

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

[2022] IEHC 182
[2020 631 JR]

BETWEEN

L.O.

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr. Justice Cian Ferriter delivered on the 29th day of March 2022

Introduction

1. In these judicial review proceedings, the applicant seeks orders of *certiorari* quashing a decision of the respondent (“the Minister”) made under s.49 (7) of the International Protection Act, 2015 (the “2015 Act”) dated 14 November, 2019 in which the Minister refused the applicant permission to remain in the State; a decision of the Minister made on the same date (and in the same document) under s.50 of the 2015 Act holding that the applicant was not at risk of refoulement if returned to Nigeria and a deportation order made in respect of the applicant by the Minister pursuant to s.51 of the 2015 Act on 13 December, 2019, and which was issued on 31 January, 2020 and which followed in consequence of the earlier two decisions.
2. In broad terms, the grounds upon which the applicant seeks these reliefs are to the effect that the Minister in reaching these decisions acted unlawfully and contrary to the relevant provisions of the Trafficking Directive (Directive 2011/36/EU of 5 April, 2011 on preventing and combatting trafficking in human beings), and related administrative arrangements for the protection of victims of human trafficking, by failing to take into account the designation of the applicant as a potential victim of human trafficking for sexual exploitation, in circumstances where, the applicant alleges, reasonable grounds remained for such belief and where she contends she is entitled as a matter of law to remain in the State when she has such a status.
3. It was further alleged that the Minister failed, as part of the humanitarian considerations assessment under s.49(3)(b) of the 2015 Act, to take into account, or have proper regard to the applicant’s status as a potential victim of trafficking and that there was a further error in failing to have proper regard to the applicant’s claim that she was at risk of refoulement as a victim of trafficking in the s.50 decision.
4. Finally, there was a complaint that the decisions were not adequately or at all reasoned and that the decisions relied on COI of no relevance to the basis of the claims made to the Minister by the applicant under s.49 and s.50.

Background

The applicant’s asylum/international protection application

5. The material background is as follows. The applicant is a 31-year-old Nigerian national. She flew from Lagos to France on 17 January, 2016, on a Nigerian passport which

contained an Irish visa issued by the Irish embassy in Abuja, Nigeria on 19 November, 2015. On 27 January, 2016, the applicant was transferred from France to Ireland under the provisions of the Dublin III Regulation. On her arrival in Ireland, the applicant applied for asylum here on the basis that if returned to Nigeria she would face persecution based on her religion and membership of a particular social group.

6. In the course of her refugee application process here, the applicant maintained that she had worked as a prostitute after leaving school, and that her parents had been killed by Boko Haram in October 2015, after which a man known to her as "Mr. Peter" who claimed to be from the Red Cross, brought her to a camp in Lagos. She says that she was used there for sex. She claimed that Mr. Peter arranged her travel from Nigeria and organised her travel documents, including making the application for her visa to the Irish embassy in Abuja where she gave her fingerprints.
7. The applicant maintained that Mr. Peter made her swear an oath on a shrine that she would die if she did not repay a sum of €50,000 which he was charging her to bring her to France and onwards to Italy. At various points in the process, the applicant asserted that she was born on 15 August, 1998, when her real birth date was 15 August, 1990. It appears that in the course of her visa application she submitted a marriage certificate evidencing her marriage to John O. and a birth certificate for her son with him.
8. The applicant's application for international protection was refused by the IPO in a report under s. 39 of the 2015 Act. In a decision issued on 3 April, 2018, the IPO rejected her claim that she had been trafficked. The applicant appealed to IPAT on 1 May, 2018.
9. A hearing proceeded before IPAT on 26 November 2018 and IPAT gave its decision on 12 December 2018.

Terms of IPAT's decision on international protection

10. It is clear from the terms of IPAT's decision that it rejected the applicant's entire story as regards her parents being killed by Boko Haram, her story as to the circumstances in which she came to get her Irish visa and her story in relation to her alleged trafficking by "Mr. Peter" and the sums said to have been paid to him for same.
11. The Tribunal determined (at para. 5.2 of its decision) that:

"In the view of the Tribunal, this appellant was not interested in responding to the questions put to her by the Tribunal, or any party, but only in putting forward a very particular narrative and version of events that she aligned with, and in so doing was very strident in her responses. In the circumstances, and for the reasons as set out also hereunder, the Tribunal does not accept that the balance of probabilities that the appellant's parents were killed in any Boko Haram attack, and/or that as a consequence, the appellant met the said Mr. Peter in the circumstances as described".
12. The Tribunal went on to reject as "totally lacking in credibility" her claims that she had no involvement in the obtaining of her Irish visa and that everything was organised by Mr.

