Neutral Citation Number: [2005] IEHC 441

THE HIGH COURT

JUDICIAL REVIEW

[2004 No. 1203 JR]

BETWEEN

CHIMENE WANDJI NGANGTCHANG

APPLICANT

AND

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

RESPONDENTS

AND

HUMAN RIGHTS COMMISSION
ATTORNEY GENERAL

JUDGMENT delivered by The Honourable Mr. Justice O'Leary on the 21st day of December, 2005.

The applicant seeks leave to apply by way of judicial review for the following orders:

> (a) An Order of Certiorari quashing the decision of the first named respondent dated the 30th day of November, 2004, in respect of the applicant's application for refugee status.
> (b) A declaration that the first named respondent erred in law and/or in fact in its conduct of the applicant's appeal hearing and its determination thereof dated the 30th day of November, 2004.
> (c) An injunction by way of application for Judicial Review restraining the second named respondent from acting on foot of the decision of the first named respondent dated the 30th day of November, 2004, pending the outcome of these proceedings.
> (d) A declaration, pursuant to section 5(1) of the European Convention on Human Rights Act, 2003, that the rule of law that currently governs the scope of judicial review in respect of cases involving fundamental human rights, is incompatible with the European Convention on Human Rights.
> (e) An order allowing for an extension of time within which to bring an application for judicial review, pursuant to section 5 (2) (a) of the Illegal Immigrants (Trafficking Act), 2000.
> (f) Such further or other order as this Honourable Court shall seem meet.
> (g) An order providing for costs.

The relief is sought on the following grounds:

(i) The tribunal member erred in law and acted in breach of section 16 (8) of the Refugee Act, 1996, and in breach of the applicant's right to fair procedures, in failing to provide the applicant and her legal representatives

with an indication in writing of the source of all information that came to her notice during the appeal. The tribunal member refers to "the sources consulted, including country reports, Amnesty International Reports, Canadian IRB, ambaxonia.indymedia.org and a general Internet search" but fails to state the source of all information that came to her notice.
(ii) The tribunal member erred in law in confining her analysis of the applicant's claim to one where the applicant was regarded solely as an employee of an SCNC member, in that such analysis fails to consider the concept of imputed political opinion. The applicant's evidence was that the police accused her of trying to protect her employer, and told her that as a member of the Bamileke tribe she wanted to divide Cameroon. The tribunal member appears to have accepted the veracity of this part of the applicant's claim and erred in law in not finding that this brings the applicant within section 2 of the Refugee Act, 1996, either by way of imputed political opinion race, ethnicity or membership of a particular social group.
(iii) Further to (ii), the tribunal member erred in law in finding that the absence of reference to the targeting of people who work for SCNC members in the UK Home Office Report of January, 2004, was such as to undermine the applicant's claim. The applicant was not regarded by the authorities as solely as an employee of an SCNC member. She was regarded by the authorities in Cameroon as a person who tried to protect her employer and who wanted to divide Cameroon.
(iv) Further to (ii), the tribunal member erred in law in drawing an adverse inference from the absence of reference to the targeting of people who work for SCNC members in the UK Home Office Report of January, 2004. The Report refers to persecution against SCNC members. It makes no statement, either corroborative or uncorroborative, in respect of the treatment meted out to employees of SCNC members.
(v) The tribunal member erred in law in drawing an adverse finding against the applicant on the basis that "no information on the detention of the applicant's employer could be located in the sources consulted". Again, the tribunal member acted unlawfully for the reasons set out in ground (i) above. Further, the Amnesty International report that refers to the detention of SCNC activists in 2002, which was before the Tribunal at the hearing, pre-dates the arrest of the applicant's employer, such that no reference could have been made to him.
(vi) The tribunal member erred in law and in breach of the applicant's right to fair procedures and unreasonably in holding that the authorities did not seek out the applicant through her school. There was no evidence before the tribunal member that the authorities did not seek out the applicant through her school. The applicant's evidence was that she did not attend the school at that particular time.
(vii) The tribunal member erred in law in making adverse credibility findings that had no, or no proper, evidential basis. In particular, but without

