

Judgment Title: Bisong -v- The Minister for Justice Equality and Law Reform & Ors

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Judgment by: O'Leary J.

Status of Judgment: Approved

Neutral Citation No. [2005] IEHC 157

**THE HIGH COURT
JUDICIAL REVIEW**

[2004 No. 911 JR]

BETWEEN

ASU CHARLES BISONG

APPLICANT

AND

THE MINISTER FOR JUSTICE EQUALITY AND LAW REFORM

AND

BEN GARVEY, REFUGEE APPEALS TRIBUNAL

RESPONDENTS

JUDGMENT of the Honourable Mr. Justice O'Leary delivered the 25th day of April, 2005.

The applicant seeks leave to apply by way of Judicial Review for the following orders:

1. An order of *certiorari* quashing the decision of the second named respondent to reject the applicant's refugee appeal which said decision was issued on the 20th November, 2003.
2. A Declaration by way of application for Judicial Review that the decision of the second named respondent was *ultra vires*, void and of no force or effect.
3. If necessary, an Interim Injunction by way of application for Judicial Review restraining the first named respondent, his servants or agents, from acting on foot of the decision of the second named respondent to reject the applicant's refugee appeal.
4. If necessary, a stay on the operation of any deportation order pending the determination of these proceedings.
5. If necessary, an order extending the time to take the within proceedings.
6. Such further or other order as this Honourable Court shall deem meet.
7. An order providing for the Costs of these proceedings.

The reliefs are sought on the following grounds.

1. The second named respondent failed to take into account relevant considerations.

a) The second named respondent failed to consider the oral evidence provided by an independent witness, Mr. Gabriel Nkwelle, at the hearing of the appeal. Mr. Nkwelle gave evidence that he was working for the Southern Cameroons National Council (SCNC) in England and that he had known the applicant to be a member of this group in Cameroon. He also provided evidence that known members of this group were often arrested and detained without trial for weeks or even months. He himself had been granted refugee status in then UK on this basis and produced a certified copy of a letter from UK Home Office granting him indefinite leave to remain in the UK as a refugee.

In his summary of the evidence provided in the Refugee Appeals Tribunal decision dated the 12th November, 2003, the second named respondent merely states that Mr. Nkwelle was called on behalf of the applicant and that "*This man said that he was technical advisor to the SCNC in the UK and was a human rights activist in who last saw the applicant in 1995*".

The second named respondent appears to lend no weight to, or even consider, the evidence provided by Mr. Nkwelle.

b) Mr. Nkwelle's submissions on the plight of SCNC members were very much support by the country of origin information provided by the applicant and this was pointed out to the second named respondent by the applicant's legal representative at the appeal hearing. However, the second named respondent appears to have failed to pay any consideration to the documentary record describing the political situation in Cameroon and the ill treatment of SCNC members. The second named respondent did not.

c) The applicant produced a membership card for the SCNC to the Refugee Applications Commissioner. At the hearing before the second named respondent Mr. Nkwelle confirmed that he knew the applicant to be a member of this group in Cameroon. The applicant also produced a medical report from an Irish doctor which confirmed that he had substantial scarring to various part of his body which the applicant alleged was caused by beatings he received while imprisoned in Cameroon. The second named respondent refers to none of the evidence in his decision.

In the circumstances, the second named respondent in this case failed to consider relevant considerations and/or failed to properly assess the documentary record in this case.

2. The second named respondent erred in law.

The second named respondent made no attempt to consider the applicant's credibility in the context of general human rights practices in Cameroon. The decision indicates that the second named respondent considered the applicant's credibility in complete isolation from the general picture as to human rights practices in Cameroon and thus erred in law. Had the second named respondent properly considered any of the country of origin information, it might have had an impact upon the assessment of the applicant's credibility. The second named respondent made a patently unreasonable evaluation of the applicant's credibility. The decision of the second named respondent in the applicant's refugee appeal, issued on 20th November, 2003, at page 6 refers to the applicant's general credibility being undermined by a number of adverse findings as to credibility.

The first adverse finding as to credibility is a purported inconsistency in the applicant's Section 11 interview where he stated that his brother has also been beaten by the authorities in Cameroon.

There was a misunderstanding in the interview as to when this occurred. The applicant was explaining why he feared return to Cameroon. He said that after his escape the authorities had searched his farm looking to recapture him and that his brother had been badly beaten up by the authorities. He was not claiming that these two events occurred at the same time and his was clarified by the applicant in his answer to Q58. The applicant stated in that answer that his brother was beaten before the applicant escaped from custody. The applicant also gave this evidence when questioned in the course of the appeal hearing. On this face of the applicant's credibility, the second named respondent's finding appears to be unreasonable. There is no inconsistency in the applicant's evidence.

The second adverse finding as to credibility is in relation to a letter from a member of a Traditional Council in Cameroon. This letter states that the applicant's house was raided by the authorities in June, 2002 and that the applicant was arrested in July, 2002. The letter is dated October, 2000. It was submitted at the appeal hearing that this inconsistency was merely a typographical error.

