

THE HIGH COURT

2007 1422 JR

BETWEEN

O. A.

APPLICANT

AND

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

RESPONDENTS

Judgment of Ms Justice Mary Irvine delivered the 17th day of June, 2009:

This is an application for leave to seek judicial review for the reliefs set forth in the Statement of Grounds dated 21st October, 2007 on the Grounds therein set forth. These reliefs include a Declaration that the Refugee Appeals Tribunal ("RAT") decision to deny refugee status, and the Recommendation of the Tribunal Member are ultra vires; an Order of Mandamus directing that the applicant's claim for refugee status be remitted for hearing by the RAT; an Order of Certiorari quashing the said Decision and Recommendation; and an Injunction restraining the Minister for Justice, Equality and Law Reform ("the Minister") from proceeding with the proposal to make a deportation order relating to the applicant pending the determination of the within proceedings.

The grounds upon which relief is sought can be summarised as follows:-

1. The Tribunal erred in law in the manner in which it assessed the credibility of the applicant. In particular, the Tribunal failed to have regard to the country of origin information before it, failed to have any regard to the explanations furnished by the applicant, and/or failed to give any reasons as to why explanations were rejected, and engaged in conjecture in arriving at its decision.
2. The Tribunal erred in law and acted in breach of fair procedures in failing to have regard to evidence of past persecution suffered by the applicant and/or persons in a like position.
3. The Tribunal failed to perform its task in the manner prescribed by statute and the UNHCR handbook.
4. The Tribunal arrived at its decision in a manner which breached fair procedures.
5. The Tribunal member failed to have any reasonable regard to the Notice of Appeal and subsequent submissions made on behalf of the applicant, failed to consider all the evidence, had regard to irrelevant matters and failed to have regard to relevant matters.

6. The Tribunal erred in law and in fact in casting unreasonable and/or irrational doubt on the applicant's origin in circumstances where documentary evidence was produced to support the applicant's claim.

7. The Tribunal erred in law and in fact in failing to have any or any adequate regard to the corroborative evidence furnished by the applicant's wife.

8. In the circumstances, the decision of the first named respondent is unreasonable, unreasoned, irrational, lacking in proportion and displays a bias to the point of being absurd.

Background Facts:

The applicant in his Grounding Affidavit states that he is a national of Sudan and that he and his wife arrived in this State on 28th June 2006, whereupon they applied for refugee status. On 29th June 2006, the applicant completed a questionnaire in which the following facts, amongst others, are revealed:

1. He was born on 25th February 1980, and is a member of the Al Baja tribe in East Sudan.

2. He is of the Muslim faith and his first language is Arabic: he speaks no other language.

3. The applicant was married on 18th November 2005 according to a religious rite.

4. The applicant's wife is also Sudanese and of the Muslim faith.

5. The applicant also has two brothers who reside in Dordib.

6. The applicant gave the following reasons for having left his country of origin:

"I am a citizen from East Sudan from the Dordib area. I work in Al Khartoum city, I have a small shop that sells computers, mobile phones and there is a copying machine in the store. I met a girl from the Soya Shark area from the Beni Amer tribe and we had a love affair. I wanted to marry her, but her parents refused because she was promised to another man who was a police officer. He threatened to kill me if I went near her and even her parents threatened to kill me. I married her without the knowledge of her parents, but I was worried for both of us so I decided to get out of Sudan. Also I was connected to the Al Baja Conference and I was monitored by the security force and they previously imprisoned me for supporting the Al Baja people in the East with money and with facilitating printing and distributing their publications."

7. The applicant claimed to have a fear of persecution on the grounds of race, membership of a particular social group and political opinion. The reason he fears persecution is explained at q.29 as:

"I fear imprisonment and I might be killed because I married a girl without the knowledge of her parents and I even escaped with her outside Sudan and this alone is against the Sudanese tribes' traditions and the fate is killing; in addition to the man who wanted to marry my wife, who was a police officer – this is

considered defiance to him and he might arrest me or kill me. Also my shop was closed, and I am chased by the government."

8. Regarding travel arrangements, the applicant states that he took a lorry from Al Khartoum to Sudan Port City then he took a ship to Ireland.

Following the completion of this questionnaire, an interview was held on 15th August 2006. During the interview the applicant was asked a large number of questions as is normal, and while it is not necessary for me to detail everything that was said, I will summarise the relevant information which was given during this interview.

