IRLANDA

CONCESIÓN DEL ESTATUTO DE REFUGIADO POR RAZONES RELIGIOSAS EN IRLANDA. SENTENCIA DEL TRIBUNAL SUPREMO IRLANDÉS DE 13 DE FEBRERO DE 2009

Mercedes Vidal Gallardo

Profesora Titular de Derecho Eclesiástico del Estado
Universidad de Valladolid

La protección internacional que reciben los refugiados ha cobrado en las últimas décadas -desde la creación del Alto Comisionado de Naciones Unidas para los Refugiados en 1950 y la aprobación del Convenio de Ginebra de 1951- una creciente importancia. Por ello, hoy en día, podemos hablar de un Derecho internacional de los refugiados. Los acontecimientos acaecidos en los últimos años, la guerra en la antigua Yugoslavia o la más reciente guerra de Afganistán, nos hacen reflexionar sobre la protección internacional que se debe otorgar a los refugiados. De hecho, actualmente, el concepto de refugiado contenido en la Convención de Ginebra de 1951 y en su Protocolo de 1967, está en entredicho, pues se trata de instrumentos adoptados para solucionar la situación de los refugiados tras la Segunda Guerra Mundial. Sin embargo, lo que se creía que era un problema temporal y geográficamente localizado, se ha convertido en un problema a escala mundial y de gran relevancia en el comienzo del siglo XXI.

Efectivamente, el Tratado de Amsterdam, en su Título IV (Arts. 61-69 TCE), prevé la creación del llamado *Espacio de Libertad, Seguridad y Justicia* en la Unión Europea. Dicho *Espacio de Libertad, Seguridad y Justicia* común, aunque con

límites temporales (prevé un plazo de cinco años desde la entrada en vigor del Tratado de Amsterdam en el cual se deberán adoptar las medidas necesarias -hasta el 1 de mayo de 2004- y espaciales (regímenes especiales para Reino Unido e Irlanda), afecta a la libertad de circulación en el ámbito comunitario. Sin embargo, no se puede concebir un espacio común sin fronteras interiores, sin tomar las medidas de acompañamiento necesarias.

Según el Convenio de 1951, como pone de manifiesto esta sentencia, el refugiado es una persona que sufre o tiene fundados temores de sufrir persecución individualizada por motivos de raza, *religión*, nacionalidad, pertenencia a un grupo social o por opiniones políticas, encontrándose fuera de su país y sin querer regresar a él. La regulación convencional de la obligación de *non-refoulement* (obligación de no devolución) se encuentra en el Art. 33 de la Convención de Ginebra de 1951, que se expresa en los siguientes términos:

1.- Ningún Estado contratante podrá, por expulsión o devolución, poner en modo alguno a un refugiado en las fronteras del territorio donde su vida o su libertad peligre por causa de raza, *religión*[1], nacionalidad, pertenencia a determinado grupo social o de sus opiniones políticas.

2.- Sin embargo, no podrá invocar los beneficios de la presente disposición el refugiado que sea considerado, por razones fundadas, como un peligro para la seguridad del país donde se encuentra o que, habiendo sido objeto de una condena definitiva por delito particularmente grave, constituya una amenaza para la Comunidad de tal país.

De esta forma, la obligación de *non-refoulement* contenida en la Convención de 1951 prohíbe a un Estado expulsar o devolver forzosamente a un refugiado a cualquier país en el que su vida o su libertad se encuentren amenazadas por motivos de raza, *religión*, nacionalidad, pertenencia a determinado grupo social o por opiniones políticas. El ámbito personal de aplicación

[1] La cursiva es de la autora.

de esta obligación se circunscribe al concepto de refugiado recogido en el Art. 1 de la Convención de 1951[2]. Dicho concepto es aplicable de forma individual, por lo que la obligación de *non-refoulement* se aplicará únicamente a aquél que tuviera el estatuto legal de refugiado conforme al Convenio de 1951. Sin embargo, la práctica de los Estados señala que esta obligación es aplicable también a los solicitantes de asilo, a los refugiados de hecho y a los refugiados en masa que no gocen de la protección del Estado de su país de origen. Por lo tanto, no es necesario que sea el Estado quien persiga al refugiado, sino que es suficiente con que el Estado no proteja, no quiera o no pueda proteger a aquél de ser perseguido por otros grupos diferentes del Estado.

Por lo que se refiere a la *concesión del estatuto de refugiado por razones religiosas*, objeto de esta sentencia, la misma posición común 96/196/JAI del Consejo de Europa[3], establece un concepto amplio de religión, dando cabida tanto a las creencias teístas, no teístas o ateas. Sin embargo, no es suficiente pertenecer a una comunidad religiosa, sino que deben producirse discriminaciones graves basadas en las convicciones religiosas del individuo[4].

---

[2] El artículo 1.A se pronuncia en los siguientes términos: "A los efectos de la presente Convención, el término "refugiado" se aplicará a toda persona:..." y añade en su apartado 2º: "Que..., debido a fundados temores de ser perseguido por motivos de raza, *religión*, nacionalidad, pertenencia a determinado grupo social u opiniones políticas, se encuentra fuera del país de su nacionalidad y no puede o, a causa de dichos temores, no quiere acogerse a la protección de tal país; o que, careciendo de nacionalidad y hallándose, a consecuencia de tales acontecimientos, fuera del país donde antes tuviera su residencia habitual, no pueda o, a causa de dichos temores, no quiera regresar a él".

