



## [Ireland - K.A. v Refugee Appeals Tribunal and Another](#)

The applicant is a child who was born in Ireland to a Cameroonian mother and a Ghanaian father, it was asserted that the child was stateless. The Refugee Appeal Tribunal denied the child applicant refugee status and the applicant requested a judicial review of the tribunal's decision. The application centred around the tribunals alleged wrongful reliance on the applicant's right to acquire citizenship in Ghana and Cameroon. The application for judicial review was ultimately unsuccessful.

**Case name (in original language) :** K.A. v Refugee Appeals Tribunal and Another

**Case status:** Decided

**Case number:** [2014] IEHC 223

**Citation:** K.A. v Refugee Appeals Tribunal and Another [2014] IEHC 223

**Date of decision:** 11/04/2014

**State:** Ireland

**Court / UN Treaty Body:** High Court

**Language(s) the decision is available in:** English

**Applicant's country of birth:** Ireland {Republic}

**Applicant's country of residence:** Ireland {Republic}

**Legal instruments:** Convention on the Rights of the Child (CRC), European Convention on Human Rights (ECHR), European Union law

**Key aspects:** Childhood statelessness, Country of return, Deportation and removal, Procedural safeguards, Refugee status determination, Statelessness and asylum, Statelessness determination

**Relevant Legislative Provisions:**

- Article 3(1) and Article 6, UN Convention on the Rights of the Child 20.11.1989
- s5(2)(b), Illegal Immigrants (trafficking) Act 2000
- Art 26, Constitution & s5 & s10 of Illegal Immigrants (Trafficking) Bill 1999, in

re 2000 2 IR 360 2000/11/4122

- s3(11), Immigration Act 1999
- s17(7), Refugee Act 1996
- s13(1), Refugee Act 1997
- Article 24.2, Charter for Fundamental Rights of the European Union,
- Article 8, European Convention of Human Rights
- Para. 12, Preamble to Council Directive 2004/83/EC (The Qualification Directive)

## **Facts**

The applicant was born in Ireland in 2012 to a Cameroonian mother and a Ghanaian father. It was asserted that the child applicant in this case was stateless. The claim made on her behalf by her father was based on a fear of persecution in Cameroon because her mother had to flee that country owing to pressure exerted on her to marry someone not of her choice. Her mother feared that the man she refused to marry might target the child. Her father also feared that there may be no shelter for the applicant and that she may be a diabetic who would not obtain adequate medical treatment (though there was no medical report to that effect). Other fears were advanced concerning the risk of the applicant being subjected to child labour, prostitution and also being targeted in Ghana due to her father's previous political activities and religious beliefs.

The applicant's parent's applications for subsidiary protection had previously been refused, and following this, the applicant's claim for refugee status was refused. The parents appeared on behalf of the child seeking leave to apply for judicial review for the decision of the tribunal which denied the applicant refugee status.

## **Legal arguments by the applicant**

1. The refusal to recognise the infant applicant as a refugee is irrational and/or unreasonable with reference to her statelessness. The respondent unlawfully failed to consider her well-founded fear of persecution in this respect by placing wrongful reliance on a right only to acquire citizenship. The right to acquire citizenship was not established and it purports to apply alternatively to the differing countries of origin of her parents, without establishing that the applicant could reside in either country with both her parents.
2. The respondent failed to make the best interest of the infant applicant a primary consideration of his decision. Such failures breach the provisions of Article 24.2 of the Charter for Fundamental Rights of the European Union,

Article 8 of the European Convention of Human Rights and para. 12 of the preamble to Council Directive 2004/83/EC (The Qualification Directive)

3. The first named respondent failed to vindicate the infant applicants inherent right to life and to ensure to the maximum extent possible her survival and development; including failing to consider particularly her infancy, her ill health, and her vulnerability to harm; breaching the provisions of Article 6 of the United (Nations) Convention on the Rights of the Child.

### **Legal arguments by the opposing party**

1. There is no basis to the applicant's case and it should be dismissed or struck out as frivolous and/or vexatious and/or having no reasonable prospect of succeeding and that the court should exercise its inherent jurisdiction to dismiss the proceedings as an abuse of process.

### **Decision & Reasoning**

The High Court contemplated whether grounds for judicial review existed or whether the case should be dismissed at an early stage.

Ground 1: Did the tribunal wrongfully rely upon the applicant's right to acquire citizenship in Ghana and Cameroon?

The Court found this ground to be misconceived. The Court noted that the tribunal determined that she may be entitled to citizenship of Cameroon though there was a degree of uncertainty about this because a child born outside wedlock to a Cameroonian mother and a Ghanaian father may not automatically be entitled to Cameroonian citizenship. The Court highlighted that no effort was made by the parents to assert the citizenship of the applicant or to obtain the necessary documents from their appropriate national authorities.

The Court further found that there was no suggestion that either parent was the subject of government or government inspired persecution. The claim for asylum was based on a fear of persecution in Cameroon and Ghana of which the parents are respectfully nationals. There was no suggestion that the parents were stateless or deprived of their nationality. The tribunal determined that there is no Convention related reason as to why the child applicant requires international protection in either Ghana or Cameroon.

Grounds 2 and 3: Best interests of the child

The Court referred to the UN Handbook and Guidelines on Procedures and Criteria for determining refugee status. The Court held that the grounds did not identify with any degree of precision what aspects of the child's best interests were not considered by the tribunal and how this affected the determination of whether the child was in need of international protection for a Convention reason.

### **Decision documents**

[2014 IEHC 223 1.pdf](#)

### **Outcome**

Application for judicial review rejected.

### **Links to other relevant materials related to the case (blogs, analysis, articles, reports, etc.)**

Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees

### **Caselaw cited**

McNamara v. An Bord Pleacutéalana [1995] 2 ILRM 125

Re Article 26 and the Illegal Immigrants (Trafficking) Bill 1999 [2000] 2 I.R. 360

Doo (An Infant) v. MJELR & Ors. [2013] IEHC 616