

THE HIGH COURT

2007 1626 JR

BETWEEN

D. T.

APPLICANT

AND

THE MINISTER FOR JUSTICE, EQUALITY & LAW REFORM

AND REFUGEE APPEALS TRIBUNAL

RESPONDENTS

Ex Tempore JUDGMENT of Mr. Justice Cooke delivered 3rd day of November, 2009.

1. Although a large number of grounds are proposed in the draft statement of grounds in this case one main issue is put forward as the basis of the application for an order of *certiorari* for which leave is now sought.
2. It is claimed that the negative decision on the applicant's asylum claim given by the Refugee Appeals Tribunal in its decision of the 19th October, 2007, is unlawful in concluding that the applicant's claimed fear of persecution could be avoided on return to Sierra Leone if she relocated from Mayomba, where she previously lived, to Freetown. It is unlawful in that regard because no information was before the Tribunal Member or consulted by him as to whether Freetown would afford a refuge from her particular source of persecution, nor, as to the general circumstances prevailing there in order to verify whether it would not be unduly harsh for the applicant in her personal circumstances to move there. More particularly, it is

submitted that there has been a failure to comply with Regulation 7 of the European Communities (Eligibility for Protection Regulations,) 2006.

3. The applicant who is now aged 30 years is from Sierra Leone. She is a single mother and has a child born in the State in November 2006, shortly after she arrived here where she claimed asylum on the 13th September, 2006.

4. She claimed to have fled Sierra Leone because of the violence and threats she experienced at the hands of her brother who was a gangster and drug dealer and who threatened to kill her for having had a child out of wedlock.

5. The contested decision of the Tribunal in this case is notable for the fact that it turns, on the Court's reading of it, entirely on the question as to the availability of internal relocation as a solution to the particular source of persecution which the applicant claims. In the analysis of the claim at section 6 of the decision, the Tribunal Member goes to some length in reciting authorities as to the approach to be adopted and the criteria to be applied when considering the possibility of internal relocation in asylum cases. Counsel for the applicant, correctly in the Court's view, acknowledges that one could not find fault with the decision's exposé of the legal criteria as thus set out. Counsel, however, strongly asserts that the Tribunal Member then manifestly failed to apply those criteria either adequately or at all.

6. It is clear that the Tribunal had some country of origin information before it but it appears to have related to the availability of protection in Sierra Leone before local customary courts and in the informal legal sector and was considered to be largely irrelevant by the Tribunal Member. It is submitted that contrary to regulation 7(2) in particular, there was a failure on the part of the Tribunal Member to consult and to have regard to appropriate information as to the "general circumstances" prevailing in the proposed site of relocation, namely Freetown, and to the particular personal circumstances of the applicant as a single mother of a 3 year old child who is asked to relocate from a rural farming area to a large city.

7. It is unnecessary to emphasise that the basis upon which the Court must consider this issue for the purpose of this leave application is whether it raises a substantial ground as to why the decision ought to be quashed.

8. It is clear first of all that the possibility of internal relocation as raised in this case has not been raised in a vacuum or without reference to a proposed destination. Although the short section 13 report of the Commissioner did not depend on internal relocation for its negative recommendation the matter was raised at the section 11 interview where the applicant replied to a question on this possibility saying: “I could have but I didn’t think of it at that moment. I did not really want to stay where my brother is. I just wanted a different place”. The applicant herself could therefore be said to have recognised the desirability in principle of leaving the area where her brother lived.

9. It was before the Tribunal that the possibility was explored in greater detail and by reference specifically to Freetown as a destination. It is relevant to look therefore at the main passages in the decision on which the conclusion in this regard is reached.

10. In an early part of the analysis in section 6 of the decision the Tribunal Member says:

“The applicant was asked if she could not relocate in one of the big cities such as Freetown and her response to that was that her brother is everywhere. She claims she did not benefit from State protection. Freetown is a large cosmopolitan city thus in my view the threat which allegedly faced this applicant would effectively be neutralised were she to relocate there.”

Later in the same page the Tribunal Member says:

“If it is argued that State protection is not available in one part of the country of origin, as is the case here, then consideration must be given to

whether State protection is available elsewhere. This is where the consideration of the option of internal relocation or internal flight is relevant. In this case I find that the risk of serious harm which the applicant alleges could be addressed by moving to another part of Sierra Leone where effective State protection could be accessed were it so required.”

