

**THE HIGH COURT
JUDICIAL REVIEW**

2008 67 JR

BETWEEN

A. A. M.

APPLICANT

AND

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

RESPONDENTS

AND

HUMAN RIGHTS COMMISSION

NOTICE PARTY

**JUDGMENT of Ms. Justice Mary Irvine delivered on the 2nd day of July,
2009.**

1. By notice of motion dated 24th January 2008, the Applicant seeks leave to apply for judicial review and in particular an order of certiorari to quash the decision of the first named respondent made on 28th November, 2007 whereby the Tribunal member affirmed the recommendation of the Refugee Applications Commissioner that the applicant be refused refugee status.

2. The grounds upon which the relief is sought are manifold and were somewhat telescoped in the course of the application before this Court. They may be summarised as follows:-

(i) that the Applicant was not afforded fair procedures by the manner in which the first named respondent reached her decision.

(ii) That in reaching her adverse finding as to the Applicant's credibility, the Tribunal member failed to take into account allegedly significant elements of the Applicant's evidence.

(iii) That in reaching an adverse finding as to the Applicant's credibility, the Tribunal member erred in law in the manner in which she dealt with the Applicant's lack of documentation.

(iv) The Tribunal member erred in respect of her findings on a number of material facts which were weighed into the balance as to the Applicant's credibility thus undermining the validity of her decision on that issue.

(v) The Tribunal member had selective regard to country of origin information before it and failed to indicate the circumstances in which she discounted a UNHCR position paper of February 2006 which supported the Applicant's claim regarding the issue of internal relocation.

Background facts

3. The Applicant claimed he is a member of the Berti tribe who had lived his entire life in the town of Serba in Darfur, Sudan. He left Darfur allegedly due to a stated fear of persecution by reason of his membership of this tribe. He asserted that he had working for three weeks at a grain store in Serba, where the employer hid weapons for opposition groups. He claimed to have feared government troops who had been outside his place of employment. This caused the Applicant to hide out in an agricultural dwelling, called a "zaribe" in Arabic, owned by a friend. However, Serba was attacked on 11th November 2006, causing the Applicant to travel to another town, Silea, by truck. From there he went to another town called Kulbus before his uncle arranged for him to leave Sudan by ship on 28th November, 2006.

4. The Applicant applied for asylum in this State on 28th December 2006. He completed the standard questionnaire supporting his asylum application in Arabic on 31st December 2006. Question 7a of the questionnaire asked the Applicant's current nationality/citizenship to which he replied "Arab." His questionnaire was translated from Arabic into English and he attended for interview on 4th May 2007.

5. By decision dated 16th July, 2007, the Refugee Applications Commissioner recommended that the Applicant should not be declared a refugee. In reaching that conclusion, the Commissioner made adverse findings as to the applicant's credibility. One of the issues in relation to credibility concerned the Applicant's statement on his questionnaire that he was of Arab nationality. The Commissioner stated:

"Asked to confirm that he was an Arab, the applicant replied "I'm African." Asked why he had put on his questionnaire that his nationality was Arab, he replied "Maybe I didn't understand the question." Since the applicant stated that he was satisfied that the information on his questionnaire was true and correct it is somewhat implausible for him to claim that he may not have understood a question relating to his nationality on this questionnaire. Furthermore, since he claims to have suffered persecution on account of his African ethnicity it would seem implausible for him to make an error about a matter of such importance.

A further adverse credibility finding was reached in circumstances where the applicant had contended that the Janjaweed had attacked government buildings in Serba in May 2006 which the Commissioner felt was unlikely due to the fact that the Janjaweed militia was allied to the Sudanese government and such an attack would have made no sense. The Applicant's apparent ignorance of the military allegiance of the Janjaweed to the government called into question his claim to be from the Darfur region.

6. A Notice of Appeal was filed by the applicant's solicitors. Included in this Notice of Appeal was a paragraph stating that there had been an error in the section 13 report where "Zaribe" was stated to be a village but was in fact the Arabic word for an agricultural dwelling in which the applicant was hiding on the outskirts of

Serba. The Notice of Appeal also addressed the incorrect answer in the questionnaire, stating that the Applicant believed the question to be in regard to language.

7. The oral hearing before the Tribunal took place on 10th August, 2007. The decision of the Tribunal member is dated 28th November, 2007. The Applicant was notified of the decision of the Tribunal member on 7th January, 2008, which was to the effect that the recommendation of the Refugee Applications Commissioner should be confirmed.