Peter; that she was going to Europe against her will and that Mr. Peter was threatening to kill her if she did not go to Europe that she had to swear an oath on a shrine that she would pay back a sum of €50,000 when she went to Italy and that she was afraid of this “juju”; that she was obliged to pay a sum of €50,000 to a Madame in Italy, at Mr. Peter’s insistence.

13. The Tribunal held that her actions in the context of her visa application (which required use of her own passport) were “not the actions of a genuine victim of trafficking who did not want to be processed with an Irish visa”. The Tribunal held that it did not accept “on the balance of probabilities that this entire operation was undertaken by the appellant against her will as alleged”. Other specific aspects of her evidence about her travel to France and what happened when she arrived there were also rejected.
14. The Tribunal concluded (at para. 5.3) that “the entire story is totally lacking in credibility, and the applicant became irritable, clapping her hands in exasperation, when being asked questions about any aspect of it”.
15. The Tribunal went on to consider other aspects of the applicant’s claims. The applicant maintained before the Tribunal the date of birth on her passport and visa application was not correct, and that she was born in 1998 and not 1990. (The applicant accepted in her affidavit in these judicial review proceedings that this evidence was false). The Tribunal expressly found that “the Tribunal notes that this appellant presents as a mature, self-possessed young woman, and expresses incredulity that she might only be 20 years of age, as she now proclaims”.
16. The Tribunal then found, at para. 5.4.1, “that the appellant’s claim is entirely lacking in credibility and rejects all the material facts of her claim, except for her nationality”.
17. It is clear from the foregoing that IPAT (as had IPO before it) rejected the applicant’s claims that she had been involved in child prostitution, or any prostitution, or that she had been trafficked for sexual exploitation.
18. No judicial review challenge was bought by the applicant against IPAT’s findings and determination.

Permission to Remain process

19. In accordance with s.49(1) of the 2015 Act, once a recommendation had been made refusing international protection, the Minister proceeded to consider whether to give the applicant permission to remain in the State. This (first) permission to remain decision is then made pursuant to s.49(4).
20. S.49(3) provides that:

(3) 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.*

s.49(7) provides that:

"Where the Tribunal affirms a recommendation referred to in section 39(3)(c) made in respect of an application, the Minister shall, upon receiving information from an applicant in accordance with subsection (9), review a decision made by him or her under subsection (4)(b) in respect of the applicant concerned."

21. Under s.49(9), the applicant may submit further information to the Minister following the Tribunal's decision on international protection, where that information would have been relevant to making of a s.49(4) decision or where there has been a material change of circumstances.
22. In this case, on 9 April, 2018, the IPO issued an "examination of file under s.49(3) of the International Protection Act, 2015" document, setting out its decision under s.49(4)(b) of the 2015 Act that the applicant be refused permission to remain in the State. That examination and decision followed from the IPO's earlier recommendation pursuant to s.39(3)(c) of the 2015 Act that the applicant should be given neither a refugee declaration nor a subsidiary protection declaration.
23. Following IPAT's decision upholding the IPO recommendation i.e. that the applicant should be given neither a refugee declaration nor a subsidiary protection declaration, the applicant sought a review pursuant to s.49(7) of the s.49(4)(b) decision refusing her permission to remain. In a letter of 17 December 2018 to the IPO, the applicant's former solicitors enclosed a number of documents in support of her application for permission to remain in Ireland. The documents included documents related to personal qualifications and volunteer work carried out by the applicant in Ireland. The letter then stated:

"We also enclose copies of email correspondence between ourselves and the Visa Office and the Garda National Immigration Bureau outlining our suspicions about the visa which was issued to our client by the Irish Embassy in Abuja. Regrettably these matters were not taken on board by the Tribunal. We ask that they now be given serious consideration and that no decision to remove our client be made at least not until the outcome of the Visa Office's investigation into the matter. In our respectful submission, our client is at risk of refoulement as a victim of trafficking if she is returned to Nigeria."

