THE HIGH COURT
JUDICIAL REVIEW

[2019 No. 2 J.R.]

BETWEEN

Z.N.U.D. (PAKISTAN)

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 15th day of January, 2020

1. The applicant was born in Pakistan in 1976. He claims to have been a member of the PAT party and to have been threatened by members of another party, the PML-N. He claimed in evidence before the tribunal that violent attacks took place in 2006, 2007 and 2009.

2. In 2006 he applied for a UK student visa. That application was refused. On 26th August, 2008 he applied again for a UK visa. That was also refused initially. Notwithstanding the alleged attacks the applicant lived in the family home in Lahore until 2010 running a jewellery shop in a shopping plaza. At the end of 2009 he successfully appealed the 2008 UK visa refusal and was granted a student visa starting on 7th January, 2010 until 3rd February, 2015. He then moved to the UK in 2010 for a five-year period and did not apply for asylum there.

3. After the applicant had been in the UK for four years, a violent incident took place in Lahore on 17th June, 2014 known as the Model Town Massacre, in which some members of the applicant's political party were victims. That seems to have related to a particular one-off situation at that time.

4. According to the UK Home Office the applicant's student visa ran out in February 2015 (the applicant gave a date of March 2015 in his s. 35 interview). He applied to extend the visa but that was refused. He then appealed that refusal, but that appeal was dismissed because there was no appearance at the appeal hearing on 13th October, 2016. The applicant had in the meantime come to Ireland on 4th January, 2016 and on his arrival had immediately sought asylum. As noted in the tribunal decision at para. 4.10, in the Refugee Applications Commissioner questionnaire, the applicant did not detail any particular attacks or injuries. Nonetheless he was able to give very specific details at the tribunal hearing which differed somewhat from the details given in previous interviews, as noted by the tribunal member at para. 4.12 onwards.

5. Following the commencement of the International Protection Act 2015 on 31st December, 2016, he made an application for international protection. On 20th April, 2018 he was informed that that had been rejected by the International Protection Office. He appealed to the tribunal on 10th May, 2018 and an oral hearing took place on 26th July, 2018 at which Ms. Marie McMahon B.L. appeared for the applicant. The tribunal rejected the application on 12th October, 2018. The tribunal member did not accept the applicant's

account of attacks, based on inconsistencies in those accounts. The applicant had claimed that the inconsistencies were due to memory loss although there was no reference to memory loss at the time of his initial accounts and he only sought a letter from his GP days after the s. 39 report issued. At an earlier stage, in the s. 11 interview, he had said that he had no medical conditions (see para. 4.15 of the tribunal decision). The tribunal also noted that the GP's letter only referred to the conditions "*reported*" by the applicant. Such commendably precise and clear language by the applicant's doctor maintains the necessary professional standards and does not provide objective support for the applicant's claims of a memory condition (see para. 4.22 of the tribunal decision). The tribunal also noted that the Pakistani medical reports produced referred to assaults by "*unknown persons*". That conflicts with the applicant's story that he was assaulted by political rivals. The tribunal member accepted that the applicant was an ordinary member of his political party but held that that did not give rise to grounds for international protection in these circumstances. The tribunal also held that the situation of indiscriminate violence in the area was not such as to pose a threat to the applicant solely on account of his mere presence there.

6. On 26th October, 2018 the applicant made representations to the Minister under s. 49(7) of the 2015 Act. The present proceedings were filed on 2nd January, 2019 although they were not moved in court for some time. The major explanation for that as set out by the applicant's solicitor on affidavit is that in order to comply with practice direction HC81, further affidavits needed to be sworn and that she understood that the practice direction was "*going through a period of discussion*". That is correct in that the practice direction commenced one day before the proceedings were filed, and some inevitable clarification was discussed and issued during the early teething period of its operation. While on the one hand the practice direction was not actually intended to take away from the need to move the application in court within a reasonable time, you might on one view say that this may not have been spelled out monosyllabically, and that procedures to clarify that were not introduced until well after the time with which we are now concerned. At the same time one can well appreciate the fact that the introduction of a major new practice direction would have created uncertainty about how it should be implemented, and one cannot say that a reasonable person might not have had some hesitation in moving an application until it was made absolutely explicit as to whether the court wished the papers to be put in order before doing so, or that priority should be given to moving the application promptly, warts and all (for future reference – it's the latter). In any event a further affidavit of the applicant was, pursuant to practice direction HC81, sworn on 24th May, 2019 and the matter was moved in court rapidly following that affidavit on 27th May, 2019. I granted leave on that date and in doing so extended time without prejudice to any point the respondents might make at the substantive hearing.

