

**HIGH COURT
JUDICIAL REVIEW
IN THE MATTER OF SECTION 5 OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT
2000 (AS AMENDED)**

[2021] IEHC 40
RECORD NO. 2019/642/JR

BETWEEN:

HK

APPLICANT

AND

THE MINISTER FOR JUSTICE

RESPONDENT

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

General

1. The Applicant is a national of Western Sahara, born on 24 April 1997. He entered the State on 24 June 2015 and applied for asylum on that date on the basis that he would face persecution in Western Sahara because of his political opposition to Morocco's control of large parts of that territory. He completed an asylum questionnaire on 4 July 2015 and was interviewed by the Office of the Refugee Applications Commissioner (hereinafter referred to as "ORAC" on 20 October 2015 and 4 May 2016. ORAC issued its report pursuant to s.13 of the Refugee Act 1996 on 10 May 2016, recommending that he not be granted refugee status. He appealed to the Refugee Appeals Tribunal on the 6th September 2016.
2. Before his appeal was processed, the Applicant left the State. He was arrested on 1 July 2017 when he returned to the State through Dublin Airport travelling on a false Spanish passport. He indicated that after leaving the State, he travelled through several other EU jurisdictions before arriving in Iceland where he applied for asylum which application was refused.
3. The Applicant applied for international protection in this jurisdiction and filed an International Protection Questionnaire in December 2017. On the 29 June 2018, he was interviewed under s. 35 of the International Protection Act 2015 (hereinafter referred to as "the 2015 Act"). On 18 July 2018, his international subsidiary protection application was refused by the International Protection Office. He appealed the refusal of international protection to the International Protection Appeals Tribunal on 16 August 2018.
4. On the 19 July 2018, the Respondent refused the Applicant permission to remain in the State pursuant to s. 49(4)(b) of the 2015 Act.
5. On the 22 January 2019, the International Protection Appeals Tribunal refused the Applicant's appeal of his international protection application.
6. On 29 January 2019, the Applicant made further representations to the Respondent in support of his application for permission to remain pursuant to s. 49(7) of the 2015 Act. He furnished a s. 49 Review Form, solicitor's representations, various character references and a medico-legal report together with supporting photographs.

7. On 8 July 2019, the Respondent refused the Applicant's s. 49(7) application. The review decision states that all "*representations and correspondence received from or on behalf of the applicant*" which included "*the Section 35 interview report/record and Matters to be considered for PTR review arising from Section 35 Interview record* " were considered.
8. On 2 August 2019, the Respondent issued a deportation order against the Applicant.
9. Leave to apply by way of Judicial Review seeking orders of Certiorari of the Respondent's review decision pursuant to s. 49(7) of the 2015 Act and the deportation order was granted by the High Court on 8 October 2019.
10. On 8 July 2020, following an application by the Applicant to amend his Statement of Grounds, leave was granted to the Applicant (without prejudice to whatever objections' the Respondent might make at the hearing) to seek a further relief, namely an order of Certiorari of the s. 35 report dated 29 June 2018 but asserted to be completed by way of a further document dated 16 May 2019 and entitled "*Matters to be considered for PTR review arising from Section 35 interview record (to be read with and as part of the Section 35 reports(s) dated 29/06/18*", and any other ensuing decision including the s. 39 Report and the s. 49(4) decision.
11. This Court is left in the unhappy position of now having to deal with an amendment application in the course of the hearing. It is unfortunate that the application to amend was not finalised when it was made before in the Court in light of the fact that the application was on notice and that each side had the opportunity to make their submissions with respect to the proposed amendment at that stage. It is preferable that hearings are reserved for determining what the actual issues are in a case rather than unnecessarily complicating what must be determined.

