Neutral Citation Number: [2009] IEHC 474

THE HIGH COURT

JUDICIAL REVIEW

2008 1373 JR

BETWEEN

F. K. S.

APPLICANT

AND

THE REFUGEE APPEALS TRIBUNAL AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENTS

JUDGMENT of Ms. Justice Dunne delivered on the 30th day of October, 2009

The applicant herein seeks leave to apply for judicial review by way of an order of *certiorari* quashing the decision of the first named respondent as notified by fax of the 12th November, 2008, affirming the recommendation of the Refugee Applications Commissioner that the applicant should not be declared to be a refugee and the decision of the Member of the first named respondent of the 12th November, 2008. Although a number of other grounds were set out in the statement required to ground the application for judicial review herein, the hearing before me was confined to two grounds. They are as follows:-

"1. The first named respondent acted *ultra vires* the Refugee Act 1996 (As Amended) and/or the Refugee Act (Appeals) Regulations 2003 (S.I. No. 424/2004) in proceeding with the appeal hearing despite there being no appearance by the Refugee Applications Commissioner or a member of the staff of the Commissioner authorised by him or her to attend the oral hearing.

2. The first named respondent failed to determine the applicant's appeal within a reasonable time and in this regard acted *ultra vires* the Refugee Act 1996 (As Amended) and/or acted in breach of natural and constitutional justice."

It will be seen that the grounds set out above do not seek to challenge any of the findings of the first named respondent (hereinafter referred to as the Tribunal) on grounds relating to the credibility of the applicant.

Background

The applicant claims to be a native of Cameroon. She apparently left that country on the 18th February, 2004, accompanied by the brother of a friend and she arrived in the State on the 23rd February, 2004. She applied for asylum and subsequently this was deemed to be withdrawn. She was then granted permission to re-enter the asylum system and this application for asylum was made in September 2006. The basis of her claim for asylum is the fear of persecution for reason of membership of a particular social group comprising women and/or

mothers from Cameroon and/or women who are HIV positive in Cameroon. Persons who are HIV positive in Cameroon are subject to stigma, discrimination and harassment within society amounting to persecution, including discrimination in relation to employment. She also feared domestic violence from her partner, with whom she had three children. She claimed that her partner announced that he wanted her daughter to be circumcised. She was not agreeable to this and he became abusive towards her. She brought her children away to a friend in Eloquito, a place as distant from the village she resided in as Cork is from Dublin. She described being beaten by her boyfriend after this because she took the children away. She then went to Eloquito. Shortly after she arrived there she said that her friend's brother made arrangements for her to leave the country. He travelled to Ireland with her and abandoned her in Inchicore.

The First Ground
In the course of the applicant's verifying affidavit sworn herein on the 3rd December, 2008, she stated as follows:-

"My appeal hearing proceeded on 25th February, 2008. There was no appearance by or on behalf of the Refugee Applications Commissioner. Counsel on my behalf drew the attention of the member of the first named respondent to the appropriate legislation and in particular the Refugee Act 1996 (Appeals Regulations 2003 S.I. No. 424/2003) and Regulation 9(1) thereof. Counsel stated that as a matter of law the hearing could not proceed without a Presenting Officer appearing on behalf of the Refugee Applications Commissioner. The member of the first named respondent drew counsel's attention to the words 'if present' in Regulation 9(1)(a) and counsel submitted that those words referred only to the High Commissioner and not to the Refugee Applications Commissioner. The member of the first named respondent opened s. 16(11)(c) of the Refugee Act, 1996 (As Amended) and stated she was of the view that once the Presenting Officer was enabled, and she stated that 'enabled' meant notified of the hearing, that that requirement was satisfied with regard to the Presenting Officer and if they were unable to attend for whatever reason the first named respondent could proceed in their absence. The hearing then proceeded."

Section 16(11)(c) of the Refugee Act 1996 (As Amended) provides as follows:-

"The Tribunal shall enable the applicant and the Commissioner or an authorised officer to be present at the hearing and present their case to the Tribunal in person or through a legal representative or other person."