Finally, we asked you to consider the Ruhama letter submitted with our client's appeal to the Tribunal. We submit that there was a compelling case based on her history of abuse and underage prostitution, for humanitarian permission to remain".

The Minister's permission to remain and non-refoulement Decisions under s.49(7) and s.50

24. The Minister then made decisions on 14 November, 2019 in which the Minister refused the applicant permission to remain in the State, pursuant to s.49(7) of the 2015 Act, and also rejected the applicant's contention that her return to Nigeria would be in breach of the principle against refoulement, pursuant to s.50 of the 2015 Act. I will come to the detail of the decisions shortly.
25. A deportation order was made against the applicant by the Minister pursuant to s.51 of the 2015 Act on 13 December, 2019, and was issued on 31 January, 2020. This followed in consequence of the earlier two decisions.

Legal provisions

26. In order to put the applicant's arguments in their proper context, it is appropriate to briefly summarise some of the relevant Irish and EU statutory provisions and the related administrative arrangements for protection of victims of trafficking.
27. The material parts of s.49 have been addressed above. s.50 of the 2015 Act provides in material part as follows:
- "50. (1) A person shall not be expelled or returned in any manner whatsoever to the frontier of a territory where, in the opinion of the Minister—*
- the life or freedom of the person would be threatened for reasons of race, religion, nationality, membership of a particular social group or political opinion, or*
- there is a serious risk that the person would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.*
- (2) In forming his or her opinion of the matters referred to in subsection (1), the Minister shall have regard to—*
- (a) the information (if any) submitted by the person under subsection (3), and*
- (b) any relevant information presented by the person 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.*
- (3) A person shall, where he or she becomes aware of a change of circumstances that would be relevant to the formation of an opinion by the Minister under this section, inform the Minister forthwith of that change."*
28. Article 11 of the Trafficking Directive is headed "Assistance and support for victims of trafficking in human beings". It provides in Article 11(2) that "Member States shall take

the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to any of the offences referred to in Articles 2 and 3". It further provides in Article 11(4) that "Member States shall take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations." The "assistance and support measures" are specified at article 11(5) to include "the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment, including psychological assistance, counselling and information, and translation and interpretation services where appropriate."

29. Article 12 is headed "Protection of victims of trafficking in human beings in criminal investigation and proceedings" and principally addresses the entitlements of victims of trafficking in the context of criminal proceedings relating to same.

The administrative arrangements for suspected victims of trafficking

30. The applicant relies on the 'Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking' published by the Minister ("the administrative arrangements document"). The administrative arrangements document states, in material part, as follows:

"[1] This notice provides information on the administrative arrangements which apply where a foreign national is identified as a person suspected of being a victim of human trafficking and the Minister for Justice and Law Reform is required to consider that person's immigration status in the State. In particular, this document sets out the administrative arrangements whereby such a person may be granted a period of recovery and reflection in the State and may also, in certain circumstances, be granted one or more periods of temporary residence in the State.

[3] This notice applies to a foreign national who is identified as a suspected victim of human trafficking, that is, where there are reasonable grounds for believing that he or she is a victim of an offence under section 2 or 4 of the Criminal Law (Human Trafficking) Act 2008 or section 3 (other than subsections (2A) and (2B)) of the Child Trafficking and Pornography Act 1998. Whether there are reasonable grounds for belief in any particular case is determined by a member of the Garda Síochána not below the rank of Superintendent at the Office of the Garda National Immigration Bureau (GNIB) at 13-14 Burgh Quay, Dublin 2. For the purpose of this notice a "foreign national" means a person from outside the European Economic Area.

[5] Subject to paragraph 10, a person who has been identified by a member of the Garda Síochána not below the rank of Superintendent in GNIB as a suspected victim of human trafficking may be granted a permission to remain lawfully in the State for a period of 60 days (a 'recovery and reflection period'). The purpose of the recovery and reflection period is to allow the person-

a) *time to recover from the alleged trafficking, and*

b) *to escape the influence of the alleged perpetrators of the alleged trafficking*

so that he or she can be take an informed decision as to whether to assist Gardaí or other relevant authorities in relation to any investigation or prosecution arising in relation to the alleged trafficking.

