

**THE HIGH COURT
JUDICIAL REVIEW**

[2022] IEHC 275
[Record No: 2020/857 JR]

**IN THE MATTER OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT, 2000
IN THE MATTER OF THE INTERNATIONAL PROTECTION ACT, 2015**

BETWEEN:

T.B.

APPLICANT

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL

AND

THE MINISTER FOR JUSTICE

RESPONDENTS

JUDGMENT of Ms. Justice Siobhán Phelan delivered on the 13th day of May, 2022

INTRODUCTION

1. In appeals against the refusal of refugee status or subsidiary protection under the International Protection Act, 2015 [hereinafter “the 2015 Act”] where the “*accelerated procedure*” applies, s. 43(b) of the 2015 Act requires the International Protection Appeals Tribunal [hereinafter “the Tribunal”] to make its decision without holding an oral hearing unless the Tribunal considers that it is not in the interests of justice to do so.

2. At the heart of these proceedings is whether, on the facts and circumstances of this case which includes particular adverse credibility findings, it was contrary to the requirements of fair procedures and/or in breach of statutory duty for the Tribunal to refuse an oral hearing and proceed to determine an appeal on the papers.

3. A second issue in the case is whether the Tribunal should have afforded a further opportunity to the applicant to submit a medical report before proceeding to make a decision.

BACKGROUND FACTS

4. The applicant applied for international protection on the 28th of May, 2019 pursuant to the provisions of the 2015 Act. Her application is based on her well-founded fear of persecution in Georgia at the hands of her former partner due to her membership of a particular social group, comprised of women at risk of domestic violence. She claims to have suffered physical violence at the hands of her partner.

5. Following her arrival in the State the applicant was placed at a reception centre pursuant to European Communities (Reception Conditions) Regulations 2018 (S.I. 230/2018). She was originally placed in the Baleskin Reception Centre. On the 1st of July 2019, she was moved by the International Protection Accommodation Service of the second named respondent to the Maldron Hotel in Limerick. While there, on the 11th of July, 2019, she completed her application for International Protection Questionnaire.

6. In completing her questionnaire the applicant stated that she was suffering from psychological and physical problems consequent upon the effects of her experiences as the victim of domestic abuse. In her questionnaire she claimed that Mr. R. was her partner for four years but that he left Georgia and went to Russia. She suspects that he is involved in organised crime. When he left, she states that his cousin, one Mr. U. was asked to look after her and a relationship developed between the two of them. She claimed that when Mr. R. found out about the relationship, he threatened her and told her that he would come back to Georgia very soon to torture and kill her. She claimed that a lot of people found out about the affair and in their treatment of her caused her to be humiliated. She claimed to have been followed, stalked and controlled by Mr. R.'s people at work and at home. She claimed that she was in constant fear. She claimed that her former partner was not a law-abiding citizen and she was very afraid of him. She claimed that she took her savings and went to the Netherlands where her godmother lived but she had to return to Georgia. She then researched safe countries to live and claimed that Ireland appeared safe so she chose to come here. She did not report any of the threatening incidents complained of to the Georgian authorities (Q. 65a). She stated that she did not report these incidents because she believed her former partner to be a person who did not obey the law and had a criminal mentality and criminal associations. She stated that she hid at her relatives and her friend's places for five months in a named town near Tbilisi. (Q. 66b).

7. On the 21st of September, 2019, she was again moved, this time to Millstreet Accommodation Centre, County Cork. The frequency with which she was moved is a factor

considered relevant to her ability to consistently access medical care and support in the Irish State.

8. On the 8th of January, 2020, pursuant to s. 35 of the 2015 Act, the applicant was interviewed by an international protection officer. In the record of the interview it is noted that the applicant claimed to have discovered that she was pregnant in February, 2017 and that when her former partner discovered that she was pregnant he was abusive and attempted to choke her inducing a miscarriage. She subsequently claimed to have had an affair with her former partner's cousin while he was out of the country. Her former partner became aware of the affair, threatened to kill her and she was subjected to threats while in her work place. She claimed that very often when she finished her shifts at night she became aware of a car following her. She asserted that she could not return to her parents because of social values which frowned on her extra marital relationship. She claimed to have travelled to the Netherlands to visit her godmother but did not stay and returned to Georgia because her godmother had no space. She said that she was afraid that she would be killed and is concerned that an attack on her brother was connected with her former partner and that her brother was also in danger because of his family connection to her.

9. It is clear from the record of the interview that during the course of her interview the applicant was asked to explain certain inconsistencies and a range of matters were covered with her including her failure to report her former partner's abuse to the police in Georgia, why she did not mention certain matters in her application, why she had returned to Georgia from the Netherlands instead of making an application for protection and why she returned to the address known to her former partner.

10. By letter dated the 10th of February, 2020, the applicant was sent a copy of a report prepared pursuant to s. 39 of the 2015 Act and dated the 27th of January, 2020 [hereinafter "the s. 39 report"]. She was advised that pursuant to s. 39(3)(c), the international protection officer recommended that the applicant be given neither a refugee declaration nor a subsidiary protection declaration. She was advised of a right of appeal in accordance with s. 41(1) of the 2015 Act.

11. The report identified the material facts of the claim as (a) the applicant's nationality and personal circumstances and (b) that the applicant was threatened and intimidated by and on behalf of her former partner (p. 6).

12. It is clear from the s. 39 report that the International Protection Office [hereinafter "the IPO"] found that a number of credibility issues arose in relation to the material facts of the applicant's claim including:

a) The IPO found that in the s. 13(2) interview, the Applicant had described Giorgi as her fiancé but during the s.35 interview, the Applicant stated she was not married or engaged to him (s. 35, Q. 29). This inconsistency was put to the Applicant, where she replied that the language is different and she intended to communicate that he was her boyfriend. The IPO found this explanation not to be credible (p. 8, s. 39 report)

b) The IPO found that the timeline of when Giorgi moved to Russia and when the purported affair with the cousin began to be internally inconsistent (p.8)

c) The IPO found that the Applicant had not provided a credible explanation to address the inconsistency regarding the Applicant's initial claim that she had been threatened over the phone and the internet, which later differed from her claim in the s.35 interview that she had only been threatened over the phone (p. 8/9).

d) The IPO found that it would have been reasonable for the Applicant to stay in the Netherlands for the three months she was entitled to and to claim international protection whilst there. The IPO was not satisfied that the Applicant had given a credible explanation as to why she returned to Georgia three days later (p. 9).

e) The IPO found that it was not credible that the Applicant would return to Georgia (following her 3 day trip to the Netherlands) to the same address where Giorgi would be able to find her. This was put to the Applicant, and she replied that she was under stress at the time and wanted to be alone (p. 9).