Regulation 9 of the Refugee Act 1996 (Appeals) Regulations 2003 provides as follows:-

"1. In conducting an oral hearing the Tribunal shall –
(a) ensure that the applicant, his or her legal representative, if any, the Commissioner and the High Commissioner, if present, are informed of the order of proceedings which the Tribunal proposes to adopt;

(b) conduct the oral hearing as informally as is practicable, and consistent with fairness and transparency;

(c) decide the order of appearance of the applicant and the Commissioner and any witness;

(d) ensure that the oral hearing proceeds with due expedition;

(e) allow for the examination and cross examination of the applicant, any witnesses and the Commissioner; and

(f) ensure that a witness shall be present at the oral hearing only for the duration of his or her evidence.

2. References to the Commissioner in para. 1 includes references to a member of the staff of the Commissioner who is authorised by him or her to attend the oral hearing."

It was submitted on behalf of the applicant that Regulation 9(1) imposed three duties on the Tribunal:
(1) To ensure that the commissioner or authorised representative informed of the order of proceedings which the Tribunal proposes to adopt;

(2) Decide the order of appearance of the applicant and the Commissioner or their authorised attendee;

(3) Allow for cross examination of the Commissioner (and/or their authorised attendee).

On that basis it was contended on behalf of the applicant that it was clear from the intent of the regulation that the hearing before the Tribunal could only take place if there was a representative of the Commissioner present. Counsel referred to a passage from a judgment of the High Court in the case of *F.A.A. v. Minister for Justice, Equality and Law Reform,* (Unreported, High Court, Birmingham J., 24th June, 2008) in which reference was made at p. 3 of the judgment as follows:-

"However, the Presenting Officer expressly accepted that the analysis in the section 13 report was inadequate."

Relying on that passage it was noted that in that case the Presenting Officer who was present made a concession in regard to the s. 13 report of the Commissioner. Thus it was submitted that in the present case, had a Presenting Officer been present it would have been possible for the Presenting Officer to make a concession to the applicant. In the course of the submissions on this point, I queried whether any prejudice was suffered by the applicant by reason of the absence of a Presenting Officer and in response counsel on behalf of the applicant expressed the view that the possibility of prejudice did not have to be established by the applicant.

Counsel also relied on the decision in the case of *M.D.A. v. The Refugee Appeals Tribunal and Another* (Unreported, High Court, Irvine J., 20th July, 2009). In the course of her judgment in that case a similar issue arose and on a leave application it was stated at p. 10 of the judgment as follows:-

"Applying the standard of proof appropriate to the present application, the court concludes that the applicant has made out a reasonable case to argue that the Tribunal member acted *ultra vires* in embarking upon the decision making process in the absence of the ORAC representative. In particular, Regulation 9 of the Refugee Act 1996 (Appeals) Regulations 2003 and the provisions of s. 16(11) of the Refugee Act 1996 as amended by s. 11 of the Immigration Act 1999, give good grounds for permitting the applicant to urge that it was mandatory, in the absence of the applicant's agreement, for the appeal to proceed in the presence

(sic) of the Commissioner's representative. It is certainly arguable that the statutory scheme, which includes the right of the Tribunal member to request the Commissioner to make further enquiries or to furnish further information to the Tribunal, mandates the presence of the Commissioner's representative in the course of the appeal and that an appeal conducted in his absence particularly in circumstances where the appellant raises an objection to their absence, might well be *ultra vires* the powers of the Tribunal."

That case also involved the grant of leave on a number of other grounds related to the findings of the Tribunal in that case.