[7] A person who has been granted a recovery and reflection period will not be the subject of removal proceedings for so long as his or her recovery and reflection period remains valid.

[12] In circumstances where the Minister is satisfied that –

a) *the person has severed all contact with the alleged perpetrators of the trafficking, and*

b) *it is necessary for the purpose of allowing the suspected victim to continue to assist the Garda Síochána or other relevant authorities in relation to an investigation or prosecution arising in relation to the trafficking,*

the Minister will grant to the person concerned a temporary residence permission valid for a period of 6 months.

[13] A temporary residence permission may be granted during the recovery and reflection period, on foot of a written request to INIS, or following the expiry of that period as the Minister considers appropriate. A temporary residence permission will be renewed in circumstances where the Minister is satisfied that the person has not renewed contact with the alleged perpetrators of the trafficking, and it is necessary for the purpose of allowing the suspected victim to continue to assist the Garda Síochána or other relevant authorities in relation to an investigation or prosecution arising in relation to the trafficking.”

31. Paragraph 16 of the administrative arrangements document provides as follows:

"A person to whom this notice applies who makes an application to be declared a refugee and is refused such a declaration may seek to have the fact that they have been identified as a suspected victim of human trafficking taken into account in any consideration of whether a proposal to make a Deportation Order should now be made under s.3(3) of the Immigration Act 1999”.

32. While the reference to s.3(3) of the Immigration Act 1999 is outdated (the relevant provision now being s.51 of the 2015 Act), the applicant maintains that the Minister acted in breach of the substance of this provision by failing to have regard to the applicant’s status as a suspected victim of human trafficking in making the s.49(7) and s.50

decisions, and by failing to allow her a recovery and reflection period or a temporary residence permission.

33. In a document published in 2015, by way of supplement to the administrative arrangements document, entitled *'Guide to Procedures for Victims of Human Trafficking in Ireland'*, it was stated:

"As a potential victim of trafficking, please remember that you will not be taken from Ireland while the superintendent in the GNIB decides if there are reasonable grounds to believe you are suspected victim of the crime of human trafficking under the Criminal Law (Human Trafficking) Act 2018". (emphasis in original)

34. This document also specifically states, in relation to asylum seekers, that *"If you are an asylum seeker and you are a potential or suspected victim of trafficking, you will stay in the asylum process and the Reception and Integration Agency (RIA) will provide the accommodation and supports that you need"*.

35. Under the heading 'Immigration Permission' it states: -

"An Garda Síochána will investigate your complaint of human trafficking while the Office of the Refugee Applications Commissioner processes your claim for asylum. You are not entitled to any extra immigration permission during this time. If you are refused asylum in Ireland, you may ask the Irish Naturalisation and Immigration Service to look at your identification as a suspected victim of trafficking when considering your case".

36. This latter sentence reflects the approach set out in paragraph 16 of the administrative arrangements document, set out above.

Discussion

37. I will turn now to discuss the principal grounds of challenge advanced by the applicant in these proceedings.

The alleged failure to take into account the applicant's status as a suspected victim of trafficking

38. The reasons for the Minister's decisions to refuse permission to remain and holding that there was no risk of refoulement were set out in a "s49(7) review" document ("the review document"). The review document stated *"all representations and correspondence received from or on behalf of the applicant relating to permission to remain and permission to remain (review) have been considered in the context of drafting this report, including the s.35 interview report/record and matters to be considered for PTR review arising from the s.35 interview record"*.

39. In the review document, the decision maker set out the documentation submitted on behalf of the applicant in support of her application for review under s.49(7). These included a copy of a letter from the HSE anti-trafficking team, dated 29 May, 2018 which had been submitted to IPAT and a copy of a letter from Ruhama and a report to GNIB

dated 31 May, 2018 also submitted to IPAT. It will be recalled the applicant's permission to remain submission had asked that the Minister consider the Ruhama letter.

