THE HIGH COURT

[2024] IEHC 16

Record No. 2023/184 JR

BETWEEN

O.S.O

APPLICANT

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL AND THE MINISTER FOR JUSTICE

RESPONDENTS

JUDGMENT of Mr Justice Barr delivered on 17th day of January, 2024.

Introduction.

1. This is an application for an order of *certiorari* quashing the decision of the International Protection Appeals Tribunal (hereafter, "the Tribunal") affirming a first instance decision taken by an International Protection Officer (hereafter, "IPO") that the applicant be refused refugee status and/or a subsidiary protection declaration. The impugned decision was made on 18th January 2023.

2. The basis for the applicant's application is that the decision made by the Tribunal is both unreasonable and irrational in the legal sense. The applicant also argued that the Tribunal made errors of fact and law in its consideration of the applicant's case.

3. In order to better understand these submissions, a detailed background to the proceedings must be set out.

Background.

4. The applicant is a citizen of Nigeria. He was born in Q2 of 1970. The applicant averred in his affidavit of 27th February 2023 that he was born into a Royal Family, with his great grandfather having been the fifth Chief of his town.

5. The applicant was 7 years old when his father died. He then moved in with his paternal grandmother. He was told by his grandmother that his father had been killed as a result of his failure to join the Ogboni cult and assume a cabinet position in his local chiefdom. The applicant practiced as a Christian pastor in Nigeria.

6. The applicant averred that he received a verbal invitation in 2008 to join that cabinet from the then Chief. He averred that he was immediately concerned that he would meet a similar fate to that of his father if he failed to take up that position.

7. His wife travelled to the UK in 2008 on a student visa. The applicant subsequently followed her to the UK on a dependant's visa. The applicant travelled to the United States on a valid visa in 2009. He returned to Nigeria in 2009 and brought his two children, born in 1998 and 2000, to join their mother in the UK. They had a third child in 2012.

8. In 2011, the applicant had travelled back to Nigeria to obtain a student visa for the UK. The applicant obtained a student visa, and travelled back to the UK, where he remained until 2014.

9. In 2014, the applicant returned to Nigeria at the expiry of his visa. He also separated from his wife that year. The applicant appears to have moved around between 2014-2019, visiting Germany twice in that period.

10. The applicant averred that he had received a letter dated 3rd March 2019 from the Chief, who had previously invited him to join the cabinet in 2008, indicating that he had been promoted to King and indicating to the applicant that he had been nominated to a role in his cabinet. The applicant averred that this letter had terrified him.

11. The applicant averred that he received a further letter on 29th December 2020 confirming his nomination and indicating that his duties were to begin imminently.

12. The applicant left Nigeria on 31st December 2020. He arrived in the State on 2nd January 2021 on a volunteer visa valid from 10th November 2020 to 9th May 2021. The applicant averred that he had received emails on 22nd March 2021 and 16th April 2021 from people at his church, informing him that people from the Palace in Nigeria had been seeking him at the church, to get him to take up his role in the cabinet.

13. The applicant applied for international protection in the State on 16th April 2021.

14. As part of that application, the applicant completed his 'Application for International Protection Questionnaire' on 18th June 2021. With this questionnaire, the applicant included copies of the letters sent to him by the Palace in Nigeria, concerning his nomination to the cabinet. He also furnished an affidavit sworn by him in March 1996, wherein he had changed his name from the surname he had shared with his late father, to a different surname.

15. In his questionnaire, the applicant set out that his father had failed to join the Ogboni society, owing to his Christian faith, and that his paternal grandmother had informed him that he was killed as a result of this refusal. The applicant set out that he had changed his name in order to distance himself from the title that would descend to him by virtue of his lineage.

16. The applicant stated that the letters which had been sent to him by the Palace in Nigeria in 2008, 2019 and 2020 had made him fear for his own life, because of what had happened to his father. He stated that owing to his own commitment to his Christian faith, he could not accept the nomination to the cabinet. He feared that his failure to accept the role put him at risk of death and/or torture or degrading treatment in Nigeria. He stated that the letter received in March 2019 had solidified his fears, and that the letter he received in December 2020, had caused him to book a flight to leave Nigeria.

