THE HIGH COURT

JUDICIAL REVIEW

[2024] IEHC 22

Record No. 2023/964/JR

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

Between

VK

Applicant

- and -

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL AND THE MINISTER FOR JUSTICE

Respondents

JUDGMENT of Ms. Justice Hyland delivered on 15 January 2024

Summary

1. This is an application for leave to seek judicial review. I heard the matter on 18 December 2023 and reserved my judgment in order to consider whether the application met the substantial grounds threshold. The correct interpretation of that threshold was considered in the case of *McNamara v An Bord Pleanala* (No. 1) [1995] 2 ILRM 125. For an application for leave to meet that threshold, it must be reasonable, arguable and weighty. It must not be trivial or tenuous.

2. I have concluded that the applicant has not met the substantial grounds threshold and therefore I refuse leave to seek judicial review.

Nature of Application

3. I should explain the nature of the application and why I conclude that the applicant has not met the substantial grounds threshold. The applicant is from Zimbabwe. He left Zimbabwe in 2008 and moved to South Africa. He resided there until March 2022 and then came to Ireland. He sought international protection on 28 March 2022. He was interviewed, completed the application for international protection questionnaire and attended an interview with the International Protection Office ("IPO") on 20 October 2022. He received the IPO decision on 24 January 2023 refusing him a refugee status declaration, a subsidiary protection declaration and permission to remain. He lodged a notice of appeal on 10 February 2023. I should indicate that he put forward various factual and legal matters in his appeal and these were dealt with by the International Protection Appeals Tribunal ("IPAT"). However, I have refrained from detailing them as they are not the subject of challenge in these proceedings. Nonetheless, it is important to understand that his appeal, and the IPAT decision, dealt with a considerably wider range of issues than those requiring to be considered in this judgment.

4. On 3 April 2023 his solicitor provided 89 images or screenshots to the IPAT to be considered in his appeal. The applicant avers in his affidavit that they were taken by him on his phone with his Twitter account open and show his Twitter account under his user name and show the comments he has left on Twitter.

5. His appeal was scheduled to be heard online on 3 April 2023 but due to technical difficulties the appeal was postponed and was heard in person on 17 May 2023. The Statement of Grounds recites under the relevant facts heading that the applicant gave

evidence under oath that the Twitter account that I will describe as "S1S" for the purposes of this judgment was his own.

6. On 4 July 2023 the applicant received a letter from the respondent enclosing the decision of the IPAT. It determined the applicant should be given neither a refugee declaration nor a subsidiary protection declaration.

7. The applicant filed his judicial review papers on 18 August 2023 and the leave application was heard on 18 December 2023.

8. Under the heading "Relevant Facts" in the Statement of Grounds, it is pleaded that the applicant claimed he would be at risk from the authorities in Zimbabwe if he returned on the basis, *inter alia*, of his Twitter account and the posts he made on Twitter criticising the Zimbabwean government and Zanu PF (the ruling party).

Grounds raised by Applicant

9. In summary, the legal grounds are set out in the Statement of Grounds are as follows:

– that the IPAT failed to adequately assess the documentary evidence i.e., the Twitter screenshots and the applicant's evidence under oath that he made such posts and the persons that the Twitter posts interacted with were government officials or pages affiliated with Zanu PF;

– no clear findings were made as to the account of the applicant in the name "S1S";

– the finding that the applicant's LinkedIn account undermined his credibility was unreasonable;

– the IPAT failed to consider and make findings on a core claim of the applicant i.e. that he was at risk in Zimbabwe having posted criticisms of the Zimbabwean government online and/or because of the views he holds regarding the government and the Zanu PF regime.

The IPAT decision

10. At paragraph 21, the Decision recites the applicant's claim that he would be at risk in Zimbabwe on the basis of his political opinion/imputed political opinion and/or membership of a particular social group, being persons opposed to the government. The Decision recites that the appellant was not a member of a political party or otherwise politically active while in Zimbabwe. Under the heading "*The Appellant's social media accounts*" the Decision summarises the evidence in this respect. It refers to the screen shots submitted by the applicant. It refers to the IPO submitting pages from the applicant's LinkedIn account which disclose his personal details, including where he lived and worked in Zimbabwe and South Africa, that he was laid off from his job in South Africa in 2021 and that he was resident in Ireland. The IPO found that this publicly disclosed information undermined his claim that he was in fear of being found by Zanu PF or the Zimbabwean authorities in South Africa or elsewhere.

