

THE HIGH COURT

2007 1017 JR

BETWEEN/

**C. B., K. I. (A MINOR SUING BY HIS MOTHER AND NEXT FRIEND C. B.)
AND A. C. N. I. (A MINOR SUING BY HER MOTHER AND NEXT FRIEND C.
B.)**

APPLICANTS

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 order of 24th March, 2009, O'Keeffe J. granted the applicants leave to make the present application for, *inter alia*, an order of *certiorari* to quash the decision of 25th June, 2007 in which the Refugee Appeals Tribunal rejected their appeal against a report of the Refugee Applications Commissioner of 6th February, 2006 and affirmed its recommendation that the applicants be not declared to be refugees. Leave was granted on the basis of the single ground as follows:

"The Tribunal erred in law and/or acted in breach of fair procedures in failing to consider and/or make an express reference to country of origin information submitted by the applicant in relation to Ghana."

2. The reference of country of origin information in relation to Ghana might at first sight appear unusual when one considers that the first named applicant fled from Nigeria, where she was born and where she had lived her entire life and that her claim to a fear of persecution was originally based upon abuse she suffered in that country and on threats of the ritual sacrifice made against her eldest child, the second named applicant. (For simplicity, the first named applicant will be referred to as "the applicant" and the remaining applicants, her children, as "the minor applicants".) However, the background and the course of the asylum application can be summarised so far as relevant to the single ground before the court as follows.

3. The applicant claims she was born in Lagos, Nigeria on 4th July, 1980 of Ghanaian parents. Her father left the family when she was very young and her mother died in 1995. Both her father and her brother are now also dead. The court notes that the claim to Ghanaian nationality is based it seems, entirely on the applicant's own statement that her parents were Ghanaian nationals and no detail or documentary corroboration is forthcoming in that regard, possibly because the potential significance of this point did not arise until the very last stages of the asylum procedure. The applicant does not appear to have been offered or been asked for any explanation of this circumstance. How did she know

her parents were from Ghana? How long had they been in Nigeria and how had they come to be here? Had they met and married in Ghana before migrating to Nigeria or did they leave Ghana separately and meet there?

4. She said that when her mother died, she found herself forced into prostitution at the age of 15. In May, 2003 she went to the UK from Nigeria and, although she said she did not do so, or was unaware of having done so, the documentation subsequently furnished by the United Kingdom authorities indicates that she applied for asylum there on 1st May, 2003. After two weeks however she apparently returned to Nigeria.

5. She met and became pregnant by a client named U.I. with whom she lived and her son, K.I., was born on 4th April, 2004. Following the birth that relationship changed and the man became abusive so she left to stay with her brother in Benin. Shortly afterwards her brother died in September 2004. A friend of her brother's, G.O., who lived with him, sexually abused her, as a result of which she became pregnant. She discovered he was a member of a secret cult and he threatened to use her son for ritual sacrifice.

6. One of the pastors in a church she attended introduced her to an agent and arranged her flight through France to Ireland. She applied for asylum here on 5th July, 2005 and her daughter, the second minor applicant, was born here on 7th September, 2005.

7. In the course of investigating her claim a fingerprint search disclosed the United Kingdom application made in May 2003. The United Kingdom authorities subsequently agreed to her transfer there but it was later decided apparently not to make the transfer and to deal with the application in this jurisdiction.

8. In the ASY 1 form the applicant gave her nationality as "Nigerian" but the word "Ghana" had been first entered and struck out. In her questionnaire the applicant gave her citizenship at birth and her current nationality/citizenship as Ghanaian and that of her parents as Ghanaian. At question 21 she said: "I am a Ghanaian by nationality/citizenship but born and brought up in Nigeria." She also said, on an added sheet to the questionnaire: "I informed the officer that I am Ghanaian by nationality and born in Nigeria but she insisted that I am Nigerian because I was born there but Nigeria does not grant citizenship because of your birth there."