17. He stated that the subsequent letters received by him in 2021 had made him more fearful for his safety, and propelled him to apply for international protection in the State to seek refuge from what he called 'religious persecution'.

18. The applicant set out in his questionnaire that he feared that if forced to return to Nigeria, he would be intimidated; would not be able to practice his religion; and would be forced to be involved in 'diabolical practices' contrary to his own beliefs as a pastor.

19. The applicant had his substantive interview pursuant to s. 35 of the International Protection Act 2015 (hereafter "the 2015 Act") as part of his application for international protection, on 6th May 2022. In his interview, the applicant repeated a large amount of what he had set out in his questionnaire.

20. He further indicated that he would suffer psychologically if he were returned to Nigeria, as he would not have access to his wife or children. He also indicated that he feared that he would be killed in the same manner as his father.

21. When asked by the interviewer about his father, the applicant indicated that: "*There is little that I know but I will say what I have heard*." He stated that his father was killed by the invocation of spirits, while in his sleep. He indicated that he could not point to exactly who was responsible for his father's death. He further indicated that he did not know what organisation his father had been invited to join.

22. When it was put to the applicant by the interviewer that he had lived for many periods in Nigeria without disturbance, he indicated that he had been living in grave fear in those times.

23. By letter dated 31st August 2022, the IPO recommended that the applicant be given neither a refugee declaration, nor a subsidiary protection declaration. Included in that letter were the s. 39 and s. 49 reports, pursuant to the 2015 Act, prepared by the relevant persons in the International Protection Office.

24. The applicant lodged a notice of appeal with the Tribunal in respect of the IPO decision on 2nd September 2022. The grounds of appeal alleged several errors of fact and law made by the IPO. More detailed submissions were sent to the Tribunal on the issue of the applicant's appeal, on 18th October 2022.

25. An oral hearing of the applicant's appeal took place on 18th November 2022. Country of origin information was provided by both the presenting officer and the appellant at this hearing. The presenting officer provided three documents in that regard, namely; 'United States Department of State, 2021 – Nigeria Human Rights Report'; 'Amnesty International World Report 2020/2021 Nigeria'; and the 'EASO Country of Information Report: Nigeria – Targeting of Individuals' (hereafter "EASO Report"). The documents submitted by the applicant included: 'Nigeria: Consequences for a Yoruba Individual who refuses the Chieftaincy title; Protection available to those who refuse' by the Immigration and Refugee Board of Canada (hereafter "IRB report"); 'Country Guidance: Nigeria 2021' by the European Union Agency for Asylum; and ; 'Country Guidance: Nigeria – Common Analysis and Guidance notes' by the European Asylum Support Office in 2021.

26. By letter dated 18th January 2023, the applicant was notified that his appeal had been refused and that the recommendation of the IPO was affirmed. It is the decision of the Tribunal which is impugned in these proceedings. The grounds of appeal are set out below.

27. The applicant made an application to 'stop time' for the purposes of challenging that decision on 3rd March 2023. On that basis the applicant is roughly 16 days out of time to challenge the decision, and therefore requires an extension of time from this court in order to bring the application.

28. Leave was granted to challenge the impugned decision on 24th April 2023.

Submissions on behalf of the Parties.

29. On behalf of the applicant, Mr De Blacam SC submitted that the respondent had used the country of origin information available on Nigeria in this case in an erroneous manner, such that the decision made should be set aside.

30. It was submitted that the decisionmaker must first ask themselves; 'Could the applicant's story have happened?', before then moving to the question as to the applicant's credibility in that regard. He submitted that the country of origin information must only be used to aid the decisionmaker decide whether the applicant's story could have happened, but should not be relied upon to an unlawful extent. To that end, he relied on *K (Zimbabwe) v International Protection*

Appeals Tribunal & Anor [2023] IEHC 6 and *Camara v Minister for Justice Equality and Law Reform* (Unreported, High Court, Kelly J, 26th July 2000).

31. Counsel took issue with a finding of the Tribunal at para. 4.19 of the Tribunal's decision wherein the Tribunal found "*country of origin information contradictory and therefore of little assistance*." It was submitted that the Tribunal was in error in finding that the information provided by the parties was contradictory, particularly in circumstances where the information provided from both parties, was drawn from the same source (being the IRB report, to which the EASO report refers).