prejudice to the foregoing, the findings were based on pure conjecture, and/or on a presumption as to how "a reasonable man" would act and, as such, were particularly unreliable in the refugee context. The tribunal member's findings in respect of the applicant's mother being identified at a checkpoint and the manner in which the applicant was apprehended by police in a taxi were based on no independent evidence, were pure conjecture, and were devoid of any adequate reasoning.
(viii) The tribunal member failed to give any, or any adequate, weight to the report of Ms. Jennifer Rylands, Senior Clinical Psychologist with the Northern Area Health Board, and in particular to the statement that the applicant "found it difficult to report experiences in her country of origin because of her distress level" and to the "Summary" of the report.
(ix) The tribunal member erred in law in failing to properly take account of the trauma of rape suffered by the applicant.
(x) The tribunal member failed to apply the principles that pertain to an application for refugee status brought by an unaccompanied minor. In particular, but without prejudice to the foregoing, the tribunal member failed to apply a liberal application of the benefit of the doubt.
(xi) The tribunal member erred in law in her assessment of the applicant's credibility and in failing to apply the correct principles in the determination of credibility in a claim for refugee status.
(xii) The tribunal member made findings that were unreasonable.
(xiii) By way of example in respect of ground (xii), the applicant submitted medical reports, and gave oral evidence, in respect of the rape that she suffered at the hands of police who had accused her of protecting an SCNC member and of being a member of a tribe that wanted to divide Cameroon. The tribunal member accepted that the applicant may have suffered trauma and that there was country of origin information that the Bamileke tribe was discriminated against. Yet, the tribunal member held that "there is no evidence that the applicant suffered persecution due to her membership of this particular tribe." This finding is unreasonable and flies in the face of the evidence before the Tribunal.
(xiv) The tribunal member erred in law in drawing an adverse inference from the fact that the medical report from the Cameroon in respect of the attack on the applicant did not identify the men who raped her. There is no reason why the report would state the identity of the attackers, such that the inference is perverse.
(xv) The tribunal member failed to apply UNHCR *guidelines* in her conduct and determination of the applicant's case.
(xvi) The tribunal member failed to apply a forward-looking test in determining whether the Applicant had a well-founded fear of persecution in Cameroon. She confined herself to an assessment of past events and so erred in law.
(xvii) The tribunal member took into account irrelevant considerations

and/or failed to take into account relevant considerations.
(xviii) The tribunal member acted in breach of the applicant's right to fair procedures.
(xix) The tribunal member made findings that were unreasonable and/or irrational.
(xx) The tribunal member erred in law in her application of Section 2 of the Refugee Act 1996, as amended.
(xxi) The applicant's life, and right to fundamental freedoms, including her right to bodily integrity, are at risk if she is returned to Cameroon, such that this Honourable Court should exercise the most anxious scrutiny in reviewing the tribunal member's decision.
(xxii) The applicant is at risk of being made the subject of a deportation order unless the second named respondent is restrained by the injunctive relief sought at paragraph 4(d) hereof.
The proceedings are supported by affidavits sworn by the following:
1. Michael Crowe, solicitor for the applicant dated 23rd Dec 2004,
2. The applicant dated 12th May, 2005.

These affidavits together with the formal pleadings and the legal submissions made have been considered by the court.
Factual background to application set out in the affidavit:

1. The applicant was born in Cameroon on 9th July, 1986.
2. She arrived in Ireland on 15th April, 2004 and applied for refugee status at that time.

The following steps have been taken in this application:

1. On 28th May, 2004, the applicant attended for interview at the Office of the Refugee Application Commissioner, where she was interviewed by Ms. Anne Lawson.
2. Following that interview Ms Lawson completed a report dated 16th July, 2004, under s. 13 (1) of the Refugee Act, 1996. This report recommended a refusal of a declaration of refugee status.
3. This report was considered and endorsed by Mr Brian Kerins on 19th July, 2004.
4. The applicant appealed the decision on 16th August, 2004.
5. The appeal was held on 4th October, 2004 at which the applicant was legally represented.
6. The judicial review of that decision was commenced out of time by some seven days. This delay is explained by the solicitor for the applicant in his affidavit.

PRELIMINARY RULING

The court accepts the explanation for the delay which has been tendered.

APPLICANT'S SUBMISSIONS

Notwithstanding the voluminous grounds set out in the application the applicant relied on five points in this leave application.