7. On 31st May, 2019 the first of two amended statements of grounds was filed by leave of the court. The Minister made a decision rejecting the review application on 26th June, 2019. On 21st October, 2019 I allowed the applicant to amend the statement of grounds to challenge the review decision.

8. I have now received helpful submissions from Mr. Garry O'Halloran B.L. and from Mr. Michael Moroney, Solicitor, who addressed the court on the time issue, for the applicant, and from Mr. Daniel Donnelly B.L. for the respondents.

Challenge to the IPAT decision

9. Mr. O'Halloran has helpfully confined his challenge to a single question identified at para. 3 of the legal submissions: "*Did the IPAT fail to properly consider the issue of prospective risk in the light of the Applicant's factual circumstances and in light of the COI when viewed rationally?"* Paragraph 23 of the applicant's written submissions complains that the tribunal failed to note that the applicant was a member of the Model Town branch of the PAT party and that among those massacred were supporters and members of the party. The assessment of risk of future persecution or harm has to be based on whatever facts are found by the tribunal, as opposed to what is not found. Here there is no specific finding as to what branch of the PAT party the applicant was a member of, so the tribunal cannot be faulted for not assessing the risk in the light of such a finding. Hypothetically the applicant could have challenged the decision, assuming there were grounds to do so, on the basis that it failed to make such a factual finding, but there is no such challenge in the amended statement of grounds and nor is it apparent that the applicant would have had any legal basis for that challenge. Merely because that was what the applicant had claimed doesn't guarantee the success of such a point.

10. In any event none of this matters because, even if the applicant is taken to be a member of the Model Town branch merely because he says so (having first made that claim, or indeed any of his protection claims, after the incident concerned – a not unknown phenomenon where an applicant's story is conveniently fitted around publicly well-known instances of persecution or harm), there is no general obligation on the tribunal to analyse in such detail an incident, especially one in which the applicant was not involved. The decision says that there is no evidence that "*ordinary members of the PAT face persecution*." That is not inconsistent with there being evidence which the tribunal was well aware of, and indeed refers to in the decision, of ordinary members being victims in a particular one-off incident several years ago, especially where, as the tribunal notes at para. 5.7, there has been a change in régime in the country concerned. The decision of the tribunal was well within what was reasonably and lawfully open to it.

Challenge to the s. 49(9) decision

11. As regards the review decision of 26th June, 2019 Mr. O'Halloran has confined his challenge to the point mentioned above and accepts that the challenge to the review decision is dependent on that to the IPAT decision. Thus in the light of my finding on the latter, the former does not arise. In any event the Minister was fully entitled to rely on the previous protection refusals in considering the review application.

Time

12. As the claim fails on its merits anyway it is not necessary to address the applicant's difficulties in terms of time. However, I extended time at the leave stage and in the particular exceptional circumstances here I probably would have maintained that extension had it been significantly challenged. As the matter evolved, the reasons for the

delay were explained more fully by Mr. Moroney at the hearing and the respondents very fairly did not press the challenge terribly vigorously after that. I do not think under the exceptional circumstances of the transitional period we are talking about here that the applicant's legal advisers can seriously be faulted. I would repeat though that, for future reference, any shortcomings in the papers as filed are not a reason to delay having an *ex parte* application opened in court on the next Monday within term in line with the current procedures. I should clarify that objection to the separate delay period following the tribunal decision up to the filing of the papers wasn't strongly pressed at the hearing in the particular circumstances in which this specific applicant found himself at that precise time.

Order

13. The applicant is the familiar figure of the Commonwealth migrant who has been seeking to live in the mother country for some time - going back fourteen years in this case. After a couple of failed attempts, he eventually succeeded in getting a student visa for the UK. When that ran out he tried unsuccessfully to get it extended and only when that failed did he move to this State and make a claim of persecution or serious harm for the first time. As it happens he has been unable to keep his story straight, and significant inconsistencies have emerged in his various accounts. The tribunal decision is unsurprising in the circumstances, and certainly no illegality in that decision has been demonstrated. The application is dismissed.