32. Counsel submitted that the finding that at para. 5.4 of the decision, which stated that the Tribunal did not accept that the applicant's psychological state of mind only crystallised in March 2019 with the receipt of the letter from the Palace, was irrational, given the finding at para. 4.24, which stated that "*the Tribunal accepts that this narrative is plausible on the balance of probability*."

33. Counsel submitted that the finding at para. 5.8, that "*the country of origin information is at best neutral and does not enhance the Appellants [sic] claim*" is an incorrect application of the country of origin information, which renders the findings made upon it, unreasonable.

34. Counsel further submitted that the Tribunal had misinterpreted the country of origin information, particularly at p. 114 of the EASO report, referring the court to a passage which was not quoted by the Tribunal, which stated:

> "*According to one IRB source, 'a chieftaincy title may be imposed on someone if a hereditary chieftaincy title is being passed through three branches in a family, adding that 'if the successor in one of the branches refuses the title, the community may punish the lineage by denying them the title in the next round of succession.' This may make the family force the successor to accept the title to avoid dishonour on the part of the family.*"

On the basis of this paragraph, counsel submitted that the Tribunal's finding that there were little/no consequences to refusing a chieftaincy title, constituted an incorrect interpretation of the country of origin information, rendering the finding unlawful.

35. Counsel also relied on para. 3.10.5 of the EASO report, which stated:

> "*IRB in 2012 cites a Nigerian Observer article on 'the case of a young man who is reportedly being "hunted" by Ogboni chieftains after he refused to take his late father's position in the society given his Christian beliefs'*."

Counsel submitted that this was country of origin information which was on all fours with the applicant's situation, and which was not validly considered by the Tribunal in its decision.

36. Counsel submitted that the Tribunal must resolve any conflicts of country of origin information on a rational basis, see *DVTS v Minister for Justice* [2007] IEHC 305.

37. It was submitted on behalf of the applicant that the findings reached by the Tribunal were irrational and unreasonable, owing to the foregoing and should be struck down and remitted to the Tribunal for rehearing.

38. On behalf of the respondent, Ms Cooney BL submitted that the applicant was attempting to pick apart the Tribunal decision in an unfair manner. She stated that when one looked at the decision as a whole, it was made on an entirely lawful basis.

39. In relation to the country of origin information, it was submitted that there was no clear evidence that the information provided in relation to the refusal of a chieftaincy title was akin to a refusal of membership of the Ogboni cult. She submitted that the evidence, even taken at its height, did not substantiate the claims made by the applicant. She stated that it appeared the applicant had never actually refused to join the group, and it appeared he had never replied to the letters that had been sent to him.

40. It was submitted that the Tribunal had considered all the relevant country of origin information and was entitled to make the finding that the information did not favour the applicant's position. It was submitted that the Tribunal was entitled to prefer the EASO report, over other country of origin information, owing to its clarity and source.

41. Counsel submitted that the applicant had conflated the issues decided by the Tribunal in order to paint a picture of an unfair decision. Counsel submitted that section 4 of the decision, being 'Assessment of Facts and Circumstances', was an entirely separate finding to that at section 5, being 'Analysis of Well Founded Fear'. Counsel submitted that section 4 was a general analysis of the facts and circumstances of the applicant's case, which the Tribunal was required to engage in by virtue of s. 28(4) of the 2015 Act. It was submitted that section 5 was an entirely separate analysis of the validity of the fears of the applicant, should they be returned to their country of origin. It was submitted that both analyses were necessary for the Tribunal to undertake, but they should not be conflated.

42. In relation to the applicant's criticism of the Tribunal's analysis at section 4 of the decision in relation to the facts and circumstances of the applicant's case, counsel submitted that that criticism was misplaced, in circumstances where the Tribunal had gone on to make a finding on

that point that the applicant's narrative was plausible and that on the balance of probabilities, the applicant's evidence was credible. It was submitted that a positive finding as to the applicant's credibility, did not automatically result in a finding that the applicant was entitled to refugee status.