THE APPLICANT'S MINORITY

The applicant was a minor when she arrived in Ireland, being 17 years and 9 months old. The applicant's counsel submitted as an unaccompanied minor she should be given the benefit of any doubt and she should not be expected to prove her status as if she was an adult. He quoted in support of that proposition the following extract from UNHCR report *Refugee Children: Guidelines on Protection and Care* (1994) as follows;

> *"The problem of "proof" is great in every refugee status determination. It is compounded in the case of children. For this reason, the decision on a child's refugee status calls for a liberal application of the principle of the benefit of the doubt. This means that should there be some hesitation regarding the credibility of the child's story, the burden is not on the child to provide proof, but the child should be given the benefit of the doubt."*

The applicant was already an adult by the time she was interviewed in July and was of course past her eighteenth birthday at all decision making stages in this process. As an eighteen year old she was asked to recall events only a short time previous to her arrival in Ireland.

The correct treatment of minors who apply for refugee status must of course be sensitive to the age of the applicant. A child of five cannot be expected to reach the same standard of proof (where that proof is based on testimony of the applicant), as and compared with a person approaching his/her eighteenth birthday. The process must surely start at almost no expectation of assistance from evidence of the applicant at 4/5 years to almost the full responsibility at 17 years of age. A person of the applicant's age and capacity to describe her experiences should be expected to bear the normal burden envisaged by section 11 (A) (3) of the Refugee Act, 1996.

FAILURE TO PROPERLY APPLY MEDICAL EVIDENCE

This ground consists of an allegation that the Refugee Appeal Tribunal failed to consider and apply the psychologist's report. A psychologist's report was submitted prior to the decision of the Tribunal. It is alleged that a later report dated 16th November, 2004, was not considered before the decision. As the hearing was on 4th October, with the decision dated 16th November, 2004, it is certain that this late report forwarded on 18th November, was too late for inclusion. It is difficult to criticise the Refugee Appeal Tribunal for this difficulty.

THE CREDIBILITY OF THE FINDINGS

The Refugee Appeal Tribunal makes an assessment of the applicant's credibility. This assessment is strongly criticised by the applicant's counsel. The factors considered by the Refugee Appeal Tribunal in making their assessment include the following:

1. Country of origin information does not suggest that employees of activists, such as the applicant claims to be, are targeted by the authorities in Cameroon.
2. No trace could be found of the arrest of the applicant's employer in the country of origin information.
3. In assessing whether the applicant was being actively sought by the authorities the alleged method of locating her (although her mother was randomly stopped on the outskirts of the city) seems unlikely, when her address would have been readily ascertainable from her old school.
4. The actual picking up of the applicant when she hailed a taxi containing some of the same officials who had previously arrested her was not likely.

These assessments of credibility appear rational and to set them aside the court would have to act as an appeal body from the Refugee Appeal Tribunal which is not its function.

COUNTRY OF ORIGIN INFORMATION

The applicant asserts that she was denied access to country of origin information on which the Refugee Appeal Tribunal relied. The extent of the search undertaken by the Refugee Application Commissioner is set out in the section 13 report and further headings are supplied in the Refugee Appeal Tribunal decision. This court has already held that failure to disclose country of origin information can be an arguable ground for judicial review in *Bisong v Minister for Justice Equality and Law Reform* (Unreported High Court 25th April, 2005). However what is at issue in this case is not a failure to disclose information relied upon, but an assertion that no such information could be found. The general description of the sources tried is sufficient to warn the other side of a potential difficulty. As the applicant is charged with the onus of proof it should be up to the applicant's side to contradict such information if they can. They were aware of the problem since the section 13 report. In the absence of such a contradiction it is difficult to criticise the Refugee Appeal Tribunal for acting on the basis that the information does not exist.

THE O'KEEFE TEST

The court rejects the submission that this is a case where the application of the *O'Keefe* test is not appropriate. Further, this is not such a case where the substitution of any other test would be likely to change the outcome of the case.

CONCLUSION

No error in principle is evident in this case. If the court granted leave it would be sanctioning a judicial review of the decision of the Refugee Appeal Tribunal which could only be changed by substituting a court's judgment on the facts for that of the deciding body. Such a process would convert the High Court into an appeal court from the Refugee Appeal Tribunal. That is not the function of judicial review.

The application is refused.