THE HIGH COURT
JUDICIAL REVIEW

[2019 No. 451 J.R.]

BETWEEN

S.T. (ZIMBABWE)

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 13th day of January, 2020

1. The applicant was born in Zimbabwe in 1988 so is now in her thirties. She lived in Botswana with her mother from 2008 to 2011 or 2012. She claimed incidents of rape, assault and abduction in which two uncles were involved between November 2012 to December 2013 when she was in her early to mid twenties. She relocated within Zimbabwe in December 2013 and then travelled to South Africa in February 2014.

2. She entered the State on 17th February, 2014 on a false South African passport and applied for asylum straight away. At that point the Refugee Legal Service of the Legal Aid Board dealt with the application. They were the first of a number of firms of solicitors instructed by the applicant. The application was rejected by the Refugee Applications Commissioner. She appealed to the Refugee Appeals Tribunal and an oral hearing took place on 12th September, 2016. Stanley and Co. Solicitors appeared on her behalf, apparently under the Legal Aid Board Private Practitioner Scheme, instructing Ciaran Doherty B.L. who represented her at the hearing. The appeal was rejected on 15th November, 2016. In that decision the tribunal member made a finding about the availability of internal relocation which is similar in nature to that challenged here (see para. 5.11). In addition, the tribunal member held as follows on p. 10 of her decision: *"There is an onus on every Appellant to be truthful throughout the asylum-seeking process. In the instance of the Appellant's appeal nothing I have heard and considered has convinced me that the Appellant was being truthful. The Appellant has not satisfied me at any level that she has a well-founded fear of persecution on any convention ground."*

3. Following the commencement of the International Protection Act 2015 in December, 2016, the International Protection Office wrote to the applicant on 13th October, 2017 noting that no application for protection under the Act had been received. It took another seven months for that application to be made notwithstanding reminders in February and March 2018. The applicant's claim for international protection was eventually lodged on 10th May, 2018; and on 11th July, 2018 Cristina Stamatescu Solicitors sent submissions on behalf of the applicant to the International Protection Office.

4. While the application was pending, the applicant was granted residency on 31st July, 2018 based on her parentage of an Irish citizen child born on 2nd September, 2017, the child's father being an Irish citizen.

5. The International Protection Office rejected the claim for international protection on 1st August, 2018 and the applicant appealed to the International Protection Appeals Tribunal. The IPAT rejected that appeal on 1st May, 2019. Fortunately for the applicant, the tribunal member in this instance did not reject the totality of the applicant's account and accepted her account of abuse but held that there was an internal protection alternative available.

6. The present proceedings were filed on 4th July, 2019 seeking *certiorari* of the IPAT decision, although in submissions counsel indicated that the applicant was only pressing the claim to the extent of seeking partial *certiorari* to the extent of the finding of internal protection, and perhaps naturally seeking to preserve the favourable aspects of the decision.

7. When initiating the proceedings, the applicant gave an address at Mosney in the statement of grounds and simultaneously a different address in County Louth in the affidavit. It is not totally clear why, but one assumes that is simple and inconsequential human error. I granted leave on 15th July, 2019. A statement of opposition was delivered on 19th September, 2019 and the matter was listed for hearing on 17th December, 2019.

8. At the initial hearing date it emerged that the full papers had not been exhibited so the matter was not finalised on that date but was adjourned to enable a further affidavit to be delivered to exhibit the papers relating to the asylum claim. An affidavit of Paul McGuire was sworn on 19th December, 2019 on behalf of the respondents for that purpose. The papers show that the applicant's sister got the benefit of a positive asylum decision based on an overlapping claim, but no specific point has been pleaded on that issue in the present proceedings. I have now received helpful submissions from Mr. Mark de Blacam S.C. (with Mr. Philip Moroney B.L.) for the applicant and from Mr. Mark J. Dunne S.C. (with Mr. Alex Finn B.L.) for the respondents.

