THE HIGH COURT

JUDICIAL REVIEW

[2016 No. 873 J.R.]

BETWEEN

O.M.A. (SIERRA LEONE)

APPLICANT

AND

THE REFUGEE APPEALS TRIBUNAL, THE MINISTER FOR JUSTICE AND EQUALITY, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 12th day of June, 2018

1. The statement of facts as set out in the applicant's written submissions has significant omissions contrary to High Court Practice Direction HC78, but it is possible to reconstruct a chronology from the other papers filed in the case. The applicant claims to have been born in 1985 in Sierra Leone. He claims to have left Sierra Leone in October, 2011, travelling to Ghana, Nigeria and then London on foot of a visa granted for the period 9th January, 2012 to 9th July, 2012 in the false name of a Nigerian national called Rotima Adejumo. He then travelled from the U.K. to the State in May, 2013, applying for asylum on 2nd May, 2013. That application was rejected by the Refugee Applications Commission on 2nd July, 2013. An appeal to the Refugee Appeals Tribunal was refused on 21st November, 2013.

2. He applied for subsidiary protection on 15th January, 2014. His claim was that he worked as a cobbler and that men arrived at his premises asking him to join their criminal gang. He claimed that he closed his shop and moved to Freetown but the men came looking for him there and burned the shop down. His story was that all of this happened in late 2012. However, once he was informed that the Commissioner had obtained a fingerprint match from the U.K. border agency to the effect that his fingerprints matched that of a Nigerian citizen issued with a visa on 9th January, 2012 he magically changed his story and said that all of this happened in 2011.

3. His subsidiary application was rejected by the Commissioner on 26th November, 2015. An appeal to the Refugee Appeals Tribunal was dismissed on 17th October, 2016. A statement of grounds directed to that decision was filed on 16th November, 2016. The application was then opened before MacEochaidh J. on 21st November, 2016. Counsel informs me that the leave decision was reserved but was not in fact delivered prior to MacEochaidh J. leaving the High Court to become a member of the General Court of the European Union. On 6th November, 2017 the matter was mentioned to me and I granted leave. A statement of opposition was filed on 31st January, 2018.

4. I have received submissions from Mr. Eamonn Dornan B.L. and Ms. Sarah K.M. Cooney B.L. for the respondent.

Relief sought

5. *Certiorari* of the tribunal decision refusing subsidiary protection is the primary substantive relief claimed. The sole ground for that relief is that the tribunal erred in failing to consider the real risk of serious harm to the applicant in the form of inhuman and degrading treatment or punishment in his capacity as a trader subject to emergency laws in Sierra Leone.

Time

6. I do not accept the respondent's argument that the application is out of time merely because it was moved after the 28 day period. It was within time because it was filed within the 28 day period: see my decision in *McCreesh v. An Bord Pleanála* [2016] IEHC 394 [2016] 1 I.R. 535 [2016] 7 JIC 0804 and the reasons set out therein. (While I appreciate that Haughton J. took a different view in *McDonnell v. An Bord Pleanála* [2017] IEHC 366, it has yet to be convincingly explained how the legal policy considerations referred to in *McCreesh* do other than favour regarding time as stopping on filing.) There is, however, an implied obligation to actively move an *ex parte* application promptly. That was complied with here, albeit that a significant complication was introduced following the original leave judge being appointed to a Luxembourg court. If in a particular case the obligation to actively move an *ex parte* application which had been filed was not complied with, and there was a long delay in doing so, that might amount to an abuse of process and proceedings could be struck out on that ground, rather than because they are out of time.