13. In summary the credibility issues identified in the s. 39 report included the applicant's reference to her former boyfriend as "*fiancé*" when they were not engaged; inconsistencies in

relation to certain dates; inconsistencies as to whether threats were made over the phone and internet; the willing return to Georgia from the Netherlands after three days without seeking protection in the Netherlands and; her return to an address known to her former partner.

14. Based on these factors, the s. 39 report made a finding that the claim was not “*internally consistent*”. It was stated that (p. 10):

“her version of events has changed throughout the course of this claim and she has not given sufficient reasons to explain these inconsistencies. Further, the applicant’s travel history and willing return to her old address in Georgia three days after having arrived in the Netherlands undermines the credibility of her claim in relation to this material fact. Given the above, this aspect of the applicant’s claim is not accepted to be credible on the balance of probabilities.

For the reasons outlined above, I find that only some of the material elements of the applicant’s claim are credible on the balance of probabilities coupled with, where appropriate, the benefit of the doubt. However, the facts/aspects of the applicant’s claim that have been accepted as credible will be considered for the purposes of assessing whether there is a well-founded fear of persecution/real risk of serious harm. The accepted facts are: the applicant’s nationality and personal circumstances.”

15. Clearly, therefore the IPO did not accept as credible that the applicant was threatened and intimidated by or on behalf of her former partner, Mr. R. This in turn led to the rejection of her claim because in consideration of the claim of a well-founded fear of persecution, the report states (p. 11):

“with respect to the feared persecution and the accepted facts in this case, I find that the applicant would not face a reasonable chance of persecution if returned to his country of origin for the following reasons. The facts that underpin the applicant’s fears have been rejected.”

16. Accordingly, the claim was rejected on the grounds that her claimed fear of persecution by her former partner was not accepted as credible.

17. As the report of the 27th of January, 2020 had included a finding under s. 39(4)(e) to the effect that Georgia was a safe country, the accelerated appeal procedures provisions of s. 43 of the 2015 Act applied and the applicant was allowed a period of ten working days within which to put in her appeal. Under s. 43(b) of the 2015 Act, this also meant that the Tribunal, unless it considers that it is not in the interests of justice to do so, is required (“*shall*”) to make its decision in relation to the appeal without holding an oral hearing. The applicant was advised in terms as follows:

“any such appeal will be dealt with by the Tribunal without an oral hearing unless the Tribunal considers that it is in the interests of justice to hold an oral hearing.”

18. By letter dated the 21st of February, 2020, the applicant’s solicitors submitted, pursuant to s. 41 of the 2015 Act, a Notice of Appeal of the s. 39 recommendation to the first named respondent. In the Notice of Appeal a request for an oral hearing was made. The reasons advanced were not specific to the applicant’s case nor the particular findings in the s. 39 report but on statistical indicators of greater success rates following oral hearings compiled in respect of the paper-based procedure under the provisions of the Refugee Act, 1996. In response to the request that the applicant set out the reasons why it was considered in the interests of justice that an oral hearing should be held, it was stated:

“Before there were oral hearings for subsidiary protection applicants the success rate was less than one percent for applicants. In 2013 when oral hearings were brought in the success rate rose to approximately forty-four per cent. We submit that when the system operated without an oral hearing the statistics show the system unfairly disadvantaged applicants/appellants and as such the interests of justice demand that the applicant/appellant has an oral hearing.”

19. Counsel for the respondents referred to this as a “*generic request*”.

20. By letter dated the 24th of February, 2020, receipt of the appeal was acknowledged by the Tribunal. It was indicated that by reference to the finding that the applicant’s country of origin is a safe country of origin under s. 39(4)(e) that the Tribunal:

“...will make its decision without holding an oral hearing unless it considers it is not in the interests of justice to do so. The Tribunal has noted your client’s request for an oral hearing. This will be brought to the attention of the Tribunal member to whom your client’s appeal is assigned.”

21. By further letter dated the 27th of February 2020, the applicant’s solicitors specifically addressed why an oral hearing was warranted in this case. On this occasion reference was made to the adverse credibility findings which had been made in the negative report of the IPO which it was said:

“...is based entirely on adverse credibility findings. The appellants are lawfully entitled to an effective remedy and challenges the negative credibility findings as a matter of fact and law. The only effective remedy in this case can be to review, in fact ad law, the oral evidence of the appellant”.

22. The letter continued:

“Moreover, it is well-established that credibility must be assessed having regard to the full picture that emerges from the evidence. In the circumstances an oral hearing is necessary to ensure the Applicants’ credibility is properly assessed in the round.”

23. By letter dated the 3rd of March, 2020, this correspondence was acknowledged.

24. On the 6th of March, 2020, the applicant’s solicitors submitted written submissions to the Tribunal in relation to the applicant’s appeal. These submissions addressed the adverse credibility findings of the IPO in some detail but did not repeat a claim that an oral hearing was necessary in order to provide an effective appeal in respect of same.

25. On the 11th of August, 2020, the Tribunal wrote to the applicant seeking further documents relating to her admission to hospital in Georgia arising from claims advanced as part of her application for protection and afforded her four weeks to do so. The specific documents sought were:

“the Appellant’s Clinic/Hospital admission notes and medical records for February/March, 2017 and November 2018 for the Evex Clinic, Tbilisi or any other medical facility.”

26. On the 30th of August, 2020, the applicant’s solicitors wrote to the first named respondent requesting a further period of time within which to submit documents as the applicant had not been able to procure the documents sought. A copy of the applicant’s request directed to the clinic by email in Georgian was enclosed. On the 2nd of September, 2020, the first named respondent granted the applicant up to the 22nd of September, 2020 to provide further documents.

27. On the 22nd of September, 2020, the applicant’s solicitors wrote to the first named respondent indicating that the applicant had to date been unable to procure the documents. This letter set out details in relation to the applicant’s medical history in the State which had been disrupted due to having been moved between three reception centres with the result that she had not yet been psychologically assessed. It was indicated that a Dr. Whitty had indicated a willingness to provide a medical report and a copy of the instruction form sent by the solicitor to the psychiatrist was enclosed. It was requested that the first named respondent confirm whether in the circumstances they were willing to consider the report and stated that their client had made every effort to evidence her medical issues. No documents were submitted showing any other efforts to obtain the medical records from Georgia, being the documentation that the Tribunal had requested.

28. On the 5th of October, 2020, the Tribunal affirmed the decision of the International Protection Office that the applicant be given neither a declaration of refugee status nor a subsidiary protection declaration. This was communicated to the applicant on the 12th of October, 2020.