The Decision

8. At section 3 of the Tribunal member's report, she sets out the facts supporting the Applicant's claim for refugee status. Within that paragraph, she states that the Applicant hid in the home of a friend in the village of Zorbe.

9. The Tribunal member went on at section 5.3 of her report to set out how she would assess the credibility of the Applicant as required under s.11B of the 1996 Act which includes a consideration as to whether the Applicant possesses identity documents and if not, whether he had provided a reasonable explanation for the absence of such documents.

10. At section 6 of the decision, the Tribunal member set out her analysis of the Applicant's claim. The following appear to be the key points contained in that analysis, namely:-

(i) The Applicant had no evidence of his identity or of his country of origin. He had no passport, no driver's licence, no national identity card, no details relating to military service (which he had claimed to have completed) and no travel documentation. He had none at the time of his arrival in Ireland and had been unable to procure any since his arrival.

(ii) It was accepted that conditions in Darfur were "dire" with the government forces complicit with the Janjaweed militia engaged in ethnic cleansing of the native African population.

(iii) The Applicant's fear of persecution stems from his claimed ethnicity as a member of the African Berti tribe.

(iv) The Applicant had inserted on the questionnaire that his nationality was "Arab" but later stated that he thought the question referred to what language he spoke. At the commencement of the interview, the Applicant had stated that he was happy that the information contained in the questionnaire was correct. The Tribunal member stated that despite being given every opportunity to explain how these misunderstandings could occur, the Applicant was unable to assist the Tribunal any further in that regard.

(v) Country of origin information revealed that Serba's population was about 11,000 people. The Applicant had told the Tribunal that it was between 1,300 and 1,400. This cast serious doubt on the Applicant's claim to have lived in Serba all his life.

(vi) The Applicant claimed to have fled Serba due to an encounter with the Janjaweed in 2006 and his fear of being attacked if he stayed.

(vii) The Applicant alleged that government buildings in Serba had been attacked by the Janjaweed in May 2006. The Tribunal member considered that this was unlikely as those forces were complicit with the Sudanese government.

(viii) The Applicant had no apparent difficulties on his travels from Serba to Port Sudan.

(ix) Country of origin information indicates that internal relocation was a tenable option for those in the Darfur region who fear persecution, according to the UK Home Office Operational Guidance Notes for Sudan of 30th November, 2006.

11. The Tribunal's conclusion was written in the following fashion:-

"The Applicant has not satisfied me that he is who he is or is from Sudan. His knowledge of Serba where he claims to be from is scant to say the least. The Applicant was unable to explain satisfactorily or at all to the Tribunal why he persisted in his Application in stating that he was Arabic. Without benefit of any travel documentation the Tribunal is not in any position to state when or how the Applicant actually arrived in Ireland. The Applicant's account of how he travelled her defies belief. Having observed the Applicant throughout his hearing and having considered all matters before me, I am satisfied that the Applicant is not a refugee and accordingly the decision of the Commissioner is upheld.

In coming to the above decision I have had regard to the background information supplied by the Applicant both in the questionnaire and at interview.

The Tribunal has considered all relevant documentation in connection with this appeal, including the Notice of Appeal, country of origin information, the Applicant's asylum questionnaire and the replies given in response to questions by or on behalf of the Commissioner on the report made pursuant to section 13 of the Act.

Accordingly, pursuant to section 16(2) of the Act, I affirm the recommendation of the Refugee Applications Commissioner made in accordance with section 13 of the Act."

The Applicant's Submissions

12. The Applicant contends that there are reasonable grounds as to why the credibility findings of the first named respondent should be impugned. Counsel on behalf of the applicant, Mr. Christle S.C., submitted that in particular, the Tribunal member had failed to take into account in the course of her considerations, a significant body of positive evidence supporting the Applicant's claim that he was a member of the Berti tribe and had lived in Serba. In particular, he complained about the failure on the part of the Tribunal member to consider the Applicant's knowledge of the geography of Sudan and of the towns close to Serba and those towns which he travelled through whilst making his escape. He also alleged that the Tribunal member failed to have any regard to the fact that the applicant's evidence that fighting had occurred in the town of Serba in November 2006 was corroborated by country of origin documentation.

