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Ireland - High Court, 31 July 2012, B.J.C. (South Africa) v the Refugee Appeals Tribunal, the Refugee Applications Commissioner and the Minister for Justice, Equality and Law Reform [2012] IEHC 340

Country of Decision:

Ireland

Country of Applicant:

South Africa

Date of Decision:

31-07-2012

Citation:

[2012] IEHC 340

Additional Citation:

2010 No 91 JR

Court Name:

High Court (Cooke J)

Keywords:

Credibility assessment
Effective remedy (right to)
Personal interview
Procedural guarantees
Refugee Status
Safe country of origin

Relevant Legislative Provisions:

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [1] > [Art 31](#) [2]

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [1] > [Art 39](#) [3]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [4] > [Art 4](#) [5]

Headnote:

The Court granted permission to the Applicant to seek judicial review of the negative decision made in a written appeal (rather than an oral appeal) in an application for refugee status made by a South African national. The decision to allow a written appeal was based on the status of South Africa as a "safe country," but because the appeal decision was based on personal credibility, the absence of an oral hearing may have been unlawful by reference to the right to an effective remedy as guaranteed by the Asylum Procedures Directive.

Facts:

The Applicant, a South African national, applied for asylum in Ireland on the basis that his parents were from Zimbabwe, and received a negative recommendation from the Office of the Refugee Applications Commissioner (ORAC) at first instance. South Africa is designated a "safe country" pursuant to section 12(4) of the Refugee Act 1996, and as a consequence, the Applicant was limited to a written appeal only of the negative recommendation rather than an oral appeal; owing to the powers so directly afforded by 13(5) of that Act. The Court found that there was an express finding of lack of personal credibility which formed part of the basis for the negative recommendation, and also that internal protection would be available to the Applicant in South Africa by relocating to either Cape Town or Johannesburg.

Decision & Reasoning:

In the previous case of *N. v. Refugee Applications Commissioner and Others* [2012] IEHC 338, the High Court had held that (a) section 13(5) of the Refugee Act 1996 confers a discretion on the first instance decision-maker as to whether one or more of the findings identified in section 13(6) prescribe the possibility of a written appeal only (including that the Applicant is from a "safe country?") and (b) in a case where the negative recommendation was based exclusively or primarily upon a finding of a personal lack of credibility, there is an obligation to ensure that the appeal to the Refugee Appeals Tribunal (RAT) provides an "effective remedy," in the sense of Article 39 of the Asylum Procedures Directive, which may thus require an oral appeal notwithstanding that the Applicant is from a "safe country?".

In the present case, the Applicant availed of the written appeal to the RAT, and it was held to be out of time for a challenge to the decision by ORAC to limit his appeal to a written form.

The Court then considered whether the Applicant could make out a substantial ground to the effect that he had been deprived of an "effective remedy," within the meaning of section 39 of the Asylum Procedures Directive owing to having been limited to a written appeal.

The Court found that credibility was at the heart of the decision taken by the RAT and that to some extent the negative finding was based upon the plausibility of the description he gave of his travels to Mozambique and Nigeria.

The Court held that the possibility could not be excluded that the relevant conclusions might not have been arrived at had there been an oral hearing at which there would have been an

opportunity of assessing personally the responses of the Applicant to pertinent questions on the relevant issues and events, and consequently it was held that the Applicant had made out a sufficiently substantial ground that he had been deprived of an effective remedy, and leave would be granted to seek judicial review on that basis.

The Court granted leave on a number of unspecified grounds pleaded by the Applicants linked to this issue, and granted leave in particular in the following terms:

"The decision of the first named Respondent on the Applicant's appeal is unlawful in that, in the absence of an oral hearing, the Tribunal member has relied predominantly upon responses to questions in the s. 11 Interview which depended upon the personal credibility of the Applicant with the result that the Applicant has been deprived of an 'effective remedy' by way of an appeal before the Tribunal."

Outcome:

Leave to seek judicial review of the RAT decision was granted, but leave to seek judicial review of the decision of ORAC was refused.

Observations/Comments:

By contrast, in the case of T. E. S., M. N. R. and B. F. R. [South Africa] v Minister for Justice and Equality, and the Attorney General, 2012 No 429JR, [2012] IEHC 554, which was decided after this case, Clarke J. of the High Court refused to grant leave to seek judicial review, holding that an appeal could not be challenged on this basis, because the appropriate time to challenge a decision to grant a written appeal by way of seeking judicial review would be prior to availing of the appeals process. The *B.J.C.* [South Africa] judgment was not referred to in her judgment, and may not have been brought to her attention. The author is unaware of any authoritative resolution of the issue at the time of writing.

Attachment(s):



[Original Judgment - B.J.C. v RAC.pdf](#)[8]

National / Other Legislative Provisions:

[Ireland - Refugee Act 1996 - Section 11](#) [9]

[Ireland - Refugee Act 1996 - Section 12\(4\)](#) [10]

[Ireland - Refugee Act 1996 - Section 13\(5\)](#) [11]

[Ireland - Refugee Act 1996 - Section 13\(6\)](#) [12]

[Ireland - Refugee Act 1996 - Section 13\(6\)\(e\)](#) [13]

[Ireland - Refugee Act 1996 - Section 17](#) [14]

[Ireland - Illegal Immigrants \(Trafficking\) Act 2000 - Section 5](#) [15]

Links:

[1] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive>

[2] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%2031>

[3] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art 39>

[4] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>

[5] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 4 QD>

[6] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 8 QD>

[7] <http://www.asylumlawdatabase.eu/en/content/unhcr-handbook-procedures-and-criteria-determining-refugee-status>

[8] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Original%20Judgment%20-%20B.J.C.%20v%20RAC.pdf>

[9] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1498>

[10] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1500>

[11] <https://www.asylumlawdatabase.eu/en/taxonomy/term/8012>

[12] <https://www.asylumlawdatabase.eu/en/taxonomy/term/8013>

[13] <https://www.asylumlawdatabase.eu/en/taxonomy/term/8014>

[14] <https://www.asylumlawdatabase.eu/en/taxonomy/term/8015>

[15] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1530>