

THE HIGH COURT

JUDICIAL REVIEW

[2018 No. 1031 J.R.]

BETWEEN

H.A. (PAKISTAN)

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 December, 2018

1. The applicant was born in Pakistan in 1990. He lived in the U.K. on a student visa for a number of years from 2012 onwards. When that expired he came to Ireland and applied for asylum on 5th June, 2015. He does not appear to have applied for protection in the U.K.

2. On 29th July, 2016 the Refugee Applications Commissioner recommended refusal of the application. He appealed to the Refugee Appeals Tribunal. Following the commencement of International Protection Act 2015, he applied for subsidiary protection on 8th March, 2017. He was notified on 27th October, 2017 that there was an adverse recommendation in that regard and that the Minister had refused permission under s. 49 of the 2015 Act. He was informed of a five-day limit for making any further submissions upon receipt of an adverse appeal decision on the protection application (see s. 49(9) and (10) of the 2015 Act and the International Protection Act (Permission to Remain) Regulations 2016 reg. 2).

3. The applicant then appealed to the International Protection Appeals Tribunal and on 1st August, 2018 was notified that the appeals were being refused. He avers at para. 7 of his grounding affidavit that his solicitor at the time informed him that she did not receive a review form with the IPAT decision. His solicitor wrote to the applicant on 9th August, 2018 asking him to contact her. The applicant has not put forward any explanation as to why nothing happened between 1st and 9th August, 2018, which included the crucial five-day period for further submissions. The applicant then did not contact his solicitor until 23rd August, 2018. No explanation has been given as to why nothing happened between 9th and 23rd August. She wrote to him again on 29th August, 2018, and also wrote to the State complaining that the review form had not been enclosed and asking whether the applicant was being dealt with under the pre or post-2015 Act procedure. The review form is not a statutory form and an applicant is entitled to make submissions independently of such a form.

4. A deportation order was made on 19th October, 2018. The applicant was required to leave the State by 19th November, 2018 and failing that to present on 21st November, 2018. He failed to present and was arrested as an evader. The applicant is now in custody in Limerick Prison and seeks leave to apply for judicial review to quash the deportation order. I directed that leave be sought on notice. I have received helpful submissions from Mr. Paul O'Shea B.L for the applicant and Ms. Sarah Cooney B.L. for the respondent.

Leave application

5. The substantial grounds test for leave applies pursuant to s. 5 of the Illegal Immigrants (Trafficking) Act 2000. There are a number of reasons why the application must fail.

(i). The evidence falls well short of establishing substantial grounds. No proper explanation for the failure to act within the five-day period has been put forward. Even the hearsay comment by the applicant's former solicitor in the form of a letter exhibited by the applicant's current solicitor does not explain why no submissions were made within that crucial five-day period. That is not a situation that can be allowed to await replies to interesting legal queries made to the Department of Justice and Equality. The five-day limit demands immediate action. The primary responsibility for that is on an applicant himself or herself.

(ii). The second evidential black hole in the case is that the applicant has not averred that he would have had anything to say if he had been given the review form. In the absence of such an averment, the point clearly does not overcome the substantial grounds hurdle.

(iii). The fundamental problem with the application is that, even to this day, the applicant has never submitted any information that would have triggered a review. Even if he did not make submissions in time for any good reason, which has not been shown, he has not done anything since then at any time to make any further submissions or seek any form of review of the decision on any reasonable basis, or on any basis whatsoever.

(iv). The fourth problem with the application is that it is out of time and no good and sufficient reason has been shown for an extension of time. However I do not need to make a formal finding on this as the application fails on the merits.

6. Therefore leave should be refused as substantial grounds have not been shown.

Injunction

7. Pursuant to the decision of the Supreme Court in *Okunade v. Minister for Justice and Equality* [2012] IESC 49 [2012] 3 I.R. 153 [2013] 1 I.L.R.M. 1, the first criterion for an injunction is whether an arguable case has been shown; if not, the application should be refused. In the regard of the application of s. 5 of the Illegal Immigrants (Trafficking) Act 2000, one has to consider the presence or absence of substantial grounds in that regard, and on that criterion an injunction cannot arise where leave is refused, but if I am wrong about that, the applicant has not shown adequate reasons in terms of the balance of justice and convenience as to why an injunction should be granted in the particular circumstances of this case.

Order

8. For those reasons, leave is refused and an injunction restraining deportation is refused.

