
Ireland - K.K. (a minor) v. Refugee Appeal Tribunal & Anor. [2015 No. 2013 87 JR]

Country of Decision:

Ireland

Country of Applicant:

Congo (DRC)

Date of Decision:

17-09-2015

Citation:

K.K. (a minor) V Refugee Appeal Tribunal & Anor. [2015] IEHC 581

Court Name:

High Court (Eagar J.)

Keywords:

Assessment of facts and circumstances

Best interest of the child

Child Specific Considerations

Country of origin information

Credibility assessment

Individual assessment

Membership of a particular social group

Obligation to give reasons

Refugee Status

Relevant Legislative Provisions:European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [1] > [Art 2](#) [2] > [Art 2 \(e\)](#) [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:

This case examined the denial of a minor's application for asylum which was decided primarily

on the failure of his mother's application. The Refugee Appeals Tribunal did not consider Country of Origin Information (COI) from the child's perspective. Furthermore, clear reasons were not given for the refusal decision. The High Court granted leave and quashed the Refugee Appeals Tribunal's decision to deny refugee status to the child. The Court also held that the best interests of the child should be a primary consideration of the Tribunal both with regard to the procedure and substantive consideration of appeal.

Facts:

The Applicant is 15 months old and is a national of the Democratic Republic of Congo (DRC). He was born in Ireland on 3 November 2011. The Applicant's mother previously claimed for asylum based on a fear of persecution for her political opinion. This claim failed, due to, predominantly, a negative credibility assessment.

The applicant's mother was diagnosed with HIV/AIDS on arriving in Ireland in 2007. Both the Applicant and his mother are receiving treatment to minimise the risk of transmission of the condition to the Applicant. It will not be clear whether this has been successful until the Applicant is about five years old.

It is argued that the Respondent failed to comply with Regulation 5 of the EC (Eligibility for Protection) Regulations, 2006 as 'all relevant facts as they relate to the country of origin' were not considered. There is vast evidence that treatment of HIV/AIDS in DRC is exceptionally difficult to access. Thus it is extremely likely that, if returned to DRC, the Applicant's mother would die. This would leave the applicant without guardianship and living on the street. There is also significant COI to the effect that street children are at risk of exploitation and identification as child witches.

The Applicant's mother's claim for asylum failed based on a negative credibility assessment. Two additional grounds for asylum were brought to the appeal which she failed to mention in her interview. She claimed that her son (the applicant) and she would face persecution based on their ethnicity as members of the Luba tribe and; based on their status as failed asylum seekers. The Respondent dismissed these additional elements as not being well-founded based on her failure to mention them in her initial application.

Furthermore, it is argued that the Applicant's claim for asylum was not given independent consideration but instead was conflated with that of his mother.

Decision & Reasoning:

The main questions put to the High Court were:

1. Did the Respondent fail to assess the Applicant's risk individually relying solely on the rejection of the Applicant's mother's claim?
2. Was the Respondent's finding that the Applicant is not at risk of persecution as a failed asylum seeker unreasonable and lacking a clearly deductible underlying rationale?

The High Court initially reiterated that the hearing in front of the Refugee Appeal Tribunal is a *de novo* hearing. Therefore it was held that the Respondent failed in its duty to deal with the two additional elements introduced by the Applicant's mother at the time with respect to her son's claim.

The High Court also condemned the lack of information provided by the Respondent as to the grounding of the decision. It was stated that the Respondent failed to deal substantively with the Applicant's claims apart from claiming that 'the Applicant's mother reconstructed her evidence after the interview' (Para. 26).

Further, it appears from the Tribunal's decision that information which the Respondent should not have had access to, was known and actively utilised by the Respondent in the final decision on the Applicant's application. This information was in relation to a decision by the Minister for Justice to deny the Applicant's mother leave to remain on humanitarian grounds. The High Court held that the use of this information jeopardised the independence of the Tribunal and was 'absolutely inappropriate' (Para. 30).

The COI was deemed not to have been appropriately considered in relation to claims made by the Applicant. It was held that a minor applicant is entitled to have his or her claims considered with the best interest of the child being the primary consideration. The High Court held that the Respondent failed to do this.

Outcome:

Application Granted and therefore the decision of the Refugee Appeal's Tribunal is quashed. To be remitted back to the Refugee Appeals Tribunal to a different member.

Observations/Comments:

An important outcome of this decision is that a risk of persecution in relation to a child, which is objectively identifiable and based on COI, must be considered with the child's best interests as the primary consideration. Credibility of the parent of such a child is irrelevant. Thus, COI should be considered from the child's perspective.

A further significant conclusion of this decision is the importance of information provided by the Tribunal in relation to its findings. Insufficient information can affect an applicant's Constitutional right to access the Court. Insufficient information on reasons for a decision denies the applicant the opportunity to assess the lawfulness of such a decision and therefore to assess whether a judicial review of the decision would be a viable option. Furthermore as an independent Tribunal it was inappropriate for it to rely on information sourced from a decision from the Minister of Justice concerning the applicant's own mother's application for leave to remain.

Attachment(s):

[Ireland - KK \(a minor\) -v- Refugee Appeal Tribunal & Anor.docx](#)[6]

Other sources cited:

Regulation 5 of the EC (Eligibility for Protection) Regulations, 2006

National / Other Legislative Provisions:

[Ireland - Refugee Act 1996](#) [7]

Links:

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

[2] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%202%20APD>

- [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] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Ireland%20-%20KK%20%28a%20minor%29%20-v-%20Refugee%20Appeal%20Tribunal%20%26%20Anor.docx>
- [7] <https://www.asylumlawdatabase.eu/en/taxonomy/term/989>