[2018] IEHC 235

THE HIGH COURT

JUDICIAL REVIEW

[2017 No. 283 J.R.]

BETWEEN

S.B. (ORSE S.B.) AND N.N. (ORSE N.M.N.) (A MINOR SUING BY HER MOTHER AND NEXT FRIEND S.B.) (ZIMBABWE)
APPLICANTS

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 22nd day of March, 2018

1. The first named applicant was born in Zimbabwe and claimed to be a member of the Movement for Democratic Change ("MDC"). She claims that her-brother-in-law, an MDC member, was persecuted and killed in 2012 for political reasons. She had two children in Zimbabwe with a partner there born in 2001 and 2007. She claims to have been kidnapped, gang-raped, tortured and threatened by ZANU–PF, including being forced to sing ZANU-PF songs. She claims one member of the MDC was killed in front of the captured group. She escaped to South Africa with the younger child, the second named applicant, and then came to Ireland *via* France. She arrived on 28th November, 2013 and claimed asylum, an application that was rejected on credibility grounds. An appeal to the Refugee Appeals Tribunal was also rejected on similar grounds. She then applied for a subsidiary protection which was refused, again on credibility grounds. An appeal to the International Protection Appeals Tribunal was rejected on 6th February, 2017, once again on credibility grounds. *Certiorari* is now sought against that decision. A statement of grounds was filed on 29th March, 2017 and the matter was formally opened before O'Regan J. on 4th April, 2017. Due to the difficulty of moving the application in a timely manner and due to the unavailability of counsel, the formal opening of the matter was deemed vacated by O'Regan J. on 8th May, 2017. In any event, at a later stage leave was granted.

2. I have heard helpful submissions from Mr. Conor Power S.C. (with Ms. Lisa McKeogh B.L.) for the applicants and Mr. Anthony Moore B.L. for the respondents.

Extension of time.
3. No objection to extension of time was pressed. I am prepared to extend time on the basis of the applicants' solicitor's affidavit and the explanations it affords.

Alleged failure to validly assess the SPIRASI report.
4. The tribunal said that the medical reports provided are consistent with the first-named applicant's story of ill-treatment but silent as to "*evidence of rape or sexual assault*". It is clear the tribunal member means that the reports are not silent as to her claim of rape but rather as to evidence of it. Thus, the situation presented is similar to that in *M.E. v. Refugee Appeals Tribunal* [2008] IEHC 192 (Unreported, High Court, 27th June, 2008), *per* Birmingham J., where a medical report did not establish the cause of the injuries as an evidential matter. It seems to me the conclusion was open to the tribunal member, albeit that it was not the most favourable interpretation from the applicant's point of view. As has been repeatedly stated, it is not the law that someone who comes forward with a medical report in general, or a SPIRASI report in particular, has to succeed (see *X.X. v. Minister for Justice and Equality* [2016] IEHC 377 [2016] 6 JIC 2409 (Unreported, High Court, 24th June, 2016) at para. 111 and *C.M. (Zimbabwe) v. International Protection Appeals Tribunal* [2018] IEHC 35 [2018] 1 JIC 2304 (Unreported, High Court, 23rd January, 2018), at para. 5).

Were the credibility findings unlawful?
5. In the s. 11 interview the first-named applicant said she never had a Zimbabwean passport. That turns out not to be the full story in the sense that the passport was issued, although she claimed not to have physical possession of it. The tribunal member was entitled to regard that as a negative factor. The more significant point is that the applicant said she had no family in Ireland at the asylum stage and claimed not to know that her brother had applied for a family reunification for her. The brother wrote a letter dated 5th February, 2016 saying that the application for family reunification was made without the applicant's knowledge. However, the family reunification application itself, dated 5th April, 2013, at question 7 purports to comment on the first-named applicant's thoughts on the matter at question 10A and B implies that correspondence had taken place with the first-named applicant and at question B12. When asked how did the brother contact family members, particularly the first named applicant, he said "*I normally called them through a neighbours phone and usually through the letters I send in the post*". That application form is referred to in tribunal decision. The applicant says in effect that it is sheer coincidence that she is seeking protection in Ireland without knowledge that the brother is here and had applied for family reunification for her. Mr. Moore submits with some justification that this is a case where "*of all the gin joints in all the towns in all the world, she walks into mine*" (Humphrey Bogart as Rick Blaine, *Casablanca* (1942)).

6. I comment in passing, although the tribunal did not say this, that the brother was not called as a witness at the tribunal hearing and no reason is apparent as to why he would not have been available to back up this story if it was capable of being backed up. It seems to me that it was well within the tribunal's role having seen and heard the applicant to reject her credibility having regard to the family reunification issue.

7. A subsidiary point was made by Mr. Power that there was no evidence that the brother's family reunification form was put to the first-named applicant but, if it was not put the applicants should have pleaded that and provided evidence to that effect, which was not done. I do note that it was put to her in the subsidiary protection interview at p. 4.

8. The adverse credibility conclusion is reinforced by the fact that the MDC membership card contradicts her account. There is also her failure to apply in third countries which, while not necessarily in itself a huge issue, was something the tribunal member was entitled to take into account especially in conjunction with a variety of other credibility issues (see *P.M. v. Refugee Appeals Tribunal* [2014] IEHC 9 (Unreported, Mac Eochaidh J., 14th January, 2014)). The fact that South Africa and France are safe countries is certainly a lawful possible factor to be considered. Thus the allegation of peripherality in relation to credibility issues has not been made out. The family reunification issue alone is a major point and with or without the accumulation of the various other matters is sufficient to make it lawful for the tribunal member to reject the first named applicant's credibility.

Alleged failure to take into account relevant considerations or explanations
9. It seems to me no point has been made out here. There is no evidential basis to say that the tribunal did not consider all of the points made by the applicants even if they are not narratively recited (see *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.).

Alleged failure to consider the possibility of exposure to persecution or inhuman or degrading treatment
10. The tribunal member did consider this issue at s. 6A of the decision albeit not necessarily in the manner most favourable to the applicants. It is accepted on the first-named applicant's behalf that the claim itself is based on her political opinion. This was considered (see p. 6 of the subsidiary protection interview). The consideration of the tribunal has to have "*some basis in and connection to the apparent circumstances of the applicant" per* Cooke J., *M.A.M.A. v. Refugee Appeals Tribunal* [2011] IEHC 147 [2011] 2 I.R. 729 at 738. It does not seem to me to be possible or appropriate to quash the decision on the basis of failure to engage in hypothetical considerations disconnected from the claim actually made by the applicants.

Alleged failure to assess the child's claim as distinct from that of the mother
11. The tribunal held that the child's claim was dependent on that of the mother. The first named applicant's grounding affidavit at para. 16 says that she advised the tribunal that she feared the younger daughter would be forced to marry if returned to Zimbabwe. She refers to that point as being made "*at the outset of the hearing*". The tribunal decision implies that the point was sorted out during the hearing. The applicant did not come back to say that this was not the case and that as a matter of evidence the finding that it was sorted out during the hearing was erroneous in fact. Taking issue with that conclusion in the decision by way of plea in the statement of grounds without an evidential basis for the claim that the tribunal member's record of what happened at the hearing is not correct is simply not sufficient.

Order
12. Accordingly the application will be dismissed.