

**THE HIGH COURT
JUDICIAL REVIEW**

[2022] IEHC 564
[2020 No. 558 JR]

**IN THE MATTER OF SECTION 5 OF THE ILLEGAL IMMIGRANTS
(TRAFFICING) ACT, 2000 (AS AMENDED), AND
IN THE MATTER OF THE INTERNATIONAL PROTECTION ACT, 2015**

BETWEEN

B.C.

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Charles Meenan delivered on the 3rd day of August, 2022

Introduction

1. The applicant was born in Malawi in 1997. The applicant's twin sister was albino. Though a twin, the applicant does not present with the signs and characteristics of albinism.
2. In Malawi there is a significant market for body parts from persons with albinism. The applicant's twin sister left her home on 15 March 2016 to attend a prayer meeting but never returned. Following a search, her body was found but some of her body parts had been removed. The applicant stated that the next thing that happened to him was that he was attacked at home on 10 April 2016. He did not know who the attackers were but said that they were

probably from around the area. The applicant believed that the attackers thought that he was an albino because his sister was albino and that they would try to use some of his body parts to get money.

3. The applicant arrived in Ireland on 12 May 2016 and made an application for protection on 7 June 2016. The applicant is afraid to return to Malawi as he believes that the men who attacked him are still looking for him and he would not be safe even in the two largest cities in Malawi.

4. By letter, dated 7 December 2016, the applicant was informed that his asylum application was refused. The applicant appealed this decision to the Refugee Appeals Tribunal. When the International Protection Act 2015 (“the Act of 2015”) came into effect on 31 December 2016 the applicant completed a fresh questionnaire in respect of his subsidiary protection application wherein he repeated his fears. The country-of-origin information (COI) submitted stated: -

“People are in huge amounts of danger because they are born with a genetic condition called Albinism. They are being hunted for their bones and body parts, and the perpetrators are going unpunished. ...” and “[e]ven the dead are not left in peace. Police recorded at least 39 people with albinism being illegally exhumed from graves, or having body parts removed from their corpses.”

5. The applicant underwent a fresh interview pursuant to s. 35 of the Act of 2015. By letter, dated 10 November 2017, he was informed by the IPO that his refugee and subsidiary protection claims were refused. The matter was appealed to the first named respondent (“the Tribunal”) and an oral hearing took place on 8 March 2018. The Tribunal rejected the applicant’s application.

Earlier proceedings

6. The Tribunal decision of 19 April 2018, rejecting the applicant's appeal, was judicially reviewed.

7. In his judgment, of 10 December 2018 ([2018] IEHC 705), Humphreys J. stated: -
“5. Insofar as the decision says expressly that there is no country information supporting the proposition that relatives are not at risk, that is hard to view as correct as phrased. [...] It is not readily obvious what the tribunal had in mind in order to reconcile the finding on the face of the decision with the information before it. Thus whether one regards it as error [...] or alternatively, which is how I would prefer to regard it, a deficit in making clear the tribunal's reasoning process, the net outcome is the same.”

The Court made an Order remitting the applicant's appeal back to the Tribunal for rehearing and determination.

8. A fresh oral hearing was held before the Tribunal on 7 October 2019. By decision of 8 July 2020 the applicant's appeal was, once again, rejected.

Judicial review proceedings

9. By Order of Court (Burns J.) the applicant was granted leave to seek, *inter alia*: -
“An Order of Certiorari by way of an application for judicial review quashing the decision of the first named Respondent affirming the first instance decisions that the Applicant be refused a grant of refugee and/or subsidiary protection status, and notified to the Applicant on or about 10 July 2020.”

10. In his Statement of Grounds, the applicant maintains that the Tribunal failed to properly consider the COI as to the dangers faced by persons and their families in Malawi who have albinism. More particularly, the following is stated: -

“3. Findings contained at paras. 5.27 – 5.32 are tainted by conjecture on the part of IPAT. Further and in the alternative the IPAT's statement at para. 5.32 that it had not

been furnished with a complete text of a statement from the President of Malawi and ‘is not prepared to hazard a guess’ about its meaning is an error in law by reason of both the failure of the IPAT to seek from the IPO or otherwise the complete text and also the reliance by the IPAT on it to discredit the Applicant’s claim.”

