THE HIGH COURT

JUDICIAL REVIEW

[2018 No. 15 J.R.]

BETWEEN

O.A. (NIGERIA) AND F.A. (A MINOR SUING BY HIS MOTHER AND NEXT FRIEND O.A.)

APPLICANTS

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL, THE MINISTER FOR JUSTICE AND EQUALITY, THE ATTORNEY GENERAL AND IRELAND

RESPONDENTS

(No. 2)

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 18th day of December, 2018

1. In *O.A. (Nigeria) v. International Protection Appeals Tribunal (No. 1)* [2018] IEHC 661 (Unreported, High Court, 20th November, 2018) I refused an application for an order of *certiorari* of an adverse IPAT decision. The applicants now seek leave to appeal. I have considered the caselaw on leave to appeal as set out in *Glancré Teoranta v. An Bord Pleanála* [2006] IEHC 250 (Unreported, MacMenamin J., 13th November, 2006) and *Arklow Holidays v. An Bord Pleanála* [2008] IEHC 2, *per* Clarke J. (as he then was). I have also discussed these criteria in a number of cases, including *S.A. v. Minister for Justice and Equality (No. 2)* [2016] IEHC 646 [2016] 11 JIC 1404 (Unreported, High Court, 14th November, 2016) (para. 2), and Y.*Y. v. Minister for Justice and Equality (No. 2)* [2017] IEHC 185 [2017] 3 JIC 2405 (Unreported, High Court, 24th March, 2017) (para. 72). I have received helpful submissions from Mr. Mark de Blacam S.C. (with Mr. Garry O'Halloran B.L.) for the applicants and from Ms. Sarah Cooney B.L. for the respondents.

2. The proposed question of exceptional public importance is set out at para. 17 of the applicant's written submissions: "*Whether in the light of (a) the rights of a child and (b) the Tribunal's shared burden with regard to the establishment of a claim to international protection, the Tribunal was bound, when dealing with a claim made on behalf of [a] four year old child, born in Ireland but liable to deportation to Nigeria, to examine a claim that the child might come within a social group, such as homeless and destitute children in Nigeria, or whether the claim to protection might be dismissed on the basis that in the case of a claim based general economic and societal issues there is no actor of persecution and that such a claim falls outside the realm of international protection".*

3. The turgid nature of the question illustrates that it is a poor candidate for a question of public importance, let alone one of exceptional public importance. It is also somewhat hard to work out precisely what the point being made is; but the kernel of it seems to be whether the tribunal was "*bound, when dealing with a claim made on behalf of [a] … child, … liable to deportation to Nigeria, to examine a claim that the child might come within a social group, such as homeless and destitute children in Nigeria".* For what it is worth, the answer to that question is obviously "*yes, if the applicant makes the case to the tribunal that the child comes within a group as so defined, and if the other criteria for international protection would be satisfied in that event*". The tribunal cannot plausibly be liable to have its decisions quashed on the basis of a failure to consider an applicant as a member of a social group that was never identified to it, and that was only dreamed up on behalf of the applicant after receipt of the decision. The really fundamental problem for the applicants is that, on the facts of this particular case, they did not make this point to the tribunal. Thus they are not entitled to make the point on judicial review, or indeed on appeal.

4. However, that is not the only problem for the applicants. On these particular facts, there are a whole host of other issues, as set out at para. 7 of the No. 1 judgment, which can be incorporated by reference here. The last of those points is not to be overlooked. Merely being in a social group does not entitle an applicant to asylum; there must be "*persecution*" for a Convention reason. Merely being destitute does not involve persecution in the sense of the Geneva Convention and the International Protection Act 2015. That is the essential point being made by the tribunal member here, and no doubt, reasonable or otherwise, about that point has been demonstrated on behalf of the applicant. Nor does destitution constitute serious harm qualifying for a subsidiary protection in the very limited sense in which that that term is defined in art. 15 of the qualification directive. The Supreme Court in *E.D. v. Minister for Justice and Equality* [2017] 1 I.R. 325 [2016] IESC 77 *per* Charleton J. at para. 2 adverted to "*extreme circumstances*" where denial of socio-economic rights was pursued as a policy against a minority group and therefore could constitute persecution. The same point could arise if the applicants were to be targeted for economic destitution by an oppressive ruling elite. Of course no such case was made here. Becoming destitute because of the cold, impersonal workings of the free-market economic system simply does not constitute persecution for the purposes of international or Irish law. Otherwise the border between the developed and the developing world ceases to exist. In any event, the whole argument as it applies to these applicants is built on sand because the mother had no problem finding employment in Nigeria over a nine-year period following the alleged persecution or serious harm (see para. 7(vii) of the No. 1 judgment). That negates the risk of destitution on which the applicants' whole tottering legal confection is premised.

5. The application is dismissed.