13. Counsel on behalf of the Applicant also submitted that the credibility findings of the Tribunal member should be impugned in circumstances where she made material errors in the course of her decision. In particular, he relied upon the

Tribunal member's statement that the Applicant had "persisted" in his Application in stating that he was Arabic. The Applicant had in fact corrected this initial error in his questionnaire at interview and also in the course of his submissions in his Notice of Appeal. He had always maintained that he was a member of the Berti tribe. Mr. Christle also relied upon the Tribunal member's error in reciting that the Applicant had hidden temporarily in the village at Zorbe which again the Applicant had clarified at interview was an agricultural building and had been corrected in the submissions filed with the Notice of Appeal.

14. Mr. Christle submitted that the inferences drawn by the Tribunal member regarding the applicant's lack of documentation were not open to her having regard to Article 196 of the UNHCR Handbook. He further submitted that the Tribunal member had not explained how she had come to the conclusion that the Applicant's description of his travel to Ireland "defied belief" and that she had not stated the basis upon which she had drawn an adverse inference from the Applicant's demeanour.

15. Finally, counsel on behalf of the Applicant submitted that the Tribunal member had failed to properly analyse country of origin documentation regarding the possibility of relocation and had failed to specify how she had concluded that internal relocation was a tenable option having regard to country of origin documentation proffering a contrary opinion.

16. In terms of caselaw, the Applicant relied upon the decision of Finlay Geoghegan J. in *Kramarenko v Refugee Appeals Tribunal* (Unreported, High Court, 2nd April, 2004) contending that the Tribunal member had failed, as she was required to do, to make her decision on credibility based upon a complete understanding of the entire picture presented to the Tribunal member. The Applicant further relied upon the decision in *Sango v Refugee Appeals Tribunal* (Unreported, High Court, Peart J., 24th November 2005) in support of his contention that there must be a cogent nexus between the matters upon which the Applicant has been found not to be credible and the core issue in the application. The Applicant relied upon the decision in *Carciu v Minister for Justice, Equality and Law Reform and Another* (Unreported, High Court, Finlay Geoghegan J., 4th July 2003) in support of his contention that the first named respondent had failed to adequately consider explanations given by the Applicant in respect of the error he made in the completion of his questionnaire. Finally, the Applicant relied upon the decision of Clarke J. in *Muia v Refugee Appeals Tribunal and Others* (Unreported, High Court, 11th November 2005) in support of his contention that no rational explanation had been given as to why the country of origin documentation favourable to the Applicant's case concerning internal relocation was not considered.

The Respondent's Submissions

17. Counsel on behalf of the respondents, Ms. Sinead McGrath B.L., submitted that the decision made by the first named respondent had nothing to do with internal relocation. At the core of the Tribunal member's decision was her finding that she was not satisfied that the Applicant was who he said he was, namely a member of the Berti tribe who had lived his entire life in Serba and had left Sudan due to a fear of persecution by the government and/or the Janjaweed militia.

18. Counsel for the respondent contended that the Tribunal member's findings on the issue of credibility were lawful having considered the evidence which was before her. She asserted that the Tribunal member had set out in her decision

each factor which she believed was relevant to her decision, and those factors had been put to the Applicant in the course of the hearing and he had ample opportunity to fully make his case on all of the issues which were resolved against him. She submitted that there had been no lack of fairness or fair procedures. She submitted that the Tribunal member had weighed the evidence and had come to an adverse credibility finding which she was entitled to make.

19. Counsel relied upon the decision of Peart J. in *Imafu v Minister for Justice, Equality and Law Reform and Others* [2005] IEHC 416, advising this Court that it should not fall into the trap of substituting its own view on credibility for that of the Tribunal member. She relied on the same decision in support of her submission that the credibility findings in this case were made in respect of a core rather than a peripheral matter. The core finding rejecting the Applicant's origins undermined entirely his claim for refugee status and any need for a consideration of other matters such as internal relocation. Counsel on behalf of the respondent also relied upon the decision of Birmingham J. in *Abdulkarim v Minister for Justice, Equality and Law Reform and Refugee Appeals Tribunal* (Unreported, High Court, 23rd January 2009) in support of her assertion that the weight to be attached to the Applicant's knowledge of local issues and the answers that the Applicant got right or wrong were a matter for the Tribunal. It was not this Court to form a different view as to the significance of that evidence.