Grounds of challenge

9. The legal grounds set out in the statement of grounds run to a slightly indigestible 1,670 words, but helpfully the applicant's written legal submissions have identified a more net list of five questions, the fifth of which, as to whether time should be extended, can be disposed of immediately because Mr. Dunne has sensibly indicated that time is not an issue from the respondents' point of view. I will now deal with the four remaining issues.

Issue 1 - Illegality

10. The first question posed by the proceedings, according to the applicant's written submissions, is "*[w]hether the First Named Respondent … erred in law by its decision dated the 1st May, 2019… made under Regulation 8(22)(a) of the European Union (Subsidiary Protection) Regulations, 2013 … and communicated to the applicant under cover of letter dated the 8th May, 2019.*" No illegality is apparent in the decision apart from what is contended for under the other headings, so the complaints made by the applicant are best addressed under those headings.

Issue 2 - Irrationality as to safety of the internal protection alternative

11. The applicant's second question is *"[w]hether the Tribunal acted irrationally in determining that the applicant could safely avail of an internal protection alternative".* Irrationality is a fairly high bar and is not a mechanism for the court to substitute its own view (see *per* Murray C.J. in *Meadows v. Minister for Justice, Equality and Law Reform* [2010] 2 IR 701, *A.H.M.K. (Bangladesh) v. IPAT* [2019] IEHC 484). The tribunal gave detailed reasons for internal protection being available (see paras. 5.10 to 5.13) and in addition considered the correct test (see *A.A. (Pakistan*) v. IPAT [2018] IEHC 497).

12. Article 8.1 and 2 of the Qualification Directive, 2004 provide that: "1. *As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country. 2. In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant."*

13. As regards the five steps envisaged by this article:

    (i) Identification of a part of the country: That was done here, that part being Bulawayo.

    (ii) Consideration of whether there was a well-founded fear of being persecuted there: Here the tribunal did so. Its decision is not irrational even if it could have taken a more favourable view of the evidence from the applicant's point of view.

    (iii) Consideration of whether it is reasonable for the applicant to stay in that part of the country: That was also considered and reasons were given. Again the decision is not irrational.

    (iv) Consideration of country circumstances: The general circumstances in the country were considered and in particular in the part of the country concerned.

    (v) Consideration of applicant's circumstances: The personal circumstances of the applicant were also considered.

14. Mr. de Blacam engaged in a somewhat nitpicking deconstruction of the precise wording of the tribunal decision, but judicial review is not a suitable vehicle for that kind of process. The tribunal member saw and heard the witnesses and is in the best position to find the facts. The decision itself noted that the applicant's "*only concern*" was that she might bump into a cousin someday who would relay details of her movements to other family members. At best from the applicant's point of view, that is a speculative concern. Thus no illegality in the tribunal's decision under this heading has been demonstrated.

Issue 3: Irrationality as to the reasonableness of the applicant's availing of internal protection.

15. The applicant's third question is *"[w]hether the Tribunal acted irrationally in determining that it was reasonable for the Applicant to avail of an IPA."* This claim also fails for similar reasons.

Issue 4: Failure to apply UNHCR guidelines.

16. The applicant's fourth question is *"[w]hether the Tribunal wrongly failed to apply the relevant provisions of the UNHCR Internal Flight Guidelines, and acted in breach of fair procedures and / or natural and constitutional justice and / or the rule of law in failing to apply or properly consider such guidance."* The UNHCR guidelines are not law and even if they were not applied that does not give rise to grounds for judicial review.

Order

17. I note finally in passing that there is not much at stake in practical terms for the applicant. She was given residency in 2018 and is therefore presumably on track for settled status and indeed possibly citizenship in due course. That does not take from her entitlement to seek asylum and nor does it dilute the standard of scrutiny by the court of any adverse decision, but it does illuminate the context. In any event for the reasons stated above the application is dismissed.