43. Counsel submitted that the Tribunal was entitled to then move on at section 5 to find, on the basis of the country of origin information provided, that the applicant's fear of persecution was not well-founded and accordingly, to refuse the applicant refugee status.

44. Counsel submitted that the Tribunal was also entitled to find that the country of origin information provided by both sides did not support the claim made by the applicant that he would suffer from sufficient physical/mental pain or suffering to qualify for international protection in the State. She submitted this to be a correct reading of the country of origin information.

45. Counsel referred to the principles set down in *IR v Minister for Justice, Equality and Law Reform* [2015] 4 IR 144, that this court should not step into the shoes of the decisionmaker, but is acting as a review of the decision-making processes used by the Tribunal. She also referred to the principle that the court should not look at isolated parts of a decision, but rather an assessment must be made on the basis of the decision as a whole.

46. It was submitted that the decision in *DVTS v Minister for Justice* could be distinguished from the applicant's case, as in *DVTS* there had been extensive country of origin information to the effect that there was significant risk of torture in the applicant's country of origin, being Cameroon, which must be distinguished from that of the applicant in this case.

47. Counsel submitted that the Tribunal member had adopted the correct approach in first considering the applicant's credibility, before then moving to analyse whether the applicant's fear of persecution was well-founded, on the basis of the country of origin information available. She relied on *MLTT v Minister for Justice, Equality and Law Reform* [2012] IEHC 568 in that regard.

48. Counsel sought to distinguish the case of *K (Zimbabwe) v International Protection Appeals Tribunal* on the basis that that case concerned an adverse credibility finding made against the applicant, whereas in this case the Tribunal had accepted the applicant's narrative as being credible.

49. It was submitted that in all the circumstances, the Tribunal decision should stand as having been reached entirely lawfully.

Conclusions.

50. The Court of Appeal in *RA v Refugee Appeals Tribunal & Ors* [2017] IECA 297 approved the following passage from Goodwin-Gill, *The Refugee and International Law* (Clarendon Paperbacks, Oxford) in relation to the assessment of country of origin information in refugee applications, such as this one:

> "*Simply considered, there are just two issues. First, could the applicant's story have happened, or could his/her apprehension come to pass, on their own terms, given what we know from available country of origin information? Secondly, is the applicant personally believable? If the story is consistent with what is known about the country of origin, then the basis for the right inferences has been laid. Inconsistencies must be assessed as material or immaterial. Material inconsistencies go to the heart of the claim, and concern, for example, the key experiences that are the cause of flight and fear. Being crucial to acceptance of the story, applicants ought in principle to be invited to explain contradictions and clarify confusions*."

51. As noted by Simons J. in the *K (Zimbabwe)* decision at para. 38 of his judgment, the Court of Appeal were interpreting older legislation in their decision, but the principle also applies to the international protection/refugee applications under the 2015 Act.

52. What the decisions in *RA v Refugee Appeals Tribunal* and *K (Zimbabwe)* make clear is that the Tribunal, in reaching a decision on the applicant's credibility, should assess the country of origin information, as well as whether the applicant themselves are personally believable.

53. The court has had regard to the principles set out by Cooke J. in *IR v Minister for Justice, Equality and Law Reform*, which are well known, and need not be quoted in their entirety. However, some of the principles are particularly relevant to the application herein:

> "*3) There are two facets to the issue of credibility, one subjective and the other objective. An applicant must first show that he or she has a genuine fear of persecution for a Convention reason. The second element involves assessing whether that subjective fear is objectively justified or reasonable and thus well-founded.*
>
> *4) The assessment of credibility must be made by reference to the full picture that emerges from the available evidence and information taken as a whole, when rationally analysed and fairly weighed. It must not be based on a perceived, correct instinct or gut feeling as to whether the truth is or is not being told.*
>
> *[…]*

8) When subjected to judicial review, a decision on credibility must be read as a whole and the Court should be wary of attempts to deconstruct an overall conclusion by subjecting its individual parts to isolated examination in disregard of the cumulative impression made upon the decision-maker especially where the conclusion takes particular account of the demeanour and reaction of an applicant when testifying in person.