The Court's Assessment

20. This being an application for leave, section 5 of the *Illegal Immigrants (Trafficking) Act, 2000* applies and the Applicant must therefore establish "substantial grounds" for contending that the RAT decision should be quashed. In *McNamara v. An Bord Pleanála (No. 1)* [1995] 2 I.L.R.M. 125, Carroll J. interpreted the phrase "substantial grounds" in the provisions of the *Planning Act of 1992* as being equivalent to "reasonable", "arguable" and "weighty" and held that such grounds must not be "trivial or tenuous." This is the onus which the Applicant must discharge in the present case.

21. I agree with counsel for the respondent that the Tribunal member's findings as to the credibility of the Applicant were core in this decision. The principles which govern the Court's review of the assessment of credibility by a Tribunal member were set out by Clarke J. in *Imafu v Minister for Justice, Equality and Law Reform and Others* [2005] IEHC 182, as follows:-

"(i) The assessment by the RAT of the credibility of an appellant and his or her story forms part of the decision-making power conferred by the Refugee Act, 1996 and therefore, in accordance with principles set out in East Donegal Co-operative Limited v The Attorney General [1970] I.R. 317, such assessment must also be carried out in accordance with the principles of constitutional justice: Traore v Refugee Appeals Tribunal and Another (Unreported, High Court, Finlay Geoghegan J., 14th May 2004).

(ii) Where the assessment of the credibility of an appellant places reliance upon a significant error of fact in a manner adverse to the appellant such error renders the decision invalid: Traore.

(iii) While the assessment of credibility is a difficult and unenviable task, it is not permissible to place reliance "on what one firmly believes is a correct instinct or gut feeling that the truth is not being told." Such a process is an insufficient tool for use by an administrative body such as the Refugee Appeals Tribunal.

Conclusions must be based on correct findings of fact: Da Silveira v Refugee Appeals Tribunal and Others (Unreported, High Court, Peart J., 9th July 2004).

(iv) A specific adverse finding as to the appellant's credibility must be based upon reasons which bear a legitimate nexus to the adverse finding: Kramarenko v Refugee Appeals Tribunal and Another (Unreported, High Court, Finlay Geoghegan J., 2nd April 2004) placing reliance on the decision of the United States Court of Appeals for the Ninth Circuit in Aguilera-Cota v INS 914 F. 2d 1375, (9th Cir. 1990).

(vi) A finding of lack of credibility must be based on a rational analysis which explains why, in the view of the deciding officer, the truth has not been told: Zhuchova v Minister for Justice, Equality and Law Reform and Another (Unreported, High Court, Clarke J., 26th November 2004).

22. It is clear in the present case that the Tribunal member, having regard to several factors in the Applicant's claim, simply did not believe that the Applicant was who he said he was, namely a member of the African Berti tribe who had lived in Sudan all his life. This finding was based on the following factors adverse to the Applicant's credibility, namely: (i) the absence of identity or travel documentation; (ii) the error on the questionnaire stating that the Applicant's nationality was Arab; (iii) the Applicant did not know the population of Serba; (iv) the Applicant claimed there had been an attack on government buildings by the Janjaweed militia when this militia were known to be complicit with government forces and (iv) her incredulity concerning the Applicant's travel arrangements. In my view, these are all matters which the Tribunal member was permitted to have regard to in assessing the Applicant's credibility.

23. I have considered the arguments advanced by counsel for the Applicant and I do not believe that there is any evidence to support the contention that the Tribunal member failed to consider the knowledge that the Applicant displayed of the geography of Sudan. Nor is there any evidence that she failed to consider the Applicant's knowledge of the towns he allegedly travelled through in the course of his departure or his evidence as to the fighting which had allegedly occurred in Serba in November 2006. Decisions must be read in the round and it is not incumbent upon the Tribunal member to set out every piece of evidence which she has considered in making her credibility findings. As Ms. McGrath pointed out, there were several other matters which, had they been recorded in the decision, could have reflected poorly on the applicant's credibility. Such matters include his lack of knowledge of attacks on Serba in 2005 (the Applicant stated in his section 11 interview that no attacks had taken place in Serba in 2005). Furthermore, at the oral hearing, the Applicant was unable to advise of the distance between a number of towns through which he allegedly made his escape from Serba.