Grounds of challenge

12. In summary, the Applicant makes the following contentions regarding the s. 35 and s. 39 report, the s. 49(4) and s. 49(7) decisions, and the deportation order which he seeks to challenge:-
 - a) the s. 35 Report is void or voidable arising from the Respondent's failure to comply with s. 35(12) and/or s. 35(13)(b) of the 2015 Act. This invalidates all decisions which flow from the s. 35 Report, including the s. 39 Report, the s. 49(4)(b) permission to remain decision, and s. 49(7) review decision;
 - b) the Respondent failed to take into account or properly evaluate representations made under s. 49(3)(a) and "humanitarian considerations" under s. 49(3)(b) in the s. 49(7) review decision;
 - c) the Respondent erred under s. 50(2) of the 2015 Act in his assessment of the Applicant's medical condition for the purposes of non-*refoulement*;

- d) the Respondent failed to give cogent reasons for the decisions made pursuant to s. 49(3) and/or s. 50 of the 2015 Act and/or Article 8(1) of the European Convention of Human Rights (hereinafter referred to as "the ECHR").

The s. 35 Report and its addendum

13. Section 35 of the 2015 Act provides that a personal interview of an applicant for international protection shall take place, except in certain defined circumstances which do not arise in the instant matter. It is envisaged that such an interview will be carried out by an interviewer rather than an international protection officer, although this is not mandatory. Section 35(12) and (13) of the 2015 Act provides as follows:-

"(12) Following the conclusion of a personal interview, the interviewer shall prepare a report in writing of the interview.

(13) The report prepared under subsection (12) shall comprise two parts-

(a) one of which shall include anything that is, in the opinion of the international protection officer, relevant to the application, and

(b) the other of which shall include anything that would, in the opinion of the international protection officer, be relevant to the Minister's decision under section 48 or 49, in the event that the section concerned were to apply to the applicant."

14. The s. 35 report in this matter was compiled on 29 June 2019 by the interviewer Mr Tommy O'Donoghue. It did not include either of the parts referred to at s. 35(13) of the 2015 Act. Apparently, this was not an unusual omission with respect to s. 35 reports at that time. The legality of such an omission was considered by Barrett J. in *IX v. CIPO* [2019] IEHC 21 when considering the NY case and the legality of a permission to remain decision taken pursuant to s. 49(4) of the 2015 Act. He stated at paragraph 11 of his judgment:-

"[B]y requiring the inclusion in a separate part of a s. 35 report of... "anything that would, in the opinion of the international protection officer, be relevant to the Minister's decision under section 48 or 49" the Oireachtas clearly intended to confer a protection on applicants in the form of (a) specific consideration by the IPO of whether there is anything relevant, and (b) reduction to writing of any such thing in a separate part of the report (effectively highlighting that "thing" for future reference). The inclusion of the relevant information elsewhere in the s. 35 report neither (i) meets the express requirements of s. 35(13) nor (ii) yields the protection which the Oireachtas appears to have been desirous to confer on application.... [I]t seems to the Court that the Oireachtas, having elected to confer the protection just described, could fairly be taken to have intended that an ensuring s. 48/s. 49 process would be viewed as fundamentally flawed where it was preceded by a deprivation of that protection."

Having made the above determination, Mr Justice Barrett thereupon quashed the s. 49(4) decision and remitted it to the Respondent for fresh consideration. While the *IX* decision was appealed by the Respondents, this finding of the High Court was not.

15. Subsequent to the decision of the High Court in *IX*, the Respondent sought to rectify the s. 35 report in the instant case by creating an additional document on 16 May 2019 entitled "*Matters to be considered for PTR review arising from Section 35 interview record (to be read with and as part of the Section 35 reports(s) dated 29/06/18*", which reflected the requirements of s.35(13)(b). This document was completed by Ms Yvonne Delaney, an International Protection Officer (hereinafter referred to as an "IPO") who is a different IPO to the IPO (Ms Orla Moran) who carried out the examination of the Applicant's protection claim and issued the s. 39 report.
16. Another IPO (Mr Eamon Foley), acting on behalf of the Respondent, carried out the s. 49(7) review and considered all "*representations and correspondence received from or on behalf of the applicant relating to permission to remain and permission to remain (review)...., including the Section 35 interview report/record and Matters to be considered for PTR review arising from Section 35 Interview record*". In the course of the hearing, Counsel on behalf of the Applicant raised a query as to whether the document created by Ms Delaney had in fact been considered by Mr Foley. It is clear that Mr Foley's reference to "*Matters to be considered for PTR review arising from Section 35 Interview record*" is Ms Delaney's document in light of the use of the capital M within the middle of his sentence.