[3] Posición común 96/196/JAI, de 4 de marzo de 1993, definido por el Consejo sobre la base del artículo K.3 del Tratado de la Unión Europea relativa a la aplicación armonizada de la definición del término "refugiado" conforme al artículo 1 de la Convención de Ginebra de 28 de julio de 1951 sobre el estatuto de los refugiados (DOCE L 63 de 13 de marzo de 1996), punto 7, en concreto, punto 7.2. *Diario Oficial nº L 063 de 13/03/1996 p. 0002-0007*. Esta posición común, sin embargo, carece de efecto jurídico vinculante.

[4] También se debe tener en cuenta el Art. 18 de la Declaración Universal de Derechos del Hombre de 1948, según el cual "Toda persona tiene derecho a la

Sin embargo, el concepto de refugiado recogido en la Convención de Ginebra ha quedado ampliamente superado por las circunstancias de las últimas décadas. Es evidente la existencia de refugiados que no entran en la "estrecha" definición del Convenio de Ginebra, ni que tampoco pueden ser calificados como inmigrantes económicos (políticas de inmigración). Se trata de una zona gris de refugiados que huyen de guerras, de situaciones de extrema violencia o de la conculcación de los más elementales derechos humanos, pero que no pueden probar persecución o no pueden demostrar tener fundados temores a la misma, por motivos de raza, *religión*, nacionalidad, pertenencia a un grupo social determinado o por sus opiniones políticas, tal y como establece la Convención de Ginebra. Precisamente esta situación es la que pone de manifiesto la Sentencia 2009 1294 JR de la Corte Suprema Irlandesa, en cuya virtud se deniega la

---

libertad de pensamiento, de conciencia y de religión; este derecho incluye la libertad de cambiar de religión o de creencia, así como la libertad de manifestar su religión o su creencia, individual y colectivamente, tanto en público como en privado, por la enseñanza, la práctica, el culto y la observancia", así como el Art. 18 del Pacto Internacional de Derechos Civiles y Políticos, Nueva York, 16 de diciembre de 1966, aprobado mediante Resolución 2200(XXI) de la Asamblea General de las Naciones Unidas; ratificado por España mediante Instrumento de Ratificación de 27 de abril de 1977 (BOE núm. 103 de 30 de abril de 1977). En este precepto se reconoce que:

1. "Toda persona tiene derecho a la libertad de pensamiento, de conciencia y de religión; este derecho incluye la libertad de tener o de adoptar la religión o las creencias de su elección, así como la libertad de manifestar su religión o sus creencias, individual o colectivamente, tanto en público como en privado, mediante el culto, la celebración de los ritos, las prácticas y la enseñanza.

2. Nadie será objeto de medidas coercitivas que puedan menoscabar su libertad de tener o de adoptar la religión o las creencias de su elección.

3. La libertad de manifestar la propia religión o las propias creencias estará sujeta únicamente a las limitaciones prescritas por la ley que sean necesarias para proteger la seguridad, el orden, la salud o la moral públicos, o los derechos y libertades fundamentales de los demás.

4. Los Estados Partes en el presente Pacto se comprometen a respetar la libertad de los padres y, en su caso, de los tutores legales, para garantizar que los hijos reciban la educación religiosa y moral que esté de acuerdo con sus propias convicciones".

concesión del estatuto de refugiado por falta de acreditación suficiente de los motivos religiosos alegados por la demandante.

ANEXO

SENTENCIA DEL TRIBUNAL SUPREMO IRLANDÉS DE 13 DE FEBRERO DE 2009

Fecha Sentencia: 13-02-2009

Fecha de Publicación: 13-02-2009

Rama Jurídica: Contencioso-Administrativa

Número: 2009 1294 JR.

Tribunal Supremo Irlandés

Sentencia por la que se resuelve el recurso presentado por la demandante en el que se solicita la revisión judicial de la decisión del Tribunal de Apelaciones para los Refugiados (RAT), con fecha de 21 de agosto de 2007, decisión en virtud de la cual se le deniega el estatuto de refugiado atendiendo a la recomendación de la Oficina del Comisionado de Refugiados (ORAC).

Mr. Ian Whelan B.L., en representación de la demandante, interpone por escrito un recurso que se resuelve en los siguientes términos (....)

A.- Antecedente de Hecho

La demandante es una mujer nacional de Nigeria, de la etnia yoruba. Nació en 1976 y creció en el Estado de Lagos. Era hija única y se crió en una estricta familia musulmana. En el proceso de su formación, asistió a la escuela primaria y secundaria desde 1982 hasta 1994. Posteriormente, inició estudios para obtener un título de marketing en una escuela politécnica federal en 2005 y hasta el año 2004 asistió a la mezquita.

La demandante pone de manifiesto que sus problemas comenzaron cuando se convirtió al cristianismo en enero de 2005,

después de que un amigo la convenciera para ir a la iglesia. Sus padres se enojaron cuando la encontraron leyendo la Biblia y les comentó su conversión. Algunos meses más tarde, conoció a un hombre cristiano en su iglesia e inició una relación con él, pero sus padres no aprobaban la relación.

En septiembre de 2005, se trasladó a la residencia para estudiantes extranjeros en Ilara, y comenzó a estudiar marketing. A partir de entonces, volvió a su casa una vez al mes y sus padres también la visitaron en Ilara. Ella sólo veía a su novio cuando iba a su casa. En julio de 2006, queda embarazada de él. Cuando se lo comunicó a sus padres, su padre le dijo que ella no se casaría con un cristiano y le exigió abortar. Además le pusieron en conocimiento que un hombre de 60 años, el Imam Muslim, que ya tenía tres esposas, les había pagado una dote para convenir su matrimonio. Ante esta situación, la demandante se enfadó mucho con sus padres.

