

THE HIGH COURT

[2018 No. 876 JR]

**IN THE MATTER OF SECTION 5 OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT
2000, AS AMENDED**

BETWEEN

O

APPLICANT

– AND –

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

RESPONDENTS

JUDGMENT of Mr Justice Max Barrett delivered 14th day of November, 2019.

1. Mr O is a national of Nigeria. He is a middle-aged, unmarried man and says that his sexual orientation is heterosexual. However, he claims that he was attacked at his apartment in Nigeria by a crowd of homophobes who believed him and (it seems) his housemates to be homosexuals. After this claimed event, Mr O fled Nigeria and came to Ireland by an apparently circuitous route of which he maintains that he does not recall all the details. Mr O has claimed asylum in Ireland. By decision of the International Protection Appeals Tribunal ('IPAT') of 27.09.2018 (the 'Impugned Decision'), he was refused both a refugee declaration and a declaration as a person eligible for subsidiary protection. Since that refusal Mr O has brought the within judicial review application. Eight key questions are contended by him to arise as regards the judicial review application. These are considered hereafter.
 1. Does the Impugned Decision lack clarity? 'No'. There can be no doubt from the decision that the reason Mr O's appeal failed is because he was found wanting in credibility. Various comprehensible reasons are given as to why this want of credibility is perceived to present. Other difficulties present with the Impugned Decision but lack of clarity is not one of them.
 2. Are the assessments in the decision vague? 'No', for the reasons stated at 1. Other difficulties present with the Impugned Decision but vagueness is not one of them.
3. Did the IPAT engage in conjecture/speculation in the evaluation or assessment of Mr O's evidence? 'Yes'. The IPAT concludes, *inter alia*, that: (a) long-time neighbours with whom one exchanges passing pleasantries would not thereafter attack one; (b) as Mr O's housemates occasionally had girlfriends call in to see them, they would have been seen to enter the apartment, leaving the impression that Mr O and his housemates were heterosexual; (c) Mr O's landlord would not have reported him to the police as a suspected homosexual because the apartment rent was always paid on time; and (d) the fact that Mr O could not identify alleged assailants drawn from his neighbourhood renders it doubtful that he was attacked by persons from his neighbourhood. An adverse credibility finding must be founded on the evidence; conjecture (as opposed to inference) is of no legal value; there must be a logical nexus between findings of fact and the

ensuing decision; and inferences too must reasonably be drawn. (See *e.g.*, *Memishi v. Refugee Appeals Tribunal*, (Unreported, High Court, Peart J., 25 June 2003) and *I.R. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 353). Unfortunately when it comes to Mr O's appeal, the IPAT, in reaching conclusions (a) - (d) acted in breach of these requirements: There is no evidence to support the inferences at (a) - (d) and none of (a) - (d) necessarily accord with general truths.

4. Were inferences drawn that were unreasonable? 'Yes', for the reasons stated at 3.
 5. Did the IPAT fail to have regard to the legal submissions submitted 31st July 2018? The IPAT indicates in the Impugned Decision that all of the documentation provided to it was considered and the court has no reason to believe that this is not true. However, it is clear from the Impugned Decision that the IPAT did not fully appreciate what was placed before it. Thus it states in the Impugned Decision that "[A]ll the COI submitted relates to issues that homosexuals have in Nigeria". Regrettably, this is wrong. The Country of Origin Information ('COI') also details the risks posed to men and women in Nigeria who are perceived, rightly or wrongly, to be homosexual, such is the apparent level of homophobia in Nigeria. It is a fundamental principle of natural justice that one's case should be decided by reference to the facts that present, not by reference to facts that do not present. Here, as mentioned, the Impugned Decision was decided on the basis that "[A]ll the COI submitted [related]...to issues that homosexuals have in Nigeria". That is not correct and leads logically to the inexorable conclusion that the evidence before the IPAT was, regrettably, misunderstood.
 6. Did the IPAT fail to take any or adequate regard of Mr O's explanations for events and his actions? 'Yes', for the reasons stated at 5.
 7. Did the IPAT take into account irrelevant considerations in its assessment of Mr O's credibility? 'Yes', for the reasons stated at 3 and 5.
 8. Did the IPAT make findings which were unreasonable, based on unfounded assumptions or pre-conceptions as opposed to being based on objective evidence? 'Yes', for the reasons stated at 3 and 5.
2. Although the court sees no issue to present as regards the conclusions reached by the IPAT concerning how Mr O came to this country, given the deficiencies identified at Questions 3-8 above, the court considers that it is appropriate to grant the relief sought at item i) of the notice of motion of 8.11.2018; there is no way of knowing what overall conclusion the IPAT would have reached had it proceeded in the absence of the above-mentioned deficiencies.