The second named respondent ignores this straightforward explanation and instead makes an unreasonable finding as to the applicant's credibility. The third adverse finding as to credibility relates to the number of years that the applicant claims that he was self-employed. The applicant stated in his Section 11 interview that he worked for someone else for seven years before starting his own business. In his questionnaire, he had stated that he started working in 1994 and that he was self employed from the year 2000. This is a minor inconsistency on a peripheral detail which was not put to the second named respondent in the course of the appeal hearing and it is unreasonable for the second named respondent to make an adverse finding as to credibility of the applicant on this basis.

The fourth adverse finding as to credibility relates to the applicant's claim that at one stage he was offered a government job on the basis that this would buy his silence. The applicant stated in his section 11 interview that this tactic of integration was sometimes used by the authorities in Cameroon but that he would not do things that way. The second named respondent finds in his decision that this is not credible. No explanation of why it is not credible is provided and the finding was not accompanied by relevant questioning of the applicant or of the witness Mr. Nkwelle. It is unreasonable for the second named respondent to make an adverse finding as to credibility of the applicant on this basis. A bald assertion of implausibility is made without any specific analysis of the allegations made by the applicant. The fifth and final adverse finding as to credibility relates to the applicant's detention. The applicant stated that he was held for thirty days in police custody and ten or fifteen days in prison as a political prisoner. He said that he was held in a cell on his own. The second named respondent states that unspecified country of origin information reveals that overcrowding and a lack of sanitary facilities are the norm in prisons in Cameroon and, by implication, the applicant's story is not credible. It was unreasonable for the second named to extrapolate that because prisons may be overcrowded in Cameroon that the applicant, a political prisoner, held mostly in police custody was not held in solitary confinement. The issues cited by the second named respondent in his assessment of credibility are unfounded and unreasonable.

The second named respondent's decision was vitiated by unreasonableness and/or irrationally.

At no point in the decision does the second named respondent review the applicant's contention that he was a member of the SCNC and was persecuted in Cameroon for this reason. The second named respondent instead unreasonably and capriciously pinpoints alleged inconsistencies in the applicant's story as related in the Refugee Application questionnaire, the section 11 Interview and the appeal hearing while ignoring key evidence such as medical reports, country of origin

information and the testimony of witnesses are ignored. These alleged inconsistencies are minor and peripheral in nature and should not logically have led the second named respondent to refuse the applicant's claim on the basis of non-credibility.

The second named respondent took account of irrelevant considerations.

The decision of the second respondent clearly takes into account either minor, peripheral or irrelevant inconsistencies in the evidence provided by the applicant.

A number of the alleged inconsistencies are not inconsistencies at all.

Lack of Constitutional and Natural Justice.

The decision of the second named respondent appears to take into account unspecified country of origin in relation to prison conditions which was not before the Tribunal in this case.

Evidence

The proceedings are supported by a number of affidavits as follows:

1. Affidavit of applicant dated 5th December, 2003, with supporting exhibits. This affidavit together with the formal pleadings in the case has been considered by the Court.

FACTUAL BACKGROUND TO APPLICATIONS ALLEGED IN AFFIDAVIT

1. The applicant is a native of Cameroon who arrived in Ireland on 22nd August, 2002, whereupon he applied for refugee status.
2. He alleges that he is a member of the SCNC (South Cameroon Nation Council) an illegal organisation within Cameroon and as a result of that membership he has a well-founded fear of persecution in his home country on the basis on his political belief and/or membership of a particular social group. The basis of his alienation from the mainstream political consensus is his adherence to the ideals of the SCNC which has as its objective the enhancements of the rights of those of Anglo rather than the dominant French culture. The policy

of the SCNC includes the secession of two provinces from the present country.

3. The applicant alleges that he was arrested on a number of occasions (the last time being the most serious as his solicitor failed to get him out of custody as he had done previously) and that he escaped from custody and was assisted to escape first to Nigeria and later to Ireland.

PROCEEDINGS TO DATE

Since his arrival in Ireland the applicant's application has been processed including the following major steps.

1. On 20th December, 2002, an interview with Authorised Officer John F Cahill. Mr. Cahill concluded as follows 'The applicant was a member of an illegal organisation. Although the organisation professes to pursue its objectives by peaceful means country of origin research indicates that some of its members have been suspected of being engaged in violent activities. On the applicant's own admission arms were found on his farm. He was arrested and imprisoned and escaped from jail. There is a warrant out for his arrest. In these circumstances I am of the view that the applicant is a fugitive from prosecution rather than persecution, (see extract from UNHCR Handbook on Procedures and Criteria for determining Refugee Status).

2. Report of this officer was considered by Ms. Lorraine Lee (For the Refugee Applications Commissioner) on 11th February, 2003, who concurred with the recommendation.

3. The matter was considered by Mr. Ben Garvey a member of the Refugee Appeal Tribunal (RAT) on 22nd September, 2003, by way of appeal.