El día 2 de septiembre de 2006, la demandante y su novio se fueron a Ibadan para quedarse con un amigo suyo. El 20 de septiembre de 2006, su padre la localizó con la ayuda de agentes de la policía. El novio de la demandante fue detenido por la policía por cargos de secuestro y ya no lo volvió a ver desde entonces. La demandante que se vio obligada a regresar a la casa de su padre, pero se encerró en su habitación y se negaba tanto a abortar como a celebrar el matrimonio arreglado con el Imán.

Dos meses después de su detención, la demandante recibió una llamada telefónica de un amigo de su novio, quien le comentó que la policía le había puesto en libertad, había abandonado el país y no había vuelto a saber de su paradero. El 3 de diciembre 2006, recibió otra llamada telefónica de ese amigo, proponiendo a la demandante un encuentro. Acudió a la cita y fue recibida por el amigo y un agente. El amigo había pagado al agente para acompañar a la solicitante en avión desde Nigeria hasta España, vía París, pero no sabe cuánto pagó y desconoce los detalles sobre el agente, quien le dio un documento que no tenía su fotografía. Llevaba un nombre francés, pero no podía recordar

si se trataba de un visado, pues ella le devolvió el documento después de haber entrado en el país a través de la oficina de inmigración.

B).- Antecedentes del procedimiento

La solicitante se encontraba embarazada de seis meses cuando llegó a Irlanda y el día 4 de diciembre de 2006 presenta una solicitud de asilo completando un cuestionario de la Oficina del Comisionado de Refugiados (en lo sucesivo ORAC), en el que alega su temor a sufrir *persecución en su país de origen por motivos religiosos*, pues tenía razones para creer que si volvía a Nigeria iba a ser obligada a casarse con un imán y su bebé corría el riesgo de ser asesinado por su padre que cree en los asesinatos de honor o por el imán musulmán con el que habían convenido su matrimonio.

Cuando el día 4 de abril de 2007 dio a luz, requirió al ORAC para que incluyese a su hija en la solicitud de asilo. Y el día 17 de mayo de 2007 tuvo la primera entrevista con los representantes del ORAC, en la que la demandante no aporta documento alguno de identificación personal ni que acredita la forma y tiempo en que tuvo lugar su viaje a Irlanda, argumentando que ello obedece a que se trató de un viaje no planeado y que un agente se ocupó de toda la documentación. Tampoco pudo acreditar suficientemente la trayectoria de su viaje hasta llegar a Irlanda.

De la misma forma, no había constancia de la existencia del matrimonio convenido con el Imán, sobre todo teniendo en cuenta la edad de la demandante, 29 años. La demandante alega que no sabía cuanto tiempo llevaban sus padres arreglando este matrimonio, puesto que el Imán era amigo de su padre y frecuentaba su casa, pero éste desconocía tanto su embarazo como su conversión al cristianismo.

A la demandante también se le preguntó por qué su padre no la había obligado a abortar mientras estuvo hospedada en su casa a lo que argumentó que se había encerrado en su habitación y que sólo salía para comer. Se cuestionó por qué su padre no la

había matado a pesar de que tuvo varias oportunidades para hacerlo y ella dijo que no sabía lo que tenía planeado.

En virtud de todas estas apreciaciones, el 22 de mayo de 2007, se emite un informe en el que se recomienda que no se conceda el estatuto de refugiado ni a la demandante ni a su hija, debido a los resultados negativos de credibilidad respecto a los siguientes extremos de la reclamación de la demandante:

.- Que el Imán no se hubiera enterado de su situación.

.- Que la solicitante no hubiera informado a la policía de que la acusación de secuestro de su novio se trataba de un error, puesto que ella había ido voluntariamente con él a Ibadan.

.- Que su padre no la hubiese obligado a abortar, si ese era su objetivo, cuando ella, después de encerrarse en su cuarto, salía para comer.

.- Que el Imán no hubiese insistido en su plan definitivo de celebrar el matrimonio antes de pagar la dote.

.- Que la solicitante argumentó que había viajado a Irlanda vía Francia, pero no solicitó asilo en este país.

C).- Documentación solicitada al país de origen

El informe se emite en base cuatro piezas de información proporcionadas por las autoridades de Nigeria:

1.- Informe de la Coalición Internacional de la Mujer (WIHC)

2.- Lista de organizaciones de mujeres de Nigeria en materia de derechos.

3.- Documentos obtenidos de una página Web de BOABAB

4.- Informe del Ministerio del Interior Británico de 2006 en relación a la misión británico-danesa.

D).- Audiencia de Apelación oral

El Tribunal de Apelaciones para los Refugiados (RAT) ratifica la resolución impugnada en base a que no se

presentan documentos adicionales en la vista ni se presentó alegación alguna en nombre de la demandante. En consecuencia, el RAT dicta resolución negativa para la concesión de estatuto de refugiado el 21 de agosto de 2007, por entender que "*surgen problemas de credibilidad que actúan contra la pretensión de la solicitante*", particularmente respecto al conocimiento de la fe musulmana (.....)

(....) los miembros del Tribunal apreciaron un conocimiento "muy vago" por parte de la demandante de la fe musulmana, pues únicamente había dado cuenta de cuatro de los cinco pilares del Islam, fue incapaz de nombrar las cinco oraciones diarias musulmanas, confunde las fechas en que se celebra el Ramadán, así como el nombre de la festividad que se celebra el primer día de ese mes, entre otras cuestiones (....).