29. A decision on the request for an oral hearing was not communicated in advance of the respondent proceeding to make its decision on the papers, albeit that the refusal of the request is addressed in the decision of the Tribunal on the appeal. Nor did the Tribunal respond to the applicant’s request that the Tribunal consider a medical report to be obtained from Dr. Whitty before proceeding to make its Decision. This request is not referred to in the Decision of the Tribunal.

30. The Report from Dr. Whitty was received by the applicant's solicitors on the 27th of October, 2020, after the Decision of the Tribunal. There is no evidence before the Court that this Report was ever furnished to the Tribunal, nor is there any evidence of a pre-action letter to the Tribunal.

DECISION OF THE TRIBUNAL

31. The decision records the request for an oral hearing and determines the request at 1.13 as follows:

“The Tribunal, in its consideration of the Appellant’s claim for international protection, has had regard to the Appellant’s completed IPO 5 form, the Interview pursuant to s. 13(2) of the Act of 2015, the Application for International Protection Questionnaire, the interview pursuant to s.35(12) of the Act of 2015, and the IPO recommendation per s. 39(3) of the Act of 2015. Having done so the Tribunal has concluded that the Appellant’s appeal, from the recommendation of the IPO, will be determined on the papers, as it is not considered that the interests of justice require an oral hearing.

1.14 For the reasons that will be set out in this decision, the Tribunal finds that those material facts of the Appellant’s claim, as were accepted by the IPO, are credible. The Tribunal has examined the records of the s. 35 interview conducted in January of 2020 and finds that the Appellant was given ample opportunity to express her reasons for seeking International Protection, and that she was articulate and coherent in setting out her reasons. For these reasons and also because the Appellant has had an opportunity on appeal to make representations as to why the material facts of her claim give rise to an entitlement to international protection, the Tribunal considers that there is no basis for finding that it would not be in the interests of justice to dispose of the appeal without holding an oral hearing. Therefore, this appeal is decided on all of the papers in the case.”

32. A number of negative comments touching on the applicant’s credibility are recorded in the Decision with respect to the applicant’s application. An inconsistency between the application and what was stated on appeal was identified at para. 2.10 as between the claim made in the questionnaire that the applicant had been threatened by her former partner as compared with a more expansive claim during the interview that a lot of people “*learned about this story and started to humiliate me, they became ironic towards me and all of these made me not want to live*”. At para. 2.12 the Tribunal appears to negatively comment on the fact that the applicant refers for the first time to the attack on her brother and learning about it from a neighbour and not her brother during the interview. At para. 2.15 the Tribunal acknowledges that while some inconsistencies were put to the applicant during her s. 35 interview, not all of the inconsistencies in her account of the events at the core of her claim were put to her.

33. The decision of the Tribunal contained a number of adverse credibility findings in relation to the applicant’s application which have been identified by counsel on her behalf in urging this application for relief on the Court.

34. At para. 4.2, the Tribunal recognises that her application is “*inherently subjective*” and that it must take into account the reasonableness of her account, the consistency of her evidence “*as a whole*” and any corroboration or corroborative evidence presented.

35. At para. 4.3 the Tribunal makes a negative observation as regards the applicant’s evidence which had not been made by the IPO following her interview, namely:

“The evidence of the assault incident in March 2017 is vague, imprecise and lacking in the type of detail that would indicate a genuine experience that resulted in significant upheaval in the Appellant’s life. The Appellant has offered a sparse level of detail of her experiences arising from the alleged events of 2017 or 2019. The Appellant has not provided the type of detail which would be expected given the impact of events on her life.”

36. At para. 4.6 the Tribunal refers to the failure of the applicant to provide medical reports in relation to her claimed hospitalisations at the Evixi (sic) Clinic in Tbilisi and states:

“the Tribunal has no option but to regard the failure by the Appellant to provide any detail of or to substantiate her claims in this regard as affecting her overall credibility”.

37. At para. 4.7 the Tribunal records a positive factor as regards her credibility namely the fact that her account is in line with the County of Origin Information [hereinafter “the COI”] on file and does not run counter to any country evidence. The decision further states [para. 4.9] that the COI is broadly supportive of the appellant’s credibility with regard to her reticence to report her partner’s domestic violence conduct. However, in this regard the Tribunal continued [para. 4.10] that the Tribunal must “*consider that the Appellant did not seek out assistance from available support organisations*”, however this was not put to her. She was asked during the interview (Q. 52) whether she had ever reported any of these matters to the authorities in Georgia, to which she replied in the negative explaining that it would not make any difference. When asked why, she explained that the police have no power in Georgia. She was not asked specifically about NGOs or support services for the victims of domestic violence available in Georgia, albeit that the Tribunal relies on her failure to seek out assistance from such organisations in its decision. The applicant relies on this to argue that it was plainly in the interests of justice to hold an oral hearing.

38. Under the heading “*inconsistencies*”, the Tribunal [para. 4.15] stated that it had concerns about the applicant’s inconsistency throughout the process in the context of the assessment of her credibility. It is contended by reference to the identification of inconsistencies at paras. 4.3 and 4.15 that had the Tribunal awaited the medical report as requested, these adverse inferences would have been explained with regard to her mental health, in particular her reluctance to discuss aspects of her past life due to the traumas associated with them.

39. At para. 4.16 the Tribunal states:

“The Tribunal cannot overlook the fundamental inconsistencies between the Appellant’s claim to fear her ex-partner and her failure to take any steps to protect herself from him. On her own account, the Appellant’s former partner had left Georgia. Notwithstanding her claims to be in fear, the Appellant has not reported the matter to the local authorities and has not sought the protection of the State. She has also returned to their home in Georgia, voluntarily, from the Netherlands.”

40. A new credibility issue, not raised during the interview, arises from para. 4.17 of the Decision where it is recorded:

“While, it is well documented that domestic violence victims often struggle to leave their abusers and that they return, often repeatedly, to the source of the threat, that is not the case here. The Appellant’s former partner no longer lives in Georgia and did not return to Georgia to threaten the Appellant”.

41. The fact that her claim was that he was sending people to threaten her is not referred to at this part of the Decision.

42. At para. 4.18, the Tribunal refers to matters advanced during interview which did not feature in her Questionnaire and sets out that her explanation for differences, namely that she was upset and could not recall claims *“that are now central to her claim”* was not accepted by the Tribunal. The point is stressed on behalf of the applicant, however, that no such adverse finding was made by the IPO in the s. 39 report. It is further submitted that the medical report now available from the applicant’s psychiatrist, which was not yet to hand when the Decision was made, is relevant to any findings referable to the impact of stress on her ability as an accurate historian because this report reflects the psychiatrist’s assessment that the applicant was reluctant to talk about her experiences due to the traumas associated with same. A finding is recorded at para. 4.19 that:

“The Tribunal has not been provided with any evidence that these events have had any impact on her memory or ability to recall or affected her ability to give her account throughout the international protection process. The Tribunal has no option but to regard the failure by the Appellant to provide any detail of or to substantiate her claims in this regard as affecting her overall credibility”.

