THE HIGH COURT
JUDICIAL REVIEW

[2021] IEHC 106
Record No. 2019/711JR

BETWEEN:

IL

APPLICANT

-AND-

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL AND THE MINISTER FOR JUSTICE

RESPONDENTS

JUDGMENT of Ms Justice Tara Burns delivered on the 12th day of February, 2021.

General

1. The Applicant is a national of Georgia who arrived in this State on 1 June 2018 and applied for international protection on 20 June 2018. He was refused international protection by the International Protection Office on 7 January 2019 and thereupon appealed this refusal to the First Respondent who also refused a declaration of refugee and subsidiary protection on 29 August 2019.

2. The basis of the Applicant's claim for protection was that he faced a real risk of persecution and/or serious harm in Georgia. He asserted that he had been threatened by a well-known politician and his associates after publicly criticising his behaviour in importing diseased potatoes and his apparent political impunity.

3. The First Respondent accepted the credibility of the Applicant's account. It accepted that the Applicant had publicly criticised a well-known politician for importing diseased potatoes which had caused people to fall ill; that the Applicant had publicly referred to this politician in a manner which implicitly queried his seeming political impunity in Georgia; and that the Applicant had been repeatedly threatened by associates of this politician.

4. The First Respondent rejected the Applicant's claim for refugee status because while the harm feared by the Applicant constituted persecution, a convention nexus had not been established. The First Respondent's decision in this regard is not subject to challenge.

5. The First Respondent also rejected the subsidiary protection claim on the basis that there were no substantial grounds for believing that if the Applicant returned to Georgia he would face a real risk of suffering serious harm.

6. Leave to apply by way of Judicial Review seeking an Order of Certiorari of the First Respondent's Decision was granted by the High Court on 17 December 2019.

7. The challenge to the First Respondent's decision with respect to its refusal of the Applicant's subsidiary protection claim is twofold: it is asserted that the First Respondent failed to properly consider and give effect to s. 28(6) of the International Protection Act 2015 (hereinafter referred to as "the 2015 Act"), if it was considered at all; and that it failed to adequately consider and assess Country of Origin information.

Section 28(6) of the 2015 Act

8. Section 28(6) of the 2015 Act provides as follows:-

> "The fact that an applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such serious harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated."

9. The Applicant's claim was summarised as follows by the First Respondent:-

> "In 2013, [the Applicant] decided to set up business as an organic potato farmer and beekeeper in a [location]. The Appellant first purchased 6 hectares of land for growing potatoes and later rented a further 6 hectares which he used to plant wheat.
>
> From the outset, the Applicant was in competition in the production of potatoes with .., a Georgian politician from the area. The Appellant was aware that this man was importing cheap potatoes from Turkey every year and then selling them for less than the local farmers, consequently undercutting the local potato producers. This resulted in the Appellant's business suffering losses.
>
> The Appellant was openly highly critical of [the politician] and his business, giving him the nickname "Evergreen" as he was elected nine times to Parliament. When [the politician] became aware of the nickname, it angered him. Other local potato farmers supported the Appellant against [the politician's] practice of importing cheap potatoes from Turkey. Particular difficulties arose for the Appellant in February 2018 when associates of [the politician] came to his home and told him that [the politician] wanted him out of the country.
>
> In March of 2018, Georgia's Prime Minister Giorgi Kvirikashvili signed an order banning the import of potatoes from Turkey for a three month period because of the danger of spreading potato cancer.
>
> In April 2018, the Appellant gave an interview to a journalist, EB from [a named tv station], disclosing that [the politician] was importing and selling substandard Turkish potatoes, which were undercutting Georgian farmers and making people ill. When the politician found out about the interview, he made sure that it was not broadcast on TV. The Appellant believes this is because [the politician] bribed the journalist.
>
> The Appellant was threatened again by [the politician's] associates. The Appellant reported the threat to the police but they took no action and would not give him a copy report of his complaint. In April 2018, the Appellant was told by a police friend of [the politician] that he should leave Georgia.

The Appellant fears that upon his return to Georgia, [the politician] who is still a member of the national Parliament in Georgia, or his associates would kill or harm him for his criticism of his potato importation business."

10. The First Respondent found the Applicant's account of events leading to his departure from Georgia to be convincing. It accepted that when the Applicant protested about the politician's importation of the cheap diseased potatoes, he was threatened by the politician's associates. In light of its acceptance of the Applicant's claim, the first Respondent found that the nature of the harm feared by the Applicant, namely that the politician or his associates would kill or harm him, constituted persecution.

11. In the context of the subsidiary protection claim, the First Respondent found as follows:-

"The Appellant fears that [the politician] or his associates will kill or seriously harm him. The Tribunal has considered the Appellant's situation under this ground and it notes that despite the threats made to the Appellant, the Appellant or members of his family were not harmed. Country of Origin (COI) confirms that [the politician] is a career politician who has a number of business interests in Georgia. When the Appellant was asked if he had any evidence that [the politician] had any history of killing or harming people, the Appellant replied, 'I only know through people'. When it was put to the Appellant that, it was unlikely a seasoned politician, such as [the politician], would actually kill or harm him he replied, 'He is a bandit'. If, as the Appellant claims, [the politician] was importing potatoes that were substandard and described in COI as 'spreading potato cancer' it is clear that the Government took appropriate steps to ban the import of such potatoes from Turkey. In the circumstances, the Tribunal can find no credible reason why [the politician] would resort to killing or seriously harming the Appellant in order to prevent him protesting about the importation of substandard Turkish potatoes, particularly as by the Appellant's own evidence, he was not the only person protesting.