It should be noted that this is a case in which the applicant objected at the outset of the hearing to the fact that there was no representative of ORAC available. In the course of the Tribunal decision it was noted as follows:-

"An application by ORAC was made before the hearing commenced and it was indicated that no PO was available. The Tribunal informed ORAC that it would inform the representative Circuits (sic) of this, but that the Tribunal could proceed with the case. The claimant's representative subsequently entered the room and had been made aware at reception that no PO was available. Counsel expressed his annoyance at this and mentioned that it was occurring too frequently at hearings. The Tribunal informed him that it could proceed without the PO but he then sought to adjourn the matter and raised Regulation 9 of the basis for the adjournment. The B.L. read the following from the Refugee Act (Appeals) Regulations 2003:-

'Conduct of oral hearing 91A 'in conducting an oral hearing the Tribunal shall ensure that the applicant his or her legal representative, if any, the Commissioner and the High Commissioner, if present, are informed of the order of proceedings which the Tribunal proposed to adopt.'

Counsel was of the view that this indicated that a PO had to be present. The Tribunal pointed out that it referred to 'the Commissioner and the High Commissioner, if present' and the B.L. stated that the words 'if present' referred only to the High Commissioner. The Tribunal took the view that nothing in the wording could be construed as referring only to the High Commissioner. The Tribunal expressed the view that the only sensible reading of that phrase 'if present' was that it referred to both the Commissioner and the High Commissioner. In any event the Tribunal opened the Act and drew the B.L.'s attention to s. 16(11)(c) which states 'the Tribunal shall enable the applicant and the Commissioner or an authorised officer to be present at the hearing and present their case to the Tribunal or through a legal representative or other person'. The Tribunal was of the view that once the PO was enabled (i.e. notified of the hearing) that that requirement was satisfied with regard to the PO and if they were unable to attend for whatever reason the Tribunal could proceed in their absence. The hearing then proceeded."

It was pointed out by counsel on behalf of the respondent that in the course of the hearing an issue arose as to the question of internal relocation and the question of the absence of a PO was raised in that context and I think it would be useful to refer briefly to the comments in that regard made in the course of the Tribunal decision in the paragraph headed "Submissions":-

"The Tribunal considers the recommendations of ORAC and then makes its own. It is not bound by the ORAC findings. It is a *de novo* hearing. The fact that there was no PO present was raised again in the context of this issue (internal

relocation) and the Tribunal stated that if an issue was being raised again in that regard that the matter be adjourned to allow a PO deal with the issue. Counsel stated that the matter had proceeded thus far and he was continuing with the hearing at this stage. Regarding credibility it was not open to the Tribunal to make adverse findings in that regard either according to counsel."

Counsel on behalf of the respondent further submitted having looked at the wording of s. 16(11)(c) and Regulation 9 that the Tribunal has an obligation under the provisions of the Act and the Regulation to facilitate the Commissioner or Authorised Officer to be present at the hearing. It was his contention that a Presenting Officer does not have to be present. It was submitted that if a valid hearing could only take place if the Commissioner or a representative of the Commissioner was present then the legislation and regulations would use appropriate wording making it clear that such was the case. On that basis it was contended that the interpretation of the legislation and the regulations set out by the Tribunal member in the decision was correct. However, it was submitted that even if that interpretation was not correct, that what had occurred was a technical breach. There was nothing to demonstrate or show that any prejudice had flowed as a result of the alleged breach. It was therefore argued that in the absence of any prejudice the decision should not be quashed. It was further submitted that no benefit could be achieved by the applicant. Further, it was pointed out as previously referred to that the issue of the absence of a Presenting Officer arose during the course of the hearing as counsel on behalf the applicant at the hearing declined to have the matter adjourned for the purpose of having a Presenting Officer available to the hearing. In support of the argument in relation to the fact that a technical breach alone does not give rise to an entitlement to have the decision of the Tribunal quashed. Counsel referred to the decision in the case of *M.N. v. David McHugh* (Unreported, High Court, Cooke J., 1st July, 2009), which concerned a breach of s. 16(8) of the Refugee Act 1996 (As Amended). That provision requires the Tribunal to furnish the applicant with copies of reports, observations or representatives furnished to the Tribunal by the Commissioner. In the course of his judgment, Cooke J. stated:-

"However that may be, there is no doubt that the Tribunal member did make use of the information to that effect at the hearing and if he derived it from a lecture or newspaper report in his possession it came within the first part of s. 16(8) - documents to be furnished. If he was simply relying on his recollection of what he heard Mr. Dayri say orally it came within the second part, - information the nature and source of which should have been the subject of a written indication. In that sense there may well have been a technical non-compliance with the requirement even in the absence of a request by the applicant.

