[2018] IEHC 256

THE HIGH COURT

JUDICIAL REVIEW

[2011 No. 834 J.R.]

BETWEEN

T.O. (NIGERIA)

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 18th day of April, 2018

1. The applicant entered the State in December, 2008 and applied for asylum. That was refused in September, 2009. On 20th October, 2010 the applicant applied for subsidiary protection and leave to remain. The subsidiary protection application was refused in April, 2011. That decision was reissued in May, 2011. A deportation order was made in July, 2011.

2. I have received helpful submissions for Mr. Paul O'Shea B.L. for the applicant and Ms. Fiona O'Sullivan B.L. for the respondent.

Reliefs and grounds

3. What is before the court is a challenge to both the subsidiary protection refusal and the deportation order.

4. Ms. O'Sullivan makes a formal objection to my having allowed amendments at the leave stage but it seems to me those amendments are allowable for the reasons stated in *P.C.N. v. Minister for Justice and Equality* (Unreported, High Court, 18th April, 2018).

5. The purely legal points advanced by Mr. O'Shea have already been rejected by me in *N.M. v. Minister for Justice and Equality* [2018] IEHC 186 [2018] 2 JIC 2710 (Unreported, High Court, 27th February, 2018) and *F.M. v. Minister for Justice and Equality* (Unreported, High Court, 17th April, 2018) and I follow those decisions here. That leaves the fact-specific points in relation to the subsidiary protection refusal and the deportation order.

6. The relevant grounds as far as the subsidiary protection application are concerned are:

(i). ground 6, the failure to have regard to representations made,

(ii). ground 8 that the representations were read selectively and were irrationally dealt with,

(iii). ground 9 that the representations were not considered and nor was past persecution in the context of the qualification directive (Council Directive 2004/83/EC) and

(iv). ground 13 that the country of origin information was insufficient, was read selectively and was not made available for the applicant until after the decision.

7. Grounds 6 and 8 are also advanced in relation to the deportation order, which perhaps illustrates the entirely generalised and boilerplate nature of the pleadings.

8. It seems to me that these boilerplate pleadings are part of a series of similar cases where identical grounds have been manufactured in a mass-produced fashion. In circumstances such as those, I am not prepared to allow such grounds to be reprogrammed after the event into case-specific complaints where no particulars whatsoever of the complaint are specified in the grounds as pleaded. That does not necessarily mean that no general ground in any judicial review whatsoever is permissible but it means that the court should not be treated as a conveyor belt with a series of virtually identical, unfocused, generalised complaints with no particularisation, turned out in case after case without attention being given to the fact-specific issues at the time at which leave is sought. If I am wrong about my view that relief should not be granted on the basis of pleadings such as these, I will go on to deal with the specific complaints.

Fact-specific points regarding subsidiary protection

9. It is suggested that the conclusion that protection would be available to the applicant did not flow from the country of origin information. It seems to me that conclusion did so flow, particularly given the general nature of the submissions made.

10. The suggestion that information was not put to the applicant is misconceived. Mainstream information does not have to be so put: see *Y.Y. v. Minister for Justice and Equality* [2017] IESC 61 [2018] 1 I.L.R.M. 109, *per* O'Donnell J.

11. As regards the allegation that the applicant's submissions were not considered, it seems to me that the applicant has failed to meet the test set out by Hardiman J. in *G.K. v. Minister for Justice, Equality and Law Reform* [2002] 2 I.R. 418 [2002] 1 I.L.R.M. 401 that where a decision-maker states that submissions were considered the onus is on the applicant to demonstrate otherwise, which has not been done. Mr. O'Shea says that his complaint regarding prison conditions has not been referred to explicitly. There is no obligation on a decision-maker to consider points made narratively or to reply to an applicant point-by-point. There are no special or higher rules for immigration protection decisions as distinct from administrative law generally in relation to matters such as these.

12. The complaint is made that the internal relocation decision is not in accordance with the UNHCR guidelines. Such guidelines are not the law in any event. That complaint, and the complaint that the decision was not in accordance with fair procedures, have not been made out.

13. The internal relocation is dealt with in a manner that seems to me to be lawful.

14. The only remaining point is reliance at the subsidiary protection stage on credibility findings at the asylum stage. The applicant clearly has a "*right to be heard*": *M.M. v. Minister for Justice and Equality* Case C-277/11 EU:C:2012:744, para. 91. That is not in doubt. The issue is the extent of that right, in particular whether the decision-maker can rely on past credibility findings if a subsequent step in the process arises. This issue is now addressed in the Supreme Court decision in *M.M. v. Minister for Justice and Equality* [2018] IESC 10 (Unreported, Supreme Court, 14th February, 2018) at para. 26 *per* O'Donnell J. "*in the present context and applying the decision of the ECJ, one of the exceptional cases in which a hearing or interview may be necessary, might be, where although an adverse decision on certain facts had been made by ORAC/RAT, an application for subsidiary protection raised some substantial grounds for doubting that conclusion".*

15. Thus, a reassessment of the credibility finding would require four elements:

> (i). That the original negative credibility finding had been based on the demeanour of an applicant or some other conflict which would warrant a hearing or an interview.
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> (ii). That the applicant requested such an oral hearing or interview.
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> (iii). That subsidiary protection submissions raised some substantial new ground for doubting the previous conclusion; and
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> (iv). That it would be unfair in all the circumstances not to allow such an interview or hearing.

16. Applying those questions to the facts of the present case the situation is as follows:

> (i). While much of the finding of the tribunal is based on the proposition as submitted by Ms. O'Sullivan at para. 24 of written submissions "*aspects of the applicant's claim were not objectively plausible*" it seems to me that an element of the demeanour of the applicant did come into the decision at p. 16.
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> (ii). The applicant did not request an oral hearing. It seems to me that that omission is fatal to the submission now being made. Mr. O'Shea says that there never has been such an oral hearing so it would be impossible and futile. However, it seems to me that such an approach is admitting defeat before making the application in the first place. Parties more generally have to make their point to the decision-maker before running to a court. Cooke J. in *I.S.O.F. v. Minister for Justice, Equality and Law Reform* [2010] IEHC 457 (Unreported, High Court, 17th December, 2010) at para. 10 made the point that the starting-point is the decision itself, but to go back a step a prior starting-point is the submission actually made to the decision-maker and in this case there was no request for such an oral hearing or an interview.
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> (iii). The credibility findings, Mr. O'Shea accepts, are not addressed in the subsidiary protection application. Thus this test is not satisfied. That is also fatal to the present point being made.
>
> (iv). It seems to me in all circumstances it is not unfair for the Minister not to have allowed an interview or oral hearing.

17. Thus the point being made has not been established. I might have been prepared to overlook the inadequacy of the pleadings if the point had been one of greater substance but in fact it is very much of a piece with the academic, generalised, boilerplate and fact-free approach being taken by this applicant.

Fact-specific points regarding the deportation order

18. There is no substance to any of these points. The conclusion that State protection is available and there is a functioning police force in Nigeria does flow from the premises. Mr. O'Shea submits that until there is a lawful subsidiary protection refusal there cannot be a deportation order, but there is a lawful subsidiary protection refusal.

Order

19. The application is dismissed.