4. Evidence was heard and submissions made at that hearing.

5. By decision dated 12th November, 2003, the Refugee Appeal Tribunal decided that the appeal failed and affirmed the recommendation of the Refugee Applications Commissioner.

**REVIEW OF IMPUTED DECISIONS TO ASSESS WHETHER
SUBSTANTIAL GROUNDS EXIST TO ALLOW THE LEAVE TO APPLY
FOR JUDICIAL REVIEW**

Matters arising tending to favouring granting relief:

I. The Refugee Appeal Tribunal relied in part on country of origin information not available to the applicant and/or on a misinterpretation of the produced documents to conclude that the evidence of the applicant on being held in solitary confinement was unreliable.

II. The Refugee Appeal Tribunal was prima facie unreasonable in relying on an alleged contradiction between the date the applicant said he became self-employed i.e. 2000 in contradiction with the alternative date of 2001 arrived at by adding the date of commencement of employment 1994 with the 7 years which the applicant gave as the length of the employment. Such reliance by the Refugee Appeal Tribunal on approximate dating by an applicant was not reasonable.

III. The Refugee Appeal Tribunal was unreasonable in not accepting as rational the explanation tendered as to the misdating of a letter submitted from Chief Samuel OWAN ENU when from the internal contents of the letter the misdating was obvious.

Matters tending to favour not granting relief:

A. The evidence of a contradiction in the evidence, concerning the date his brother was allegedly beaten up, was a matter to be assessed by the deciding body having heard the explanation. The conclusion that the event impacted adversely on the applicant's credibility was within the competence of the Refugee Appeal Tribunal.

B. The acceptability of the explanation as to why the applicant did not stay in Nigeria when he escaped there is a matter within the competence of the deciding body having heard the evidence. The adverse inference suggested in the decision but not spelt out therein is a matter for the Refugee Appeal Tribunal rather than this or any other court.

C. The Refugee Appeal Tribunal was entitled as the deciding body to *inter alia* conclude that it "was concerned at the degree of evasiveness by the applicant, who is a very well educated person, during the course of his evidence relating to his escape, his travel to Nigeria and

his subsequent journey to this country". However by way of note, it is of no help to this Court when the deciding authority adds "*He was unable to reply to a number of matters raised by the Presiding Officer*". Lack of particularity as to what matters are being referred to renders that part (but that part only of the paragraph) impotent.

The court does not accept that the Refugee Appeal Tribunal failed to consider the other evidence presented to it including the evidence of Mr. Gabriel Nkwelle. The tribunal was in a unique position to assess the value of this witness's evidence. The court also accepts that the Refugee Appeal Tribunal properly applied its mind to the assessment of credibility in a reasonable fashion. Further the Tribunal appears to this court to have considered in an appropriate fashion whether the totality of the evidence constituted circumstances where applying the appropriate criteria the applicant had a well founded fear of persecution. For this or any court to substitute a different assessment of the available evidence would require compelling errors in the application of the law.

WAS THERE AN ERROR OF LAW AND IF SO DOES IT CONSTITUTE A SUBSTANTIAL GROUND?

If one was to make the assumption that the three matters referred to above with which the court takes issue, (the use of country of origin material not available to the applicant to assess the likelihood of solitary confinement, the misdated letter and the calculation of the start of the applicant's self employment) were properly included in the assessment, there is ample evidence on which the Refugee Appeal Tribunal was entitled to conclude that the applicant had not demonstrated substantial grounds within the meaning of the Refugee Act 1999. On that assumption the Refugee Appeal Tribunal's conclusion could not be disturbed. The Court, however, has concluded that these three matters appear on the evidence before the court to be unsustainable or at least questionable and a further reassessment of the Refugee Appeal Tribunal decision is needed on that basis.

This court is satisfied that each of these three matters could constitute *grounds* for judicial review of the decision as they constitute the consideration by the deciding body of conclusions unsupported by legally acceptable evidence. In the view of the Court, however, each would not, on its own, constitute the *substantial ground* needed to meet the requirement of the Act at this stage. The issue for the Court is whether taken together these constitute such substantial grounds.

Each of the three matters played a part (probably a minor part) in the assessment of the applicant's credibility. The crucial and in the view of the court the deciding matter is that each of these three errors relate to a single issue i.e. credibility of the applicant rather than, for example, some relating to credibility and some to some other issue such as the assessment of the internal conditions in the country of origin. If the errors each related to separate areas of assessment there would not necessarily have a cumulative effect. However, in this case, each of the errors was part of the one process i.e. assessment of credibility. In the judgement of the court, when taken

together, they could have cumulative effect on the assessment of credibility. The effect of that accumulation could be to convert what is in each case a simple and unsubstantial ground of complaint into the substantial ground needed to succeed in this application.

For that reason the court will grant leave to apply for judicial review on the following basis (being an amendment of ground 5.3 in the pleadings).

“5.3 The second named respondent made an unreasonable evaluation of the applicant’s credibility.”