Nevertheless, the Court is satisfied that even if there has been a non-compliance with the strict terms of the statutory requirement it has been a technical defect which would not justify the quashing of the appeal decision on that ground alone.

In the first place, it is clear that there was no substantive violation of the principle of natural or constitutional justice which s. 16(8) reflects because the information was openly disclosed and put to the applicant at the hearing. The applicant, therefore, had the possibility of disputing it or of demanding an opportunity of examining its source and context with a view to rebutting it after the hearing and before the decision was adopted."

Reference was also made to decision in the case of *Emanuel v. Refugee Appeals Tribunal* (Unreported, High Court, Clark J., 7th July, 2009). The court in that case

commented on the role of a Presenting Officer in the context of a hearing before the Tribunal. The issue that arose in that case was whether The Presenting Officer could be subject to cross examination. Nonetheless, it is clear from that decision that the position of the presenting officer is that of a *legitimus contradictor*. Clark J. commented at para. 33 of the judgment as follows:-

"It is a fundamental misconception to view a *legitimus contradictor* as a witness. The Presenting Officer was not at the s. 11 interview, did not conduct the COI research that led to the negative recommendation, did not analyse the applicant's file and did not prepare the s. 13 report. He could not have been in a position even if he were a witness to give any relevant evidence. The applicant must be taken to have been aware of these facts. It is difficult therefore to see how in view of those facts, combined with the fact that the notice of appeal did not seek to have the appropriate authorised officer responsible for the report called as a witness, there could have been any purpose served in attempting to cross examine the Presenting Officer."

Relying on those authorities it was submitted on behalf of the respondent that at its height the applicant's case relates to a technical breach if indeed it is a breach of the legislation and that no suggestion whatsoever was made of anything that flowed from the breach to the prejudice of the applicant.

Finally, I should note at this point that in the course of submissions it was conceded by counsel for the applicant and the respondent that appeals before the Tribunal occur from time to time in which no Presenting Officer is present.

Delay
The hearing before the Tribunal took place on the 25th February, 2008. The applicant stated in her affidavit at para. 19:-

"Following the conclusion of the appeal hearing, there was a very considerable period in which neither my solicitor nor I received any correspondence from the first named respondent regarding a decision on my appeal. I grew increasingly distressed and anxious with respect to the delay in determining the appeal. I was finding life extremely difficult in my accommodation as a result of my illness. I instructed my solicitor to send a letter of the 16th October, 2008, to the member of the first named respondent and to the Chairperson of the first named respondent seeking confirmation within seven days that a decision on my appeal would issue within 21 days of the date of the letter."

A further letter was sent on the 10th November, 2008, and the decision was finally delivered on the 12th November, 2008, over eight months after the hearing of the appeal. On this basis it is contended by the applicant that the Tribunal failed to determine her appeal within a reasonable time and thus acted *ultra vires* the Refugee Act 1996 (As Amended) and/or acted in breach of natural and constitutional justice. In support of that contention, counsel for the applicant referred to a number of decisions. The first of those was the decision in the case of *Biti v. Ryan* acting as the Refugee Appeals Tribunal (Unreported, High Court, Finlay Geoghegan J., 24th January, 2005). That was a case in which the appeal before the Refugee Appeals Tribunal was heard on the 7th January, 2003. A decision was made by the Tribunal on the 22nd March, 2004. The delay in that case was in excess of fourteen months. In the course of her judgment in that case Finlay Geoghegan J. referred to a number of English authorities which had been considered by her previously in the case of *Messaoudi v. The Chairperson of*

the Refugee Appeals Tribunal (Unreported, High Court, Finlay Geoghegan J., 29th July, 2004), in which she stated at p. 23 of the judgment:-

"I do not disagree with the general principle underlying the above English decisions, namely that in an appeal which turns upon the credibility of the applicant, if there is a significant gap between the oral hearing and the determination of the appeal, it may become unsafe such that either party may be entitled to have same quashed as being invalid. However, that entitlement will depend upon the relevant facts of the appeal."