(....) teniendo en cuenta la edad de la solicitante, su educación y el hecho de que vivía con sus padres musulmanes y asistió a la mezquita hasta el año 2004, resulta difícil creer que no tuviera un conocimiento más integral de la fe musulmana. La vacilación de la solicitante y la falta de conocimiento cuando se le pregunta sobre la fe musulmana, socava su credibilidad (...).

E).- Alegaciones de la demandante en la interposición del recurso

Mr. Ian Whelan B.L., en representación de la demandante, interpone por escrito un recurso ante el Tribunal Supremo Irlandés, pidiendo la revisión de los siguientes extremos:

1.- El tratamiento viciado de credibilidad de su representada.

2.- Ausencia de consulta por parte del Tribunal de Apelaciones de información suficiente en el país de origen de su representada.

3.- No consideración del riesgo que asume la hija de la demandante en el caso de ser devuelta al país de origen.

Respecto de esta última cuestión, el abogado afirma que (...) no es admisible que a la hija de la demandante no se la

incorpore al procedimiento, habida cuenta de que así fue solicitado por la madre y no se ha abierto una causa separada e independiente respecto de la hija, sino que ésta debe ser subsumida en la solicitud de la madre. Se aporta como referencia la Sentencia de la Corte Suprema J. Peart de 2 de mayo de 2008, donde se pone de manifiesto el temor de una madre de que su hija fuera sometida a una mutilación genital femenina si se la obligaba a regresar al país de origen.

F.- Fundamentación de la resolución del recurso

El Tribunal Supremo Irlandés estima que al ser de aplicación lo establecido en el artículo 5.2 de la Ley de inmigrantes ilegales de 2000[5], la solicitante debe demostrar razones fundadas para sostener que la decisión debe ser anulada. Por eso hay que demostrar que los motivos son razonables y de peso, pues el Tribunal considera que los argumentos presentados en este caso eran "tenues" e "inconsistentes". Además, la escasez evidente de conocimientos de la fe musulmana fue considerada como motivo determinante para cuestionar la credibilidad de la demandante. Esta afirmación debe valorarse a la luz del hecho de que la religión de la demandante y su conversión, son centrales. Criada como hija única en una estricta familia musulmana y practicante de esta fe hasta los 28 años, es la base sobre la que se formula la solicitud de asilo, sin la cual, la pretensión carece de fundamento.

Ante estas circunstancias, el Tribunal Supremo estima que "es totalmente razonable y racional que a los miembros del Tribunal de Apelaciones les resultase difícil creer que la demandante no tuviera un conocimiento más profundo de la fe musulmana, a juzgar por su edad y educación". Asimismo, el

[5] Vid., Illegal Immigrants (Trafficking) Act 2000, *Number* 29 *of* 2000. Fecha de entrada en vigor 28 de agosto de 2000. En virtud de los establecido en al artículo 5.2 de esta Ley, se concede al interesado un plazo de 14 días contados a partir de la fecha en que se notificó la decisión, la determinación, la recomendación o la negativa, salvo que el Tribunal Supremo considera que hay motivos válidos y suficientes para ampliar el plazo en que la solicitud se hizo.

Tribunal aplica lo dispuesto en la Sección 11B (c) de la Ley de Refugiados, en la cual se establece que

"El Comisionado o Tribunal, según proceda, en la evaluación de la credibilidad de un solicitante a los fines de la investigación de su solicitud o de la resolución de un recurso en relación con su solicitud, deberá tener en cuenta los siguientes aspectos:

(...) (C) "si el solicitante ha proporcionado una información completa y verídica de cómo viajó y llegó al Estado".

Sobre este particular, la demandante no supo acreditar la nacionalidad del pasaporte con el que viajó, ni tampoco si este documento contenía o no el visado. En este sentido, el Tribunal manifiesta que "es difícil creer que la demandante podría haber viajado con información limitada sobre los detalles de su viaje, pues constatada su falta de información por los funcionarios de inmigración, habrían surgido graves dificultades para entrar en el país.

Finalmente, respecto a la consideración de los riesgos para la hija de la demandante, es un principio general que "cuando no hay motivos independientes, el caso del hijo se subsuma en la solicitud de la madre". En este sentido, en el caso A.N y ORS c. el Ministerio de Justicia, Igualdad y Reforma Legislativa (2004) IEHC 433, J. Peart, declaró lo siguiente "*una interpretación constitucionalmente armoniosa del marco legislativo en relación con los intereses de un menor de edad acompañado por un progenitor, viene a decir que el padre es la persona que sigue llevando la responsabilidad de velar por los intereses del menor y, en consecuencia, sigue teniendo la responsabilidad, en calidad de participante activo en el proceso de asil, para llevar a cabo, de manera adecuada, todos los motivos de la solicitud (...).*

Sin embargo, en este caso, la demandante de forma sucinta alega que su hija no podía regresar a Nigeria porque ella pertenece a una familia cristiana, el padre de su hija era cristiano

y ella es una cristiana conversa, de ahí el temor de que el padre de la demandante quisiera matar el bebé debido a la vergüenza que ello suponía. Por lo tanto, la demandante efectúa la misma reclamación para su hija que la que hace en su propio nombre.

G.- Resolución

Por todo ello y, a la luz de las consideraciones anteriores, este Tribunal acuerda denegar la concesión del estatuto de refugiado a la demandante.