43. This suggests that medical evidence of impact on memory or ability to give her account was potentially material to the Tribunal’s conclusions but the Decision does not address the applicant’s request for time to obtain a report. The applicant was not questioned in relation to her memory or the extent to which her ability to give an account was affected.

44. At [para. 4.24], the Tribunal also states that the contended delay on the part of the applicant to apply for international protection undermines her credibility.

45. In this judicial review, the applicant submits that the above elements of the Decision are illustrative of the necessity for an oral hearing

46. Insofar as medical reports were concerned, the Decision recites its request for documents in support of the appeal in the form of the applicant's clinic/hospital admission notes and records for February/March 2017 and November 2018 for the Evex Clinic, Tbilisi or any other medical facility. It also sets out the correspondence in relation to medical records but without recording that she was due to be seen by a psychiatrist who had agreed to prepare a report.

47. At para. 4.4 the Tribunal states that the appellant has offered no medical records and has not furnished any independent or objective evidence to support her claim. The Tribunal refers to the onus on her to "*at least attempt to obtain evidence.*" It is submitted on behalf of the applicant that the Tribunal acted unfairly in deciding not to wait for a medical report which had been signalled to the Tribunal, without even referring to this fact in the Decision.

LATE MEDICAL REPORT

48. A medical report was obtained from Dr. Peter Whitty following an assessment carried out on the 13th of October, 2020. This post-dated the Tribunal decision and the report was not available to the Tribunal. In his report Dr. Whitty sets out the applicant's family and personal history, her current symptoms and her current treatment. He also addresses her past psychiatric history and her past medical history. On a mental state examination he observed:

"She was distressed and tearful ...she was reluctant to discuss her personal life and past experiences due to the traumas associated with this. ...mood was anxious with fears for her safety."

49. He concluded:

“Ms. B. gives a credible account of threat to her life when she was living in Georgia. Ms. B. is in fear of her ex-partner who she says has criminal associations and has threatened to kill her. Ms. B has become estranged from her family who disowned her over her personal life. Ms. B’s symptoms tend to fluctuate although her psychological health has suffered as a result of ongoing threat. Objectively, she presents as anxious and tearful on mental state examination. Ms. X is prescribed medication (sertraline 50mg) daily for anxiety and depression.”

50. The Tribunal’s Decision makes no reference to the fact that the applicant had requested permission to submit a report, to which the Tribunal did not respond. It is recalled that this request was made following the Tribunal’s specific request for Georgian medical records corroborative of the applicant’s claim to have received treatment there prior to her departure. It was clear that the Tribunal was not seeking a report as to her medical condition, but rather was investigating whether there might be objective support for the claims she advanced in respect of treatment received in Georgia. It is true that the Tribunal’s Decision refers to a lack of detail and inconsistencies in the Applicant’s account as between her questionnaire and her evidence during interview. The medical report, while broadly supportive of the applicant’s claim, does not offer a medical explanation for this other than what might be extrapolated from a finding that she was distressed and unwilling to talk about past traumas. Nonetheless, where the Tribunal refers negatively to the lack of evidence as to the impact on her memory in assessing the applicant’s credibility, then the fact that a late request was made to provide medical evidence and the reason for not accommodating that request warrants consideration.

STATUTORY FRAMEWORK

51. It is common case that Georgia has been designated a safe country of origin and that the IPO included such a finding in the s. 39 report in respect of the applicant. While the default position under s. 42 of the 2015 Act is that an appeal against a refusal of refugee status or of subsidiary protection “*shall*” proceed by way of oral hearing, the effect of the inclusion of a finding under s. 39(4)(e) modifies the s. 42 appeal in the manner set out in s. 43 of the 2015 Act, which provides:

“43. Where the report under section 39 includes any of the findings referred to in section 39 (4), the following modifications shall apply in relation to an appeal under section 41 by the applicant concerned—

- (a) the appeal shall be brought by notice in writing within such period, which may be a shorter period than that prescribed for the purposes of section 41 (2)(a), from the date of the sending to the applicant of the notification under section 40 , as may be prescribed under section 77 ,*
- (b) notwithstanding the provisions of section 42 , the Tribunal, unless it considers it is not in the interests of justice to do so, shall make its decision in relation to the appeal without holding an oral hearing, and*
- (c) the notification referred to in section 40 (1) shall include a statement informing the applicant concerned of the effect of the modifications referred to in paragraph (a) and (b)”.*

52. It is clear that under s. 43(b) of the 2015 Act, the Tribunal is given a discretion as to whether to hold an oral hearing, albeit from the structure of the provision the default position, absent identification of countervailing interest of justice considerations, is to decide the appeal without an oral hearing. This contrasts with the predecessor provision where under s. 13(5)(a) of the Refugee Act, 1996 (as amended) it was provided that *“any such appeal will be determined without oral hearing”*. In the applicant’s case, s. 43(b) of the 2015 Act required the Tribunal to make its decision without holding an oral hearing unless the Tribunal considered that it was not in the interests of justice to do so. There is no automatic statutory entitlement to an oral hearing but a discretion which falls to be exercised within the parameters of s. 43(b) and in accordance with the requirements of constitutional justice.

SUBMISSIONS

53. The applicant submits that: (a) adverse credibility findings were made about her personal account of abuse at the hands of her former partner, and that the only effective way in which she could appeal these was through an oral hearing in which her personal credibility could be assessed; (b) further, the Tribunal also drew adverse inferences on the basis of a purported absence of corroborating documentation, a matter that would properly have been

addressed orally; (c) the Tribunal gave no adequate reasons as to why it was ‘*in the interests of justice*’ to refuse an oral hearing; (d) in refusing to allow the applicant to submit a medical report and medical records, the Tribunal acted unfairly and contrary to its statutory duty and; (e) the Tribunal made a number of irrational and unreasonable determinations, a number of which exemplify why an oral hearing should have been held.

54. The respondents’ position is that the Tribunal properly considered the application and having done so considered that the interests of justice did not require an oral hearing and this decision was within the margin of discretion afforded to the Tribunal under s. 43(b) of the 2015 Act and this decision was adequately reasoned. The Tribunal was satisfied that the applicant was given the opportunity to make representations regarding the material facts of her claim, to express her reasons for seeking international protection, and to submit any information, documentation or evidence in respect of her appeal to the Tribunal. The respondents contend that the Tribunal gave the applicant reasonable time and opportunity to submit corroborating documents. The applicant was also afforded a fair and reasonable period to submit any medical records and first made an application for time to do so some seven months after having submitted the Notice of Appeal to the Tribunal and after an extension had already been granted in respect of obtaining medical records from Georgia. It is submitted on behalf of the respondents that the various findings made by the Tribunal were reasonable and rational and were based on matters which were known to the applicant and which she had a full opportunity to address on appeal.