40. It is important to note that the applicant, in the submissions made on her behalf to the Minister in the context of seeking permission to remain, did not specifically ask that the Minister take into account that she had been identified as a suspected victim of human trafficking pursuant to the administrative arrangements document. Rather, the applicant, through her solicitors, invited the Minister to have regard, in addition to the Ruhama letter, to a specific aspect of her case as regards trafficking, being the circumstances of the procurement of her visa from the Irish Embassy in Abuja which it was alleged that IPAT had not taken on board.
41. The review document expressly engaged with that submission. Under the heading s.49(3)(b) "Humanitarian Considerations" the decision maker stated as follows:

"Section 49(3)(b) – Humanitarian Considerations

The applicant's previous legal representatives, KOD Lyons, submit that they have suspicions regarding the Irish visa that was issued to the applicant in 2015 by the Irish Embassy in Abuja. No further representations have been received in relation to this submission, and it is noted that the tribunal member at the applicant's IPAT hearing found that the documents submitted for the applicants visa application were accepted as genuine and sufficient for her to be granted a visa, and was not prepared to accept that Consular Officials in the Irish Embassy in any manner, so erred, or were otherwise engaged in any negligent or fraudulent management of those documents in order to give a visa that was not warranted, and/or to which the applicant was not lawfully entitled. "

42. In my view the Minister cannot be criticised for failing to have regards to the administrative arrangements document when this was never the subject of any submission to her: the decision maker did properly engage with and consider the submission in fact made. In relation to the decision under s.50 of the 2015 Act on prohibition of refoulement, the decision maker stated as follows in the review document:

"The applicant has made representations regarding the prohibition of refoulement. The applicant's legal representatives submit that the applicant is at risk of refoulement as a victim of trafficking if she is returned to Nigeria. The applicant's international protection claim was refused by the IPO and affirmed by the IPAT as she was determined to be a person not in need of international protection. It is noted that the only core fact of the applicant's claim that was accepted by the Tribunal was that the applicant is a national of Nigeria."

43. It is clear from this that the decision maker was relying on the IPO and IPAT rejection of the applicant's contention that she was a victim of trafficking. As a matter of law the Minister is entitled when performing the refoulement analysis under s.50, to take into account the earlier findings of the IPO and IPAT that there was no such risk if the

applicant were returned to Nigeria: see *MN (Malawi) v. The Minister for Justice & Equality* [2019] IEHC 489.

44. In that case, Humphreys J noted that it was not correct to say that the Minister - in making a deportation order or in refusing permission to remain - could not rely on protection decisions including IPAT decisions. Humphreys J noted that a deportation order was the end stage of a lengthy process of carefully calibrated steps and that it was clear that any decision maker can consider appropriately what happened during previous steps:

"[26] More broadly, it is certainly not correct to say that the Minister, in making a deportation order or refusing permission to remain, cannot rely on protection decisions including IPAT decisions. A deportation order is the end-stage of a lengthy process of carefully calibrated steps. It is clear that any decision-maker can consider appropriately what happened during previous steps.

*[29] In relation to those concerns, one can say as follows. Firstly, s. 50 does not require a de novo reconsideration of all matters at this stage of making the deportation order. The Minister can consider all of the relevant circumstances of the case. That is implicit, and by definition that must include the decisions or recommendations of the IPO and IPAT. It is open to the Minister to in effect adopt the reasoning and conclusions of a protection decision for the purposes of the deportation order, and indeed, this is normally implicit in the Minister's decision-making. Furthermore, in particular, the outcome of the refoulement consideration can normally be determined by reference to the outcome of the protection claim, unless exceptional circumstances arise such as the application of the exclusion clause or anything distinctly new or additional presented such as to persuade the Minister otherwise: see the point made in *Meadows v. Minister for Justice and Equality* [2010] IESC 3 [2010] 2 I.R. 701 at 731 per Murray C.J., citing *Baby O v. Minister, Equality and Law Reform* [2002] IESC 44 [2002] 2 I.R. 169 at 193, to the effect that if the applicant did not make submissions regarding refoulement, the decision ' would have been one of form only and not required any rationale'. That clearly implies that it is not necessary to reconsider the matters de novo and that there is an entitlement to rely on previous rejections."*

45. In my view, it is clear from the review document that the decision maker had regard to the fact that the applicant's claims to have been trafficked were rejected by the IPO and IPAT and that rejection materially informed the Minister's decision to refuse permission to remain and to take the view that the prohibition on refoulement did not apply on the facts, and therefore that the making of the Deportation Order was appropriate.
46. In the circumstances, I do not believe there was any failure to take into account the applicant's alleged status as a victim of trafficking, as contended for in these proceedings.