ANEXO

Judgment Title: O. -v- MJELR & Anor Neutral Citation: [2009] IEHC 82 High Court Record Number: 2007 1294 JR Date of Delivery: 13 February 2009 Court: High Court Composition of Court: Judgment by: Clark J. Status of Judgment: Approved

THE HIGH COURT

JUDICIAL REVIEW 2007 1294 JR BETWEEN O. A. O.APPLICANT AND THE MINISTER FOR JUSTICE, EQUALITY, LAW REFORM AND

JUDGMENT OF MS. JUSTICE M. H. CLARK, delivered on the 13th day of February, 2009.

1. The applicant is seeking leave to apply for judicial review of the decision of the Refugee Appeals Tribunal (RAT), dated the 21st August, 2007, to affirm the earlier recommendation of the Office of the Refugee Applications Commissioner (ORAC) that she should not be declared a refugee. Mr. Ian Whelan B.L. appeared for the applicant and Ms. Sinéad McGrath B.L. appeared for the respondents. The hearing took place at King's Inns in Court 1 on the 5th February, 2009.

Factual Background

2. The applicant is a national of Nigeria of Yoruba ethnicity. Her account of events is as follows: she was born in 1976 and grew up in Lagos State. She was an only child and was raised in a strict Muslim family. She has had thirteen years of education, having attending primary and secondary school from 1982 to 1994 and having commenced study for a marketing qualification at a Federal Polytechnic in 2005. Between 1994 and 2005 she worked at her mother's clothes shop. She says she attended the Mosque until 2004.

3. The applicant says her problems began when she converted to Christianity in January, 2005, after a friend convinced her to attend church. Her parents were angry when her father found her reading the Bible and she told them of her conversion. Some months later she met a Christian man at her church and entered into a relationship with him. She says she saw him weekly, mostly at church. Her parents did not approve of the relationship but she says they could not prevent it.

4. In September, 2005, she moved into student accommodation in Ilara, an hour from her parents' house, and began to study marketing. From then on, she returned home once a month and her parents also visited her in Ilara. She only saw her boyfriend when she went home. In July, 2006, she became pregnant by him. When she told her parents her father told her she would not marry a Christian and demanded that she have an abortion. He then told her that a 60-year old Muslim Imam, who already had three wives, had paid a dowry to the applicant's parents in respect of his envisaged marriage to her. The applicant became very angry with her parents.

5. The applicant's mother died of a heart attack on the 2nd September, 2006. Two days later the applicant and her boyfriend went to Ibadan to stay with a friend of his. On the 20th September, 2006, her father tracked her down with the help of police officers. The applicant's boyfriend was arrested by the police on charges of kidnapping; she has not seen him since. She says she was forced to return to her father's house but locked

herself in her room and refused to have an abortion or to go through with the arranged marriage to the Imam.

6. Two months after his arrest the applicant received a phone-call from her boyfriend's friend, who told her the police had released her boyfriend. She says he ran away after being released and she does not know his whereabouts. On the 3rd December, 2006, she received another phone-call from that friend, telling her to meet him at a bus stop five minutes from her house. She went to the bus stop and was met there by the friend and an agent. The friend paid for the agent to accompany the applicant by plane from Nigeria to Ireland via Paris; she does not know how much he paid or any further details about the agent and she did not know if the same plane from Nigeria to Paris continued from Paris to Ireland. She says the agent gave her a red passport which did not have her photo on it. It bore a French name but she could not remember if it had a visa in it. She gave it back to her agent after coming through immigration. The agent answered questions when they were asked.

Procedural Background

7. The applicant was six months pregnant upon arrival in the State. She made an application for asylum on the 4th December, 2006. She filled in an ORAC questionnaire in which she claimed to fear persecution on the basis of her religion. She stated that she fears being forced to marry a Muslim Imam and that she and her baby would be at risk of being killed by her father who believes in honour killings, or by the Muslim Imam who is influential.

8. On the 4th April, 2007 she gave birth to a daughter. She indicated to ORAC that she wanted her daughter to be included under her application for asylum. Her s. 11 interview took place on the 17th May, 2007. She did not submit any travel or identification documents and said this was because her journey was unplanned and her agent took all of her travel documents. When it was put to her that as an educated woman she surely would know whether she took the same plane from Nigeria to

France and on to Ireland, she replied "I don't know if it was the same plane." It was noted that when asked how often she saw her boyfriend the applicant was very vague. It was put to her that COI indicates that it would be very unusual for a Muslim arranged marriage to occur at the age of 29; she said she didn't known when they started arranging the marriage and that in Nigeria "they wait for the right person".

9. The applicant told the interviewer that, although the Imam was her father's close friend and had visited their home while she was pregnant, he did not find out she had converted to Christianity, that she was in a relationship with a Christian man, or that she was pregnant. When it was put to her that neighbours talk and that communication in Nigeria is very effective, she had said the Imam was a well connected man and knew influential people in town but not her neighbours. When the interviewer said she found it hard to believe the applicant was afraid the Imam would find her elsewhere in Nigeria if he was unable to find out such basic information, the applicant pointed out that someone told her father where she was in Ibadan.

10. The applicant was also asked why her father had not forced her to have an abortion when she was at his house between August and December, 2006. She said she locked herself in her room for most of the time but was able to come out to eat. She didn't know why her father didn't break the door down even though he abducted her from Ibadan or why he hadn't killed her even though he had ample opportunity to do so, and she said she didn't know what he had planned.

