

THE HIGH COURT

JUDICIAL REVIEW

[2018 No. 477 J.R.]

BETWEEN

B.C. (MALAWI)

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 10th day of December, 2018

1. The applicant was born in Malawi in 1997. He claims that his twin sister was murdered in that country due to having albinism. He was advised not to be seen in public, says that he was the subject of an attempt to enter his family home and says he then fled his home, arriving in Ireland on 12th May, 2016. He then applied for asylum on 7th June, 2016, an application that was refused on 7th December, 2016. He appealed to the Refugee Appeals Tribunal on 21st December, 2016. Following the commencement of the International Protection Act 2015 he applied for subsidiary protection. That was refused on 10th November, 2017, a decision that he appealed to the IPAT on 30th November, 2017. The IPAT then issued a decision on 19th April, 2018 rejecting his appeal. That was received on or about 26th April, 2018 under cover of a letter dated 24th April, 2018.

2. On 15th June, 2018 the present proceedings were filed. Leave was granted on 25th June, 2018 and a statement of opposition delivered dated 26th October, 2018. I have received helpful submissions from Mr. Mark de Blacam S.C. (with Mr. Garry O'Halloran B.L.) for the applicant and from Ms. Eva Humphreys B.L. for the respondents. The challenge has been confined to ground 3 of the statement of grounds.

Issue regarding time

3. While the respondents' written submissions make an issue of time, in fairness the point was not pressed with any particular vigour and Ms. Humphreys did not refer to the issue in her oral submissions. On the basis that time stops on the filing of proceedings subject to the requirement to move them formally within a reasonable time thereafter, the proceedings are in time: see *McCreech v. An Bord Pleanála* [2016] IEHC 394 [2016] 1 I.R. 535. In any event, any lapse of time is explained at para. 15 of the grounding affidavit in satisfactory terms.

Alleged erroneous finding in tribunal decision

4. The tribunal accepted that the applicant has a sister with albinism (para. 5.14). In some ways that was quite a favourable finding given that the tribunal also felt there were significant question marks over the applicant's story. It also found that "*no COI was found to support the proposition that the relatives of those suffering from albinism are at risk*". However, there were a number of pieces of country information before the tribunal that do lead to such a conclusion.

(i). A UN news service press release dated 29th April, 2016 which states that "*parents of children with albinism constantly live in fear of attack*".

(ii). A 2016 Amnesty International Report "'We are not Animals to be Hunted or Sold" - Violence and Discrimination Against People with Albinism in Malawi" (7th June, 2016) which states that "*Misconceptions can also have a damaging effect on members of families of people with albinism*" (p. 20) and that the fear of harm is "*also felt by other family members*" (p. 21).

(iii). An Amnesty International UK document dated 2nd February, 2017 "The Ritual Murders of People with Albinism in Malawi", which refers to the need to protect "*those with albinism and their families at risk of attack*".

(iv). An article in the LA Times dated 15th June, 2017 by Robyn Dixon, noting that the UN is relocating families of people with albinism from Malawi to Canada and other countries.

5. Insofar as the decision says expressly that there is no country information supporting the proposition that relatives are not at risk, that is hard to view as correct as phrased. Ms. Humphreys attempts to creatively re-interpret the various pieces of country information as being less favourable to the applicant than the terms would suggest (for example that the fears referred to are vicarious), but I do not think it would be a fair reading of the decision to allow such an interpretative process at this stage. Even Ms. Humphreys concedes that the country information shows that relatives are at risk of discrimination, whatever about persecution. It is not readily obvious what the tribunal had in mind in order to reconcile the finding on the face of the decision with the information before it. Thus whether one regards it as an error, as phrased in ground 3 of the statement of grounds or alternatively, which is how I would prefer to regard it, a deficit in making clear the tribunal's reasoning process, the net outcome is the same.

Order

6. Accordingly, the order will be:

- (i). an order of *certiorari* removing for the purpose of being quashed the IPAT decision of 26th April, 2018; and
- (ii). an order remitting the applicant's appeals to another tribunal member for rehearing and determination.