Having referred to that passage from her judgment in *Messaoudi,* Finlay Geoghegan J. went on in the case of *Biti* to make the following observations:-

"It appears to me that in line with the reasoning in the English cases which concern the assessment of creditability of an applicant there exist for the purposes of a leave application substantial grounds for asserting that where, as in this case the assessment of the applicants claim depends upon careful scrutiny of the evidence given by the applicant in relation to past events and her description of her fear and the reasons therefore that where a decision is not given within a reasonable period of time of the oral hearing it may be unsafe as the impact of the oral testimony may have dimmed. This is particularly so as I was informed that there is no transcript taken of an oral hearing before the Tribunal member."

Accordingly in that case the applicant was granted leave to apply for judicial review on the ground of delay. Although it does not appear that credibility was an issue in that case, there were a number of other grounds upon which leave was granted.

I was also referred to the Supreme Court decision in *Messaoudi* which is reported as *G.E. v. Refugee Appeals Tribunal* [2006] 2 I.R. 11. It was submitted that it appears from the judgment of Fennelly J. in that case that there was a breach of duty by reason of delay. Fennelly J. at p. 15 commented:-

"It is important to note, however, that the judge's finding of breach of duty by the second respondent flowed from the undisputed fact cited by the judge that a 'reasonable period of time had expired prior to the decision of the first respondent to reassign these appeals . . .' Furthermore, at that point for a judgment she was careful to limit the finding to the period before the reassignment. Thus, the judge determined that the delay, which had been described as 'inordinate', in issuing decisions in the two cases was sufficient to place the Tribunal and/or the second respondent in breach of their legal duty imposed by the statutes."

In the course his dissenting judgment in the same case, also recognised the need to ensure speedy adjudication. At p. 25 of his judgment he commented:-

"In refugee applications, where human rights are so essentially at stake, the requirement for speedy adjudication is both self evident and indeed apparent from the relevant legislation. For example, a judicial review application challenging a decision of the Refugee Appeals Tribunal under s. 16 of the Refugee Act 1996, must be brought within fourteen days of the Tribunal's determination. Whether or not it is specifically provided for by statute (and it is in this case), there is therefore a clear onus on a member/division of a Tribunal who is dealing with business of this nature to do so expeditiously and promptly. This the second respondent has singularly failed to do, and his failure to provide any explanation for his inactivity only adds insult to injury."

He also went on to make the following comment at p. 30:-

"I would wish to add the following observation. It appears to me that the applicants, by opting to seek the remedy of *mandamus*, have thereby disentitled themselves from raising any objection on grounds of delay in the context of any further consideration of this matter now by the second respondent. It is simply not open to an applicant to simultaneously affirm and disavow when seeking a remedy by way of judicial review. Reference has been made to a number of English cases where delay per se provides a basis for quashing a decision of this nature, particularly where issues of the applicant's credibility might be involved.

Some such entitlement might also have arisen in the instant case if a remedy other than *mandamus* had been sought."

Whilst those comments were made *obiter* in the course of that judgment counsel on behalf of the applicant herein relied on them to support his argument on the ground of delay.

I was also referred to a transcript of a judgment in the case of *Balogun v. Refugee Appeals Tribunal,* (Unreported, High Court, Charleton J., 29th January, 2008). It appears that that is a case in which leave was granted to apply for judicial review on the basis of a delay in furnishing a decision. It appears that in that case the oral hearing took place on the 4th July and the decision was furnished on the 28th October, 2005. It appears to be a case in which the only point on which leave was granted was the issue of delay.

