[2019] IEHC 868

THE HIGH COURT

[2019 No. 331 JR]

IN THE MATTER OF SECTION 5 OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000 (AS AMENDED) AND IN THE MATTER OF THE INTERNATIONAL PROTECTION ACT 2015

BETWEEN

S

APPLICANT

– AND –

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

RESPONDENTS

JUDGMENT of Mr Justice Max Barrett delivered on 19th December, 2019.

1. Ms S claims that she was raped by a man who is now a senior politician in her country of origin, that she gave birth to a stillborn child following the rape and that the alleged rapist arranged for the child's remains to be taken from her. However, according to the International Protection Appeals Tribunal ("IPAT") decision of 20.05.2019 (the "Impugned Decision"), *"the only material elements of the Applicant's claim which are credible on the balance of probabilities"* are that Ms S is of a particular age and religious denomination, that she arrived in Ireland on a particular date on a particular permission, and that she claimed asylum here in December 2015.

2. The statement of grounds alleges that there are five deficiencies in the Impugned Decision; one (Ground 3) does not arise for consideration as the relevant legislation is agreed not to apply:

"1. In determining the appeal on the basis of findings made in respect of credibility, internal relocation and state protection, the Tribunal had no regard to the mutually exclusive nature of the said findings….

2. [T]*he credibility findings which were based on conjecture and/or related to aspects of the narrative given by the Applicant and did not go to the core of the Applicant's claim relating to the rape by a very prominent and powerful individual….*

4. *The manner in which the Tribunal had regard to the country of origin (COI) information was contrary to the* [European Asylum Support Office ("EASO")] *and* [European Country of Origin Information ("ECOI")] *standards of assessment….*

5 [T]*he IPAT simply stated that the Appellant could 'relocate to* [Stated Place]…*without any indication of whether it derived its jurisdiction from section 32(1)(b) of the International Protection Act 2015,* [which] *insofar as it introduces the concept of 'settle' when considering the availability of internal relocation is not compliant with or otherwise at odds with the concept of 'stay' contained in…Art.8(1) of Council Directive 2004/83/EC, and without any clarification as to the IPAT's views on the said concepts and their consequences for the IPAT's decision-making process."*

Ground 1: In determining the appeal on the basis of findings made in respect of credibility, internal relocation and state protection, the Tribunal had no regard to the mutually exclusive nature of the said findings.

3. The court is presented in this context with precisely the same position that presented in *R.J. v. Minister for Justice & Equality* [2019] IEHC 448, where (see para. 36):

> *"The tribunal considered the applicant's evidence on the unavailability or unreasonableness of an internal relocation alternative...solely in the context of an assessment of...general credibility and not in the context of any discrete assessment of the availability of adequate state protection. Since no assessment of the latter kind arose or was conducted in this case, any issue on the principles that would govern it, if it did, is moot".*

Again, that is the same situation as presents here. Ms S claims that her appeal was wrongly decided because an internal settlement test, which did not fall to be applied (because there was no nexus to the Convention grounds), was wrongly applied. That proposition needs merely to be stated to see that it must fail.

Ground 2: The credibility findings which were based on conjecture and/or related to aspects of the narrative given by the applicant and did not go to the core of the applicant's claim relating to the rape by a very prominent and powerful individual.

4. The court does not see any basis for these allegations. Ms S was given a detailed and reasoned decision that conforms with, e.g., the principles concerning an assessment of credibility identified by Cooke J. in *I.R. v. Minister for Justice, Equality & Law Reform & Anor*. [2009] IEHC 353.

Ground 4: The manner in which the Tribunal had regard to the Country of Origin Information ("COI") was contrary to the EASO and ECOI standards of assessment.

5. The IPAT states at para. 2.3 of the Impugned Decision that "[a]*ll of the information and documentation provided has been fully considered*" and specifically references its consideration of relevant COI at para. 8.3. As is clear from, *e.g., M.N. (Malawi) v. Minister for Justice & Equality* [2019] IEHC 489, this being so, it was not necessary for the IPAT to consider the COI *in extenso* in the Impugned Decision; however, COI is in fact extensively referenced throughout the Impugned Decision.

Ground 5: The IPAT simply stated that Ms S could relocate to [Stated Place] without any indication of whether it derived its jurisdiction from section 32(1)(b) of the International Protection Act 2015, which, insofar as it introduces the concept of 'settle' when considering the availability of internal relocation is not compliant with or otherwise at odds with the concept of 'stay' contained in Art.8(1) of Council Directive 2004/83/EC, and without any clarification as to the IPAT's views on the said concepts and their consequences for the IPAT's decision-making process.

6. Three points might be made: (i) credibility is fully, properly and lawfully considered; (ii) to the extent that Ms S complains that insofar as mention is made of internal relocation, the IPAT refers to 'relocation', rather than 'settling', the court respectfully sees no practical difference to arise given the difference in terminology; and (iii) any notion that the use of the verb 'to settle' in s.32(1)(b) renders it incompatible with the Council Directive 2004/83/EC 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 ("The Qualification Directive") [2004] OJ L304/12 (which uses the verb 'to stay' in Art.8(1)) (*"Internal*

protection") is, with respect, mistaken: Art.3 of that Directive provides that "*Member States may introduce or retain more favourable standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection*" and this Ireland has done; to the extent that there is potential for divergence between the two measures, the duty of consistent interpretation acts as a 'cure all', requiring that the two terms be interpreted consistently with each other. There is nothing in the Impugned Decision which suggests that s.32 has been misinterpreted or misapplied.

Conclusion

7. For the reasons stated above, all the reliefs sought are respectfully refused.