STATELESSNESS
Case Law Database

Ireland - B.D.R. v Refugee Appeals Tribunal

A stateless applicant born in Bhutan and previously resident in India was refused asylum in Ireland by the Refugee Appeals Tribunal. The Tribunal stated that according to the 1951 Refugee Convention, statelessness per se, does not give rise to a claim to refugee status. The High Court held that, for the purposes of refugee status determination, the applicant does not have to prove that he was persecuted in all countries of former habitual residence. The applicant must demonstrate that one country was guilty of persecution, and that he is unable or unwilling to return to any of the states where he formerly habitually resided.

Case name (in original language) : B.D.R. v Refugee Appeals Tribunal
Case status: Decided
Case number: [2016] IEHC 274
Citation: B.D.R. v Refugee Appeals Tribunal [2016] IEHC 274
Date of decision: 25/05/2016
State: Ireland
Court / UN Treaty Body: High Court
Language(s) the decision is available in: English
Applicant's country of birth: Bhutan
Applicant's country of residence: India
Legal instruments: European Union law, Other international law
Key aspects: Refugee status determination, Statelessness and asylum
Relevant Legislative Provisions:

s.2 of the Refugee Act 1996

Art 1A of the Convention relating to the Status of Refugees 1951

Regulation 5 (2), 9 (1) and (2) of the European Communities (Eligibility for Protection) Regulations 2006

Article 9(1) and (2) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (2004) OJ L 304/12.

Facts

The applicant was born in Bhutan to parents of Nepalese ethnicity. He arrived in Ireland and sought asylum, claiming that he had been denied citizenship of Bhutan because of his ethnicity and that his family home had been set on fire and his parents killed. He then left Bhutan and went to live in India where he lived for several years, before ultimately arranging with a trafficker to get him out of India. His asylum claim was refused at first instance by the Refugee Applications Commissioner and on appeal by the Refugee Appeals Tribunal.

The High Court quashed the first decision of the Tribunal and his refugee appeal was remitted to the Tribunal for reconsideration. At the rehearing of his appeal, the Tribunal Member requested written legal submissions on the issue of the correct approach to the determination of a refugee application from a stateless person with more than one country of former habitual residence. Written legal submissions on this issue were duly filed on behalf of the applicant, and the Tribunal Member subsequently dismissed the applicant's appeal.

Although the Tribunal Member accepted that the applicant was stateless on the balance of probabilities, it found that because he was unable to return to Bhutan, his country of former habitual residence, there was therefore no need to consider whether he had a well-founded fear of persecution there. As regards India, the Tribunal member found that the applicant had left there voluntarily and did not claim to fear persecution there on any 1951 Convention ground. Further, given the practical impossibility of the applicant returning to Bhutan, the Tribunal found that compelling reasons could not arise in this case.

The applicant challenged this decision by way of judicial review.

Legal arguments by the applicant

The Tribunal Member applied the wrong legal test and therefore erred in law in finding that the applicant's inability to return to Bhutan meant that he did not have a

well-founded fear of persecution there.

When focusing on whether the applicant could return to Bhutan and given that he could not return there the Tribunal Member should have assessed whether that of itself constituted persecution for a 1951 Convention reason.

The Tribunal Member erred in law in failing to consider, in accordance with Regulation 5 (2) of the European Communities (Eligibility for Protection) Regulations 2006 (the "2006 Regulations) whether compelling reasons arose from the previous persecution of the applicant which may warrant a determination that the applicant is eligible for protection.

Legal arguments by the opposing party

Due to the Appellant's practical impossibility of returning to Bhutan, his fear of being persecuted there is not well-founded.

The fundamental test in the 1951 Convention is forward-looking (notwithstanding Regulation 5 (2) of the 2006 Regulations) and if it is impossible for the applicant to return to Bhutan then the question is what is the nature of the fear which the applicant can establish in relation to Bhutan.

The inability to return to the second country of habitual residence is a question of fact and the inability must be linked to a failure to protect in that country. It was argued that the applicant did not give such evidence with regard to India and no challenge was made to the Tribunal Member's finding with regard to India in these proceedings.

Decision & Reasoning

Alleged error of law in determining that the applicant's inability to return to Bhutan meant that he did not have a well-founded fear of persecution there

The Court held that the Tribunal's finding that because of the applicant's inability to return to Bhutan he could have no well-founded of persecution there was contrary to judicial and academic authority on the issue and the 1951 Convention itself.
On the issue of the assessment of refugee claims by stateless persons with more than one country of former habitual residence, the Court relied on the approach taken in the Canadian case of Thabet v Canada (Minister of Citizenship and Immigration) [1996] 1 F.C. 685. An extract of Thabet found most useful was given by

the Court at para. 27:

". . . Where a claimant has two nationalities he or she does not have to show two separate instances of persecution. It will suffice to show that one state is guilty of persecution, but that both states are unable to protect the claimant. Likewise, where a claimant has been resident in more than one country it is not necessary to prove that there was persecution at the hands of all those countries. But it is necessary to demonstrate that one country was guilty of persecution, and that the claimant is unable or unwilling to return to any of the states where he or she formerly habitually resided."

The failure of the Tribunal to afford the applicant the opportunity to establish a "well founded" fear of persecution in Bhutan on grounds of race meant the applicant was unable to satisfy the first part of the Thabet test. Further, the Tribunal Member improperly applied the second limb of the Thabet test in requiring the applicant to establish a fear of persecution in India and therefore the tribunal's finding as regards India could not save the decision.

Error of law in the approach to nationality and statelessness

The Court found that it would be unfair to quash the decision on the basis that the Tribunal did not consider the question of whether inability to return to Bhutan of itself constituted persecution due to the absence of arguments submitted before the Tribunal in relation to this issue.

Compelling reasons

The Court found that the Tribunal's decision must be vitiated as a result of the Tribunal failing to consider whether previous persecution claimed by the applicant amounted to compelling reasons which may warrant protection.

Decision documents
bdr-v-refugee-appeals-tribunal-aXado5qJm3mdl.pdf
Outcome

The High Court quashed the decision of the Tribunal and the matter was sent back to the Tribunal for consideration before a different Tribunal Member.

Caselaw cited

Thabet v Canada (Minister of Citizenship and Immigration) [TD] [1996] 1 FC 685
Thabet v Canada (Minister of Citizenship and Immigration) [1998] 4 F.C. 21
New Zealand Refugee Appeal Authority in Refugee Appeal No. 72635/01
Revenko v. Secretary of State for the Home Department [2001] QB 601
M.A. (Palestinian Territories) v. Secretary of State for the Home Department [2008] EWCA Civ 304
AK v Secretary of State for the Home Department [2006] EWCA Civ 1117, [2007] INLR 195
S.H. (Palestinian Territories) v. Secretary of State for the Home Department [2008] EWCA Civ 1150
E.B. (Ethiopia) v. Secretary of State for the Home Department [2009] 1 QB 1
UN Human Rights Committee in Nystrom (Consideration Number 1557/2007)
M.S.T. v. Minister for Justice [2009] IEHC 529
A.A.A.A.D. v. RAT [2010] 1 I.R. 213
N.B. v. Minister for Justice [2015] IEHC 267
O. C. B. v Minister for Justice Equality and Law Reform and Others [2015] IEHC 267