11. In the assessment of the claim, the Decision concluded that on the balance of probabilities the applicant's claim that he would be at risk from government authorities in Zimbabwe on the basis of his social media activity while in South Africa lacked credibility and was not accepted. It continued at paragraph 38 as follows:

> "*The Appellant's Twitter account is not in his name and there was no evidence offered that anyone would know or be able to detect who was the author of the tweets he posted using a pseudonym or that his accounts were seen or monitored by any Government officials, Zanu PF members or otherwise. The Tribunal finds that the Appellant's Linkedin account which made public his personal details including education, places of employment and residences in Zimbabwe, South Africa and Ireland undermines his claim to fear the Zimbabwe authorities*".

12. It is necessary to consider the applicant's complaints with reference to those findings to consider whether substantial grounds have been raised in respect of same.

13. In respect of the criticism that no clear findings were made as to the account of the applicant in the name "S1S", it is clear from paragraph 38 that the decision maker is proceeding on the basis that the account S1S is the applicant's account but points out that there is no evidence that anyone would be able to detect who was the author of the tweets using a pseudonym. I cannot discern any basis for the argument that there was a failure to make findings in relation to the applicant's relationship with the account S1S in those circumstances.

14. It is also argued that the IPAT failed to consider and make findings on a core claim of the applicant i.e., that he was at risk in Zimbabwe having posted criticisms of the Zimbabwean government online and/or because of views he holds regarding the government and the Zanu PF regime. But that is not so. At paragraph 38 an explicit finding is made that there is no evidence offered that his account was seen or monitored by any government officials, Zanu PF members or otherwise. That constitutes an assessment of his claim that he was at risk because of his views. The outcome of that assessment is a finding that he was not so at risk as there is no evidence the government or party members were aware of his views. This finding must be read in conjunction with the finding that there was no evidence to suggest his true identity was known given he was using a pseudonym on Twitter. Accordingly, I cannot discern substantial grounds for arguing that the Decision failed to assess the relevant elements of the application in this respect.

15. Separately, the applicant argues that the Decision failed to consider the evidence of Twitter screenshots showing pro Zanu PF Twitter pages reacting and replying to S1S and was wrong to conclude that no evidence was offered that his accounts were seen

by government or Zanu PF. But the applicant pointed to no evidence provided to the IPAT showing that the Twitter pages that engaged with the S1S posts were those of the government or Zanu party. In the circumstances I cannot conclude that substantial grounds have been raised that the IPAT erred in law in holding that no evidence was offered that his account was seen or monitored by any government officials, or Zanu PF members.

16. Next, an argument is made at paragraph 2 of the Legal Grounds identified in the Statement of Grounds that the Decision fails to make clear findings in that, "*[w]hile paragraph 38 refers to posts on Twitter while in South Africa, the decision is silent as to the posts made while the Applicant was in Ireland (which were provided to the respondent on 3rd April 2023)*". Although not stated explicitly, this appears to be an argument that no findings were made in respect of the posts provided on 3 April or that they were not adequately considered. When one goes to the list of documents stated to be relied upon by the applicant at paragraph 14 of the Decision, the only reference to screenshots is as follows: "*Screen shots from the appellant's Twitter account submitted 3 April 2023*". These appear to be the only screenshots that were submitted. The grounds of appeal do not refer to screenshots or social media posts at all. The legal submissions submitted to the IPAT make reference to posting anti-government material online in one sentence only, but no documents are referred to. Therefore, there appears no factual basis for contending that the screenshots submitted on 3 April were not considered, as these were the only screenshots submitted. The majority of these screenshots record posts made when the applicant was in Ireland in 2022. The Decision undoubtedly engages with the screenshots and comes to a conclusion on them. The applicant has failed in my view to raise a substantial ground to the effect that the IPAT has failed to engage with the material placed before it i.e., the screenshots submitted on

3 April 2023, by only referring to material posted while the applicant was in South Africa. The Tribunal's decision was clearly made on the basis of the material before it i.e., the screenshots submitted on 3 April, which included posts made while the applicant was in Ireland.

17. The Decision is also criticised for not making findings as to whether a person holding such views would be free to express their political views and opinions in Zimbabwe. For this to constitute a substantial ground of challenge, the applicant would have to explain why such a finding was required given the findings made by the IPAT in respect of the facts of this case. The applicant has failed to do so.

18. Finally, it is difficult to understand the basis upon which it is alleged that the Tribunal acted unreasonably in finding that the applicant's LinkedIn account undermined his credibility. The argument made in the Statement of Grounds is that the appellant was not residing in Zimbabwe at the time and was not within the jurisdiction of the Zimbabwean government. But the claim made is that the appellant is afraid of returning to Zimbabwe and therefore the question as to what matters are within the knowledge of the Zimbabwean government is relevant.

19. In the circumstances, I conclude that the applicant has failed to establish substantial grounds in respect of his challenge to the decision of the IPAT and I therefore refuse leave.