9. In the Section 11 interview the nationality question was again touched upon and the applicant said she was Ghanaian and Nigerian: "I have dual nationality but I am a Nigerian."

10. The Section 13 report of the Commissioner as mentioned, found her claim lacking in credibility and that it contained: "Serious misstatements, factual inaccuracy, material falsehoods and major discrepancies." It goes on to list, amongst others, the following;

- she applied for asylum in the United Kingdom giving a different date of birth and using the name Imarhiagi Courage;
- the name "Imarhiagi" is the name of the pastor who she says arranged her flight and while his letter of support for her says he had known her for 15 years she said she joined his church in 2004;

- she had said in her application that she had made no previous asylum application,
- country of origin information disclosed no secret society with the name she gave as the one to which her brother's friend belonged.

11. The report also made an express finding under section 13(6)(d) of the 1996 Act, thereby removing the possibility of an oral hearing on the appeal .

12. On 23rd February, 2006 a notice of appeal was lodged with the Tribunal. At paragraph 1.6 of the appeal form the applicant's nationality was stated to be Nigerian. Some 10 grounds were set out in the notice and, so far as they raised specific issues as opposed to general allegations of errors of law or fact, they are all directed at the particular matters of credibility identified in the report and, as such, are based on the claim as it had been made, namely, to a fear of persecution arising exclusively out of her personal history and events in Nigeria and an absence of State protection or the availability of internal relocation in that country.

13. It was only when, on 16th April, 2007, lengthy further submissions extending over 35 pages were lodged that it was submitted for the first time that: "The applicants are refugees because they have a well founded fear of being persecuted in Ghana." This was advanced on the basis of their membership of a series of particular social groups. In the case of the mother these are:

- 1) Women or,
- 2) Women from a poor socio-economic background with very limited formal education or,
- 3) Single mothers from such a background and/or,
- 4) Former prostitutes with such a background.

In the case of the minors they are said to be members of one or more of the social groups comprising children, or the children of women in each of the social groups described for their mother.

14. In the submissions, extracts from the relevant constitutions and laws of Nigeria and Ghana are cited to support the proposition that: "The applicant's nationality at present is Ghanaian and only Ghanaian" (see paragraph 26). In relation to the minor applicants it is submitted that they have both Ghanaian and Nigerian nationality.

15. In these further submissions the case is then made for the first time that the applicant fears persecution if returned to Ghana because she will not be able to survive other than by resorting again to prostitution. She will be exploited by pimps and effectively enslaved, subjected to beatings and tortured. She is said further to be afraid that she will not find effective protection or assistance from the Ghanaian authorities or society in general. Extensive country of origin information is then referred to and quoted, extending over 16 pages of the submissions. This material is drawn particularly from, first, a US Department of

State 2006 Ghana Country Report on human rights practices dealing with discrimination, societal abuses, trafficking of persons, problems with forced child marriages and child labour and secondly, from the Report of the Committee on Elimination of Discrimination Against Women in Ghana 2006; and thirdly, a report of the Committee on Elimination of Racial Discrimination Ghana 2003.

16. It was on that basis that the matter came before the Refugee Appeals Tribunal and was determined without oral hearing by the Contested Decision of 25th June, 2007.

17. In spite of the length and density of the further submissions it is fair to say that the appeal is dealt with in the decision in relatively straight-forward terms. The usual section 6 "Analysis of the Claim" commences with the finding or acknowledgement that: "The applicant is a citizen of Ghana," although in the opening sentence of the summary of the claim at section 3, the Tribunal member records that: "The applicant states that she is a Nigerian and Ghanaian citizen."

18. The Tribunal member then cites article 1 A(2) of the 1951 Convention and paragraph 106 of the United Nations High Commission for Refugees Handbook on the treatment of a person with dual or multiple nationality. The Tribunal member then says: "The applicant has expressed no fear of persecution in Ghana and only states that she does not know her father's people in ACCRA. The applicant fears one man in Nigeria who is associated with the cult. She does not fear the State" [presumably the State of Nigeria]. "It is reasonable to suggest that she could have travelled to Ghana when her difficulties arose."