Consideration of issue

11. The serious dangers facing persons who have the signs and characteristics of albinism in Malawi are fully documented. What is not clear are the dangers (if any) faced by family members who do not have such signs and characteristics. The applicant is in this category.

12. The impugned decision of the Tribunal does consider COI as follows: -

“(5.26) – - - The only COI which has been furnished to the Tribunal in this respect is the Amnesty International Report 2016 which states at page 22 that ‘the wave of violent attacks against people with albinism has provoked serious insecurity among the population group. Almost every person with albinism in Malawi, irrespective of their social and economic background, lives in fear of being killed or harmed for who they are. By extension, this sense is also felt by other family members’.

(5.27) The Tribunal considers that this statement does not mean that other family members themselves are in fear of being killed but rather that they empathise with the fear being suffered by the albino member of their family being killed.”

And: -

“(5.30) - - - The only link with attacks on families is the following statement in the final paragraph as referred to by the Appellant in his legal submissions ‘Malawian President Peter Mutharika issued a statement in March last year condemning the wave of attacks on people with albinism. He called on police to arrest perpetrators and protect those with albinism and their families at risk of attack – but police and governmental response since then has been lackluster’.

(5.31) The Tribunal has not had sight of President Mutharika's full statement so it is not possible to determine the context of one part of it as a stand-alone statement.

- - - Without having sight of the President's full statement, it is impossible to know exactly what the President was referring to and the Tribunal is not prepared to hazard a guess at what he meant."

The Tribunal further states at para. 5.32: -

"On the balance of probabilities the Tribunal does not accept that family members of albinos are targeted for attack and killing simply by virtue of their family relationship to albinos."

13. In his submission the applicant relies on the following passage of the judgment of Edwards J. in *DVTS v. Minister for Justice & Anor.* [2008] 3 I.R. 476 at para. 44 where he states: -

"... While this court accepts that it was entirely up to the [Refugee Appeals Tribunal] to determine the weight (if any) to be attached to any particular piece of country of origin information it was not up to the [Tribunal] to arbitrarily prefer one piece of country of origin information over another. In the case of conflicting information, it was incumbent on the [Tribunal] to engage in a rational analysis of the conflict and to justify its preferment of one view over another on the basis of that analysis. The difficulty in the present case is that the second named respondent firstly, does not allude to the fact that the information is conflicting and secondly, does not give any indication as to why he was inclined to prefer the information contained in the US State Department report on Cameroon, 2004 and the United Kingdom fact finding mission Report 2004 to that contained in the reports submitted by or on behalf of the applicant."

14. In my view, this passage is of some assistance to the applicant. In this case it does not seem to me that it was a case of conflicting COI information but, rather, incomplete COI

information. Based on this incomplete information, the Tribunal stated it was “*not prepared to hazard a guess at what he meant*” referring to the statement of President Mutharika. However, the Tribunal then put a construction on the said words against the case being made by the applicant. In my view, the Tribunal fell into error in so doing. In a sense, the Tribunal was doing what it said it would not do and proceeded to “*hazard a guess*” on what it accepted to be “*incomplete*” information.

Conclusion

15. By reason of the foregoing, I will grant the applicant an Order in terms of para. D (1) and (2) of the Statement of Grounds. Without giving direction to the Tribunal, it seems to me that a question which has to be considered is to what extent (if any) family members of persons with albinism but who do not present with the signs and characteristics of albinism face danger(s) in Malawi.

16. As this judgment is being delivered electronically, my provisional view is that the applicant, having been successful, is entitled to an order for costs (including reserved costs) to be adjudicated in default of agreement. Should the respondent take issue with this, written legal submission (no longer than 2,000 words) should be submitted on or before 7 October 2022 and I will list the matter for mention before me on 14 October 2022.