Rejection of the applicant's credibility is fatal

7. The tribunal found that the material facts of the claim were rejected (see para. 5.12). Thus, the applicant's argument simply does not apply. The applicant is insufficiently credible to enable the court to conclude that there is anything wrong with the way in which the claim was dealt with by the tribunal. The application having been validly rejected on a dispositive credibility basis, there is no obligation to consider other points (see *E.I. v. Minister for Justice and Equality* [2014] IEHC 27 (Unreported, Mac Eochaidh J., 30th, January 2014), *K.D. (Nigeria) v. Refugee Appeals Tribunal* [2013] IEHC 481 [2013] 1 I.R. 448 *per* Clark J., *Imafu v. Minister for Justice, Equality and Law Reform* [2005] IEHC 416 (Unreported, Peart J., 9th December, 2005), *R.A. v. Refugee Appeals Tribunal* [2015] IEHC 686 [2015] 11 JIC 0403 (Unreported, High Court, 4th November, 2015)). The applicant's argument involves misplaced reliance on the decision in *T.M. (Zimbabwe) v. Refugee Appeals Tribunal* [2015] IEHC 813 (Unreported, Eagar J., 17th December, 2015). That decision relies expressly on the judgment of Edwards J. in *D.V.T.S. v. Minister for Justice, Equality and Law Reform* [2008] 3 I.R. 476 [2007] IEHC 305, which refers to a situation where country documentation contains *"conflicting information"* (at para. 44) that needs to be resolved on a reasoned basis.

8. That is not to be generalised into an obligation to narratively discuss country information. There is no such obligation. Failure to narratively discuss material presented is generally permissible and should not be confused with, and does not equate to, a failure to consider such material: see *S.A. v. Minister for Justice and Equality* [2016] IEHC 462 [2016] 7 JIC 2921(Unreported, High Court, 29th July, 2016) at para. 11, *G.K. v. Minister for Justice, Equality and Law Reform* [2002] 2 I.R. 418 *per* Hardiman J. The best Mr. Dornan can say is that the tribunal has not expressly rejected every fact presented by the applicant. It is not necessary to tediously list every element of an applicant's case and reject it point by point. A court or a tribunal or other decision-maker is entitled to reject the evidence of a witness or a party generally. This applicant actively misled the Irish immigration system and lied to the international protection bodies. He is not someone who can make the point now being made. The express rejection of the material facts of the applicant's credibility means that no element of his story can be regarded as having been accepted, including that the applicant is even a trader as alleged.

The applicant's entire point is constructed on a misconception.
9. Even assuming counterfactually that the applicant is a trader in Sierra Leone, the point he is seeking to make is that, given that the state imposes curfews on traders, he therefore has a more onerous obligation than a regular citizen. That is fine but it does not any view translate into a risk of serious harm such as to demand the award of subsidiary protection. He claims that if he violates the curfew he will be punished and that that constitutes serious harm. As it is put at para. 20 of the applicant's written submissions, "*the applicant's concern is that he is at a greater risk of punishment because he is a cobbler and he would be at risk of arrest or detention if he violates the curfew on traders which interferes with his means to earn a living in Sierra Leone*". That argument is a misconception. If he violates the curfew, that is unlawful behaviour under the laws of the state of Sierra Leone. Punishment for an offence is not to be equated with serious harm. It does not become serious harm because of an allegation that the state engages in arbitrary arrest and detention. The applicant's own written submissions to the tribunal *"the US state department report of 2015 which only alleges that the 'police occasionally arrested and detained persons arbitrarily'"* (para. 14). Evidence of only occasional unlawful behaviour does not amount to something that can be generalised in favour of an applicant, particularly an applicant such as this one. Furthermore, it is clear from the country material that the curfews are not a form of oppression of the population. Rather, the curfews exist to prevent the spread of Ebola. The applicant's own written submissions at para. 14 refer to a decision of the U.K. Upper Tribunal, *Secretary of State for the Home Department v. Kamara* 2015 UKUT DA/01678/2013 (Unreported, 15th May 2015) to the effect that "*the government in Sierra Leone continue to operate lockdowns in a bid to combat Ebola and its spread…the evidence therefore points to continuing hardships in Sierra Leone*".

10. The applicant claims that if he were to violate the curfew he would be subject to inhumane prison conditions. This element, as with the claim as a whole, is totally speculative. All he has to do to avoid such consequences is to comply with any curfews that have been imposed in the interests of public health. All Mr. Dornan can say is that the tribunal did not say that this outcome was hypothetical. The reason for that is that the point did not arise because the applicant's evidence was totally rejected. It is not open to an applicant to quash a decision on the basis of a totally speculative argument as here.

Order
11. It is not a particularly happy commentary on Ireland's immigration system that despite telling a non-credible story at every stage, actively misleading the system as to his immigration history, lying to the protection bodies, lying to the UK immigration authorities and being flatly rejected at every single stage of the process, the applicant's exhaustion of all avenues has allowed him to remain in the State for a five-year period. That delay does not change the fact that his claim is without merit. The application is dismissed.