Alleged breaches of rights under Trafficking Directive and Administrative Arrangements

47. The applicant contended that her rights under Articles 11 and 12 of the Trafficking Directive had been breached and, in particular, that the Minister has acted unlawfully in

seeking to remove her from the State in circumstances where she was still entitled to the benefit of the protection mechanisms under the Directive. The applicant submitted that there is no evidence of a determination by a superintendent at GNIB that there were no longer reasonable grounds for the belief that the applicant is a suspected victim of human trafficking, such as to mark the end of her entitlement to protection under the Trafficking Directive and the administrative arrangements document. She contends in the circumstances that she remains entitled to remain in the State and her deportation would be unlawful as a result.

48. In my view, the applicant's case in this regard is not well-founded. As a matter of fact the applicant has ceased to be a suspected victim of trafficking since the closure of the investigation into her trafficking claims in September 2019, as set out in the affidavit of Detective Garda Paul Kelly, discussed below. It follows that the protections which would apply to a suspected victim of trafficking such as the 60 day reflection and recovery period or a 6 month temporary residence permission had no application to the applicant from that point. This is quite apart from the fact that IPAT roundly rejected the applicant's claims to have been a victim of trafficking at all.
49. The Minister tendered an affidavit from Detective Garda Paul Kelly who is attached to the Garda National Protective Services Bureau, which outlined the steps taken by the Gardaí following the applicant's referral from Ruhama on 14 October, 2017 as a suspected victim of trafficking.
50. Detective Garda Kelly averred that he and another detective garda met with the applicant on 9 January, 2018 at Ruhama's offices in Dublin. He averred that the applicant was offered services under the National Action Plan for Potential Victims of Human Trafficking. He and a number of other Gardaí met with the applicant on 11 and 19 April, 2018 at her accommodation in Sligo and obtained a statement from her, in which she described being trafficked from Nigeria to Italy for the purposes of prostitution. He said that she was considered therefore to have cooperated with the garda inquiry. He noted that the applicant was also referred to the HSE Anti-Trafficking Team as confirmed by a letter from that team dated 29 May, 2018.
51. Detective Garda Kelly averred that the criminal/trafficking investigation could not proceed beyond the initial stages due to lack of evidence or detail in the matter other than the single first name (or possibly surname) which had been provided by the applicant. It was also limited by the fact that there was no suggestion that any of the offences outlined had been committed in Ireland, the criminality described being specific to conduct in Nigeria and/or possibly France. It was considered in the circumstances that there was nothing of substance that might justify a referral to the French and Nigerian police authorities. The investigation was precluded from referring an inquiry to the Nigerian authorities given that the applicant was seeking asylum in Ireland from the Nigerian State. He averred that all logical lines of inquiry, including through the auspices of Europol, were exhausted in the matter.

52. Detective Garda Kelly averred that “a full file on the matter was submitted to a detective superintendent in the Garda National Protective Services Bureau in September 2019 at which point the investigation had concluded”.
53. Detective Garda Kelly averred that the investigating garda member was unable to contact the applicant as the phone number she had supplied was not in service after the taking of the statement from her and that, as a result, she may not have been aware that the investigation had concluded until so informed in the context of these proceedings.
54. I should say that given that the applicant remained in direct provision accommodation at the same address in Sligo, it is regrettable that the fact that the investigation had concluded was not brought to her attention. However, it does not seem to me that that renders the status of the investigation other than an investigation which had closed, as deposed to by detective Garda Kelly.
55. In my view, in light of the foregoing evidence, it was clear that the applicant was properly initially treated as a suspected victim of human trafficking and that she was afforded appropriate protective mechanisms, including referral to the HSE Anti-Trafficking Unit, and engagement with the support services of Ruhama, in that context. However, the investigation ran into sand and was closed. In a parallel development, which cannot be ignored in the context of addressing the question as to whether any of the applicant’s entitlements under the Trafficking Directive were breached, the IPO, and the IPAT on appeal, concluded that the applicant’s story that she was a victim of trafficking was not credible and rejected that story in its entirety. The applicant’s claim to remain entitled to protection as a suspected victim of trafficking is untenable in the circumstances.
56. The applicant sought to rely on the decision of O’Malley J in *P. v. Chief Superintendent GNIB* [2015] IEHC 222. In this case, O’Malley J held that the Trafficking Directive was directly effective and that an applicant who has failed to be afforded the protections under the Directive could seek judicial review in respect of same. However, that was a very different case on the facts where O’Malley J held that the view was erroneously taken that the applicant in that case was not entitled to the benefit of the administrative arrangements. That is not the case here, where the applicant was conferred with the benefits of the arrangements and where the period of the protections under the arrangements has come to an end such that no outstanding entitlements - such as a temporary residence permission pending the conclusion of a criminal investigation into the suspected trafficking - arise.

