Refugee Appeals Tribunal* [2005] I.E.H.C. 416.

#### **(d) Consideration of the risk faced by the applicant's child**

29. Counsel submits that it is unusual that the applicant's child was not joined to the proceedings. It is further complained that no separate or independent ground was ever set out by her mother on the child's behalf and that the child must therefore be treated as subsumed in her mother's application. It is contended that this case is distinguishable on the facts from *Ojuade v. The Refugee Appeals Tribunal* (Unreported, High Court, Peart J., 2nd May, 2008) where it was asserted by the adult applicant that she feared her daughter would be subjected to FGM if returned to her country of origin. Reference is made to *B.V.E. and O.V.E. v. The Minister for Justice, Equality and Law Reform* [2008] I.E.H.C. 230 where Birmingham J. noted that *Ojuade* was "essentially a female genital mutilation case". He found that "[n]o specific fears or concerns for her daughter were advanced by the adult applicant" until the judicial review stage, and found the fears asserted at that stage in respect of the child to be "singularly unimpressive" and "redolent of legalistic, formulaic pleading by the applicant."

## **THE COURT'S ASSESSMENT**

30. This being an application to which section 5(2) of the *Illegal Immigrants (Trafficking) Act 2000* applies, the applicant must show substantial grounds for the contention that the decision ought to be quashed. As is now well established, this means that grounds must be shown that are reasonable, arguable and weighty, as opposed to trivial or tenuous. I find that all the arguments made in this case were utterly tenuous.

### **(a) Treatment of Credibility**

31. The primary credibility finding made in the RAT decision relates to the apparent paucity of the applicant's knowledge of the Muslim faith. That finding must be assessed in the light of the fact that the applicant's religion and her conversion are central to her claim: she said she was raised as the only child in a strict Muslim family and that she practised that faith until 2004 when she was 28 years of age. That is the bedrock upon which her asylum application was built; without it, the claim crumbles. It is in that light that this Court must view the Tribunal Member's findings on the applicant's answers to the questions put to her in respect of the Muslim faith at the oral appeal hearing. In the circumstances, I find it wholly reasonable and rational that the Tribunal Member found it difficult to believe that the applicant would not have a more comprehensive knowledge of the Muslim faith in the light of her asserted background, her age and her education. The Tribunal Member was especially charitable in expressing her finding in this instance.

32. I reject the submission that the applicant should have been given credit for knowing some commonly known details about the Muslim faith. I also firmly reject the submission that the Tribunal Member was obliged under s. 16(8) of the Refugee Act 1996, as amended, to furnish the applicant with copies of the sources that she consulted in respect of the Muslim faith. The purpose of that sub-section is to ensure that information is not sprung upon an applicant or relied upon without allowing the applicant to consider the information and to make submissions in reply. It is not intended for basic credibility assessments about which no submissions or explanations are necessary.

33. With respect to the second negative credibility finding, I accept that the Tribunal Member did not explicitly state that she found the applicant's account of the period after her boyfriend's arrest to be implausible or incredible. I do not believe it was necessary for her to do so, however, as it is clear from a holistic reading of the decision that this is one of the three credibility issues that the Tribunal Member found to undermine the applicant's account. The applicant and her legal representatives were aware from the s. 13 report that the applicant's account of that period was doubted but did not make any submissions in that regard at the appeal stage. It is well established that applicants are not passive participants in this process: they must not just sit back and let things happen around them and then seek to complain afterwards.

