THE HIGH COURT
JUDICIAL REVIEW

[2017 No. 1021 J.R.]

BETWEEN

A.A. (PAKISTAN)

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 31st day of July, 2018

1. The applicant is a citizen of Pakistan. He claims that he suffered assaults from an uncle in relation to a property dispute in 2005 and again in 2012. He gave some contradictory evidence in relation to the situation thereafter, having told the IPO that threatening phone calls were made when he was in the U.K. but telling the tribunal that there had been no contact since 2012.

2. On 22nd July, 2012, he moved to the U.K. on a student visa. On 28th September, 2015, he left the U.K. for Ireland after the visa expired. He then sought asylum, which was refused by the IPO. On 25th August, 2017, he appealed to the IPAT. On 11th December, 2017, the IPAT rejected the appeal in a decision by Mr. Nicholas Russell. The decision accepted some, although not all, of the material facts of the claim, particularly that the applicant had been assaulted by an uncle in relation to a property dispute. The tribunal member held that no Convention nexus had been established, so state protection or international relocation did not arise. The asylum claim was rejected and that aspect of the decision is not challenged.

3. As regards the subsidiary protection claim, the tribunal member concluded that, given that it was put to the applicant that he could move to Karachi, a city of 20 million people, and could enjoy safety and anonymity there, and given that the tribunal was not convinced by the applicant's response, it was considered that an internal relocation option existed.

4. On 21st December, 2017, I granted leave in the present proceedings. The relief sought is partial *certiorari* of the decision of the IPAT at paras. 7.4 and 8.1 in relation to subsidiary protection. The applicant has structured the relief sought in that way in a (legitimately tactical) attempt to preserve the favourable parts of the ruling intact and to remit the unfavourable parts back to the tribunal. As discussed in *H.A.A. (Nigeria) v. Minister for Justice and Equality* [2018] IEHC 34, the jurisdiction to partially quash a decision is "*consistent also with this court's increasing flexibility of response and remedy in the ever-developing field of judicial review*", *per* Simon Brown J. (as he then was) in *R. v. Inner South London Coroner*, ex parte *Kendall* [1988] 1 W.L.R. 1186 at 1194: see also Michael Fordham, *Judicial Review Handbook*, 6th ed. (Oxford, 2012), para. 43.1.6, pp. 477-478.

5. I have received helpful submissions from Mr. James Buckley B.L. for the applicant and from Ms. Diane Duggan B.L. for the respondents.

Alleged irrationality, including relying on oral evidence by the presenting officer

6. I do not consider that the presenting officer's questions can be characterised as giving evidence. It is perfectly reasonable for the presenting officer to raise an issue as to whether the applicant could live in Karachi as a large city, or indeed any other large city. There may have been an error as to whether the population of Karachi was 27 million as put or 20 million as appears in the IPAT decision, but any error is not material to the point under discussion.

Alleged breach of fair procedures, where internal relocation was not an issue before the IPO, where submissions on it were not invited and the applicant was not made aware that it would be an issue.

7. This complaint of breach of fair procedures is fundamentally misconceived. The applicant put the subsidiary protection refusal in issue by appealing against it and therefore inherently opened up the question of internal protection or internal flight. An applicant does not need to be specifically notified of such a matter as it is an issue that arises automatically from the nature of appealing a subsidiary protection refusal. The applicant was put on notice in any event by questions posed at the hearing. That complies with the requirement of *K.D. (Nigeria) v. Refugee Appeals Tribunal* [2013] IEHC 481 [2013] I.R. 448 *per* Clark J., at para. 28(11).

Alleged failure to have regard to local circumstances, personal circumstances and precise and up-to-date country information

8. To some extent this duplicates other grounds insofar as the complaint made relates to country information. A detailed investigation of conditions in the proposed place of internal relocation can be explored in oral evidence. A detailed dossier of country information regarding that proposed place does not have to be narratively discussed provided there is before the decision-maker some appropriate country material, provided there is due notice of the point being made (including notice that is given by putting the point to the applicant at the hearing) and provided that the correct test is applied. The tribunal decision should not be condemned for a failure to engage in detailed narrative discussion about conditions in the proposed *locus* of internal relocation.

9. A question is raised as to whether the country information before the IPO was also before the IPAT. It is perhaps implied in a letter from the CSSO of 12th March, 2018 that the original country reports were not so forwarded, but the wording of that letter may have been based on the mistaken belief that because the reports are mentioned in the IPO report they were before the court in the present proceedings. It seems not all country information is actually exhibited in these proceedings but I do not believe that the letter of 12th March, 2018 was intended to convey that material before the IPO was in fact not before the IPAT.

10. Ms. Duggan has since clarified that the IPAT got the whole file from the IPO so whatever was before the latter was also before the former. A letter of 28th August, 2017 from the IPAT to the IPO acknowledging receipt of the original files has been produced. Thus no point under this heading of lack of consideration of relevant country material has been made out.

Alleged failure to apply the correct test

11. The correct test involves considering whether it is reasonable for the applicant to move to Karachi. Article 8(1) of the qualification directive 2004/83/EC provides that Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of persecution or serious harm, "*and the applicant can reasonably be expected to stay in that part of the country*". That is reinforced by s. 32(1)(b) of the International Protection Act 2015, which states that the tribunal must consider that the applicant "*can reasonably be expected to settle there*". There is some discussion of this in Hailbronner and Thym in *EU Immigration and Asylum Law*, 2nd ed. (C.H. Beck/Hart/Nomos, 2016) at p. 1163, Part D III by Judge Harald Dörig, to the effect that there is both an objective element and a subjective element of this test. The objective

element involves an assessment of whether a reasonable person in the situation of the applicant could stay in the place concerned. The subjective element involves consideration of that in terms of the applicant's individual circumstances.

12. The tribunal just does not ask this question. It is well-established that a decision-maker must pose the correct question: see *per* Clarke J., as he then was, in *Rawson v. Minister for Defence* [2012] IESC 26 (Unreported, Supreme Court, 1st May, 2012). Failure to do so can, and in this case does, give rise to grounds for *certiorari*.

Order

13. For these reasons there will be:

> (i) an order of *certiorari* removing for the purpose of being quashed paras. 7.4 and 8.1 of the IPAT decision of 11th December, 2017; and
>
> (ii) an order remitting the balance of the applicant's subsidiary protection application as it relates to the internal relocation issue to the same tribunal member, Mr. Nicholas Russell, for consideration in accordance with this judgment.