11. In the s. 13 report compiled on the 22nd May, 2007, it was recommended that the applicant and her daughter should not be granted declarations of refugee status. A number of negative credibility findings were made with respect to the following aspects of the applicant's claim:-

- That the Imam would not have found out about her circumstances;

- That the applicant would not have informed the police that the charge of abduction levied against her boyfriend was a mistake as she had gone willingly with him to Ibadan;

- That her father had ample time to force her to have an abortion if that was his aim, that she was able to lock herself in her room and emerge for food when she needed it, and that her father had not broken the door down;

- That the Imam would not have insisted on a definite marriage plan before paying a dowry; and

- That the applicant said she travelled through France on her way to Ireland but did not claim asylum there. It was found that s. 11B (b) of the Refugee Act 1996, as amended, was particularly relevant in the circumstances.

12. Four pieces of country of origin information (COI) were appended to the s. 13 report, namely a report from the Women's International Health Coalition (WIHC) entitled *Nigeria – The Context: A Brief Overview of Nigeria* of 2004, a list of Nigerian women's rights organisations and information taken from a web-page about BAOBAB, and two excerpts from a U.K. Home Office Report of 2006 (the second referencing a British-Danish FFM report). These four documents comprise the only COI that was before the Tribunal Member at the appeal stage: no additional documentation or COI was attached to the Form 1 Notice of Appeal and covering letter submitted, and nothing further was submitted at the appeal hearing.

13. An oral appeal hearing took place at which the applicant was legally represented. No attendance note of the hearing is before the Court; the Court is therefore reliant on the summary contained in the Tribunal Member's decision. This summary indicates that no documents were submitted and no submissions were made by or on behalf of the applicant at the hearing. A negative decision issued from the RAT on the 21st August, 2007. It is that decision that is challenged in the within proceedings.

The Impugned Decision

14. The RAT decision first sets out the applicant's claim and recorded the evidence given by the applicant and the questions asked of her at her appeal hearing. It next addresses various legal principles and provisions, and it then turns to assess the applicant's claim. In the analysis section, the Tribunal Member found that "credibility issues arise which undermine the Applicant's account". She went on to address:-

(1) The applicant's knowledge of the Muslim faith;

(2) The period between her boyfriend's arrest and her departure; and

(3) The applicant's travel to Ireland.

15. On the applicant's faith, the Tribunal Member found that the applicant's knowledge of the Muslim faith was "very vague" and that when she was asked in any detail about the faith she was "generally very hesitant". In particular, the Tribunal Member noted that that the applicant had named only four of five pillars of Islam, was unable to name the five daily Muslim prayers, was unaware that Bilal is one of Mohammed's companions, incorrectly stated that Ileya is the first month of the Islamic calendar, was unaware of the name of the festival that starts on the first day of that month, and incorrectly stated that Ramadan sometimes occurs on the fourth month of the Muslim calendar. She concluded that:-

"Considering the Applicant's age, education [...] and the fact that she lived with Muslim parents and attended a Mosque until 2004, it is difficult to believe that she would not have a more comprehensive knowledge of the Muslim faith. The Applicant's hesitancy and lack of knowledge when questioned on the Muslim faith undermines her credibility."

16. On the subject of the events between the arrest of the applicant's boyfriend and her departure for Ireland, the Tribunal Member noted as follows:-

"The applicant states that her father demanded that she have an abortion. The Applicant remained in her home from September 2006 to December 2006 when she left for Ireland. The Applicant locked herself in her room to avoid her father. She was able to receive phone calls from her partner's friend and get food. The Applicant's father did not force the door or insist she have an abortion during this time, considering the Applicant states he chased her to Ibadan with police officers."

17. On the subject of travel, the Tribunal Member noted that the applicant says she travelled on a red passport but did not know if it contained a visa, did not know the nationality of the passport, and was not told where she was going. She was told th she was to tell immigration officials that she was "going visiting". The Tribunal Member drew a negative credibility finding in that regard, and then stated that he found that s. 11B (c) of the Refugee Act 1996, as amended, was relevant to the applicant's claim. She concluded by stating that she had considered all relevant documentation, and affirmed the ORAC recommendation.

THE APPLICANT'S SUBMISSIONS

18. The applicant's complaints in respect of the decision may be summarised as:-

a. Flawed treatment of credibility;

b. Making a bald finding under s. 11B (c) of the Refugee Act 1996;

c. Failure to consult COI; and

d. Failure to consider the risk faced by the applicant's child.

(a) Treatment of Credibility

19. In respect of the findings made in relation to her lack of knowledge about her asserted faith, counsel for the applicant complains that the Tribunal Member failed to take into account that the applicant knew some details about the Islamic faith. He also complains that the Tribunal Member had regard to *"highly technical and highly specialist areas of knowledge"* in relation to the Muslim faith - relating for example to the role of Bilal, the months in the Islamic calendar and the duration of those months – without first furnishing to the applicant any indication as to what sources the Tribunal Member had consulted in that regard, in breach of s. 16(8) of the Refugee Act 1996, as amended.

20. In respect of the second negative credibility finding relating to the period after her boyfriend's arrest that the applicant spent at her father's house, counsel contends that the manner in which the Tribunal Member addressed the issue amounts to no more than a statement of fact under a general, catch-all heading relating to credibility, and that it fails to indicate why the applicant's credibility is undermined.

(b) The s. 11B Finding

21. Counsel contends that it is unclear upon what basis the Tribunal Member decided that she would have regard to s. 11B (c) of the Refugee Act 1996, as amended, and that she failed to engage in any rational analysis of the applicant's travel to the State such that an assessor is left to speculate and draw inferences as to her thinking. Reliance is placed on *Ajoke v. The Refugee Appeals Tribunal* (Unreported, High Court, Hanna J., 30th May, 2008), where Hanna J. granted leave on the following basis:-

"[O]ne does not expect an exhaustive and detailed judgment from an Applications Commissioner but I do seriously query at if questioned, whether or not the bald statement that due regard has been had to everything in section 11B is of itself enough, perhaps because they are such important incredibility pointers and because they are mandatory considerations should something more not have been included."