24. The weight to be attached to the evidence, including the questions the Applicant got right as opposed to those he got wrong, is a matter for the Tribunal member. In this regard, I am guided by the remarks of Birmingham J. in *Abdulkarim v Minister for Justice, Equality and Law Reform and Another* (Unreported, High Court, 23rd January 2009) where he held:-

"The applicant also criticised the Tribunal member for failing to have regard to those areas where the applicant displayed a knowledge of Somali life and Reer Hamar life. It seems to me that the weight to be given to these issues and the significance to be attached to the issues and questions which the applicant got

right, as against those that she got wrong, was peculiarly a matter for the Tribunal. The criticism now made, in effect, amounts to a request to the court to form a different view and that is something this court just cannot do."

This finding is supported by the decision of Peart J. in *Imafu v Minister for Justice, Equality and Law Reform and Others* [2005] IEHC 416, where he stated:-

"The Court must not fall into the trap of substituting its own view on credibility for that of the Tribunal member. The latter, just as a trial judge is at trial rather than the appellate court, in the best position to assess credibility based on the observation and demeanour of the applicant when she gives her evidence."

25. Having reviewed the Tribunal member's decision, it appears to me that she carried out an extensive and considered analysis of the Applicant's claim and all the relevant documentation. It was of critical importance to her findings that the Applicant had been unable to correctly state the population of Serba and he had asserted that Janjaweed militia had attacked government buildings. She also relied, as she was entitled to do, on the Applicant's lack of documentation. The Applicant was unable to procure identity documents, including documents relating to the military service which he claimed to have completed in Sudan. These are all matters which the Tribunal member was entitled to have regard to in assessing the Applicant's credibility. There is nothing in the Tribunal member's decision which suggests that she relied on gut instinct or conjecture in rejecting the Applicant's claim.

26. In the course of the oral hearing, the Tribunal member heard evidence from the Applicant as to how he travelled from Sudan to Ireland. In her findings, she states the Applicant's account of his travel "defies belief." This is an unfortunate use of words and it would have been preferable had the decision-maker specified the basis upon which she found the Applicant's account to be incredible. However, I am satisfied that this assessment was not central to the Tribunal member's assessment of the Applicant's credibility and was merely peripheral to her central finding that the Applicant could not be believed to be a member of the Berti tribe from Serba.

27. Counsel for the Applicant made reference to two errors in the Tribunal member's decision, firstly the reference to the Applicant having stayed temporarily in the village of Zaribe which is in fact the Arabic word for an agricultural building. I am of the view that this error is not significant in the context of the credibility findings and should be overlooked. In *Da Silveira v Refugee Appeals Tribunal* (Unreported, High Court, 9 July 2004), Peart J. stated:-

"Conclusions must be based on correct findings of fact. A factual error of sufficient importance will often have the capacity to at least cast some doubt upon the integrity of the decision-making process, and in those circumstances, this Court's function is to intervene, and if necessary on a substantive hearing, to provide redress."

I am not satisfied that the error identified by the Applicant is of sufficient importance to meet this threshold.

28. Counsel for the Applicant also impugned the Tribunal member's statement in the conclusions of her decision that the Applicant was "unable to explain satisfactorily or at all to the Tribunal why he persisted in his Application in stating that he was Arabic." This must be seen against the analysis of the Applicant's

claim in section 6 of her report where the Tribunal member sets out in full the history of how the Applicant subsequently dealt with the mistake he made his initial questionnaire. She stated:-

"It was put to the Applicant that when the Applicant was asked his nationality he replied "Arab." The Applicant told the Tribunal that he thought he was asked what language he could speak. It was then put to the Applicant that on the very same page the Applicant was asked what language he spoke, the Applicant replied "Arabic." When this was put to the Applicant, the Applicant said he did not understand the question that was asked and he said he had stated Sudanese but then cancelled it. The Applicant was asked at the commencement of his interview if he had completed the Questionnaire himself. He replied in the affirmative. The Applicant was also asked if he was happy that the information contained in his Questionnaire is true and correct. The Applicant also replied in the affirmative. Despite being given every opportunity to explain how these misunderstandings could occur, the Applicant was unable to assist the Tribunal any further in that regard."

29. I am satisfied that the Tribunal member was entitled to come to the conclusion she did in having misgivings about accepting the Applicant's alleged mistake. She was entitled to take the evidence on this issue and conduct a weighing exercise. I do not think that the Tribunal member erred outside jurisdiction in doing so. In any event, even if this was an irrational conclusion on the part of the Tribunal member, it was not of such significance that it would have made any difference, in my view, to the overall outcome.

30. In the circumstances, I am not satisfied that substantial grounds have been shown by the Applicant and I must refuse to grant leave.