### **(b) The s. 11B Finding**

34. I also find the applicant's complaint in respect of the Tribunal Member's finding as to the relevance of s. 11B (c) of the Refugee Act 1996, as amended, to be entirely without foundation. That sub-section provides:-

*"The Commissioner or the Tribunal, as the case may be, in assessing the credibility of an applicant for the purposes of an investigation of his or her application or the determination of an appeal in respect of his or her application, shall have regard to the following:- [...]"*

(c) whether the applicant has provided a full and true explanation of how he or she travelled to and arrived in the State;”

35. The Tribunal Member made her finding under s. 11B (c) following the noting of the applicant’s claim to have travelled on a red passport but where she did not know the nationality of the passport or whether it contained a visa. The applicant claimed that she did not know where she was going and was told to tell Immigration officials she was “going visiting”. The Tribunal Member expressly stated as follows before referencing s. 11B (c):-

*“It is difficult to believe that the Applicant could have travelled with such limited information about her travel details. If she was questioned by immigration officials her lack of knowledge would have created serious difficulties for the Applicant and the agent.”*

36. This is a rational finding and there is no doubt that it constitutes a cogent basis upon which a finding under s. 11B (c) could be made and bears a legitimate nexus to such a finding. I have reached this conclusion having also read the applicant’s questionnaire and the notes of her s. 11 interview, in neither of which can there be identified any further explanations of the applicant’s travel to the State.

37. I accept the respondents’ submission that the present case is distinguishable from that of *Ajoke v. The Refugee Appeals Tribunal* (Unreported, High Court, Hanna J., 30th May, 2008). In that case the decision-maker baldly stated that he had regard to s. 11B without referring to any particular sub-section and without linking his statement to any of the factual matters upon which he had made negative credibility findings. The same is not true in this case, where the decision-maker had regard to a specific sub-section and where his finding bears a clear factual nexus to his findings on the applicant’s explanations on her travel to Ireland.

**(c) Treatment of COI**

38. It is clear to me that this is one of the cases described by Peart J. in *Imafu v. The Refugee Appeals Tribunal* [2005] I.E.H.C. 416 where nothing would be gained by consulting objective COI especially where the only objective evidence before the Tribunal Member was that which was appended to the s. 13 report and relied on in support of the ORAC negative credibility findings. In general, it is a matter of good practice to assess the credibility of an applicant in the light of objective evidence but in the present case the findings made relating her claim to have been a Muslim until her recent conversion meant that her claim fell at the first hurdle. It would have been an exercise in futility to go on to assess COI, if any existed, to support her story of a Muslim’s father’s attitude to a woman and child in her position. In the circumstances, no COI could have been “relevant” within the meaning of Regulation 5 of the European Communities (Eligibility for Protection) Regulations.

**(d) Consideration of the risk to the applicant’s child**

39. The applicant complains that no consideration was given by the Tribunal Member to the risk faced by the applicant’s daughter in Nigeria. The infant daughter is not a party to these proceedings. Even if that were to be ignored, there is no merit in that complaint as it is well established that where no independent grounds are made out, the child’s case is treated as being subsumed in the parent’s application. At the post-leave stage in *A.N. & Ors v. The Minister for Justice, Equality and Law Reform & Anor* [2004] I.E.H.C. 433, Peart J. held:-



"A constitutionally harmonious interpretation of the legislative framework in relation to the interests of a minor accompanied by a parent is that the parent is the person who continues to carry the responsibility for looking after the minor's interests, and as a consequence, continues to have the responsibility, in the capacity of active participant in the asylum process, for setting out in an appropriate way any grounds for the application [...]."

40. In this case, when asked at her s. 11 interview why her daughter could not return to Nigeria, the applicant replied that "*Because she belongs to a Christian family – [her] father is a Christian, I am a converted Christian. My father would want to kill the baby due to the shame.*" Thus it is clear that the claim advanced on behalf of the applicant's daughter is precisely the same claim as that advanced by the applicant on her own behalf. Nothing further was asserted in the Notice of Appeal. In fact, the baby was not mentioned at all in the short letter in which routine general submissions were made on behalf of the applicant and no further submissions were made at the appeal hearing. In the circumstances, this case is distinguishable from the facts in *Ojuade v. The Refugee Appeals Tribunal* (Unreported, High Court, Peart J., 2nd May, 2008), where a distinct fear was asserted on behalf of the infant applicant but the Tribunal Member failed to give any more than an "oblique" mention to that fear. The applicant's arguments in this regard must therefore fail.

#### **Conclusion**

41. In the light of the foregoing, I refuse leave.