THE HIGH COURT

JUDICIAL REVIEW

[2016 No. 898 J.R.]

BETWEEN

A.M.C. (MOZAMBIQUE)

APPLICANT

AND

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

RESPONDENTS

(No. 2)

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 9th day of July, 2018

1. In *A.M.C. (Mozambique) v. Refugee Appeals Tribunal (No. 1)* [2018] IEHC 133, I refused *certiorari* of a decision of the International Protection Appeals Tribunal refusing an asylum claim made by the applicant. The applicant now submits a large number of new authorities, and new points that were not originally made, in support of an application for leave to appeal the original decision.

2. As noted in the substantive decision, the applicant's written submissions relied on the High Court decision in *A.O. v. Refugee Appeals Tribuna*l [2015] IEHC 252 (Unreported, Barr J., 21st April, 2015) without referring either to the fact that it had subsequently been overturned by the Court of Appeal (*A.O. v. Refugee Appeals Tribunal* [2017] IECA 51 (Unreported, Court of Appeal, 27th February, 2017)) or to my decision in *T.T. (Zimbabwe) v. Refugee Appeals Tribunal* [2017] IEHC 750 (Unreported, High Court, 31st October, 2017) discussing the latter judgment. The applicant thus must be credited with achieving a new definition of legal chutzpah, in asserting on the one hand that he is entitled to leave to appeal due to alleged confusion in the law, while on the other having attempted to create such confusion by making submissions which failed to refer to relevant authorities in the first place.

3. I have considered the case law in relation to leave to appeal as set out in *Glancré Teoranta v. An Bord Pleanála* [2006] IEHC 250 (Unreported, MacMenamin J., 13th November, 2006), *Arklow Holidays v. An Bord Pleanála* [2008] IEHC 2, *per* Clarke J. (as he then was), *S.A. v. Minister for Justice and Equality (No. 2)* [2016] IEHC 646 [2016] 11 JIC 1404 (Unreported, High Court, 14th November, 2016) para. 2, *Y.Y. v. Minister for Justice and Equality (No. 2)* [2017] IEHC 185 [2017] 3 JIC 2405 (Unreported, High Court, 24th March, 2017) at para. 72. and *I.R. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 510 [2015] 4 I.R. 14.

4. I have received helpful submissions from Mr. Mark de Blacam S.C. (with Mr. Eamonn Dornan B.L.) for the applicant and from Mr. Dermot Manning B.L. for the respondent. I should note that Mr. de Blacam did not appear in the original substantive proceedings.

An important context is the demolition of the applicant's credibility

5. An important context for assessing what Mr. de Blacam says are interesting and significant legal points is that, on the facts of this particular case, the applicant's credibility is in tatters for a whole series of reasons set out in the substantive judgment and summarised in the thirteen reasons at para. 4, including a series of matters where the applicant either told repeated lies, gave vague, contradictory or implausible explanations, was unable to account for matters or gave explanations that were contrary to known country material.

6. The applicant raises legalistic points regarding a document produced in the form of an alleged death certificate for his father, but he has the insuperable difficulty that the document was in effect insufficient to overcome the fundamental problems with his credibility on other grounds. But even apart from that, the applicant's document is fundamentally unsatisfactory. Four points are notable in that regard:

> (i). The document was produced well into the process rather than at the outset.
>
> (ii). The applicant was unable to furnish any explanation as to who furnished the information enabling the death to be registered.
>
> (iii). The applicant was unable to explain the provenance of the document and in particular how he allegedly obtained it at that stage in the proceedings.
>
> (iv). The certificate purports to identify the cause of death as "*attack by RENAMO*". While the IPAT did not make this specific point, it is inherently unworkable for a civil registration system to operate on the basis that a death certificate would specifically name murderers on its face. That would preclude registration of death until the conclusion of police investigations and court proceedings, which could take years, even assuming that such conclusions could be reached at all.

7. The document is simply all-too- convenient from the applicant's point of view and ultimately this is not the sort of case where there was any injustice whatsoever done to the applicant by the tribunal failing to take the view that this shaky document took the applicant over the line in terms of his asylum claim.

