

THE HIGH COURT
JUDICIAL REVIEW

[2022] IEHC 164

[2020 No. 653 JR]

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

BETWEEN

I. M.

APPLICANT

AND

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

RESPONDENTS

**JUDGMENT of Mr. Justice Charles Meenan delivered on the 28th day of
February, 2022**

Background

1. The applicant is a national of Georgia who made a claim for international protection in the State on 10 June 2019 on the basis that he would face persecution or serious harm as a result of an assault on him by an unnamed neighbour in 2009 and 2012 on the basis of ethnicity.

2. The applicant was interviewed by the International Protection Office (“IPO”) under s.13(2) of the International Protection Act 2015 (“the Act of 2015”) on 24 June 2019. He submitted an International Protection Questionnaire and was interviewed under s.35 on 18 December 2019.

3. The IPO issued a report pursuant to s.39 of the Act of 2015, dated 22 January 2020. This report determined that the applicant had not established a well-founded fear of persecution and that substantial grounds had not been shown for believing that he would face a real risk of serious harm. The IPO made a finding under s.39(4) that the applicant was from a safe country of origin. The applicant appealed to the first named respondent (the Tribunal) on 3 February 2020.

4. The IPO set out and considered a number of material matters which the applicant claimed: -

- (i) The applicant’s nationality and personal circumstances;
- (ii) The applicant was assaulted in 2009 outside his home by a neighbour;
- (iii) The applicant was assaulted again in 2012 by the same neighbour at a party in his own yard;
- (iv) The applicant’s neighbour is “*looking for him*”.

5. Following the submission of an appeal, there was an exchange of correspondence between the applicant’s legal advisers and the Tribunal. The applicant had sought an oral hearing but the Tribunal adopted the position, and the report contained a finding, that the applicant’s country of origin is a safe country of origin under s.39(4)(e) of the Act of 2015 and that, in accordance with s.43(b), the Tribunal would make its decision without holding an oral hearing unless it considered that it was not in the interests of justice to do so. In response, the applicant stated that he wished to have an oral hearing in order to put forward medical documentation. He

maintained that credibility issues arose in the report in relation to injuries sustained by him. It was further stated that medical documentation was awaited from Georgia. Sometime later this documentation did arrive and the applicant made a submission seeking an oral hearing.

6. The Tribunal issued its decision on 18 August 2020 and, for the reasons stated therein, found that the applicant was not entitled to subsidiary protection and affirmed the recommendation made by the IPO, pursuant to s.39(3)(c) of the Act of 2015, that the applicant should be given neither a refugee declaration nor a subsidiary protection declaration.

7. Application for leave to seek certain reliefs by way of judicial review came, in the first instance, before Burns J. Having considered the matter, Burns J directed that the application for leave be on notice to the Tribunal and other respondents. In a written decision given by Burns J on 25 November 2020 ([2020] IEHC 615) the applicant was granted leave to seek the following relief: -

“An Order of *Certiorari* sending forward to this Honourable Court for the purpose of being quashed the decision of the First Named Respondent [the Tribunal] dated 18th August 2020 made under Section 46(3)(a) of [the Act of 2015] affirming the recommendation of [the IPO] under s.39(3)(c) of the Act that the Applicant be given neither refugee nor a subsidiary protection declaration.”

8. The applicant in his written legal submissions to the Court helpfully set out the legal issues arising: -

(1) Did the Tribunal err in finding that it was not in the interests of justice to grant the applicant an oral hearing?

- (2) Did the Tribunal err in finding that the applicant (as a member of a minority subject to ethnic cleansing) was not subject to persecution or serious harm and/or could avail of effective state protection?
- (3) Did the Tribunal err, contrary to sections 28(4)(a) and (b) and section 33(b) of the Act, in the assessment of the medical report provided?

Oral hearing

9. I have already referred to the correspondence that passed between the applicant's advisers and the Tribunal. In giving judgment on the issue of leave, Burns J stated: -

“... In the present case, the reason for requesting an oral hearing was asserted to be that the Applicant could explain medical reports to the First Respondent and explain the reason for their late submission. With respect to this issue, the Court does not understand how the Applicant could give evidence explaining an expert's report and does not understand how the interest of justice required an oral hearing to take place to explain the delay in obtaining this documentation. ...”