Can the invalid s. 35 report be added to?

17. The question arises as to whether it is possible to add an addendum to the s. 35 report so that it can thereby become compliant with s. 35(13) of the 2015 Act.
18. In light of what is required to be addressed pursuant to s. 35(13) of the 2015 Act, which relates to a previously recorded written interview conducted by the interviewer, it seems to me that an addendum can clearly be made at a later stage to the s. 35 report to reflect the necessary requirements of s. 35(13)(a) and (b). Indeed s. 35(13) can only ever be complied with after the compilation of the written interview as it involves an assessment by the IPO of matters referred to in the interview which are of relevance to the international protection claim and to the issue of whether the applicant should be granted permission to remain, if that arises. This is an assessment which clearly can only take place after an assessment of the written interview. Accordingly, the creation of an addendum to the s. 35 written interview to reflect the requirement of s. 35(13) can be made after the written report of the interview comes into existence.
19. This issue has, by implication, already been decided by Barrett J in the *IX* decision having regard to the order made in that case which quashed the s. 49(4) decision and remitted the s. 49(4) issue to the Respondent for reconsideration. Quite clearly, Mr Justice Barrett envisaged an appropriate s. 35(13) report coming into existence so that the s. 49(4) issue could be re-determined on foot of an amended s. 35(13) report.

20. I am also of the view that this exercise can be conducted by an IPO other than the IPO who made the recommendation pursuant to s. 39(3) of the 2015 Act, as occurred in this case, in light of s. 76(2) of the 2015 Act which provides:-

"The Minister may authorise a person with whom the Minister has entered into a contract for services in accordance with subsection (1) to perform any of the functions (other than the function consisting of the making of a recommendation to which subsection (3) of section 39 applies) of an international protection officer under this Act."

21. I have already considered the import of s. 76(2) of the 2015 Act in the case of *MM v. CIPO & Ors* (Unreported, High Court, Burns J., 12 January 2021) and determined that applying a literal interpretation to the 2015 Act, it is clear that the intention of the Oireachtas was that another IPO or a person who has entered into a contract for services with the Respondent who has been authorised pursuant to s. 76(2), can exercise any function of an IPO in a particular case except for the final recommendation of an IPO pursuant to s. 39(3) of the 2015 Act.

Effect of invalid s. 35 report on s. 39 report

22. The relief seeking to challenge the s. 39 report is comprised in the amendment to the Statement of Grounds which was sought on 8 July. As already referred to, this relief was granted without prejudice to whatever objections the Respondent might raise at this hearing. The Respondent objected strenuously to this amendment and has made a number of arguments against permitting it raising the significant length of time which has elapsed since the report was notified to the Applicant; the failure of the Applicant to explain the reason for the delay particularly when the failure to challenge it and the consequences of same were raised by the Respondent in submissions; and the significant prejudice which would be caused to the Respondent should the amendment be allowed.
23. Without dealing with these objections presently, the Applicant cannot be successful in this regard in any event. In reality this issue was determined by Barrett J in IX. As already referred to, the order made in IX related to the s. 49(4) decision which was quashed and remitted to the Minister for reconsideration; the underlying s. 39 report was not quashed but was found to be valid.
24. However, aside from the order in IX, an argument that an otherwise valid s. 39 report should be quashed because of non-compliance with s. 35(13) of the 2015 Act cannot succeed. Section 39(1) and (2) of the 2015 Act provides, inter alia:-

"(1) Following the conclusion of an examination of an application for international protection, the [IPO] shall cause a written report to be prepared in relation to the matters referred to in section 34.

