

## THE HIGH COURT

## JUDICIAL REVIEW

[2018 No. 270 J.R.]

BETWEEN

J.U.O. (NIGERIA)

APPLICANT

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL,

THE MINISTER FOR JUSTICE AND EQUALITY, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

**JUDGMENT of Mr. Justice Richard Humphreys delivered on the 4th day of December, 2018**

1. The applicant was born in Nigeria in 1981. She claims to have been physically and sexually abused there, in particular by her uncle, and claims to have been the subject of an attempted forced marriage to a Mr. E., including a claim of being drugged and raped. She made a failed application for a U.K. visa in 2012. This required her to furnish her fingerprints, although she initially denied having had any involvement in that application.

2. She claims she got Mr. E. to pay for her travel to Ireland on the premise that she was coming to here to buy a wedding dress. She applied for international protection on 23rd December, 2015. On 23rd August, 2016, she was informed by the Refugee Applications Commissioner that her application for asylum was to be refused. On 12th September, 2016 she appealed to the Refugee Appeals Tribunal. On 16th March, 2017 she applied for subsidiary protection. On 10th October, 2017 she was informed that that had been rejected by the IPO. She appealed the subsidiary protection refusal to the IPAT on 24th October, 2017.

3. She claims that after arriving in Ireland she telephoned Mr. E. and said she would not be returning. She said Mr. E. said that he would kill her mother and brother, and says that her mother stated that Mr. E. tied her up, threatened her and beat her. She claims to have had a number of same-sex relationships in Nigeria and Ireland.

4. The tribunal, in a decision dated 14th March, 2018, rejected the credibility of her account and dismissed the appeals. I granted leave on 16th April, 2018. A statement of opposition was delivered on 22nd June, 2018. The applicant's submissions were delivered dated 12th November, 2018 and respondents' submissions dated 27th November, 2018. At the hearing I received further helpful submissions from Mr. Eamonn Dornan B.L. for the applicant and from Ms. Sarah K.M. Cooney B.L. for the respondents.

**Allegation that the tribunal failed to give proper probative weight to medico-legal reports**

5. While Mr. Dornan launched a spirited attack on the decision, it might be helpful if we begin with a reality check and remind ourselves for a moment of the reasons the tribunal had for thinking that the applicant's account was not credible.

- (i). She gave inconsistent evidence initially regarding the age of the woman she had an alleged fourteen-year relationship with in Nigeria.
- (ii). The lack of detail in that account.
- (iii). Further inconsistencies in the evidence about that relationship at the tribunal hearing.
- (iv). A lack of detail in the s. 35 interview about a relationship with a woman called Mary with whom the applicant allegedly had a ten-month relationship with in Ireland.
- (v). A vague and non-specific account at the appeal hearing in relation to that issue.
- (vi). Inconsistency in the detail about when she made contact with the alleged woman called Mary and where this contact took place.
- (vii). An unreasonable lack of detail as to where the applicant lived during 2015.
- (viii). A lack of detail in the s. 35 interview regarding another woman named Mary Anne, with whom the applicant claimed to be in a relationship.
- (ix). A vague and unspecific account of these matters at the appeal hearing.
- (x). Failure to mention the alleged abuse by Mr. E. at an earlier stage of the protection process.
- (xi). Failure to give a reason why she had not done so.
- (xii). Inconsistency about when she was supposed to be getting married to Mr. E.
- (xiii). Inconsistency in relation to the number of wives Mr. E. was supposed to already have.
- (xiv). Failure of the applicant to offer a reasonable explanation for this inconsistency.
- (xv). Denial of having made a failed application for a U.K. visa in 2012 despite the fact that it involved her giving her fingerprints.
- (xvi). Giving evidence that was unreasonably inconsistent, evasive and unforthcoming in relation to that issue.

(xvii). Failure to mention the fact that her uncle allegedly stabbed her in the abdomen until the s. 11 interview.

6. Many of these findings are unchallenged in the present proceedings. Apart from the generalised issue of psychological health, almost all of the above matters are independent of the medical reports as such. Where the tribunal member comes to consider the issue of abuse by the uncle, which is the part of the story most supported by the medical evidence, he expressly discussed the medical reports, but express narrative analysis is not generally necessary.