PRELIMINARY ISSUE – EXTENSION OF TIME

55. Proceedings were not commenced within twenty-eight days of the date of communication of the Tribunal Decision in accordance with the requirements of s. 5 of the Illegal Immigrant (Trafficking) Act, 2000 (as amended). The Decision of the Tribunal dated the 5th of October, 2020 was communicated by letter dated the 12th of October, 2020. The applicant was scheduled to be seen by Dr. Whitty on the 13th of October, 2020. The applicant relies on the fact that a report was awaited from Dr. Whitty and was only received on the 27th of October, 2020 to explain her delay in issuing proceedings. Her solicitor states that while the applicant had formed the intention to appeal within twenty-eight days, legal advice and the drafting of proceedings had awaited the receipt of the report. It is contended that there is no prejudice to the respondents and that there was good and sufficient reason to extend time.

56. It is a concern to me that the affidavit filed on behalf of the applicant contained averments in relation to the extension of time which did not relate to her. Her solicitor has explained this on affidavit as a printing and compiling error in the solicitor's office which was not attributable to the applicant as the offending passage was not present when the affidavit was sworn. It is most unsatisfactory that an error of this nature could occur within a solicitor's office given the fundamental importance to the applicant of accurate and true evidence being submitted on her behalf.

57. In view of the solicitor's explanation for what transpired and her frank and full acceptance of responsibility, I conclude that it would be unfair to visit the consequences of human error occurring in the solicitor's office on the applicant. For obvious reasons great vigilance and care is required on the part of professional advisors, especially concerning cases on behalf of protection seekers. More than the norm and by reason of language issues such clients are dependent on their advisors and interpreters to ensure that their evidence is properly and accurately communicated to the Court and to the immigration authorities. A failure to properly discharge professional duties in this regard may result in serious consequences including an otherwise meritorious claim being dismissed or an application for protection being refused.

58. No objection was actively pursued on behalf of the respondents during the hearing to the extension of time and they were restrained and measured in their approach, as I have also sought to be, to the inclusion of a clearly erroneous passage which had made its way by reason of the solicitor's error into the applicant's affidavit by way of justification advanced seeking an extension of time.

59. In view of the reasons subsequently advanced for the delay in commencing proceedings by the applicant's solicitor and the fact that the Statement of Grounds and supporting documents were filed by the 17th of November, 2020 in respect of a decision received on the 12th of October, 2020 with the result that the proceedings were late by a period of circa a week, I am satisfied that good and substantial reason has been demonstrated to grant an extension of time for the bringing of the within proceedings. No prejudice arises for the Respondents from the grant of this short extension.

DISCUSSION AND DECISION

60. It is well established that there is no entitlement to an oral hearing *per se* as confirmed in the case of *M.M v. Minister for Justice and Equality* [2018] IESC 10 and Case C-277/11 *M.M. v Minister for Justice, Equality and Law Reform and Others*. In *M.M.*, the Supreme Court (O'Donnell J., as he then was) held, following the preliminary ruling of the CJEU on the second question referred to it by the Supreme Court, that (para. 25):

“The decision of the European Court of Justice makes it clear that in the Irish context which existed at the time of the decision here, and where the decision on subsidiary protection was a separate decision taken after the determination of the asylum process, it was permissible to make that decision on the basis of a written procedure, so long as the procedures adopted were sufficiently flexible to allow the applicant to make his case. Exceptionally, it may be necessary to permit an oral interview”.

61. O'Donnell J. then went on to address the approach that might be taken to dealing with matters of “*credibility*”. He distinguished between two senses in which the concept of “*credibility*” can arise: the first (the “*classic sense*” of credibility) being whether an account of disputed facts is to be believed or not; the second being where credibility is used in the sense of whether a particular conclusion should or should not be accepted as flowing from a particular state of facts. He gave the following examples to draw out the distinction between these two different conceptions of credibility (at paras. 29 and 30):

“29. To take another example, the law may provide that if a certain legal test is satisfied on the facts, (in this case a risk of serious harm), then certain consequences must follow (subsidiary protection). Some applicants may therefore present a case on paper which if accepted would establish a classic case for subsidiary protection. They may for example argue that they have been tortured by a group still in power in the country. Or an applicant may say that he or she belongs to a particular grouping or family which has been subjected to serious violence in the country in question, and that that treatment of that group has been verified by unimpeachable accounts from reputable international agencies. Such cases may raise a question of credibility in the classic sense: is the applicant to be believed when they contend they have suffered that

treatment, or is the applicant to be believed when they say that they are a member of the particular group or family?

30. A different issue may arise when someone puts forward a number of matters arising from their background, education, and experience, and contends by consequence they are at risk of serious harm. In such a case, the issue may not be whether the applicant is telling the truth, but rather whether the asserted conclusion follows from those facts. Any such conclusion may be expressed in general terms of belief or credibility, i.e. that it is not credible that such matters would give rise to a risk of serious harm. Even if used in that way, it is quite a different conclusion from that in the example just discussed: in this case, any such conclusion does not reflect at all on the veracity of the account. It may be important in a particular case to distinguish clearly between these cases most particularly since the necessity for some oral or personal process is clearly more pressing where the veracity of the witness is the central issue.”

62. Reasons why the circumstances might be such that an applicant is not entitled to an oral hearing include, firstly, that the applicant had been allowed the opportunity to comment on all relevant matters and had done so and, secondly, the facts were in the documents and left little room for doubt.

63. Returning to the question of when an oral hearing may be required in *VJ v. Minister for Justice and Equality and Ors.* [2019] IESC 75 (Unreported, 31 October, 2019) the Supreme Court (O’Donnell J.) 31 October 2019) at [para. 45], set out the circumstances where an oral hearing should be held as follows:

“The decision in M.M makes it clear that what is required is that an applicant must have an opportunity of making his or her case. Whether an interview or oral hearing is required depends on the nature of the case made, not whether the particular point was raised in the asylum process. The type of contention made here was one which by definition was something about which the applicants could have little if any personal knowledge, nor was that suggested in their applications. It was an issue particularly suited to determination by reference to the materials relating to country of origin information, since the case made was that the applicants would suffer on return as failed asylum-

seekers. That depended on a status they shared with many others, rather than any individual characteristic. That feature of the case did not, therefore, require an interview, still less an oral hearing. [...]”