Failure to properly reason decisions and reliance on irrelevant COI?

57. The applicant sought to rely on the decision of Barrett J in *Y v. Minister for Justice and Equality* [2021] IEHC 82 in support of her argument that the impugned decisions failed to properly reason why the applicant’s case for permission to remain/non-refoulement was rejected.
58. In the Y case, the applicant submitted material in the context of the s.49(7) review decision which had not previously been seen by the IPO or the IPAT. Barrett J held that

there was a failure by the Minister to give cogent reasons for his decision under s.49(3) and s.50 in circumstances where the impugned decision in that case engaged “in no analysis (none at all) of the significance” of the additional documentation relevant to his leave to remain case which concerned his claimed membership of a Catholic lay organisation which membership he maintained would expose him to State persecution where he to be returned to his country of origin. However, such considerations do not apply to the case before me as it is not the case that new factual material or evidence was put before the Minister in the context of the s.49(7) review which warranted separate engagement in the impugned decisions. As we have seen, the specific submissions and information advanced in respect of the s.49(7) review were engaged with on the face of the review document.

59. Fundamentally, the review document engaged with the applicant’s contention that she was a victim of trafficking but rejected same, on the basis that IPAT had rejected same. This basis for the decision is clearly set out in the review document.
60. Insofar as other complaints were raised in the statement of grounds as regards adequacy of reasons for the impugned decisions, in my view, the decisions are adequately reasoned. The objective reader of the review document can understand the basis for the decisions in the document, particularly in circumstances where the applicant’s core case as to having been involved in prostitution and trafficked to Europe for same had been rejected by the IPO and IPAT.
61. Barrett J in Y at paras. 81-83 held that the reliance on “freedom of movement” COI fell foul of the analysis of Cooke J in *JDS v. Minister for Justice and Equality* in that there was a failure to draw any linking explanation between reliance on that piece of COI and the reason for rejecting the applicant’s case.
62. I should say that it is difficult to see that the ‘freedom of movement’ section of the US Department of State 2018 Country Report on Human Rights Practices in Nigeria as cited in the review document in this case was relevant to the applicant’s contention that she was at risk of trafficking if returned to Nigeria, as fairly conceded by counsel for the Minister at the hearing before me. However, I accept the point made by counsel for the Minister to the effect that this was not an operative error and that the decision maker had prior to that in her review document set out ample grounds to justify the rejection of the non-refoulement submission made on behalf of the applicant, particularly in light of the IPAT rejection of the core of the applicant’s claims.
63. Accordingly, in my view, the applicant’s case in alleged failure of the duty to give reasons is not well founded.

Other grounds

64. While counsel for the applicant, in his oral submissions at the hearing of this judicial review, focused on the points addressed above, I will for completeness, also briefly address the other points raised in the applicant’s statement of grounds. The applicant in her statement of grounds complained, variously, that the s.49 decision failed to make any

express determination in relation to the nature of the connection with the State under s.49(3)(a) of the 2015 Act; that the Minister erred in finding that the applicant's medical condition did not meet the threshold of a violation of article 3 ECHR and also failed to properly consider the applicant's article 8 case under s.49(3)(b). It was also contended that the Minister erred in finding no interference with the applicant's private life. In my view, these are points which go to the merits of the Minister's decisions. It is clear from the face of the review document that the Minister expressly engaged with the case made by the applicant as to her medical circumstances and her connection with the State. I see no error of law in the circumstances.