7. Crucially, the tribunal member expressly states that he has borne the medical reports in mind in all the findings made, saying "*in arriving at the various credibility factors in this decision the Tribunal has at all times taken account of the medico-legal, medical and counselling reports submitted on behalf of the applicant*" (para. 4.25). That is a vital statement for present purposes and must be accepted by the court unless the applicant discharges the onus of displacing it as untrue, which has not been done here: see by analogy *G.K. v. Minister for Justice, Equality and Law Reform* [2002] 2 I.R. 418 [2002] 1 I.L.R.M. 401 *per* Hardiman J. The tribunal accepted the findings in the medico-legal reports and accepted that the reports were supportive of aspects of the applicant's claim (para. 4.30). However, the tribunal member went on to say "*however the fact that the appellant has experienced the instances of physical and psychological harm described therein does not necessarily mean that the instances of harm were incurred in the manner alleged by the appellant.*" That logic is impregnable.

8. Whether a report says that injuries or harm are consistent, or even as here highly consistent, with the account given, that does not mean that the harm was caused by the matters complained of in the account. It is a piece of evidence to be put in the balance with all other elements. It is not appropriate, or indeed lawful, for the tribunal to compartmentalise an assessment of the evidence by artificially divorcing the evidential ramifications of a medical report from all other evidence: see *R.S. v. International Protection Appeals Tribunal (No. 2)* (Unreported, High Court, 3rd December, 2018). Guidelines prepared by the European Asylum Support Office and drafted by the International Association of Refugee Law Judges-Europe, "Evidence and Credibility Assessment in the Context of the Common European Asylum System", 2018, citing *Mibanga v. Secretary of State for the Home Department* [2005] EWCA Civ 367, make clear that compartmentalisation is a legally erroneous approach. The error in *Mibanga* was to form a definite view of credibility first without reference to the medical evidence and then to ask whether that view should be shifted by reference to the medical evidence. That is certainly not what the tribunal did here. The applicant's submissions simply do not engage with that distinction.

9. The tribunal member viewed the evidence as a whole and expressly says so. As noted above, the tribunal member specifically accepted the medical evidence and that it was to some extent supportive. Thus the caselaw on "*rejection*" of medical evidence is simply irrelevant: see *J.M. (Cameroon) v. Minister for Justice, Equality and Law Reform* (Unreported, Clark J., 16th September, 2013), *R.A. (Uganda) v. Refugee Appeals Tribunal* [2014] IEHC 552 (Unreported, Eagar J., 25th November, 2014), *R.M.K. (DRC) v. Refugee Appeals Tribunal* [2010] IEHC 367 (Unreported, Clark J., 28th September, 2010), *A.M.N. v. Refugee Applications Commissioner* [2012] IEHC 393 (Unreported, McDermott J., 3rd August, 2012), *I.M. (Niger) v. Minister for Justice, Equality and Law Reform* [2015] IEHC 826 (Unreported, Eagar J., 17th December, 2015), *K.H.A. v. Refugee Appeals Tribunal* [2015] IEHC 91 (Unreported, Barr J., 23rd January, 2015) and *R.O. v. Minister for Justice, Equality and Law Reform* [2012] IEHC 573 [2015] 4 I.R. 200.

10. The applicant's submission that "*the Tribunal has engaged in an improper rejection of the core findings of the SPIRASI report*" (para. 27 of applicant's submissions) is therefore simply misconceived. The findings were not rejected: quite the reverse. They were simply held insufficient to take the applicant over the line when put in the context of all of the evidence.

11. The applicant's written submissions appear to be attempting to set up a possible appeal point by contending at para. 34 that "*there is a divergence of views expressed*" between *J.M.* and *R.A. (Uganda)* on the one hand and *C.M. (Zimbabwe) v. International Protection Appeals Tribunal* [2018] IEHC 35 [2018] 1 JIC 2304 (Unreported, 23rd January, 2018) on the other. That, however, is misconceived for two reasons:

- (a). as I have already noted, the report was not rejected here, and
- (b). reasons were, in any event, given for not accepting it as decisive.

12. I do not necessarily accept that in all circumstances, if a decision-maker does not reject a medical report but considers that an inference that might be drawn from medical evidence alone is outweighed by other evidence, he or she has to give specific reasons for such a finding, but I assume in favour of the applicant that in the present circumstances such a requirement applies. The tribunal member did give such express reasons, namely:

(a) The medical reports did not in themselves establish how the harm to the applicant occurred. Indeed, the SPIRASI report itself acknowledged that some of the applicant's mental difficulties related to being in Ireland, which is tendentiously and unhelpfully described by SPIRASI as "*forced exile*" in the medical report, and also by being in direct provision.

