THE HIGH COURT

JUDICIAL REVIEW

[2016 No. 898 J.R.]

BETWEEN

A.M.C. (MOZAMBIQUE)

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 8th day of March, 2018

1. The applicant arrived in the State from Mozambique on 16th February, 2014 travelling on a false South African passport. In February, 2014 prior to applying for asylum, he left Ireland and travelled to the UK, claiming to be visiting a relative in Wales. In the s. 11 interview under the Refugee Act 1996 he lied that he had not been in the UK. He applied for a PPS number using a false name, according to the s. 11 interview. He did not seek asylum until 11th April, 2014 explaining this by saying that *"the guy who brought us here was waiting for the rest of the money and I didn't know about asylum*". That is possibly strange language for a genuine asylum seeker as opposed to, for example, a person whose asylum claim is part of a manufactured story purchased by a particular applicant as part of having availed of the people-trafficking industry. He claimed to have been kidnapped by an insurgent group called RENAMO, held in captivity and raped. He claimed to have had his jaw damaged with a weapon. An MRI scan on 4th July, 2014 showed no significant bony abnormality. He claimed the group killed his father on 26th June, 2012. On 18th October, 2014 the asylum claim was rejected by the Refugee Applications Commissioner. He appealed that refusal to the tribunal, and an oral hearing took place on 5th September, 2016, at which Mr. Peter O'Sullivan B.L. appeared for the applicant. The appeal was rejected by the tribunal (Ms. Olive Brennan) by decision dated 27th October, 2016.

2. A statement of grounds was filed on 25th October, 2016 and leave to challenge the tribunal decision granted on 6th February, 2017. A statement of opposition was filed on 5th October, 2017.

3. I have received submissions from Mr. Eamonn Dornan B.L. for the applicant and Mr. Dermot Manning B.L. for the respondents.

Ground 1 - failure to give proper probative weight to medico-legal documents.

4. It is clear that the applicant's credibility was left in tatters after his various interactions with the asylum process.

> (i). He failed to apply for asylum on arrival in the State (see para. 5.15 of the decision), a statutory factor under s. 11B(d) of the 1996 Act.
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> (ii). His explanation essentially was that his people-trafficker was waiting for payment (see para. 5.15).
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> (iii). He lied repeatedly that he did not go to the U.K. prior to seeking asylum. (see s.11 interview notes).
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> (iv). He failed to apply for asylum in the U.K. either.
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> (v). He claimed that his jaw was damaged but the MRI scan says otherwise (see para. 5.13).
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> (vi). His claim was seriously lacking in specifics or details (see paras. 5.10 and 5.22.)
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> (vii). He gave contradictory information about his capacity to move to the village of Maputo (see para. 5.12).
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> (viii). It was found that he could have reported matters to the authorities (see para. 5.11).
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> (ix). He made the implausible claim that his captors gave him a gun (see para. 5.10).
>
> (x). He was unable to account for a number of details in his story (see paras. 5.6 and 5.10).
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> (xi). He suggested that villagers were both being raped and being asked to carry heavy goods by the rebels, which was found to be somewhat contradictory (see para. 5.6).
>
> (xii). He was unable to account for either how he obtained his father's death certificate or where the information contained in that certificate came from (see para. 5.6).
>
> (xiii). In the opinion of the tribunal his account was contrary to country of origin information.

5. Insofar as the decision amounted to a challenge to the applicant's credibility, the specific findings in that regard are not impugned in these proceedings. Mr. Dornan submits that there is a lack of clear adverse findings by the tribunal, but it is clear that the tribunal rejected the applicant's credibility overall having regard to "*all issues to which I have referred … taken cumulatively"* (para. 5.22).

6. It is not necessary for a decision-maker to tediously recite after each hammer blow to the applicant's credibility that she is making a specific finding in relation to each and every sub-matter, outlining the precise contours of such sub-finding. Peart J. said in *G.T. v. Minister for Justice Equality and Law Reform* [2007] IEHC 287 (Unreported, High Court, 27th July, 2007) that the court should read the decision as a whole rather than parse and analyse it word for word. Similarly, a decision-maker is entitled to take the evidence more broadly and as a whole, and is not under an invariable obligation to parse and analyse each individual micro-element of it piece by piece. Even the High Court does not invariably do that when evaluating the credibility of a particular witness.