Delay in bringing judicial review challenge

65. The s.49(7) and s.50 decisions were made on 14 November, 2019 and communicated on 28 November, 2019. The Deportation Order was made on 13 December, 2019 and notified to the applicant on 31 January, 2020. Pursuant to s.5 Illegal Immigrants (Trafficking) Act, 2000 as amended there was a time limit of 28 days in respect of the s.49(7) and s.51 (deportation order) decisions. These expired on 26 December, 2019 and 28 February, 2020, respectively. The ordinary Order 84 three-month time limit applied in respect of the s.50 decision and this expired on 28 February, 2020.
66. The applicant's application for judicial review was filed on 14 September, 2020, and leave was granted on 19 October, 2020. On any view, this was very considerably outside the stipulated time limits.
67. The applicant swore an affidavit in which she says she formed the intention to bring an application for judicial review to challenge the impugned decisions after she received them *"but my original solicitors did not recommend a judicial review, and I was required to seek a second opinion from BKC Solicitors, who I contacted on or around 10th February, 2020. I am advised counsel drafted proceedings on 28th April, 2020, however, due to the Covid crisis my solicitor was not in a position to meet me until today [end of September 2020] to complete these proceedings. In addition, I say that the travel and movement restrictions arising from the Covid-19 emergency meant that there were logistical difficulties for me in swearing the grounding affidavit and affidavit of verification."*
68. The applicant's solicitor made a similar averment to this latter averment as to logistical difficulties arising from Covid-19. He stated that the applicant *"contacted this office on or around 27th January, 2020, and I requested her file from her previous solicitors KOD Lyons, who informed me that her file had transferred to Abbey Law Solicitors. I requested her file from Abbey Law Solicitors on or around 10th February, 2020 and received it on 27th February, 2020. The file is voluminous, and runs to over 843 pages. In the interim Barrett J had issued his judgment in I v. The International Appeals Tribunal & Ors. [2020] IEHC 63 (18th February, 2020) which is relevant to the applicant's case and circumstances."*
69. In *DFS v. Refugee Applications Commissioner* [2017] IEHC 127, O'Regan J followed the view of Irvine J in *JA v. Refugee Applications Commissioner* [2009] 2 IR 231 that "an

extension of time would not be granted merely to allow new lawyers to take a different view as to the legality of a decision already considered by their predecessors. To do so would lead to an open ended right to maintain judicial review proceedings”.

70. In my view, the applicant has not made out good and sufficient reason for an extension of time in this case. It is clear from the decision of Irvine J in JA that good and sufficient that good and sufficient reason is not made out by reason of an applicant seeking a second opinion after a first set of lawyers had advised her that she did not have a good case.
71. While I accept that the existence of Covid restrictions made matters more logistically difficult for applicants issuing proceedings, I cannot accept that there was a basis for the applicant to take over 6 months from the outset of the pandemic in March 2020 to file her papers for a leave application (which were filed in September 2020). It is not explained why, for example, no letter was sent to the Minister at a much earlier point calling upon her to revoke the impugned decisions and threatening proceedings if she refused to do so. It is not explained why a leave application was not sought to be brought grounded on a solicitor’s affidavit with an undertaking to file a sworn confirming affidavit of the applicant once it was safe to do so. The courts remained open throughout the pandemic period to deal with cases and any time-sensitive applications such as judicial review leave, in particular. This is not a situation where the applicant missed the deadlines by a number of weeks; in the case of the s.49(3) and the Deportation Order application, the time limit has been missed by some eight months.
72. Notwithstanding that the applicant had an arguable case I am not satisfied that either good and sufficient reason has been made out for the very lengthy delay in bringing the leave application, or that the interests of justice would merit granting an extension of time of the magnitude of the extension sought. In the circumstances, I refuse the applicant an extension of time to pursue the reliefs sought.

Conclusion

73. I refuse the applicant an extension of time to pursue the reliefs sought. In any event, having considered the applicant’s arguments in support of the reliefs sought, I am satisfied for the reasons set out in this judgment, that the applicant would not have been entitled to any of the reliefs sought.