(b) The many significant adverse credibility issues to which I have already referred, which themselves were formed bearing the medical report in mind.

13. A further important context here is the fact that it is well-established that the weight to be attached to any particular piece of evidence is quintessentially a matter for the decision-maker: see *S.A. (Ghana and South Africa) v. International Protection Appeals Tribunal* [2018] IEHC 97 (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, 15th February, 2016), *K.K. v. Refugee Appeals Tribunal* [2007] IEHC 148 (Unreported, McGovern J., 22nd May, 2007), *S.P.E. v. Refugee Appeals Tribunal* [2010] IEHC 133 (Unreported, Cooke J., 25th February, 2010), *E.Y. (Pakistan) v. Refugee Appeals Tribunal* [2016] IEHC 340 (Unreported, Stewart J., 17th June, 2016) and, as put by Birmingham J. in *M.E. v. Refugee Appeals Tribunal* [2008] IEHC 192 (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 [decision-maker]*". It is certainly not the law that if you have the medical report you have to succeed: see *C.M. (Zimbabwe)* [2018] IEHC 35 [2018] 1 JIC 2304 (Unreported, High Court, 23rd January, 2018) (para. 5). It should also be emphasised, in incredibility cases in particular, that the tribunal member is an independent statutory quasi-judicial officer holder who has seen and heard the witnesses and is almost always in a much better position than the court on judicial review to decide whether an account given by a particular applicant is credible.

#### **Alleged error in finding that the applicant was not subject to past harm or future risk**

14. Misconceived reliance was placed by the applicant on *S.N. (South Africa) v. Refugee Appeals Tribunal* [2018] IEHC 234 [2018] 3 JIC 2007 (Unreported, High Court, 20th March, 2018). The point made in that case was that if it is accepted that there was past persecution then there should be consideration of whether there is good reason to think that there would be no future risk. That

clearly does not apply here because there was no finding of past persecution. As far as the applicant's reliance on *R.K.S. v. Refugee Appeals Tribunal* [2004] IEHC 436 (Unreported, Peart J., 9th July, 2004) is concerned, an assessment of future risk has to be carried out in the light of what is accepted by the tribunal. Where the main material elements of a claim are rejected, there may be no real future risk arising from the limited elements that remain and that is the case here: see also *A.Q. (Pakistan) v. Minister for Justice and Equality* [2018] IEHC 276 [2018] 4 JIC 1910 (Unreported, High Court, 19th April, 2018). Insofar as the applicant submits that the rejection of all material facts was unreasonable (para. 40 of written submissions) that is not so. Those findings were entirely reasonable given the avalanche of factors adverse to the applicant, to which I have referred above.

15. Insofar as an attempt is made to rely on *F.O. (Nigeria) v. Minister for Justice, Equality and Law Reform* [2015] IEHC 816 (Unreported, Eagar J., 17th December, 2015) in relation to the court expressing its own views contrary to those of the decision-maker about the credibility of an applicant's failure to mention past abuse, I have already held that this decision is not one that could be followed: see *R.S. (Ukraine) v. International Protection Appeals Tribunal* [2018] IEHC 512 [2018] 9 JIC 1704 (Unreported, High Court 17th September, 2018). However, even this minor jurisprudential skirmish is of little centrality to the matters at issue in the present case given the weight and number of adverse matters going to the applicant's credibility.

16. Finally under this heading, the applicant launched a point about the benefit of the doubt, but it is well-established both in the UNHCR handbook para. 204 and in the International Protection Act 2015 s. 28(7) that the principle of the benefit of the doubt simply does not apply unless the applicant's general credibility is already established. That is certainly not the case here.

#### **Alleged error in assessment of the applicant's sexuality**

17. This point was only very faintly pressed on behalf of the applicant, sensibly so because no error has been demonstrated. Ample reasons were given for the rejection of the applicant's account under this heading. The applicant's written submissions involve a tediously boilerplate reliance on the judgment in *R.O. v. Minister for Justice and Equality* [2015] 4 I.R. 200 (again perhaps with a view to creating an appeal point), but as I explained in *I.E. v. Minister for Justice and Equality*, the questions set out in *R.O.* cannot be accepted to be a test to be applied by the court. The court does not have to start by asking itself whether, and nor is the respondent obliged to demonstrate that, reasons given for decisions are "specific, cogent and substantial". An applicant carries the burden of proof and must show that such reasons are unlawful. That certainly has not been done here.

#### **Order**

18. The application is dismissed.