9) Where an adverse finding involves discounting or rejecting documentary evidence or information relied upon in support of a claim and which is prima facie *relevant to a fact or event pertinent to a material aspect of the credibility issue, the reasons for that rejection should be stated.*

10) Nevertheless, there is no general obligation in all cases to refer in a decision on credibility to every item of evidence and to every argument advanced, provided the reasons stated enable the applicant as addressee, and the Court in exercise of its judicial review function, to understand the substantive basis for the conclusion on credibility and the process of analysis or evaluation by which it has been reached."

54. I agree with counsel for the respondent that what the applicant in this case has essentially sought to do, is to pick apart the Tribunal decision on an isolated basis, which is contrary to the principles set down by Cooke J. in the *IR* decision. This court must review the decision as a whole, and not unduly scrutinise each individual sentence.

55. In deciding on the applicant's credibility, the decisionmaker found the '*country of origin information contradictory and therefore of little assistance*'. The applicant sought to challenge this finding on the basis that: first, the information was not contradictory, and secondly, any conflicts should have been resolved rationally.

56. It appears to this court that the Tribunal was entitled to have regard to all of the information and to find that it was not consistent as to the position in relation to the refusal of a chieftaincy/position within the Ogboni cult. In any event, the decisionmaker went on to find in the applicant's favour, that he was a credible individual and his narrative was believable.

57. When the Tribunal considered whether the fear of persecution was well-founded, it is clear that the decisionmaker engaged in a balanced review of the voluminous information submitted to it by both parties. The decisionmaker was entitled to prefer some country of origin information over others, so long as reasons were provided for that finding. In this case, the decisionmaker preferred the EASO report for its 'clarity and source'. The court finds this to be a valid reason for preferring that country of origin information.

58. In *DVTS v Minister for Justice* [2007] IEHC 305, Edwards J. stated:

"*While this court accepts that it was entirely up to the Refugee Appeals Tribunal to determine the weight (if any) to be attached to any particular piece of country of origin information it was not up to the Tribunal to arbitrarily prefer one piece of country of origin information over another. In the case of conflicting information it was incumbent on the Tribunal to engage in a rational analysis of the conflict and to justify its preferment of one view over another on the basis of that analysis. The difficulty in the present case is that the second named respondent firstly, does not allude to the fact that the information is conflicting and secondly, does not give any indication as to why he was inclined to prefer the information contained in the US State Department Report on Cameroon, 2004 and the UK Fact Finding Mission Report 2004 to that contained in the reports submitted by or on behalf of the applicant.*"

59. The decisionmaker in this case has referred to the conflicting country of origin information. He gave reasons why he preferred the EASO report over the other country of origin information. On that basis, it is clearly distinguished from the decision in *DVTS.*

60. It was open to the Tribunal to find that the applicant's fear was unfounded in circumstances where the applicant had spent prolonged periods of time in Nigeria, without being subjected to torture or harm. The Tribunal was entitled to reject the applicant's assertion that his fear only 'crystallised' in 2019, and find that he could have sought protection in the UK, USA or Germany, as he travelled through those countries.

61. It is clear that the decisionmaker considered the relevant country of origin information before arriving at the conclusion that the applicant's fear of persecution was unfounded. This is shown through the extensive quotations from that information and the application of that information to the applicant's case, which appear at section 5 of the decision.

62. The applicant has attempted to conflate some of the findings under section 4, with those made in section 5, but the court is satisfied that they are distinct analyses, both of which were made lawfully.

63. The decisionmaker found that the applicant was subjectively credible, but that his fear of persecution was objectively unfounded. In both of those findings, the decisionmaker had had regard to the country of origin information available to it and had engaged in a balanced analysis of the evidence heard by it. Therefore, the court finds that the decision was validly made and should not be interfered with by this court.

64. The court is satisfied that there exists sufficient reason to extend the time allowed to bring this application, given the non-objection by the respondent to same, and the relatively modest period of delay.

65. The final order shall provide that the court extends time for the bringing of the within application, but refuses the other reliefs as sought by the applicant in his notice of motion.

66. As this judgment is being delivered electronically, the parties shall have two weeks within which to furnish brief written submissions on the terms of the final order and on costs and on any other matters that may arise.

67. The matter will be listed for mention at 10.30 hours on 7th February 2024 for the purpose of making final orders.