10. I agree with the views expressed by Burns J. The applicant may well have been of the view that the medical report contained insufficient information. If this be the case, then it would not be for the applicant himself to expand on the report. Also, it is very difficult to see how the delay in obtaining the reports needed to be explained by oral evidence.

11. The fact that negative credibility findings were made by the IPO does not mean that an oral hearing is required. The Tribunal stated: -

“... The Tribunal is also capable of carrying out an assessment of the credibility of a claim for international protection without recourse to an oral

hearing. The fact that negative credibility findings were made at first instance does not require, in and of itself, an oral hearing of the appeal. In a papers only appeal, the Tribunal remains required by section 28(2) of the Act of 2015 to carry out an assessment of the relevant aspects of application for international protection. The Tribunal is required to exercise extreme care in considering a papers only appeal. ...”

12. This decision of the Tribunal is supported by two authorities. Firstly, *M.A. v. Refugee Appeals Tribunal* [2015] IEHC 528 and, secondly, *S.H.I. v. The International Protection Tribunal* [2019] IEHC 269.

13. It follows from the foregoing that the Tribunal considered the applicant’s request for an oral hearing and rejected this request having correctly applied the statutory provisions and having correctly considered the relevant authorities.

Findings of the Tribunal

14. In his Statement of Grounds, the applicant contends that a number of aspects of the impugned decision were unlawful and/or irrational and/or unfair: -

- (i) The Tribunal erred in finding that the harm feared by the applicant (as a member of a minority subject to ethnic cleansing) did not constitute persecution or serious harm;
- (ii) The Tribunal erred and/or engaged in irrationality in finding that there was an “*effective regime for the investigation, prosecution and punishment of criminals*”;
- (iii) The Tribunal erred and/or engaged in irrationality in finding that the evidence provided did not show serious grounds for considering that Georgia is not a safe country of origin for the applicant, having regard to his particular circumstances;

- (iv) The Tribunal erred and/or engaged in irrationality in accepting that the COI demonstrated that there has been “*conflict in the region between Russia, Georgia and South Ossetian separatists*” and engaged in irrationality in finding that COI “*does not indicate that Georgia is in a situation of international or internal armed conflict*”;
- (v) The Tribunal erred in finding that there was “*no material before the Tribunal to demonstrate that Appellant [the applicant] faces any real risk of serious harm and individual threat to his life by reason of indiscriminate violence if returned to Georgia*”.

15. These are judicial review proceedings and not an appeal from the Tribunal. It is not the function of the Court to review the evidence and then, possibly, substitute its own findings for those of the Tribunal. The function of the Court is to review the process adopted by the Tribunal when making the findings it did. Therefore, I refer to the decision of Cooke J. in *I.R. v. Minister for Justice* [2015] 4 I.R. 144 where the Court set out ten principles which ought to guide the Tribunal in making a determination about the credibility of the applicant.

16. The test for setting aside a decision as being irrational and/or unreasonable is set out in *O’Keeffe v. An Bord Pleanála* [1993] 1 I.R. 39 and *Keegan v. Stardust Compensation Tribunal* [1986] IR 642. For the sake of brevity, I will not set out the well-known passages from these authorities, but it is undoubtedly the case that the bar is set high for a court, on judicial review, to reach a conclusion that a finding or decision was irrational or unreasonable.

17. It should be said that the decision of the Tribunal was detailed and lengthy. The Tribunal considered the political history of the region and accepted that the

country of origin information demonstrated that there had been conflict in the region between Russia, Georgia and South Ossetian separatists.

18. The Tribunal also considered in detail the history given by the applicant and referred to the s.13 interview, where he stated: -

“The applicant stated he had a conflict with criminal gangs since 2009. The applicant stated he was beaten badly in 2009. The applicant stated he was stabbed in 2012 by the criminal gang. The applicant stated his ethnicity is half Ossetian. The applicant stated he moved to Tskhinvali but he could not stay there. The applicant stated he no longer felt safe and decided to leave Georgia.”

In the applicant’s questionnaire he stated that he was in conflict with “*a certain group of people*”. He was asked whether he knew the identity of his attacker and in response he stated: -

“If I tell you his name I don’t want my family to have problems. I don’t want to say his name”.