It was submitted on behalf of the respondent that before a decision could be quashed on the grounds of delay, there had to be some disquiet as to the findings before the decision could be quashed. Indeed it is fair to say that that was one of the matters identified in the course of the judgment of Finlay Geoghegan J. in the *Biti* case referred to above. In that context I was referred to a transcript of a judgment in the case of *Krameranko v. O'Brien and Refugee Appeals Tribunal* (Unreported, High Court, McCarthy J., 14th July, 2009). An issue arose in that case as to delay. McCarthy J. at p. 9 of the transcript of the judgment commented as follows:-

"I am satisfied in this particular instance however, that the appropriate manner in which one approaches the question of delay is first of all whether or not what one might term prejudice ahs followed from the delay and not imputed prejudice, but actual prejudice. I accept also that one must be extremely jealous, as it were, in guarding the proposition that if in fact there is delay, if prejudice exists, then the decision could not stand."

He referred to a number of other matters that could affect the decision by reason of delay, for example, the possibility of updated country of origin information which could have the effect of rendering the decision inadequate. However, he took the view that the decision of the Privy Council in the case of *Cobham v. Frett* [2001] 1 W.L.R. 1775, set out the law correctly. In that case the Court of Appeal of the British Virgin Islands held that by reason of the delay between the conclusion of the trial and the judgment and certain errors in the judgment it was entitled to disagree with the judge's evaluation of the evidence and substitute its own conclusions and it allowed an appeal. However, on appeal to the Privy Council the appeal was allowed. In the course of its judgment it was stated at p. 1783 (Lord Scott of Foscote):-

"In their Lordships opinion, if excessive delay, and they agreed that twelve months would normally justify that description, is to be relied on in attacking a judgment, a fair case must be shown for believing that the judgment contains errors that are probably, or even possibly attributable to the delay. The appellate court must be satisfied that the judgment is not safe and that to allow it to stand would be unfair to the complainant."

The Privy Council went on to consider a number of decisions in relation to setting aside judgments by reason of delay and continued at p. 1784 as follows:-

"In *Times Newspapers Limited v. Singh and Choudry* (Unreported) 17th December, 1999, Court of Appeal (Civil Division) transcript No. 21256 of 199, in which Peter Gibson L.J. handed down the judgment of the Court of Appeal, the judge had taken seven months to complete an 80 page judgment. The court did not think he could be criticised for taking so long, but Peter Gibson L.J. added:- 'more pertinently, in the absence of any sign whatsoever that the judge has misremembered any evidence, it is, in our judgment, impossible to see how the appeal could succeed on this ground.'
These cases demonstrate, in their Lordships view the correct approach to be adopted by an appellate court to an appeal based on excessive delay in delivering judgment. In the present case their Lordships conclude, the Court of Appeal was not entitled to substitute its own evaluation of the evidence and the witnesses for that which the judge had made."

I was also furnished with the decisions in *Kwamin v. Abbey National Plc* [2004] 1 I.C.R. 841, in which the Employments Appeals Tribunal in the United Kingdom heard a number of cases in relation to delay. In the course of the decision in that case it was held that there is no period of delay in the delivery of a judgment which will create a presumption that the decision should be set aside. An automatic sanction of a rehearing would not be just, since it would lead to yet further delay and the risk to further dimming of recollection. The question is whether the party who lost has been deprived of a fair trial by virtue of the delay in judgment. The appellant must show that the result was unsafe and the consequence of the delay. It was further held that the proper approach is that the party impugning the judgment will need to show a material error or omission due to faulty recollection. Relying on that authority it was submitted on behalf of the respondent that the applicant had failed to show substantial grounds for an allegation that the findings of the Tribunal had been undermined by the alleged delay in issuing the decision. Nothing has been put before the court to suggest that there is any error in the findings of the Tribunal. On that basis it was submitted that the applicant is not entitled to leave on this ground.