The applicant was asked whether he had completed military service in Sudan. He stated that he had not, as it was "based on two things", firstly education level. To qualify, one had to have passed ones leaving certificate and that he had not. Secondly, one had to be drafted between the ages of 18 and 33 and the applicant had avoided this. Each time there was an inspection the applicant had hidden in the back of his shop or in the centre. The applicant stated that he was a member of a sub-division of the Beja tribe, and that the language of the Beja tribe was Albadqweet. The applicant told the Commissioner that he was not a member of any party but had given some assistance to the Beja Congress by producing documents in his shop. The applicant stated that he had been arrested and detained for two days for giving this assistance during which he was severely beaten.

The applicant stated that he was arrested on a second occasion and detained for one month after he had married his wife against the wishes of her family as it was intended that she would marry a high ranking police officer. He believed that his second arrest was as a result of the police officer's actions rather than his support for the Beja Congress. His shop was then closed. The applicant stated that he could not have moved elsewhere in Sudan as his wife's file was in every single police station in Sudan.

The applicant was notified by letter dated 13th October 2006 of the decision of the Refugee Applications Commissioner to refuse his application for refugee status and he was furnished with a copy of the report of the investigation as well as the recommendation of the Commissioner. In the Report pursuant to section 13(1) of the Refugee Act, 1996 (as amended), and which is dated 29th August 2006, the facts as outlined by the applicant in his application and interview are set out. It is clear from this report and recommendation that the reason he was considered not to have established a well-founded fear of persecution was that the Commissioner was of the view that he lacked credibility with regard to a number of issues, namely those of language, military service, the circumstances surrounding his marriage and his account of how he travelled to Ireland.

In relation to language, the Commissioner noted:

"[The applicant] stated that the Beja tribe used to have a language called Albadqweet. However, Country of Origin information stated that the Beja language is known as Tobedawie (Appendix 1). It is felt that this casts doubt on his claims. It is implausible that someone who was so dedicated to the cause of the Beja tribe would be unable to speak any tribal language or even correctly identify the language."

With regard to military service, the Commissioner noted that country of origin

information confirmed that military service was compulsory for all males aged 18 and over and was not, as advised by the applicant, dependant on the two pre conditions already referred to.

Regarding the applicant's marriage, the Commissioner stated:

"It is questioned why would the applicant continue to work at his premises and continue to live in the same area if he was encountering problems with a highly ranked police officer from the same city. It is felt surely that the applicant and his wife, after secretly getting married, would have attempted to relocate to a different part of Sudan to avoid any potential future problems. Further, it is felt that it is not possible to prove or disprove the applicant's claim as it is not possible to verify the authenticity of documentation submitted.

With regard to the applicant's travel, the Commissioner stated:

"The applicant claims that he travelled to Ireland with his wife by sea from Sudan. He claims that the ship stopped in an unknown location on the way to Ireland. He claims that they were put into a lorry and that this was how they departed the ship when it arrived in Ireland. He claims that he had no travel documents in his possession. It is felt that the applicant possibly should have been able to identify the country in which he changed ship."

The applicant lodged an appeal against the decision of the Refugee Applications Commissioner to refuse his application for refugee status on 3 November 2006. Firstly, he submitted in his Appeal that the Refugee Applications Commissioner had erred in fact and in law when concluding that the applicant had failed to establish a well-founded fear of persecution. It was alleged that the Commissioner had erred in fact in relying on inaccurate information in concluding that he should doubt the credibility of the applicant's account of having been subjected to persecution in Sudan. The applicant submitted that these findings of fact related to the evidence given in relation to (i) his perceived involvement with the Beja Congress and (ii) the circumstances surrounding his marriage and his alleged subsequent persecution as a result of the same. The applicant also submitted for the purposes of his appeal that credibility findings were improperly made on the evidence available to the commissioner particularly in relation to the issue of language. The applicant maintained that he had not been asked to speak in the language of the Beja tribe at interview and it was unfair therefore to rely on his alleged inability to speak the language of the Beja Tribe. He later submitted in the course of the hearing of his appeal that there were a number of different names for this particular language including Albadqweet.

With regard to adverse credibility findings stemming from the applicants evidence in relation to military service the applicant submitted that Country of Origin Documentation did not state that military service was compulsory, as found by the Commissioner. Further, in relation to country of origin documentation that said that in order to receive a certificate upon leaving school or to get a place in university that a student had to have entered military service was not inconsistent with the applicants statement to the Commissioner that this had never been an issue for him as he had not completed his leaving certificate.

It was further submitted that the Commissioner had erred in fact in finding that the option of relocation was open to the applicant and his wife. He relied upon the fact that he had told the Commissioner that as his wife's proposed husband was a

police officer and her file was in every single police station in Sudan, that relocation was not an option.