The Tribunal accepts that the Appellant came to the attention of [the politician], as a man willing to protest against him and annoyingly called him by the nickname 'Evergreen'. However, in order for an Appellant to receive protection under this ground, the serious harm referred to must reach a minimum level of severity. The assessment of the minimum threshold is relative and depends on all the circumstances of the case including in particular, the duration of treatment. The Appellant described three incidents over a five-month period, where men associated with [the politician], threatened him, yet there was no incident throughout that time where the Appellant or any members of his family were subjected to any harm or physical assault. There is no evidence that the Appellant suffered at the hands of [the politician] or his associates, nor is there any clear evidence to suggest he would suffer on his return. The evidence before the Tribunal does not suggest that the Appellant was the subject of torture, inhuman or degrading treatment or punishment in the past and there is no clear evidence before it to suggest that the Appellant would be at risk under this heading now. In the circumstances, the

> Tribunal finds that the events outlined by the Appellant do not reach the minimum level of severity, which must be reached, in order to engage protection under this ground.

12. The First Respondent does not engage in any analysis of the rebuttable presumption which the Applicant was entitled to in light of its earlier finding that the Applicant had been subject to threats of serious harm. The Applicant's claim was that he had been subject to death threats from the politician's associates. The First Respondent accepted that he had been threatened by the politician's associates and does not take issue with the nature of the threat. The implication must therefore be that the First Respondent accepted that the nature of the threats were death threats which are threats of serious harm within the meaning of the 2015 Act. Once that earlier finding had been made by the First Respondent, this established a serious indication that the Applicant's subjective fear of suffering serious harm if returned to Georgia was well founded unless there were good reasons to consider that such serious harm would not be repeated.

13. There was an obligation on the First Respondent to engage in an analysis of this rebuttable presumption which it failed to do. Indeed, there is no reference whatsoever by the First Respondent to s. 28(6). This is an error on the part of the First Respondent. Section 28(6) provides a significant evidential presumption to an applicant which can be rebutted by good reason. However, it should be unambiguous from the First Respondent's decision that such a significant evidential presumption was considered by the First Respondent and the good reasons which rebutted the presumption should be stated. In *NS (South Africa) v. Refugee Appeals Tribunal* [2018] IEHC 243, Humphries J stated:-

> "If it is accepted that there was past persecution, the decision-maker needs to consider positively whether there is good reason to consider that there would be no future risk."

14. The Respondent argues that good reasons did exist to rebut the presumption and that they are set out and apparent in the decision, although s. 28(6) is not specifically analysed. This is not sufficient to deal with this issue. As already stated, s. 28(6) is a significant evidential benefit which an applicant, who has been found to have been subjected to threats of serious harm, has. It is not appropriate that assumptions and inferences be made as to whether this issue had been considered by the First Respondent, and if so, what the good reasons were for determining that the presumption, which the Applicant is entitled to, has been rebutted.

15. The Applicant has made an argument that the "good reasons" required to rebut the presumption provided by s. 28(6) must be predicated upon a change of circumstances. I do not agree with that submission. Nothing in the sub-section limits "good reasons" to that interpretation. However, in light of my earlier findings, it is not necessary for me to further consider this issue.

16. The Applicant also asserts that the First Respondent failed to properly assess Country of Origin information having regard to the specific facts of the case. The First Respondent, having noted that Georgia was a safe country of origin, found that there was nothing to suggest that the police in Georgia would not offer protection to the Applicant or his family in circumstances where there was a genuine threat to kill or cause them serious bodily harm. The Applicant submits that this is an incorrect statement of fact as the Applicant had submitted a "US State Department 2018 Country Report on Human Rights Practices – Georgia" which recorded at p. 8:-

> "The effectiveness of government mechanisms to investigate and punish abuse by law enforcement officials and security forces was limited, and domestic and international concern over impunity remained high.

17. This finding by the First Respondent fails to engage whatsoever with the Applicant's claim, which appears to have been accepted by the First Respondent, namely that the police took no action after he reported the threat to them; that they refused to provide him with a copy of his statement of complaint; and that one of the associates of the politician who told him to leave the country was a policeman. It is unclear whether the First Respondent took any account of this evidence of the Applicant in its assessment of Country of Origin information. If it did consider this evidence, no reasons are provided as to why, in effect, this evidence was discounted. This is an inappropriate manner to have dealt with this aspect of the Applicant's claim.

18. Accordingly, I will grant the Applicant the relief sought at paragraph (d)(1) and (d)(2) of the Statement of Grounds and make an order for the Applicant's costs as against the Respondent to be adjudicated upon in default of agreement.