19. The remaining three short sentences of the analysis are directed at the claim in respect of return to Nigeria and rejects it for lack of credibility and for failure on the part of the applicant to seek protection in Nigeria.

20. As indicated, the single ground for which leave was allowed is based on the failure of the Tribunal member to consider and refer to the country of origin information relating to Ghana and it is true that, apart from the mention of the "submissions/country of origin information submitted under cover of the letter of 17th April, 2007" in the list at section 4, the Contested Decision wholly ignores that material.

21. In arguing the case, counsel for the applicant went somewhat beyond the terms of the ground and invited the court not to construe the ground narrowly. It was urged, in effect, that the decision fails to address and to make a finding on the nationality issue, namely the claim the applicant is, at present, Ghanaian and only Ghanaian and then to rule upon the claim to a fear of persecution in that country by reference to the country of origin information.

22. It is, of course, settled law that the Tribunal member must consider all of the evidence and to come to a reasoned conclusion upon it when fairly and objectively weighed. The court is satisfied, however, that this duty applies only to evidence which is relevant to a material issue which requires to be adjudicated upon in the appeal. In the court's judgment that was not the case in this instance so far as country of origin information relating to the circumstances of the various social groups in Ghana was concerned.

23. In the first place, as counsel for the respondent correctly pointed out, the Tribunal member did not ignore the applicant's claim to be a national of Ghana. She expressly recognised that the applicant had that nationality as quoted from the opening analysis on section 6. She dealt with the claim on the basis of dual

Nigerian and Ghanaian nationality and was correct in doing so given the two minor applicants had, in any event, Nigerian nationality through their fathers and that an express claim had been made in respect of the eldest that he was subjected to threats in the form of ritual sacrifice in Nigeria.

24. So far as concerns the applicant herself, the statement of the Tribunal member that she: "... has expressed no fear of persecution in Ghana ..." was, as counsel agreed, literally correct. Nowhere in the prior asylum process had she mentioned such a fear although, of course, the possibility of going to Ghana had never been raised. The only reference which might be thought relevant was at question 21 of the Section 11 interview where, in response to the question: "Question: What do you fear if you were to go to Ghana?" She answered: "Answer: I don't know my father's people. They are in Accra."

25. Thus, when the matter was before the Tribunal member there was, in fact, no evidence upon which fear of a particular form of persecution in Ghana might have been substantiated. The only matter before the Tribunal was the submission drafted on her behalf. As such, the fears expressed (see para. 15 above) about resuming prostitution and being exposed to ill treatment and prostitution as a result were purely speculative and hypothetical.

26. It is only when she comes to swear the grounding affidavit in the present application that her claim is given an evidential basis by the applicant when she avers: "I have never lived in Ghana but I understand that it is very like likely that I will suffer persecution in Ghana if I have to go to that country and that exploited women do not get protection they need in Ghana."

27. Significantly, perhaps, the applicant stops short of verifying the proposition advanced to the Tribunal in the submissions that she would have no option but to work again as a prostitute. She confines herself to saying: "One of the reasons I am seeking asylum is because of my fear of persecution in Ghana as a woman and particularly as a woman who had been exploited and abused physically and sexually as a former prostitute."

28. It follows from the above that, in the court's judgment, there existed no factual or evidential basis before the Tribunal which required the Tribunal member to examine and to rule upon the country of origin information relating to Ghana. In a case such as this where, notwithstanding the continued references to Ghanaian nationality, alongside Nigerian nationality, combined with the habitual residence exclusively in Nigeria since birth, the claim to refugee status had been made explicitly and with the benefit of legal representation up to and including the notice of appeal, upon the basis of past mistreatment in Nigeria so that the Tribunal cannot be said to have erred in law by having not enquired by reference to country of origin information into a hypothetical case advanced in the legal submissions.

29. For these reasons the Court considers that the single ground for which leave was granted has not been substantiated and the application must accordingly be refused.