7. As regards the specific complaints made by the applicant, it should be noted that the tribunal holds that there is no Convention

nexus in relation to the applicant's story. That was a permissible ground for the rejection of the claim irrespective of any other finding.

8. Next, as regards the allegation that the medico-legal material was not considered, it is clear that the tribunal did consider all of the reports and correspondence submitted. The report of Dr. Patrick Davitt of 8th September, 2016 notes that the applicant did not seem depressed or anxious and was unwilling to discuss exactly how often he had been raped. The letter from SPIRASI states that it is a "*file review*". It noted that two consultations had occurred, that the applicant had difficulties with alcohol, had attended the Mater Hospital, had two further psychotherapy sessions and did not return. It then concluded, quite unscientifically, that "*the client had been significantly impacted from a psychological perspective as result of the inhumane treatment that he endured at the hands of his torturers and the subsequent separation from his family"* (see paras. 5.17 to 5.19). That unfortunately is not a dispassionate, objective statement. SPIRASI has not demonstrated that there was such torture nor does it discuss the pros and cons of how the applicant's presentation might have been accounted for otherwise than by reference to his subjective account.

9. Yet again I have to note the very limited value of SPIRASI reports if they are essentially doing little more than putting a medical or ostensibly expert gloss on the subjective account of an applicant. If SPIRASI are not bringing to bear sufficient scientific objectivity and scientific scepticism on the situation, that is certainly not helping the tribunal or indeed the court.

10. Mr. Manning submits, very reasonably in my view, that there could be a variety of factors causing psychological difficulties for the applicant, particularly the failure of his asylum claim causing trauma, which is a matter that is specifically highlighted by SPIRASI, the separation from his family and the fact that he was living in direct provision.

11. The report of Dr. Patrick Davitt, consultant psychiatrist, is however considerably more guarded and scientific in that it refers to the effect of "the traumatic events as he describes them" which openly identifies that Dr. Davitt is not in a position to objectively verify that description. Likewise the dental report from Dr. S.W. Campbell is unable to state with certainty how the sequelae occurred. In any event, it is not the law that if an applicant comes forward with a SPIRASI report or any medical report he or she is entitled to succeed, as I said in *C.M. (Zimbabwe) v. International Protection Appeals Tribunal* [2018] IEHC 35 [2018] 1 JIC 2304 (Unreported, High Court, 23rd January, 2018) para. 5, citing *X.X. v. Minister for Justice and Equality* [2016] IEHC 377 [2016] 6 JIC 2409 (Unreported, High Court, 24th June, 2018) para. 111. Evaluation of the SPIRASI report or any other evidence is primarily a matter for the decision-maker.

12. Insofar as there may be law to the effect that reasons for rejecting medical evidence are required (see *R.A. (Uganda) v. Refugee Appeals Tribunal* [2014] IEHC 552 (Unreported, Eagar J., 25th November, 2014), *R.M.K. (D.R.C.) v. Refugee Appeals Tribunal* [2010] IEHC 367, *A.N.N. v. Refugee Applications Commissioner* [2012] IEHC 393 (Unreported, Clark J., 28th September, 2010), *I.M. (Niger) v. Minister for Justice and Equality* [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), in the specific context of this case I do not accept that the reports were "*rejected*" in the sense of this jurisprudence. The reports describe certain symptoms interwoven with the applicant's own subjective account. It is the latter which is rejected. But even if the reports are to be regarded as having been rejected, reasons are given, namely the applicant's overall lack of credibility. Ultimately, the tribunal concluded that it had not been demonstrated that the applicant would face future persecution or indeed that there had been past persecution (see para. 5.22).

13. The applicant's submissions involve a misplaced reliance on reg. 5(2) of the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006), but that provision does not apply because there is no finding of past persecution.