In relation adverse credibility findings regarding the applicants account of his travel arrangements, the applicant submitted that he had given a wholly competent account of his journey to Ireland at the interview.

The decision of the Refugee Appeals Tribunal member is contained in a document of fourteen pages approximately in which she outlines the applicant's background and summarizes the facts already outlined above. The Tribunal member made the following findings in relation to the core issues of marriage, language, military service and travel to Ireland.

Marriage

"It was put to the applicant in his questionnaire that the applicant stated he had given money to the Beja Congress. At question 29 of the applicant's Questionnaire the applicant stated that what he did went against Sudanese tribal traditions in marrying his wife in the manner in which it occurred. The applicant was asked if the Beja Congress would support what he had done. The applicant told the Tribunal that it was a personal matter and the Beja Congress would have no views either way. It was then put to the applicant that in the English translation of the marriage certificate it stated that his wife had given her consent by way of her proxy and the applicant's wife's father was named as being the proxy. It was put to the applicant how given the opposition to the marriage his wife's father was named as proxy on the certificate. The applicant told the Tribunal that his wife's father has to be mentioned in the certificate. Given that the applicant's wife told the Tribunal that the Mazzin knew of the situation and still went ahead with the ceremony in the light of consents that are required for Muslim ceremonies the situation seems to be highly improbable and unlikely and the applicant's account in this regard is simply not capable of being believed. The applicant was asked who the two witnesses to the ceremony were. The applicant was unable to state who they were but told the Tribunal that they were produced by the Mazzin. The applicant was asked after the wedding if his now in-laws searched for their daughter. The applicant told the Tribunal that they were only looking out for her, however he had no idea if her parents sent Ali Taha searching for them. The applicant continued to live in Sudan after the marriage undetected and undiscovered by anybody."

Language

"The Commissioner had concerns that the applicant seemed unable to name the language of the Beja tribe. He called it Albadqweet, Country of Origin Information states that the Beja language is known as Tobedawie. The applicant told the Tribunal that the name he gave in the course of his interview was a slang word. It is of some concern to the Tribunal that the applicant notwithstanding his support for the Beja Congress and his claim to be of the Beja tribe would be unable to speak any tribal language."

National service

"The applicant also denied having carried out any National Service in Sudan. Country of Origin Information confirmed that military service is compulsory for all males aged eighteen and over (Appendix 2 U.K. Home Office Country Report April 2005). The applicant's account of not attending high school and hiding at the

back of the shop whenever draftsmen approached to compulsorily draft him is simply not believable."

Travel

"The applicant's account of his travel to Ireland is completely lacking in any credibility. He claims the ship stopped in an unknown location, he transferred to another ship, they were then put into a lorry and this was how they departed the ship when it allegedly arrived in Ireland. The applicant had no travel documentation in his possession and the Tribunal does not know when or how the applicant actually arrived here.

Under the heading of "Conclusion", the Tribunal Member states:

"Having considered all the matters relating to the applicant's claim there are serious lackings and inconsistencies in relation to the account given by the applicant as regards his alleged persecution in Sudan. Having considered all the matters before me I am satisfied that the applicant has not satisfied me that he has a well founded fear of persecution on any Convention grounds. That being so the applicant is not a refugee and accordingly the decision of the Commissioner is upheld."

Legal Submissions:

Counsel for the applicant, Pdraig Cullinane BL, submits that the Tribunal failed to consider adequately or at all the evidence presented. With regard to the issue of the language of the Beja tribe, Mr Cullinane submits that the Commissioner and the Tribunal took a most unreasonable and excessively narrow approach to this issue and not only failed to have regard to the true position, but elevated their own narrow and erroneous focus to the level of a weighty conclusion. The applicant was never asked to speak in any dialect or version by the respondents.

With regard to the issue of national service, Mr Cullinane submits that the Tribunal erred in its analysis of the position in that it confuses the position with regard to country of origin information which does not state that military service is compulsory but rather that the law governing military service is the National Service Act of 1992, which renders all males between eighteen and thirty-three liable for national service. Mr. Cullinane submits that the Tribunal displayed a high degree of bias and a total lack of understanding in its conclusion that the applicant's responses were "simply not believable."

On the issue of travel, Mr. Cullinane submits that the Tribunal's position that the applicant's account of the passage to Ireland is completely lacking in credibility cannot be sustained as the applicant *de facto* reached Ireland and why he would lie about that is a question which the Tribunal sidesteps.