(c) Treatment of COI

22. Counsel for the applicant contends that the Tribunal Member erred by failing to consult COI when assessing the applicant's credibility. He submits that this is not one of the "exceptional cases" referred to by Peart J. in *Imafu v. The Refugee Appeals Tribunal* [2005] IEHC 416 where the credibility findings made were sufficiently strong that the potential value to be derived from consulting COI is rendered nugatory. He accepts that the applicant submitted no COI in support of her appeal and that her knowledge of the Muslim faith is weak, but notes that there is a shared burden of proof on the Tribunal Member to seek out all facts and information and that there is an obligation under Regulation 5 of the European Communities (Eligibility for Protection) Regulations to consult relevant COI.

23. He also argues that it is clear that no COI was considered by the Tribunal Member because she makes no reference to COI at the end of her decision where she states that she had considered "all relevant documentation".

(d) Consideration of the risk faced by the applicant's child

24. Counsel submits that the Tribunal Member failed to give consideration to the risk that would be faced by the applicant's child if she were to be deported to Nigeria. Reliance is placed on *Ojuade v. The Refugee Appeals Tribunal* (Unreported, High Court, Peart J., 2nd May, 2008).

THE RESPONDENTS' SUBMISSIONS

25. Counsel for the respondent submits that the grounds put forward on behalf of the applicant are trivial and tenuous and do not meet the requirement for leave. The Court's attention is drawn to the fact that in the Notice of Appeal, the applicant did not seek to address any of the credibility findings made by ORAC in the s. 13 report nor did she make any submissions or furnish any objective COI, and that no oral submissions were made by or

on her behalf at the oral appeal hearing. Counsel for the applicant describes the applicant's appeal as "bald".

(a) Treatment of credibility

26. It is contended that the Tribunal Member acted in accordance with fair procedures insofar as she questioned the applicant at the appeal hearing, at which the applicant was legally represented, and that she was entitled to make a note of the applicant's demeanour and hesitancy at the oral hearing. It is argued that the first of the three matters on which the credibility findings were made (i.e. her apparent lack of knowledge about the Muslim faith) was central to the applicant's claim. With respect to the second and third credibility findings, it is contended that although these are weaker than the first they do bear a legitimate nexus to the applicant's core claim and that that this Court must be very slow to interfere with the Tribunal

Member's findings in this regard.

(b) The s. 11B Finding

27. Counsel submits that the s. 11B finding made by the Tribunal Member in *Ajoke v. The Refugee Appeals Tribunal* (Unreported, High Court, Hanna J., 30th May, 2008) can be distinguished from the finding made by the Tribunal Member in the present case on the basis that the finding in this case was not "bald" as was the case in Ajoke but rather bore a clear and legitimate nexus to the applicant's core claim.

(c) Treatment of COI

28. It is contended that there was a fundamental finding made with respect to the applicant's credibility in this case and that there was therefore no obligation to consult COI. It is contended that the obligation to assess credibility in the light of objective COI does not apply at all cases and at all times and reliance is placed on *S.M. v. The Refugee Appeals Tribunal* (Unreported, High Court, Hedigan J., 2nd December, 2008) and *Imafu v. The Refugee Appeals Tribunal* [2005] IEHC 416.

(d) Consideration of the risk faced by the applicant's child

29. Counsel submits that it is unusual that the applicant's child was not joined to the proceedings. It is further complained that no separate or independent ground was ever set out by her mother on the child's behalf and that the child must therefore be treated as subsumed in her mother's application. It is contended that this case is distinguishable on the facts from *Ojuade v. The Refugee Appeals Tribunal* (Unreported, High Court, Peart J., 2nd May, 2008) where it was asserted by the adult applicant that she feared her daughter would be subjected to FGM if returned to her country of origin. Reference is made to *B.V.E. and O.V.E. v. The Minister for Justice, Equality and Law Reform* [2008] IEHC 230 where Birmingham J. noted that *Ojuade* was "essentially a female genital mutilation case". He found that "[n]o specific fears or concerns for her daughter were advanced by the adult applicant" until the judicial review stage, and found the fears asserted at that stage in respect of the child to be "singularly unimpressive" and "redolent of legalistic, formulaic pleading by the applicant."

THE COURT'S ASSESSMENT

30. This being an application to which section 5(2) of the *Illegal Immigrants (Trafficking) Act 2000* applies, the applicant must show substantial grounds for the contention that the decision ought to be quashed. As is now well established, this means that grounds must be shown that are reasonable, arguable and weighty, as opposed to trivial or tenuous. I find that all the arguments made in this case were utterly tenuous.

(a) Treatment of Credibility

31. The primary credibility finding made in the RAT decision relates to the apparent paucity of the applicant's knowledge of the Muslim faith. That finding must be assessed in the light of the fact that the applicant's religion and her conversion are central to her claim: she said she was raised as the only child in a strict Muslim family and that she practised that faith until 2004 when she was 28 years of age. That is the bedrock upon which her asylum application was built; without it, the claim crumbles. It is in that light that this Court must view the

Tribunal Member's findings on the applicant's answers to the questions put to her in respect of the Muslim faith at the oral appeal hearing. In the circumstances, I find it wholly reasonable and rational that the Tribunal Member found it difficult to believe that the applicant would not have a more comprehensive knowledge of the Muslim faith in the light of her asserted background, her age and her education. The Tribunal Member was especially charitable in expressing her finding in this instance.