(2) The report under subsection (1) shall-

(a) refer to the matters relevant to the application which are-

- (i) *raised by the applicant in his or her application, preliminary interview or personal interview or at any time before the conclusion of the examination, and*
- (ii) *other matters the [IPO] considers appropriate."*

25. As is clear, the matters which are required to be addressed in the s. 35(13) report are required to be addressed in the s. 39 report pursuant to s. 39(2). No argument has been raised that the s. 39 report in the instant case was not in compliance with s. 39(2). Accordingly, whilst on a formal basis, s. 35(13)(a) of the 2015 Act was not complied with before the s. 39 report came into existence in its original format, this is of no consequence to the Applicant as the matters required to be addressed in s. 35(13)(a) were in any event addressed by the s. 39 report.

Effect of invalid s. 35 report on s. 49(4) decision

26. The relief seeking to challenge the s. 49(4) report is comprised in the amendment to the Statement of Grounds which was sought on 8 July. As already referred to, this relief was granted without prejudice to whatever objections the Respondent raised at this hearing. The arguments raised by the Respondent in this regard were referred to under the previous heading.

27. The Applicant relies on the judgment of Barrett J in *IX* in this regard which quashed the s. 49(4) decision in the NY case comprised in the *IX* judgment. Of course matters are quite different in the instant case as the s. 49(4) decision was not challenged when it came to the attention of the Applicant on the 25 July 2018 that there had not been compliance with s. 35(13)(b) of the 2015 Act. This relief was only sought on 8 July 2020. Also, matters had moved on from the s. 49(4) decision in the instant case with the Respondent having now determined a s. 49(7) review decision.

28. Whilst I note the dicta of Barrett J in *IX* regarding the significance of s. 35(13)(b) and the recent judgment of the Supreme Court in *ASS v. Minister for Justice and Equality* (Unreported, Supreme Court, 8th December 2020), I am not of the view that the failure of the s. 35 report to comply with s. 35(13)(b) of the 2015 Act should result in quashing the s. 49(4) decision.

29. Section 49(2) of the 2015 Act provides:-

"For the purpose of his or her consideration under this section, the Minister shall have regard to-

- (a) *The information (if any) submitted by the applicant under subsection (6), and*
- (b) *Any relevant information presented by the applicant in his or her application for international protection, including any statement made by him or her at his or her preliminary interview and personal interview."*

30. The practise of who makes a s. 49(4) decision is that such decisions are made by an IPO acting on behalf of the Respondent. They are determined by a different IPO to the IPO who made the recommendation refusing international protection pursuant to s. 39(3) of

the 2015 Act. The requirements of s. 35(13)(b) arise within the international protection claim context. Whilst it may be helpful that an IPO identify what parts of an applicant's s. 35 interview are relevant to the s. 49(4) decision, this has no binding effect as the IPO determining the s. 49(4) issue on behalf of the Minister is obliged to have regard to any relevant information contained in the s. 35 interview. That IPO must come to her own conclusions regarding relevant information contained in a s. 35 interview and is not required to consider only the relevant information identified by another IPO pursuant to the s. 35(13)(b) process. It would be quite contrary to natural justice if it were otherwise. On this analysis, I fail to see the prejudice or indeed the effect on the Applicant in this instant case that a s. 49(4) decision was made against the Applicant without the benefit of a valid s. 35 report which complied with s. 35(13)(b).

31. However, if I am incorrect in either analysis relating to the s. 35 and s. 39 reports or the s. 49(4) decision, I would not, in any event, permit the Applicant to amend his proceedings in light of the excessive delay in seeking to challenge these decisions. The Applicant became aware on 25 July 2018 of the situation regarding the s. 35 report and did not seek to challenge the s. 35 and s. 39 reports or the s. 49(4) decision until 8 July 2020. Time limits in judicial review proceedings should have some significance. No explanation has been proffered by the Applicant regarding the delay in seeking to challenge these matters since he became aware of this issue. This is in particular circumstances where the issue of his failure to challenge these matters was in fact raised by the Respondent in their written submissions. For that reason alone, I would not be prepared to permit the Applicant to amend his proceedings to seek the proposed relief.