64. In his recent decision in *SK v The International Protection Appeals Tribunal and The Minister for Justice and Equality*, Ferriter J. found the dicta of the Supreme Court in *M.M* to be of assistance in deciding on whether a refusal of an oral hearing under s. 43(b) was sustainable stating (para. 24):

„... the analysis engaged in by O’Donnell J. on the different conceptions of credibility is of assistance here as it chimes with the approach taken by Cooke J. in SUN i.e. that when an applicant’s credibility has been rejected in the classic sense of the applicant being disbelieved in relation to his or her account of matters which could have taken place (as opposed to matters which are demonstrated to be impossible or contradicted by independent evidence), the interests of justice may require an oral hearing on the appeal to ensure that the appellant’s credibility can be justly determined.“

65. The *SUN* case here referenced by Ferriter J. is the seminal decision of Cooke J. (*SUN v. The Refugee Applications Commissioner & Ors* [2013] 2 IR 555 (hereinafter “*SUN*”) concerning the legal position which had been obtained under the Refugee Act, 1996, where, if an applicant for refugee status came from a designated safe country of origin, there was no facility for an oral hearing at all and any appeal proceeded on an accelerated, “*papers-only*” basis. The relevant provisions of the 1996 Act were considered in some detail by Cooke J. and the issue in that case was summarised by Cooke J. as follows (at para. 28):

“[28] The issue that these provisions raise in the context of the present case, accordingly, concerns the effectiveness of the remedy by way of appeal to the Tribunal where an applicant has been automatically deprived of an oral re-hearing before the Tribunal by reason only of the fact that a finding has been included in the s. 13 report to the effect that the applicant is a national of a designated ‘safe country’. In particular, where, as in the present case, the primary ground upon which the negative recommendation has been based is a finding of a lack of personal credibility on the part of the applicant in the claim which has been advanced, can an appeal to the

Tribunal conducted exclusively on paper be considered an ‘effective remedy’ in the sense of art. 39 when the applicant does not have the opportunity of persuading the court or tribunal dealing with the appeal of his credibility by personal observation and persuasion?”

66. Cooke J. then went on to reason as follows (para. 40):

“[40] Where, as in the present case, a claim for asylum has been rejected in a s. 13 report upon the basis that the applicant has been found not to be telling the truth, the issue of personal credibility is clearly fundamental to the appeal and, accordingly, to the character of the appeal procedure as providing a remedy which is effective to rectify the basis upon which the claim has been rejected. Where, as here, the events and facts described by an applicant are of a kind that could have taken place (as opposed to matters which are demonstrated to be impossible or contradicted by independent evidence), but have been rejected purely because the applicant has been disbelieved when recounting them, it is, in the judgment of the court, clear that the effectiveness of the appeal remedy as a matter of law is dependent upon the availability to the applicant of an opportunity of persuading the deciding authority on appeal that he or she is personally credible in the matter.”

67. Relying on the approach outlined by Cooke J. in *SUN* and the analysis of O’Donnell J. in *MM*, the Court (Ferriter J.) in *SK* identified the types of credibility cases in which the exercise of a discretion under s. 43(b) of the 2015 Act to convene an oral hearing as follows (para. 27):

*“where the issue of personal credibility is fundamental to the appeal and where the credibility of the applicant’s account of the events and facts subtending his or her case is in issue in the classic sense i.e. where the events and facts are of a kind “that could have taken place (as opposed to matters which are demonstrated to be impossible or contradicted by independent evidence), but have been rejected purely because the applicant has been disbelieved when recounting them” (Cooke J. in *SUN* at paragraph 40), the interests of justice are likely to merit an oral appeal.”*

68. Ferriter J. further acknowledged however that (para. 30):

"a wide discretion such as that contained in s.43(b) based on "the interests of justice" is not susceptible to any hard and fast rule".

69. So while there is no *"right"* to an oral hearing in all cases, there are circumstances where the requirements of constitutional justice in ensuring an effective appeal may mandate the holding of an oral hearing, most particularly where the proper determination of the appeal turns on the personal credibility of the applicant in respect of matters of a kind that could have taken place but have been rejected purely because the applicant has been disbelieved when recounting them.

70. In this case, as in *SK*, the only interview which was conducted with the applicant throughout the process was in the s. 35 interview process which was conducted on behalf of the IPO in the 27th of January 2020. The fact that an oral hearing in the form of an interview takes place during the process is relevant because in *IX v. Chief International Protection Office* [2020] IESC 44, the Supreme Court upheld the lawfulness of this general approach of the IPO to the conduct of interviews and finalisation of s. 35 reports and recommendation by decision makers other than those who conducted the interview. This is a recognition that it may not be necessary to have an oral hearing at each stage of the process and it is legitimate for a decision maker to rely on the record of what was said when matters were put to a witness to satisfy itself as to the fairness of the process without necessarily conducting the interview themselves.

71. I note that in *SK v. IPAT & Ors* [2021] IEHC 781, where the refusal of an oral hearing also involved a Georgian lady and where the refusal was quashed, a separate decision on the application for an oral hearing was communicated before the Tribunal proceeded to determine the appeal. Unlike the position in *SK*, in this case the decision of the Tribunal on the request for an oral hearing was not determined and communicated in advance of the appeal decision itself but was addressed in the single Decision of the Tribunal.

72. No issue is taken in the proceedings with the fact that a decision on both applications was not communicated in advance of the Tribunal proceeding to determine the appeal in the grounds of challenge for which leave has been granted in these proceedings.

73. It is noted that the reasons for the decision to refuse an oral hearing recorded in the Tribunal decision proper do not refer in terms to the basis advanced for requiring an oral hearing in the first place. It is recalled that an oral hearing was expressly sought because the negative decision appealed against was said to have been based entirely on adverse credibility findings. It was contended that the appellants were lawfully entitled to an effective remedy and to challenge the negative credibility findings as a matter of fact and law. It was further contended that credibility must be assessed having regard to the full picture that emerges from the evidence. It was in these circumstances that it had been contended that an oral hearing was said to be necessary to ensure the applicants' credibility is properly assessed in the round.

