

THE HIGH COURT

JUDICIAL REVIEW

[2017 No. 382 J.R.]

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

AND

IN THE MATTER OF THE EUROPEAN UNION
(SUBSIDIARY PROTECTION) REGULATIONS 2013

BETWEEN

I.O.

APPLICANT

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL
THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM
ATTORNEY GENERAL IRELAND

RESPONDENTS

JUDGMENT of Ms. Justice O'Regan delivered on the 17th day of July, 2017

1. The within application is for leave to seek judicial review for the purposes of quashing the first named respondents' decision on 31st January, 2017 and notified to the applicant on 6th February, 2017 to the effect that the applicant be refused the grant of subsidiary protection status.

2. In the proposed statement of grounds it is suggested that the Tribunal erred in failing to commission and secure a medical report on the applicant notwithstanding that the applicant himself had not produced such a report save that he was on a waiting list for assessment. This aspect of the matter was not developed in either written submissions tended to the Court prior to the matter coming before the Court on the 19th June, 2017 nor in oral submissions tendered on that date. Furthermore as was pointed out by the Tribunal at para. 5.16 of its decision it is for the applicant to evidence his case as he sees best (see para. 32 of *O.O. v. Refugee Appeals Tribunal & Ors.* [2016] IEHC 734).

3. In written submissions the applicant asserts that IPAT had an investigative function and should not have had a complete deference to ORAC's findings as this was not permissible.

4. In oral submissions on 19th June, 2017 it was argued that there was no finding as to whether or not the core issue to the applicant's claim, namely, that his parents and sibling were killed in a bomb attack at a market place in Maiduguri on 26th June, 2011 was accepted. Therefore no reason or finding was made as to the applicant's core claim.

5. I do not accept that there is evidence that there was complete deference by the first named respondent in respect of the prior ORAC decision of 13th November, 2015 as is evidenced by:

(a) At para. 5.3 of the appeal decision the Tribunal expressed surprise that the country of origin information which confirmed that there was a bomb attack at the relevant market place in Maiduguri on 26th June, 2011 was not accepted as corroborative material in respect of the applicant's claim. At para. 5.4 the Tribunal held that the report was taken to corroborate the applicant's account which enhances his credibility;

(b) At para. 5.13 of the appeal decision the issue as to the whether there was a river in the city of Maiduguri was dealt with – in the ORAC decision the failure of the applicant to name the river was held against him. In the appeal decision the Tribunal considered that the map was very indistinct and not an official map it could not therefore be evidence for the Tribunal to rely on. The para. 5.13 concluded with the view that the respondent's point regarding the river was considered unsafe and is discounted from the Tribunal's assessment.

6. Insofar as the claim that the Tribunal decision is flawed, (as it is not clear from the decision whether or not the Tribunal accepted that the applicant's parents and brother were killed in the bomb blast of 26th June, 2011), I do not accept this submission for the following reasons:

(a) At para. 5.17 of the Tribunal decision it is held that the appellant was unable to give much detail about the city of Maiduguri and this was central as he had suggested he lived there for six years and experienced persecution in the form of the death of close family members from a bombing.

(b) In my view it is clear from this statement that the issue as to whether or not his close family members were killed by the bomb would depend upon on whether or not the applicant in fact resided in Maiduguri on or about 26th June, 2011.

(c) Para. 5.17 also states that it appears likely that the applicant has not in fact ever resided there.

(d) At para. 5.23 with the heading of "conclusions on credibility" the Tribunal states that:

"however in his account as a whole it was so problematic as to cast serious doubt on his assertion to be from this area, or to have suffered the persecution he asserts (loss of family members). His credibility is not accepted."

7. I am therefore satisfied that the Tribunal did in fact specifically deal with the core issue of whether or not the applicant's parents and siblings were caught up in the bomb blast of the 26th June, 2011.

8. By reason of all of the foregoing the application to maintain judicial review proceedings is refused.