Section 49(7) Decision on foot of addendum to s. 35 report

32. In light of my decision that the s. 35 report could be added to at a later stage by the creation of an additional document dealing with s. 35(13)(b) of the 2015 Act, even if the issues required to be addressed were dealt with by a different IPO to the IPO who made the s. 39 recommendation, the s. 49(7) review decision is a legally valid decision. It is based on a series of underlying decisions, which I am also of the view are valid regardless of the initial failure to comply with s. 35(13) of the 2015 Act.

Other grounds of challenge to the s. 49(7) Review Decision

33. The Applicant submitted the following documentation in support of his application for review pursuant to s. 49(7): letter from his solicitor dated 29 January 2019; representations from his solicitors; s. 49 Review Form; letters of reference; and Medico-Legal report dated 14 November 2018 (which was not available at the time of the s. 49(4) decision) together with photographs. It was noted by the Second Respondent that the representations had previously been submitted for the purpose of the s. 49(4) application. Accordingly, as that document had previously been considered at the time of the initial decision, the Respondent appropriately indicated that it would not be reconsidered in this review application. That document contained references to the fact that the Applicant had been found by ORAC to have been neglected by his family and that he travelled through Europe since he was 13 alone, "*living on his wits*".
34. Section 49(3) of the 2015 Act provides:-

"In deciding whether to give an applicant a permission, the Minister shall have regard to the applicant's family and personal circumstances and his or her right to respect for his or her private and family life, having due regard to—

- (a) the nature of the applicant's connection with the State, if any,*
- (b) humanitarian considerations,*
- (c) the character and conduct of the applicant both within and (where relevant and ascertainable) outside the State (including any criminal convictions),*
- (d) considerations of national security and public order, and*
- (e) any other considerations of the common good."*

35. As is well established, in the absence of evidence to the contrary, a presumption arises that a party charged with a statutory duty has complied with it. (*MN (Malawi) v. Minister for Justice and Equality* [2019] IEHC 489). Also of relevance to the Applicant's submissions in relation to this issue is the dicta of Hardiman J. in *GK v. Minister for Justice and Equality* [2002] 2 I.R. 418 that

"a person claiming that a decision making authority has, contrary to its express statement, ignored representations which it has received must produce some evidence, direct or inferential, of that proposition before he can be said to have an arguable case."

36. In the Review Decision, the Respondent stated that he considered all representations and correspondence received from or on behalf of the Applicant relating to permission to remain at first instance and on review. He expressly referred to the representations from the Applicant's solicitor that stated that the Applicant had been residing in the State for almost four years and had become integrated into Irish society; the references which were submitted on behalf of the Applicant were also noted and it was indicated that they had been considered; the Applicant's intention to register for a course was noted and that he had signed up to act as a volunteer and was awaiting a placement.
37. The Respondent considered medical issues which the Applicant raised under "*humanitarian considerations*". The medical evidence before the Respondent was a "Spirasi" report of Dr. Uwe Hild based on an examination of the Applicant on the 6 November 2018. It referred to a number of scars on the Applicant's body, nearly all of which could be attributed to innocent injuries but one of which was consistent with maltreatment. In his international protection claim, the Applicant claimed that he had been hit over the head by a policeman with his baton, but this account of the injury was not accepted by IPAT. The report recorded psychological symptoms of concerns for his family, especially his mother. He was assessed as having PTSD. Dr. Hild recommended that he should have specialist psychotherapy for his social isolation and post-traumatic problems and recommended treatment for his skin. The Respondent summarised the findings of the medico-legal report as "*the applicant presents with physical signs and*

findings that are falling in keeping with his account with typical findings for both innocent injuries and scars attributed to maltreatment. His psychological features are indicative of a traumatic past where maltreatment has played a major part." No issue could be taken with that summary.