Mr. Cullinane submits that the Tribunal failed to consider and adequately weigh the applicant's evidence of past persecution and failed to refer to same in its written decision either adequately or at all. Counsel refers the court to the case of *Da Silveria* (Unreported, High Court, Peart J., 9th July 2004) where the court approved the decision of the court of Appeal in *Karanakaran v The Secretary of State for the Home Department* [2000] 2 All ER 449, where it was stated at page 29:

"The decision maker...was required to take account of all material considerations when making an assessment about the future...the decision maker could not exclude from consideration any matters when assessing the future unless it felt that it could be safely disregarded because it had no real doubt that they had in fact not occurred."

Counsel for the applicant submits that the adverse credibility findings as set forth by the Tribunal are made without any or any adequate assessment of the facts before the Tribunal and are arbitrary, biased, unfair, unconstitutional and in breach of the applicant's fundamental and human rights. In this regard, counsel relies upon *Zhuchova v Refugee Appeals Tribunal* (Unreported, High Court, 26th November 2004) where the obligation to consider explanations was considered and it was stated at page 13:-

"The tribunal member simply states that he did not find the explanations credible, he gives no reasons for that, and that seems to me to be precisely the kind of exercise which Peart J. in Da Silveria indicated should not be engaged in."

Sinead McGrath BL, Counsel for the respondent, submits that the decision of the Tribunal is made within jurisdiction and is valid. With regard to the evidence concerning the applicant's marriage, Ms McGrath submits that the Tribunal member fairly put the matter to the applicant for comment and that she acted both rationally and reasonably when rejecting his explanation. She submitted that the Tribunal member acted fully within her jurisdiction and that her findings in relation to the circumstances surrounding the applicant's marriage were based on a proper analysis of the evidence.

With regard to language, Ms McGrath points out the applicant gave two different explanations for his statement that the Beja language is called Albadqweet. He initially claimed that it was one of a number of names for the Beja language. . Later he maintained that it was a slang word. In his Questionnaire, the applicant had clearly stated that he spoke only Arabic. Ms McGrath submits that the applicant's complaint that he was not asked to speak another language at his interview is wholly unsustainable in the light of the information inserted by him on the questionnaire. Also, he was fully aware from the Commissioner's decision that this was an issue that went to the core of his asylum application. He attended the oral hearing with legal representation and had a full and fair opportunity to deal with this issue.

In respect of national service, Ms. McGrath suggests that the applicant has incorrectly interpreted country of origin information in this regard. He submitted that he could not enter military service without a school certificate. In fact the report states that completion of military service is required in order to obtain entry to University. Ms McGrath submits that the country of origin information clearly supports the finding made by the Tribunal member in relation to national service in Sudan. The Tribunal member did not accept the applicant's explanation as to how he managed to avoid conscription and in particular his purported reliance on the fact that he had avoided military service partly because he had not passed the necessary school examination

Regarding travel, Ms. McGrath submits that the Tribunal member was fully entitled to have regard to the plausibility of his travel details pursuant to section 11B of the Refugee Act, 1996 (as amended) and *Imoh v Refugee Appeals Tribunal* (Unreported, High Court, 24th June 2005). Counsel relies upon the decision of

Bermingham J in *Muanza v Refugee Appeals Tribunal* (Unreported, High Court, 8th February 2008) where he stated:

"The way in which the prison escape and passage through Luanda airport are dealt with are also criticised. However, it seems to me that it is indeed the function of the tribunal member to consider the plausibility or otherwise of an actual account. Having regard to the dramatic and remarkable account of the escape given, much of the attention at the tribunal seems to involve a discussion of the mechanisms of the escape. There would be some who would think that the Tribunal member was, if anything, rather charitable in the way in which he referred to the circumstances of the escape. Again, the conclusions in relation to how the applicant is supposed to have made his way through Luanda airport is criticised, but again it does not seem to me that the Tribunal member was doing anything other than his duty in assessing the account given."

With regard to the Tribunal member's assessment of the applicant's credibility and the coherence of the account given by him, Ms McGrath submits that decisions in relation to credibility are for the Tribunal and not for this court. The court is referred to the decision of Peart J. in *Imafu v Minister for Justice, Equality and Law Reform and Refugee Appeals Tribunal* (Unreported, High Court, 9th December 2005) where he stated:

"The court must not fall into the trap of substituting its own view on credibility for that of the Tribunal member...a court would be reluctant to interfere in the credibility finding by an inferior tribunal, other than for the reason that the process by which the assessment of credibility had been made is legally flawed."