74. In refusing the oral hearing, the Tribunal reasoned in its decision that the interests of justice did not require an oral hearing because:

“... the Tribunal finds that those material facts of the Appellant’s claim, as were accepted by the IPO, are credible. The Tribunal has examined the records of the s. 35 interview conducted in January of 2020 and finds that the Appellant was given ample opportunity to express her reasons for seeking international protection and, that she was articulate and coherent in setting out her reasons. For these reasons and also because the Appellant has had an opportunity on appeal to make representations as to why the material facts of her claim give rise to an entitlement to international protection, the Tribunal considers that there is no basis for finding that it would not be in the interests of justice to dispose of the appeal without holding an appeal. Therefore, this appeal is decided on all the papers in the case”

75. In this way the Decision only indirectly acknowledges that adverse credibility findings had been made notwithstanding that it was because of the credibility issues arising that an oral hearing had been sought. The fact that adverse credibility findings were made in the IPO report and were material to the refusal of decision was not further addressed. Depending on the nature of the credibility issues which arise from the documents recording the claim advanced, it is possible in some cases to ensure fairness to the applicant by affording her a right of reply which does not necessarily require the convening of an oral hearing. Where matters are fully canvassed during the IPO process in a manner which demonstrates that no new issue arises on appeal which has not already been put to the applicant, then it may be possible to be satisfied with the fairness of the process. However, where an issue of concern emerges for the first time

on appeal and was not put to the applicant during the interview process, and it concerns a material matter, then it will be necessary to provide an appropriate opportunity to an applicant to address the new concern be it in writing or orally to safeguard the fairness of the process. As stated by the Court of Appeal in *BW v. Refugee Appeals Tribunal* [2017] IECA 296 (Peart J. at para. 42):

“[W]here an issue of concern emerges for the first time on a papers-only appeal in relation to a matter which the appellant has not already had a fair opportunity to address, either because it was not put to her at interview, or because perhaps it may have arisen for whatever reason only after the ORAC process had ended, and that concern is in relation to something which is material to the basis on which asylum is being sought, and therefore to the decision whether or not she be granted a declaration of refugee status, she is as a matter of fair procedures entitled to an opportunity to address it. Whether that opportunity requires some form of oral hearing in relation to the concern, or whether it can be dealt with fairly and adequately in writing will depend on the particular facts. It will be a matter to be considered by the Tribunal member in any individual case. But the principle is the same. If the concern is a material concern – one that has the capacity to affect the outcome of the appeal – then the appellant is entitled to a fair opportunity to address the concern where that opportunity has not already been provided.

76. Further, it is true and must be acknowledged that adverse findings of credibility on grounds of demeanour or attitude do not feature in the reasoning advanced, a factor which might be considered to weigh against the need for an oral hearing. Instead the Tribunal relies on the impressions and conclusions derived from the documents submitted. There is evidence in both the s. 39 Report and the Tribunal Decision of reliance on the applicant’s own account of events to undermine her credibility, a course which may be permissible where the credibility finding derives from the documents themselves independently of anything the applicant might be in a position to say about them. Depending on the circumstances, this may only be fair where issues with the account given have already been identified and an appropriate opportunity to address them furnished. What is clear is that the Tribunal must engage with the credibility findings already made and those which arise for the Tribunal in its own Decision to identify whether an oral hearing could provide an opportunity to clarify, explain or otherwise

affect the decision maker's assessment of credibility in the round in a manner material to the decision it might make.

77. In this case the Tribunal does not engage with a consideration of the types of credibility issues which arise to explain what it was about the nature of the credibility findings made which meant that an oral hearing was not required. This is the type of analysis one would have expected to find in a decision refusing a request for an oral hearing where the case made for an oral hearing was squarely advanced on the basis that credibility issues arose. It was contended on behalf of the applicant that the matters in issue as identified through a parsing of the s. 39 report and the Decision are particular to the personal knowledge of the applicant, rather than an issue to be determined by reference to country of origin information (which was supportive of the applicant) and are fundamentally a matter of personal credibility such as would require an oral hearing for fair assessment. It seems to me that there is substance to this argument which should properly have been weighed and considered by the Tribunal in reaching its Decision on whether to convene an oral hearing.

78. In *SK*, Ferriter J. quashed the IPAT's refusal to hold an oral hearing on the basis that the Tribunal had failed to lawfully discharge its assessment of the interests of justice pursuant to s. 43(b) in the light of the submissions made on the appellant's behalf. The Court ruled (para. 36):

“There was no engagement at all in the oral hearing decision with the actual case made in favour of an oral hearing. The impugned decision makes no reference at all to the caselaw relied upon in the applicant's written submission in support of his oral hearing request...”

79. While it is accepted that in this case, there was not a lengthy submission in support of the request for an oral hearing of the kind which had occurred in *SK*, nonetheless an application was made referable to the importance of credibility findings to the decision and the lack of an effective appeal where credibility findings based on the personal truthfulness of the applicant is concerned absent an oral hearing. The question which arises is whether the Tribunal properly engaged with the concerns raised.

80. It seems to me that the credibility findings which underpinned the IPO's decision were findings as to the personal credibility of the applicant in respect of matters of a kind that could have taken place but were rejected purely because the applicant has been disbelieved when recounting them. Accordingly, they are classicly of the type that would warrant a hearing. In this case, however, the applicant addressed the negative credibility findings that were contained in the IPO report in her written appeal submissions in such a manner that the Tribunal did not make credibility findings on the same grounds as had been identified in the IPO report but proceeded to make its own credibility findings. It may be for this reason that the Tribunal considered that an oral hearing was not required to effectively address the credibility findings which underpinned the IPO decision, albeit this is not expressed in the Tribunal Decision. However, this being the case, the Tribunal should also have considered whether credibility remained an issue on other grounds and whether an oral hearing was required in respect of any credibility findings it proposed to make. Indeed, in its Decision, the Tribunal acknowledges that "*some*" of the inconsistencies in the applicant's account of events at the core of her claim were put to her in the s. 35 interview. This was an acknowledgement by the Tribunal that not all had been. A view that not all matters had been put to her at an earlier stage should, in my view, have put the Tribunal on enquiry as to whether it could fairly proceed without providing an opportunity to the applicant to respond to the identified inconsistencies which had not been put to her and to reflect in the reasoning contained in the Decision that proper consideration had been given to this question and why, in the circumstances of the credibility issues in this case, an oral hearing was not required in the interests of justice.

81. In terms of matters not put to the applicant it seems at [paras. 4.10 and 4.13] of the Decision that the first named respondent makes an adverse credibility finding against the applicant and states that she never availed of the help of any support organisation but this was never put to the applicant in clear terms as the question during the s. 35 Interview was directed to "*authorities*" and clearly understood by the applicant as referring to the police.

82. The Tribunal further acknowledged [at para. 4.2] the difficulty of the Tribunal's task in considering claims of the nature brought by the applicant because of their "*inherently subjective*" nature. The Tribunal identifies that its task in such circumstances in determining whether the appellant's claim is credible is to take into account the reasonableness of the facts presented to it, the consistency of the appellant's evidence as a whole and any corroboration or corroborative evidence presented by the appellant. In its Decision to refuse the oral hearing

sought, the Tribunal did not address whether the Tribunal's task could fairly be achieved without an oral hearing in the circumstances of this case given that the applicant's credibility was clearly key.