38. The Respondent had regard to the Supreme Court decision in *DE v. Minister for Justice and Equality* [2018] IESC 16 when considering whether Article 3 ECHR was engaged in the instant case. He found that the medical report did not establish, as was required for an Article 3 engagement, that "*the applicant has demonstrated with sufficient evidence that there are substantial grounds for believing that, in substance, there is a real risk that he would be "exposed to a serious, rapid and irreversible decline in [his] state of health resulting in intense suffering or a significant reduction in life expectancy" in the event that he is removed from the State*". He therefore found that the threshold for a consideration of an asserted violation of Article 3 was not reached and that therefor no further consideration of Article 3 was required.
39. The Respondent was entitled to consider whether Article 3 ECHR was engaged and was entitled to make the finding that it was not engaged based on the medical evidence before him. The decision cannot be impugned on those grounds
40. The Respondent proceeded to consider Article 8 ECHR with respect to the medical evidence. He stated:-

"Article 8 includes the impact on both the mental and physical health of the applicant. There could be an Article 8 issue even if there is no Article 3 issue. The applicant stated that he was attacked when he was living in Western Sahara however, the circumstances around this attack have not been accepted in the intentional protection application.

The applicant submitted representations in relation to his medical matters in the State however, he has submitted insufficient evidence to engage Article 8 on the basis of his mental and physical health. Therefore, there is no interference with respect to his private life on the basis of his medical grounds".

41. These were findings which were open to the Respondent to make and no error has been established in terms of how the Respondent reached this conclusion.
42. The Supreme Court judgment in *DE v. Minister for Justice and Equality* [2018] 3 IR 326 sets out relevant considerations which apply to the Respondent's decision in a s. 49 application at paragraph 35 of the judgment:-

"[S]omewhat different considerations must apply in practice where a very general question such as the appropriateness or otherwise of the Minister granting humanitarian leave to remain arises. Such an issue is not, strictly speaking, concerned with legal rights and entitlements but rather is subject only to the entitlement of a relevant person to make representations to the Minister as to the

basis on which it is said that the Minister might be persuaded to grant humanitarian leave and to the entitlement to have the Minister consider those representations. But the criteria, under the legislation, to be applied in respect of such an application is very much at the open-ended end of the spectrum. In such an application the Minister is not concerned with whether a legal entitlement exists, but rather whether general humanitarian considerations ought to lead to the person concerned not being deported. In passing it should be noted, of course, that it may be that a party also puts forward, in the course of the same representations, an argument which does touch on a legal entitlement. For example, the issue which arises in this case and which concerns the contention that it would be in breach of D.E.'s Convention rights to deport him having regard to the health issues raised, does give rise to a contention that a legal entitlement exists. Different considerations apply to that question. However, on the assumption that no legal entitlement arises, then the decision of the Minister can, in my view, be properly described as one involving the exercise of a very broad discretion.

43. In the same judgment, O'Donnell J. set out at paragraph 92 of the judgment that

"Humanitarian considerations are not limited to, or defined by, the necessarily high threshold for consideration of breaches of article 3 which would require a minister in a case such as this not to deport an individual. Situations which may not reach the high threshold posed by article 3 may nevertheless properly be taken into account by a decision maker in considering the broad question of humanitarian leave to remain."

44. In the instant matter, having considered whether Article 3 was engaged and having considered Article 8, the Respondent then considered humanitarian considerations and determined:-

"Having considered the humanitarian information on file in this case, there is nothing to suggest that the applicant should be not be returned to Western Sahara".

45. The Respondent further noted that the s. 49(4) decision had determined that the applicant's private life rights had not been engaged and that a refusal of permission did not constitute a breach of Article 8(1). The Respondent determined that:-

"Having considered and weighed all the facts and circumstances in the case, it was not accepted that any potential interference with the Applicant's right to respect for his private life had consequences of such gravity as to potentially engage the operation of Article 8 ECHR.