11. Then at a later passage towards the end of the analysis the Tribunal Member makes two further observations as follows:

“In the instant case I am of the view that the applicant would be able to seek safe refuge within her own country and accordingly there is no basis for finding that she is unable or unwilling to avail herself of the protection of her country. Insofar as I must consider the issue of relocation the judgment to be made is whether the risk of persecution that the applicant claims to experience in one part of the country can be successfully avoided by living in another part of the country.”

12. Then finally at page 33 of the book the substantive answer in the conclusion of the Tribunal Member is set forth in this passage.

“In the instant case even if I am willing to accept that there is a reasonable chance that she will suffer serious harm from the non State agents identified I am not however satisfied that she would not have access to meaningful internal protection elsewhere in Sierra Leone. She was asked to consider why she could not move to Freetown. She was in Guinea for a month and even though she alleged she couldn’t stay as her brother trades in drugs there nothing actually happened to her there and she had no contact with him either. Further I do not accept, given the size and the population of Freetown, that it is reasonable to conclude that she would be located in

Freetown or indeed that there would be any reason to seek her out there. In my view it is a place which would afford the applicant a meaningful antidote to the persecution she claims to suffer. The proposed site of internal relocation does not present a distinct risk of even generalised serious harm and the applicant did not identify any risk attached to relocation in Freetown. She merely claimed that her brother is elsewhere.”

Then slightly further on:

“Other than saying her brother was everywhere no cogent reason was put forward as to why she could not remain safely in Freetown.

Notwithstanding his alleged trading in drugs in Guinea the reality was he did not find her or locate her there. Given that Freetown is a large urban centre it is reasonable to conclude that she would not be located there either.”

13. In the Court’s view this is clearly a reasonable, balanced and cogent consideration of the basis upon which Freetown would constitute an acceptable refuge from the specific threat which has been claimed. It is argued that the statement “no cogent reason was put forward” is a wrong approach and a mistaken understanding of where the burden lies on this issue. It is submitted that it lay with the Tribunal Member as the proposer of Freetown as a solution to verify by recourse to appropriate country of origin information that the general circumstances prevailing in Freetown both removed the specific risk of persecution and provided acceptable general circumstances such as would preclude a move there from being unduly harsh for this particular claimant. The Court cannot agree.

14. As already mentioned, the applicant was herself open to relocation as a solution for her dilemma. The primary consideration in examining the prospective site of relocation within a country of origin is to ensure that the particular source of persecution will not exist in that

place or be likely to be encountered there once again. That is most frequently the primary consideration in cases where the threat is of a general or public character such as a tribal conflict in part of the country or oppression by a political regime which is in power in part of a country. In such cases it may be necessary by recourse to appropriate country of origin information to confirm that such a threat is genuinely absent from the proposed area of relocation.

15. The position is different however, in the Court's judgment, where the specific risk identified is a private or domestic one, such as the threat from a particular family member. Country of origin information is of little relevance in assessing such a risk. It falls to the decision-maker to make the assessment by reference to an objective and common sense appraisal of the reality of the risk. If the brother is a gangster and a drug dealer in one particular town and his threat is based not upon being owed money or having been informed upon to the police or some other grievance but is the purely personal disapproval of his sister's behaviour, how likely is it, if at all, that he would go to the trouble of following the applicant over a long distance to seek to locate her in a large city such as Freetown? The judgment to be made on that issue is the proper function of the specialist decision-maker.

16. If it is reasonable to conclude that the prospective site is one in which the specific risk of persecution is eliminated or highly improbable, the only remaining question is whether the Tribunal Member erred in not seeking out specific information on the general economic, social or other conditions and circumstances prevailing in Freetown.

17. In the Court's judgment there has not been an error in that regard in this case. As is clear from the passages quoted from the decision above, the Tribunal Member had regard to various characteristics and advantages of Freetown in terms of size, facilities and, if needed, the availability of protection. The only reason for rejecting Freetown put forward by the

applicant was her claim that “my brother is everywhere” which the Tribunal Member obviously and reasonably discounted.

18. In the Court’s judgment in these circumstances there is no obligation under Regulation 7(2) upon a decision-maker to seek out specific information on general economic and social conditions in a location such as Freetown in the absence of any specific objection on that score being put forward by the asylum seeker or at least in the absence of some particular circumstance of general knowledge which puts the decision-maker on inquiry as regards prevailing conditions in that location.

19. In this case the Tribunal Member did not have any reason to suppose and the applicant did not put forward any reason to suppose, that the economic, social or other conditions or the facilities for support available in Freetown to a single mother of a 3-year old child would be so much inferior to those she would face in her locality of origin as to render relocation so unduly harsh as to be unacceptable as a viable site of relocation. For these reasons the application for leave must be rejected.

Approved: Cooke J.