Decision

The first ground
I have already referred at length to a passage from the judgment in the case of *M.D.A. v. Refugee Appeals Tribunal and Another* (Unreported, High Court, Irvine J., 20th July, 2009). A similar issue arose in that case. Leave was granted by Irvine J. in that case on the basis that the applicant had made out a reasonable case to argue that the Tribunal member acted *ultra vires* in embarking upon the decision making process in the absence of the ORAC representative. She referred in that context to Regulation 9 of the Refugee Act 1996, (Appeals) Regulations 2003, and the provisions of s. 16(11) of the Refugee Act 1996, as amended by s. 11 of the Immigration Act 1999. There are some differences which, it was argued, distinguished the facts of that case from the facts of this case, particularly the

fact that in this case during the course of the hearing before the Tribunal, the Tribunal member, when an issue arose during the course of the hearing as to the question of internal location, suggested that if that matter was being raised, that the hearing would be adjourned to allow a presenting officer to deal with the issue. That suggestion was rejected by counsel on behalf of the applicant. The core complaint made by the applicant is that in the absence of the presenting officer, the Tribunal has no jurisdiction to proceed with a hearing. If that view is correct, then the proceedings are without jurisdiction at the outset. An offer to have a presenting officer present made during the course of the hearing will not cure the original lack of jurisdiction.

Strong counter arguments were put forward by counsel on behalf of the respondent in relation to this issue as to the interpretation of the relevant statutory provisions and the regulations made thereunder. However, those arguments are for a full hearing and I do not think it would be appropriate for me to make any further comment on those arguments.

As I have pointed out, this is a case in which objection was taken at the outset of the hearing before the Tribunal to the fact that a presenting officer was not available but notwithstanding the objection, the Tribunal member decided to proceed with the hearing. I agree with the approach of Irvine J. in the decision referred to above. I am satisfied that there is a serious issue raised as to the interpretation of the statutory provisions and the regulations made thereunder as to whether or not it is appropriate to proceed in that way. I am satisfied that the applicant is entitled to leave to apply for judicial review on the first ground.

Second ground
In this case, a period of over eight months elapsed between the hearing of the appeal before the Refugee Appeals Tribunal and the delivery of the decision. The question raised is whether that delay is something that renders the decision of the Tribunal *ultra vires* the Refugee Act 1996 (as amended) or is a breach of natural and constitutional justice. I have referred previously to the authorities opened to me in this regard. I think that the first point of importance to note is that there is no suggestion whatsoever of any prejudice to the applicant as a result of the delay. This is a case which turned upon the credibility of the applicant and it is clear from the authorities that if the delay has caused any concern as to the safety of the decision by virtue of the gap between the oral hearing and the determination of the appeal, then in such circumstances it may be open to either party to have the decision quashed as being invalid. Finlay Geoghegan J. in the case of *Messaoudi* referred to above made that clear. This is not such a case. It is clear from the facts of this case that no point whatsoever is taken by the applicant as to the credibility findings in this case.

I am not of the view that delay *per se* should, as a general proposition, give rise to the quashing of a decision of the Tribunal. There may be cases of such egregious delay that it would be untenable to permit the decision to stand but they must be far and few between. This is not such a case. There may be cases in which a change of circumstances occurs in the course of the period when a decision is awaited which would make the decision unsafe. It may be that in cases where credibility is in issue that the delay has led to a fear as to the accurate recollection of the evidence by a Tribunal member. To that extent, one would have to have regard to the facts and circumstances of any particular case. I am conscious of the fact that the hearings before the Tribunal have at their heart an individual's human rights and consequently it is important that decisions should be given within a reasonable period of time. However, I would be slow to indicate the level of delay which is unacceptable. In the circumstances of this case the

delay was less than satisfactory. However, no prejudice of any kind was suffered as a result of the delay. In those circumstances I am not satisfied that the applicant is entitled to leave on this ground.