83. The Tribunal then comments adversely on the lack of detail in the applicant's evidence of her experiences and the failure to provide objective support in the form of the medical records from the clinic which the appellant claimed to have attended in Tbilisi. The Tribunal comments adversely on the fact that claims which were advanced during the interview were more extensive than set out on the questionnaire. The Tribunal makes a finding that the applicant's explanation for the level of detail in her questionnaire that she was upset is not accepted, adding that the Tribunal had not been provided with any evidence that these events had any impact on her memory or ability to recall or affected her ability to give her account throughout the process. In point of fact the medical report subsequently obtained, but not available to the Tribunal when it made its Decision, does state that the applicant was reluctant to talk about her experiences "*due to traumas associated*" with those experiences. The late request for time to submit a medical report is not referenced at all in the Decision in this or any context. It might also be considered that had the Tribunal explored with the applicant why she did not give more detail, it could have elicited this information from the applicant itself.

84. The Tribunal relied on the applicant's failure to seek protection or asylum in the Netherlands and the resultant delay in seeking protection as undermining of her credibility saying that she had not explained this. In fact, the applicant had offered an explanation, perhaps one which the Tribunal did not find persuasive but this is not what the Tribunal states in its Decision, and the Tribunal's approach to this issue is material to its decision as to the applicant's credibility. Had the Tribunal engaged with the explanation offered, it might or might not have concluded that an oral hearing was necessary before making a credibility finding based on the return to Georgia without seeking protection but in proceeding without addressing credibility as a factor in its Decision, a question arises as to whether there was a proper consideration by the Tribunal of the interests of justice requirements of s. 43(b) of the 2015 Act.

85. In this case, issues of concern clearly arose for the Tribunal with regard to the failure to seek assistance from support organisations. This issue was not squarely raised with the applicant at any stage during the process. Furthermore, elements of the appellant's account

were of a kind that could have taken place but were rejected because the applicant has been disbelieved when recounting them. Other elements were just not addressed in the decision either because the Tribunal did not believe them or overlooked them when assessing fear of persecution including threats which are not addressed at all (e.g. third party threats) and evidence of risk discounted or ignored because the former partner was no longer in Georgia.

86. In my view there was no engagement in the decision rejecting the request for an oral hearing with the actual case made in favour of an oral hearing and it is not clear from the reasoning advanced by the Tribunal that it considered the extent to which an assessment of the personal truthfulness of the applicant would be determinative of the appeal and whether the applicant's personal truthfulness could, in this case, be fairly gauged without an oral hearing having regard to the centrality of the applicant's personal credibility to the outcome. Credibility had been identified as being at issue in the case, as it transpired, credibility issues were also material to the decision on appeal.

87. Accordingly, I am not satisfied that the Tribunal properly considered whether an oral hearing was necessary in the interests of justice in view of the said credibility issues because the Tribunal Decision does not address these issues in its decision to proceed without an oral hearing. To that extent the Tribunal Decision is not adequately reasoned and fails to demonstrate that the Tribunal asked itself the correct question of law when deciding that an oral hearing was not required in the interests of justice.

FAILURE TO AWAIT MEDICAL REPORT

88. The fact that a request was made to submit a medical report and no response or reference was made this request in the Tribunal Decision has also been urged on me as supporting concern as to the fairness of the decision-making process. It is not suggested that the Tribunal must facilitate all requests for extensions of time nor that it must indefinitely postpone its determination to facilitate an applicant but, in this case the applicant has throughout her application for international protection been consistent in stating that she suffered from mental health issues due to her experiences at the hands of her former partner. As well as that, she attributes inconsistencies with her account to her mental health issues.

89. The applicant had consistently sought to be assessed by a mental health practitioner; however, this was disrupted by her being moved between reception centres by the International Protection Accommodation Service of the second named respondent. Further, as it happens, the Tribunal intended to conclude that it did not accept that she was so upset for 5 weeks that her recall was affected, a conclusion which should have caused the Tribunal to consider the request for time to submit a report and make a reasoned decision in respect of same. This notwithstanding, it seems to me that there could be no criticism of a Tribunal decision to proceed without awaiting a report where adequate opportunity had already been provided to allow for relevant material to be produced and no proper explanation is given for the failure to do so earlier. On the other hand, the Tribunal might have decided to engage with the applicant's solicitor in relation to a time-line for receipt of a report where it was a concern to the Tribunal that medical evidence in relation to her recall of events had not been submitted. Unfortunately, however, the Tribunal simply refused to engage with the request so that it is unclear if the Tribunal considered the fact that the applicant was seeking to adduce medical evidence at all. It is possible therefore that the Tribunal proceeded to make a decision without advertent to the potential significance of the evidence and did not properly consider the question of whether it should await the report or not.

90. Were it not for other concerns in relation to the proper conduct of the interests of justice test, I might not be persuaded to quash the Decision of the Tribunal by reason of its failure to properly consider the request to submit a medical report in view of the lateness of the request and the discretionary nature of judicial review, however, in this case it is a factor to be added to other concerns which together persuade me that the decision of the Tribunal is not sustainable having regard to the fairness of the decision making process.

CONCLUSION

91. In its reasoning rejecting the application for an oral hearing, the Tribunal proceeded without addressing directly the fact that credibility findings were at the heart of the IPO report and would also be determinative of the appeal. The fact that the credibility issues which arose on appeal differ to those before the IPO is also significant in my view. While the applicant had an opportunity to address credibility findings insofar as they permeated the IPO report in the written documents submitted in support of her appeal (successfully in that the Tribunal did not repeat the IPO's credibility findings), to the extent that the Tribunal relied on different issues

as the basis for its findings on appeal, the applicant was not on notice that the particular concerns arose for the Tribunal in such a manner as to provide her a fair opportunity to address those concerns, if she could, in writing absent the facility of an oral hearing.

92. The Tribunal has a discretion to refuse a request for an oral hearing but this discretion falls to be exercised in accordance with the requirements of constitutional justice. In determining whether the interests of justice require an oral hearing in any given case, the Tribunal should demonstrate that it has had regard to the applicant's right to a fair decision-making process through its consideration of identified credibility issues and its' conclusion on whether they are capable of being justly resolved without an oral hearing and, if so, why.

93. In the light of my findings above, I am quashing the Tribunal decision of the 5th day of October, 2020 and remitting this matter for fresh determination of the question of whether there should be an oral hearing.

94. I will hear the parties in relation to any consequential orders. The case will be listed for mention on a date to be notified more than fourteen days after the delivery of this judgment. Such written submissions as the parties wish to have considered in respect of the orders sought should be exchanged within fourteen days of delivery of the judgment.