THE HIGH COURT
JUDICIAL REVIEW

[2018 No. 544 J.R.]

BETWEEN

K.A. (GHANA)

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY, THE ATTORNEY GENERAL AND IRELAND

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 17th day of September, 2018

1. The applicant was born in 1975 and claimed persecution in Ghana due to having refused a traditional chieftaincy. He came to Ireland on 29th June, 2015 and applied for asylum. That application was rejected by the Refugee Applications Commissioner. He appealed to the Refugee Appeals Tribunal. On 31st December, 1996 the International Protection Act 2015 was commenced and the application was referred to the International Protection Office. On 25th August, 2017 the IPO rejected the asylum and subsidiary protection claims and the applicant was notified under s. 49 of the 2015 Act that he was being refused permission to remain in the State.

2. On 8th January, 2018 he was informed that an appeal to the International Protection Appeals Tribunal had been rejected. On 31st January, 2018, submissions under s. 49 of the 2015 Act were made and on 16th May, 2018 a review under s. 49(9) of the Act took place. On 5th June, 2018 a deportation order was made, and was notified on the 14th June, 2018. Leave in the present proceedings was granted on 9th July, 2018, the primary relief sought being *certiorari* of the deportation order.

3. I have heard helpful submissions from Mr. Garry O'Halloran B.L. for the applicant and from Ms. Eilis Brennan B.L. for the respondents.

4. The difficulty with the decision under s. 49(9) which underlies the deportation order is in the treatment of the question of *refoulement* for the purposes of s. 50 of the 2015 Act. The analysis of that issue contains the crucial sentence "*the country of origin information does not indicate that the applicant would be at risk of refoulement if the applicant returned to Ghana*". In a situation such as this, the Minister can find that there is no risk of *refoulement* because either (a) any such risk depends on the applicant's account and such account is disbelieved, particularly where the Minister adopts a previous rejection by protection bodies of that account or (b) even if the applicant's account is correct, the country material does not support a risk of *refoulement* meeting s. 50 requirements arising out of that account. There may also be exceptional additional circumstances where *refoulement* arises *sur place* or in a manner not dependent on the applicant's account.

5. The Minister's analysis in the present case does not state that the rejection of the applicant's credibility by the protection bodies is adopted by him (for example because there is no reason to doubt those findings), although that is probably implicit. At the end of the day, however, given the ambiguous wording of that crucial sentence, there is something of a shortcoming in the articulation of reasons on behalf of the Minister as to whether what is intended to be conveyed is that even if the applicant's account is correct, the country material does not support a risk of *refoulement* or alternatively, which is probably the more likely option but one which has not been clearly articulated, that the *refoulement* question has to be assessed in terms of the Minister having endorsed the rejection of the applicant's credibility so that his claim of *refoulement* has to be judged in the context of whether *refoulement* arises by virtue of a status merely as a failed asylum seeker.

6. Given that what is at issue here is simply an ambiguity, rather than what might be regarded as a fundamental or irremediable difficulty, it would be disproportionate to quash the decision on this ground, particularly because the Minister may have had perfectly valid reasoning in mind. The appropriate order therefore is to exercise the jurisdiction to direct further reasons: *Hurley v. MIBI* [1993] I.L.R.M. 886, *English v. Emery Reimbold & Strick Ltd* [2002] EWCA Civ 605 [2002] 1 W.L.R. 2409 [2002] 3 All E.R. 385, *R.P.S. v. Kildare County Council* [2016] IEHC 113 [2017] 3 I.R. 61.

Order

7. Accordingly I will direct the Minister to provide further reasons for the finding at section 4 of the s. 49(9) review as to (a) whether the Minister adopted the IPAT rejection of the applicant's credibility generally and (b) whether the Minister's reference to country material not supporting the risk of *refoulement* should be construed as dealing with (i) the applicant merely as a failed asylum seeker or (ii) the applicant by reference to his own account, even if that account is correct; and I will adjourn the proceedings for a period to be fixed to enable those reasons to be provided and to be considered on behalf of the applicant.