Another contextual matter is the consideration given by the tribunal to the applicant's medical report

8. As regards the medical report, this was simply one of a number of items of evidence, the assessment of which was a matter for the tribunal. Mr. de Blacam submits that the applicant's doctor said that he had signs of PTSD and numbing, but as with any such matters these are for the tribunal to assess on the facts of any individual case. Here the medical report was considered by the tribunal at para. 5.17. Again, this is certainly not a case where the medical information was entirely disregarded. That information in and of itself does not automatically identify what is the cause of the applicant's difficulties and the tribunal was entitled to assess it in the manner it did.

Proposed first question – alleged conflict in jurisprudence

9. The applicant's proposed first question is an alleged conflict in jurisprudence between *R.O. v. Minister for Justice and Equality*

[2012] IEHC 573 [2015] 4 I.R. 200 and *I.E. v. Minister for Justice and Equality* [2016] IEHC 85 (Unreported, High Court, 15th February, 2016). Mr. de Blacam accepts that *R.O.* was not mentioned in the applicant's written submissions for the substantive hearing. It seems to me that that concession is fatal to giving leave to appeal under this heading. It would be procedurally improper for such a point to be introduced now as the basis for leave to appeal after the event. In any event, the main point I made in *I.E.* was that *R.O.* should be rephrased to ensure that one was not inadvertently reversing the balance of proof. The conventional judicial review jurisprudence does not assume that a respondent must justify a decision. The onus is on the applicant. Thus an applicant has to prove that the decision lacks reasons. It is not for a respondent to show that there are cogent and compelling reasons for the decision. Thus there is not so much a conflict of jurisprudence as that *R.O.* needs to be slightly rephrased to comport with conventional doctrine. In any event, insofar as the medico-legal report is concerned it was not positively rejected (see para. 12 at the substantive judgment).

Second question – *M.M. v. R.A.T.*
10. The second proposed question is whether the principles outlined by Faherty J. in *M.M. v. Refugee Appeals Tribunal* [2015] IEHC 158 (Unreported, High Court, 10th March, 2015) are correct. Again *M.M.* is not mentioned in the applicant's substantive submissions and it would be procedurally improper for it to be introduced only now at the leave to appeal stage. Furthermore, *M.M.* is not referred to in the judgment so it is not a ground for leave to appeal on the logic set out by Cooke J. in *I.R. v. Minister for Justice and Equality* [2009] IEHC 510 at para. 6 [2015] 4 I.R. 144 at 162.

Third question – probative value of medical report
11. The third question is what probative value is to be afforded to medico-legal reports where credibility is in issue. The answer to that question must depend on the individual case and only fact-specific answers can be given. It is thus not an appropriate matter for leave to appeal. As Mr. Manning puts it in para. 12 of his written submissions, *"the relevance or issue the court is asked to certify … is not understood. At best it appears that the applicant is raising some vague issue of general application which falls far outside the scope of what constitutes a proper question for certification".*

Fourth question – *S.R. v. R.A.T.*
12. Reliance is placed in the fourth question on the judgment of Clark J. in *S.R. v. Refugee Appeals Tribunal* [2013] IEHC 26 (Unreported, High Court, 29th January, 2013). By contrast to all of the other cases now being relied on, *S.R.* was argued in the applicant's original written submissions but has clearly been superseded by the Court of Appeal decision in *A.O.* as further discussed by me in *T.T.*, neither of the latter cases having been mentioned in those written submissions as previously noted. It seems to me that insofar as *S.R.* is concerned, that issue has been dealt with by the Court of Appeal in *A.O.* and insofar as *T.T.* is concerned it would be procedurally improper of me to grant leave to appeal based on *T.T.* when the applicant made no submissions based on that case at the substantive hearing.

Fifth question – unauthenticated documentary evidence
13. The fifth question asks what probative value is to be afforded to unauthenticated documentary evidence. That is not susceptible to a simple answer and again can only be dealt with on a fact-specific basis. Thus it is not a question suitable for leave to appeal. As noted above, on the facts of this particular case, the applicant's document was so unsatisfactory in any event that no injustice of any kind was done to him in the tribunal's treatment of it.

The application is out of time
14. The judgment was delivered and the order perfected in this case on 8th March, 2018. The court was first notified of an intention to seek leave to appeal on 30th April, 2018. The applicant is thus out of time according to the High Court practice direction HC78 on asylum, immigration and citizenship, but it is not necessary for me to decide on the consequences of that because I am rejecting the application for leave to appeal on its merits anyway.

Order
15. The application for leave to appeal is dismissed.