THE HIGH COURT

JUDICIAL REVIEW

[2017 No. 860 J.R.]

BETWEEN

D.U. (NIGERIA)

APPLICANT

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL,

THE MINISTER FOR JUSTICE AND EQUALITY,

THE ATTORNEY GENERAL AND IRELAND

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 6th day of November, 2018

1. The applicant was born in Nigeria in 1980. He claims to be bisexual and also claims that he had been the subject of an attempt to force him to join a cult. He arrived in Ireland on 1st October, 2016, fraudulently presenting a false Irish passport in order to do so.

2. On 18th January, 2017, in an interview under s. 13 of the International Protection Act 2015, he claimed asylum due to a cult targeting him because his father owns a clothes shop. No reference whatsoever was made to the alleged bisexuality.

3. In the interview under s. 35 of the 2015 Act on 3rd March, 2017, he referred for the first time to the bisexuality as well as cultism.

4. On 22nd May, 2017, he was informed by the International Protection Office that his application for protection was refused on the grounds that the credibility of his account was rejected. A leave to remain decision also rejected a risk under s. 50 of the 2015 Act. On 1st June, 2017, he appealed to the IPAT, which rejected the appeal in a decision of 17th October, 2017, by Ms. Una McGurk S.C.

5. On 13th November, 2017, I granted leave in the present proceedings. The statement of opposition was delivered on 26th January, 2018 and written submissions were delivered by the parties in June and July, 2018 respectively. I have received helpful submissions from Mr. Garry O'Halloran B.L., for the applicant and Ms. Grace Mulherin B.L., for the respondent.

Relief sought

6. The relief sought in the proceedings is *certiorari* of the decision of the tribunal. The grounds of challenge essentially fell under three headings: the credibility assessment, an alleged lack of clarity, and failure to consider future risk by reason of the applicant's sexual orientation.

Alleged shortcomings in credibility assessment

7. Grounds 1, 2, 3, 5 and 6 allege various shortcomings in the assessment of the applicant's credibility by the tribunal. In paras. 4.19 – 4.29 of the decision, the tribunal member considers various aspects of the applicant's account. This was an assessment by an independent statutory decision-maker who heard and saw the applicant. It is a sufficiently reasoned and rational decision. It is possibly not the most favourable one from the applicant's point of view, but there is no obligation on a decision-maker to be favourable. Perhaps some isolated sentences are not necessarily phrased in the best possible way, but that cannot be equated with establishing an entitlement to *certiorari*.

8. It is quintessentially a matter for the decision-maker as to what matters or omissions go to credibility or as to the weight to be placed on the evidence: *S.A. (Ghana and South Africa) v. IPAT* [2018] IEHC 97 [2018] 2 JIC 0104 (Unreported, High Court, 1st February, 2018), *R.A. v. Refugee Appeals Tribunal* [2015] IEHC 686 [2015] 11 JIC 0403 (Unreported, High Court, 4th November, 2015), *I.E. v. Minister for Justice and Equality* [2016] IEHC 85 [2016] 2 JIC 1505 (Unreported, High Court, 15th February, 2016)), *Koffi v. Refugee Appeals Tribunal* [2007] IEHC 148 (Unreported, McGovern J., 22nd May, 2007), *S.B.E. v. Refugee Appeals Tribunal* [2010] IEHC 133 (Unreported, Cooke J., 25th February, 2010). As was put by Stewart J. in *E.Y. (Pakistan) v. Refugee Appeals Tribunal* [2016] IEHC 340 (Unreported, High Court, 17th June, 2016), each finding by the tribunal member was open to that member on the evidence before the tribunal; and as Birmingham J. said in *M.E. v. Refugee Appeals Tribunal* [2008] IEHC 192 (Unreported, High Court, 27th June, 2018) (para. 27) *"the assessment of whether a particular piece of evidence is of probative value, or the extent to which it is of probative value, is quintessentially a matter for the Tribunal Member".*

Alleged lack of clarity

9. Ground 4 alleges that the finding at para. 4.29, in which the tribunal accepts that the applicant is a national of Nigeria, is unclear. However, it is not unclear. That finding implies that the other material allegations are not accepted, and indeed the tribunal member says this expressly later on in the decision at p. 16.

10. Reinforcing that conclusion, O'Regan J. rejected a similar submission in *M.G. v. Refugee Appeals Tribunal* [2017] IEHC 94 (Unreported, High Court, 21st February, 2017) and I follow that decision here.

Alleged failure to consider future risk due to applicant's sexual orientation

11. Ground 7 claims that there is a failure to consider the risk of future harm. This was elaborated in submissions by Mr. O'Halloran as relating to the future risk of harm arising from the applicant's sexual orientation. But no particular express consideration of future risk was called for giving the findings of the tribunal. Future risk is specifically considered under the subsidiary protection heading, for what it is worth. The fundamental misconception in the complaint under this heading is that there was no obligation to consider a future risk based on the applicant's orientation if the claim regarding an orientation was not accepted by the tribunal.

12. At para. 17 of *M.A.M.A. v. Refugee Appeals Tribunal* [2011] IEHC 147 [2011] 2 I.R. 729, Cooke J. said that *"In practical terms, however, the precise impact of the finding of lack of credibility in that regard upon the evaluation of the risk of future persecution must necessarily depend upon the nature and extent of the findings which reject the credibility of the first stage. This is because*

the obligation to consider the risk of future persecution must have a basis in some elements of the applicant's story which can be accepted as possibly being true."

13. The interpretation of this passage really depends here on what we mean by "*possibly*" being true. This means "possibly having regard to what is accepted or rejected by the tribunal". Where an applicant alleges a fact that could give rise to future risk and that fact is accepted, then there may be an obligation to consider any future risk based on that fact. Where such a fact is not accepted, the need to consider a future risk based on that alleged fact simply does not arise. It is clear, for example, from the judgment of MacEochaidh J. in *M.M.A. v. Refugee Appeals Tribunal* (Unreported, High Court, 13th February, 2013) that the forward looking risk only arises where it is "*based upon an accepted nationality or ethnicity"* (see also *S.W.A. v. Refugee Appeals Tribunal* [2017] IEHC 40 (Unreported, O'Regan J., 30th January, 2017) (para. 12)). As it is correctly put in the heading to Ms. Mulherin's submissions on this issue, "*future risk [is] to be assessed in accordance with the facts as found [or] accepted facts".*

14. As there were no such found or accepted facts from which a risk of future harm could plausibly arise, no further consideration of the future risk was required.

Order
15. The application is dismissed.