19. The applicant was assured that the interview was confidential and would not be shared with the Georgian authorities. However, the applicant did not provide the name of the man to the IPO, though he did confirm the man was a neighbour.

20. The Tribunal applied the provision of s.28(7) of the Act of 2015, which provides: -

“Where aspects of the applicant’s statements are not supported by documentary or other evidence, those aspects shall not need confirmation by the International Protection Officer or, as the case may be, the Tribunal, is satisfied that

- (a) the applicant has made a genuine effort to substantiate his or her application,
- (b) all relevant elements at the applicant's disposal have been submitted and are satisfactory explanation regarding any lack of other relevant elements has been given,
- (c) ---
- (d) ---
- (e) the general credibility of the appellant has been established.”

The Tribunal stated: -

“The most basic information that could be provided by the Appellant is the identity of the person who attacked him in Georgia. This is required both for the assessment of the credibility of the claim and the determination of whether the Appellant faces any future risk associated with this previous harm. The Tribunal is not satisfied that any adequate explanation as to his failure to identify his attacker has been provided. The Appellant was assured of the confidentiality of the international protection process but still did not name the person who he fears will harm him in Georgia. Notwithstanding that this resulted in a negative credibility finding by the IPO, this information, or an explanation as to the absence of this information, has not been provided to the Tribunal. The Tribunal is satisfied that the failure of the Appellant to identify his attacker undermines the credibility that these events occurred as well as the general credibility of the Appellant.”

21. From the foregoing it seems to me that the Tribunal applied the correct statutory provisions and that the conclusion it reached on the issue of credibility could not be considered to be either irrational or unreasonable.

22. The applicant was critical of how the Tribunal addressed the issue of Georgia, being designated by the second named respondent as a “*safe country of origin*” pursuant to s.72 of the Act of 2015. Section 33 of the Act provides: -

“A country that has been designated under section 72 as a safe country of origin shall, for the purposes of the assessment of an application for international protection, be considered to be a safe country of origin in relation to a particular applicant only where –

- (a) the country is the country of origin of the applicant, and
- (b) the applicant has not submitted any serious grounds for considering the country not to be a safe country of origin in his or her particular circumstances and in terms of his or her eligibility for international protection.”

From this section it followed that the Tribunal was to consider that Georgia was a safe country of origin unless the applicant submitted serious grounds that would show the contrary. Thus, the burden was on the applicant. The applicant failed to do so.

23. The Tribunal considered the applicant’s s.13 interview and his answers to the questionnaire. As previously referred to, the applicant did not identify his attacker(s). It was also not clear to the Tribunal, on the applicant’s evidence, who he feared were he to be returned to Georgia. The applicant had referred to a “*criminal gang*” or his neighbour. The Tribunal queried why these alleged attacks were not reported to the police in the period between the first attack in 2009 and when he left Georgia ten years later in 2019. This, in the view of the Tribunal, undermined the applicant’s credibility. In doing so, the applicant did not provide evidence under the provisions of s.72(b) referred to above, nor could the decision of the Tribunal, based on the evidence before it, be considered to be irrational or unreasonable.

Medical report

24. The applicant submitted that the Tribunal “*erred and/or engaged in irrationality in the treatment of the medical report of Dr. Brendan Murphy (13 February, 2020)*”. This report reads as follows: -

“To Whom it may Concern,

This man has scarring/previous injuries to right upper limb consistent with previous potential fracture.

Yours sincerely,

Dr. Brendan Murphy”.

25. The Tribunal described this letter as being “*of limited probative value*”. The medical report has to be viewed in the context of what evidence was given by the applicant. The report sets out what injuries were present, but does not materially advance to any extent what caused the injury. There is no objective expert medical opinion as to whether the injuries identified are consistent with the account of events given by the applicant.

26. Given the brief nature of this medical report, I cannot see how it was irrational or unreasonable for the Tribunal to reach the conclusion that it was of limited probative value.

Conclusion

27. By reason of the foregoing, am satisfied that the applicant’s claim ought to be dismissed. I will list this matter for the first Tuesday after fourteen days from the delivery of this judgment to deal with the issue of costs (Tuesday, 15 March 2022).