Having considered and weighed all the facts and circumstances in this case, a decision to refuse the applicant permission to remain does not constituted a breach of the right to respect for private life under Article (8)1 of the ECHR."

46. The Respondent ultimately concluded:-

"While noting and carefully considering the submissions received regarding the applicant's private and family life and the degree of interference that may occur should the applicant be refused permission to remain, it is found that a decision to refuse permission to remain does not constitute a breach of the applicant's rights. All of the applicant's family and personal circumstances, including those related to the applicant's right to respect for family and private life, have been considered in this review, and it is not considered that the applicant should be granted permission to remain within the State."

47. Again, these were findings open to the Respondent to make and no error has been established in terms of how the Respondent reached these conclusions.

48. Accordingly, the Respondent considered Article 3, Article 8 and further humanitarian considerations arising and came to conclusions which were open to him to reach. Counsel for the Applicant suggests that wider humanitarian considerations were not considered by the Respondent. However, the terms of the decision clearly reflect a consideration of Article 3, then Article 8, and then humanitarian considerations.

49. Counsel for the Applicant complains that matters such as the Applicant not having had contact with his family since he was 13; the fact that ORAC found that he was neglected by his parents; that he had lived on his wits in Europe for a significant period of time; the nature of his mental make up as referred to in subsequent clarifying information received from SPIRASI; and that he is diagnosed as suffering from PTSD were not considered by the Respondent. The fact that he left his family at 13, that ORAC found he was neglected by them, and that he had lived "on his wits" from the age of 13 in Europe were already considered in the s. 49(4) decision as they were included in the representations made for that application. The Respondent had appropriately indicated that he would not be considering representations previously made. With respect to the SPIRASI information, the Respondent clearly did consider this under humanitarian considerations as well as Article 3 and 8, as is clear from the ordering of his report. Of note, no evidence had been submitted to the Respondent to the effect that the Applicant was presently attending treatment for his PTSD symptoms or that he would be unable to access appropriate treatment in Western Sahara

Consideration of Refoulement

50. The Applicant complains that the Respondent did not give proper regard to his opposition to Moroccan rule in Western Sahara, when making his decision in relation to refoulement. It is asserted that if the Applicant was deported, he would be required to obtain a travel or identity document from Morocco which he presently does not have and in any event objects to. Arranging travel documentation is not what is at issue for the Respondent in determining a s. 49(7) review, nor is the Applicant's attitude to that travel documentation. The Respondent instead is concerned with whether, in this instance, the Applicant, a failed asylum seeker, would be subjected to inhuman or degrading treatment or punishment.

51. The request for review did not make any submissions in relation to refoulement. In the review decision, the Respondent noted that the representations made concerning refoulement had previously been made and considered for the purposes of the decision of the s. 49(4) decision. He noted that the Applicant's international protection claim had been refused by the IPO and the Tribunal. He quoted the 2018 State Department report, which noted that the Moroccan government generally respected freedom of movement. The Respondent indicated that he had considered all of the facts of the case together with relevant country information and that he had considered the prohibition of refoulement in the context of the international protection determination. The country information did not indicate that the prohibition of refoulement applied. As noted already, the Applicant had not asserted any new basis on which he alleged that his deportation would breach the prohibition on refoulement. The Respondent, having considered all the facts and relevant country of origin information was of the opinion that repatriating the applicant to Western Sahara did not offend against the prohibition of refoulment.
52. This was a decision which was open to the Respondent and no error has been established with respect to how he arrived at this conclusion.

Alleged Lack of Reasons

53. This grounds of challenge does not arise. Sufficiently detailed reasons were given for the decision, particularly having regard to the fact that this is a decision taken on a review of an earlier decision to the same effect, in circumstances where very little additional information was put before the Respondent for the purpose of the review. The rationale for the decision is clear: nothing new had been put forward which, in the Minister's opinion, warranted a change in the decision not to grant permission to remain.
54. I therefore refuse the Applicant on all of the reliefs sought and make an order for costs in favour of the Respondent as against the Applicant.