32. I reject the submission that the applicant should have been given credit for knowing some commonly known details about the Muslim faith. I also firmly reject the submission that the Tribunal Member was obliged under s. 16(8) of the Refugee Act 1996, as amended, to furnish the applicant with copies of the sources that she consulted in respect of the Muslim faith. The purpose of that sub-section is to ensure that information is not sprung upon an applicant or relied upon without allowing the applicant to consider the information and to make submissions in reply. It is not intended for basic credibility assessments about which no submissions or explanations are necessary.

33. With respect to the second negative credibility finding, I accept that the Tribunal Member did not explicitly state that she found the applicant's account of the period after her boyfriend's arrest to be implausible or incredible. I do not believe it was necessary for her to do so, however, as it is clear from a holistic reading of the decision that this is one of the three credibility issues that the Tribunal Member found to undermine the applicant's account. The applicant and her legal representatives were aware from the s. 13 report that the applicant's account of that period was doubted but did not made any submissions in that regard at the appeal stage. It is well established that applicants are not passive participants in this process: they must not just sit back and let things happen around them and then seek to complain afterwards.

(b) The s. 11B Finding

34. I also find the applicant's complaint in respect of the Tribunal Member's finding as to the relevance of s. 11B (c) of the Refugee Act 1996, as amended, to be entirely without foundation. That sub-section provides:-

"The Commissioner or the Tribunal, as the case may be, in assessing the credibility of an applicant for the purposes of an investigation of his or her application or the determination of an appeal in respect of his or her application, shall have regard to the following:- [...]

(c) whether the applicant has provided a full and true explanation of how he or she travelled to and arrived in the State;"

35. The Tribunal Member made her finding under s. 11B (c) following the noting of the applicant's claim to have travelled on a red passport but where she did not did not know the nationality of the passport or whether it contained a visa. The applicant claimed that she did not know where she was going and was told to tell Immigration officials she was "going visiting". The Tribunal Member expressly stated as follows before referencing s. 11B (c):-

"It is difficult to believe that the Applicant could have travelled with such limited information about her travel details. If she was questioned by immigration officials her lack of knowledge would have created serious difficulties for the Applicant and the agent."

36. This is a rational finding and there is no doubt that it constitutes a cogent basis upon which a finding under s. 11B (c) could be made and bears a legitimate nexus to such a finding. I have reached this conclusion having also read the applicant's questionnaire and the notes of her s. 11 interview, in neither of which can there be identified any further explanations of the applicant's travel to the State.

37. I accept the respondents' submission that the present case is distinguishable from that of *Ajoke v. The Refugee Appeals Tribunal* (Unreported, High Court, Hanna J., 30th May, 2008). In that case the decision-maker baldly stated that he had regard to s. 11B without referring to any particular sub-section and without linking his statement to any of the factual matters upon which he had made negative credibility findings. The same is not true in this case, where the decision-maker had regard to a specific sub-section and where his finding bears a clear factual nexus to his findings on the applicant's explanations on her travel to Ireland.

(c) Treatment of COI

38. It is clear to me that this is one of the cases described by Peart J. in *Imafu v. The Refugee Appeals Tribunal* [2005] IEHC 416 where nothing would be gained by consulting objective COI especially where the only objective evidence before the Tribunal Member was that which was appended to the s. 13 report and relied on in support of the ORAC negative credibility findings. In general, it is a matter of good practice to assess the credibility of an applicant in the light of objective evidence but in the present case the findings made relating her claim to have been a Muslim until her recent conversion meant that her claim fell at the first hurdle. It would have been an exercise in futility to go on to assess COI, if any existed, to support her story of a Muslim's father's attitude to a woman and child in her position. In the circumstances, no COI could have been "relevant" within the meaning of Regulation 5 of the European Communities (Eligibility for Protection) Regulations.

(d) Consideration of the risk to the applicant's child

39. The applicant complains that no consideration was given by the Tribunal Member to the risk faced by the applicant's daughter in Nigeria. The infant daughter is not a party to these proceeding. Even if that were to be ignored, there is no merit in that complaint as it is well established that where no independent grounds are made out, the child's case is treated as being subsumed in the parent's application. At the post-leave stage in

A.N. & Ors v. The Minister for Justice, Equality and Law Reform & Anor [2004] IEHC 433, Peart J. held:-

"A constitutionally harmonious interpretation of the legislative framework in relation to the interests of a minor accompanied by a parent is that the parent is the person who continues to carry the responsibility for looking after the minor's interests, and as a consequence, continues to have the responsibility, in the capacity of active participant in the asylum process, for setting out in an appropriate way any grounds for the application [...]."

40. In this case, when asked at her s. 11 interview why her daughter could not return to Nigeria, the applicant replied that *"Because she belongs to a Christian family – [her] father is a Christian, I am a converted Christian. My father would want to kill the baby due to the shame."* Thus it is clear that the claim advanced on behalf of the applicant's daughter is precisely the same claim as that advanced by the applicant on her own behalf. Nothing further was asserted in the Notice of Appeal. In fact, the baby was not mentioned at all in the short letter in which routine general submissions were made on behalf of the applicant and no further submissions were made at the appeal hearing. In the circumstances, this case is distinguishable from the facts in *Ojuade v. The Refugee Appeals Tribunal* (Unreported, High Court, Peart J., 2nd May, 2008), where a distinct fear was asserted on behalf of the infant applicant but the Tribunal Member failed to give any more than an "oblique" mention to that fear. The applicant's arguments in this regard must therefore fail.

Conclusion

41. In the light of the foregoing, I refuse leave.