Ground 2 - failure to make any determination regarding the authenticity of a death certificate for the applicant's father.
14. Two specific complaints are pleaded under this heading; failing to make "*any determination as to its authenticity*" and "*failing to carry out further inquiries*". As regards the second point, that the matter should have been investigated, unfortunately the applicant's written submissions relied on *A.O. v. Refugee Appeals Tribunal* [2015] IEHC 252 (Unreported, Barr J., 21st April, 2015) without reference to the overturning of that decision by the Court of Appeal in *A.O. v. Refugee Appeals Tribunal* [2017] IECA 51 (Unreported, Court of Appeal, 27th February, 2017); still less to my subsequent decision in *T.T. (Zimbabwe) v. Refugee Appeals Tribunal* [2017] IEHC 750 [2017] 10 JIC 3105 (Unreported, High Court, 31st October, 2017). The claim in the submissions that *Singh v. Belgium* (Application no. 33210/11, European Court of Human Rights, 2nd October 2012) sets out that if a document is verifiable and the investigating authority chooses not to verify it this will amount to a breach of art. 13 in conjunction with art. 3, is a totally inaccurate description of the effect of that case, as the applicant's counsel would possibly have realised had he made himself aware of my decision in *T.T*. For the reasons set out in that decision (notwithstanding the views of Clark J. in S*.R. v. Refugee Appeals Tribunal & Ors*. [2013] IEHC 26 (29th January 2013) at para. 29) there is no obligation on the tribunal to conduct investigation into local country of origin material generated within the entrails of the particular jurisdiction, as here.

15. Turning to the alleged failure to make any express decision on the authenticity of the death certificate, Mr. Manning accepts that there is no express decision that the document is not authentic and he submits that the document has not therefore been rejected. However, not rejecting something is not quite the same as entirely accepting it. Rather Mr. Manning's case is that the death certificate is essentially insufficient to outweigh the credibility factors.

16. In particular, the tribunal member considered that, in effect, the document undermined the applicant's case that he could not go to the authorities because if the death certificate established that the applicant's father had been killed in an attack by RENAMO rebels, then by virtue of the death having been registered the authorities would be aware of that situation and the applicant could seek recourse. This, it seems to me, is not a case of express rejection of documentary material in the sense of para. 11(9) of *I.R. v. Minister for Justice Equality and Law Reform* [2009] IEHC 353 (Unreported, Cooke J., 24th July, 2009). The certificate was not rejected as such. It seems to be the position that, standing alone, it could provide some support for the claim, although clearly not overwhelming support. However, one must bear in mind first of all, the point mentioned by the tribunal that the certificate also undermined the applicant's claim to the extent of indicating that the authorities were aware of the situation, but secondly it must be regarded as not providing sufficient support to overcome the credibility problems reading the decision in the round. I observe in passing that the content of the alleged death certificate seems remarkable and all-too-convenient for the applicant in that it purports to name RENAMO as the cause of death rather than setting out any medical cause of death whatsoever, such as assault, blunt force trauma and so on. However, despite its mysterious provenance and content, the tribunal member did not find it necessary to expressly reject the authenticity of this document. Her decision must be viewed as regarding it as being insufficient to discharge the onus of proof on the part of the applicant and establish the claim.

17. Finally under this heading, the applicant's submissions complain that the applicant is entitled to know the reasons and rationale for the decisions (see submissions, para. 43). He does know the reason and rationale. It is because his credibility is rejected, and it seems to me validly so.

Ground 3 - Alleged error in failing to consider a claim of risk of persecution on account of imputed political opinion
18. It is incorrect that there is no consideration of imputed political opinion. The tribunal member discusses this at para. 5.23 and accepts the Refugee Applications Commissioner's views that political opinion would not be imputed to the applicant given that his alleged low-level activities were carried out unwillingly. The somewhat makeweight nature of the claim is also illustrated by the applicant's fears that his daughter and wife would be raped, notwithstanding that he separated from the wife, that the daughter lives elsewhere and that he had made no effort to contact either prior to leaving Mozambique.

Order
19. As in *C.M. (Zimbabwe) v. International Protection Appeals Tribunal*, the applicant is engaging in a very artificial and legalistic exercise. The tribunal member saw and heard the applicant and is in the best position to assess his credibility. She did so and rejected that credibility comprehensively. The facts as set out in the decision comprehensively support that finding. 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 at 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".*

20. The order therefore will be that the application be dismissed.