The court is also referred to the decision of Peart J. in *Tabi v Refugee Appeals Tribunal* (Unreported, High Court, 27th July 2007) where he stated:

"This Court (the High Court) should not lightly interfere with an assessment of credibility, since it is quintessentially a matter for the decision-maker who has the undoubted benefit of seeing and hearing at first-hand the applicant giving her evidence. This court cannot substitute another view, simply by the reading of words on the page and by way of summary contained in the documents, unless an error is a clear and manifest error without which a different decision might well have been reached."

Counsel for the respondent also relies upon the decision of Bermingham J. in *ME v Refugee Appeals Tribunal* (Unreported, High Court, 27th June 2008) where he stated:

"On the other hand, a Tribunal member is not expected to accept without challenge or question every account given to him or her. Rather, she is expected to weigh, assess, analyse and draw inferences. I have already set out in some detail the findings of the Tribunal member in relation to credibility. From that, it will be apparent that this was a considered conclusion and went well beyond a mere gut feeling. Instead, the Tribunal member's findings on credibility seem to be arrived at following the accumulation of up to some ten factors that she saw as being relevant...what the applicant is really saying is that the tribunal member should not have reached the view that she did. While the Tribunal member may have arrived at conclusions which are unwelcome to the applicant, this is not a court of Appeal."

Conclusions

This is an application for leave, and therefore I must be satisfied that the applicant has succeeded in passing the threshold required to be overcome before the court will grant such leave, and that is that the issue raised must be "reasonable", "arguable", "weighty" and not something frivolous or trivial. The issue raised in this application is whether the conclusions reached by the Tribunal member as to the credibility of the applicant were soundly based in fact. This Court should not interfere with a finding of the Refugee Appeals Tribunal where there is evidence to support it and where the tribunal member has, *prima facie*, acted within jurisdiction.

I am satisfied that the Tribunal member acted within jurisdiction in assessing the applicant's credibility concerning the language of the Beja tribe. The country of origin information supports the Tribunal member's finding as to the language of the the Beja tribe. The Tribunal member from the evidence was entitled to reach the conclusion she did taking into account the evidence of the applicant regarding the language of the Beja Tribe, his failure if he could speak it to volunteer to do so having regard to its known importance to his appeal and the belated explanation furnished to the effect that his original answer to the query gave a slang word for the language.

In relation to the marriage, there was ample evidence before the Tribunal to support the Tribunal member's conclusion that the applicant's account was simply not capable of being believed. There was evidence that the applicant's wife's father was named as a proxy giving her consent on the marriage certificate, despite the alleged opposition of his wife's family to the marriage. Moreover, the Tribunal member drew attention to the fact that the applicant continued to live in Sudan after the marriage undetected and undiscovered by anybody.

The Tribunal member also made an adverse credibility finding in relation to the applicant's denial of having carried out any national service in Sudan. In this regard, the Tribunal member referred to country of origin information which confirmed that military service is compulsory for all males aged eighteen and over. The Tribunal member considered the applicant's claim that he had avoided military service due to the fact that he had not passed the requisite examinations and by hiding at the back of the shop whenever draftsmen approached and found it to be implausible. I am satisfied that the Tribunal member reached this conclusion after weighing and assessing the evidence before her and acted within jurisdiction.

With regard to the Tribunal member's finding that the applicant's account of his travel to Ireland was "completely lacking in any credibility", I am not satisfied that this conclusion was correctly reached on the evidence given. There is no reason given why the Tribunal member should doubt the evidence of the applicant in this regard. It is frequently the case that asylum seekers arrive in Ireland without any travel documentation and lacking in knowledge of the countries they may have transited through in reaching Ireland. However, my finding that the Tribunal member's assessment of the applicant's credibility regarding his travel was flawed does not displace my findings that on all other matters the Tribunal member acted within jurisdiction in reaching the conclusions which she did. The issue of the applicant's travel to Ireland was not central to the determination of his overall credibility or his asylum claim. There was ample evidence before the Tribunal member to reach the other adverse findings as to credibility which she did.

The relief claimed in these proceedings is a discretionary remedy. Notwithstanding the fact that the court has concluded that the applicant has an arguable case to make that the conclusion of the Tribunal member based upon the respondent's account of her travel arrangements cannot be justified on the basis of the evidence the court does not believe that that based upon this one finding alone that the justice of the case require a reconsideration by the Tribunal of the findings that are warranted in respect of that evidence. The issue of travel was not in any way critical to the overall decision of the second named respondent.

In all the circumstances, I must dismiss the claim of the applicant and refuse leave sought.