THE HIGH COURT

JUDICIAL REVIEW

[2018 No. 454 J.R.]

BETWEEN

N.A.

APPLICANT

AND

THE CHIEF INTERNATIONAL PROTECTION OFFICER AND THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENTS

[2018 No. 535 J.R.]

F.K.

APPLICANT

AND

THE CHIEF INTERNATIONAL PROTECTION OFFICER AND THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENTS

[2018 No. 551 J.R.]

N.M.

APPLICANT

AND

THE CHIEF INTERNATIONAL PROTECTION OFFICER AND THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENTS

[2018 No. 541 J.R.]

I.G.

APPLICANT

AND

THE CHIEF INTERNATIONAL PROTECTION OFFICER AND THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENTS

[2018 No. 577 J.R.]

J.L.F.G.

APPLICANT

AND

THE CHIEF INTERNATIONAL PROTECTION OFFICER AND THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENTS

[2018 No. 517 J.R.]

N.M.

APPLICANT

AND

THE CHIEF INTERNATIONAL PROTECTION OFFICER AND THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 10th day of September, 2018

1. The applicants in each of these six cases have brought proceedings making the technical objection that the International Protection Office used contractors in the process of coming up with a negative recommendation. In *I.G. v. Minister for Justice and Equality* [2015] IEHC 682 [2015] 11 JIC 0602 (Unreported, High Court, 6th November, 2015) I refused leave on that purely technical point on the grounds that I considered it to be insubstantial. The Supreme Court on appeal granted leave (*I.G. v. Refugee Applications Commissioner* [2018] IESC 25 (Unreported, Supreme Court, 16th May, 2018)). The issue now is whether the present applicants in other cases raising the same or similar points should get the benefit of a stay restraining the International Protection Appeals Tribunal from carrying out its statutory duty to hear their appeals from the IPO recommendations expeditiously.

2. I have received helpful submissions from Mr. Shannon Haynes B.L. for the applicants in *N.A., F.K.* and *N.M.* cases from Mr. Paul O'Shea B.L. for the applicants in the *J.L.F.G.*, *I.G.* and *N.M.* cases, and from Ms. Nuala Butler S.C. (with Mr. Mark J. Dunne B.L.) for the respondents and for the International Protection Appeals Tribunal.

3. What is sought by the applicants in each of the cases is in essence an order, whether phrased as a stay or an injunction or otherwise, which would have the effect of preventing the tribunal from processing their appeals further. Mr. Haynes and Mr. O'Shea essentially rely on the balance of convenience and justice. Ms. Butler, appearing for the respondents and the tribunal, drew certain matters to the court's attention material to that assessment. To facilitate that being done, in the course of the hearing I added the International Protection Appeals Tribunal as a notice party in all six cases.

4. The major factors particularly relevant to the balance of convenience and justice are the following:

> i. The harm to the applicants by the refusal of a stay because their challenges might become moot. That is certainly a factor that I need to take into account but balancing that is the fact that their complaints are purely technical and no particular harm to the applicants (beyond the speculative) has been demonstrated by the use of contractors.
>
> ii. There is a benefit to the applicants in the appeals going ahead because the IPAT will then be able to carry out its function of processing them expeditiously and the appeals will not be held up for many months or possibly even years depending on the procedural steps that will follow.
>
> iii. Refusing a stay provides a benefit to the legal system and the people of Ireland because it permits the protection process to work in a manner envisaged by the Oireachtas. I would have a significant concern as to the impact of a whole wave of purely technical challenges, of which there are at least 40 at the present time, holding up the working of the protection system. The system is certainly in danger of logjam if applications are frozen at the end of the initial stage and cannot proceed to the appellate stage, where they will benefit from a full rehearing if unsuccessful initially.
>
> iv. Then there is the benefit for the tribunal itself, which can organise and carry out its statutory mission if there is no stay. It is clear from the judgment of MacEochaidh J. in *H.T.K. v. Minister for Justice and Equality* [2016] IEHC 43 (Unreported, High Court, 15th January, 2016) that the tribunal is obliged to process any appeal made to it in the absence of any court order to the contrary.
>
> v. It seems to me that Ms. Butler's concern is well founded when she submits that if stays are routinely granted preventing the processing of appeals against IPO recommendations on purely technical points, such as those in the present cases, then the tribunal will be prevented from doing its job in a significant number of cases. Ms. Butler has informed me that there are one or two requests every day from applicants to adjourn hearings because they wish to litigate the technical point at issue in these proceedings. Ms. Butler also informs me that the tribunal is in a position to consider and conduct hearings in appeals that are taken to it within a relatively short period of months from the appeals being lodged. A situation that prevailed some time ago where there were long delays in hearing appeals has now been cleared.
>
> vi. A further and related point is that to grant stays in cases of this nature would inherently create a backlog because all of those cases would then come on stream for consideration by the International Protection Appeals Tribunal at the same time on the final determination of the test cases. That could be some time to come and therefore the backlog could be quite substantial, which in turn would significantly affect the workload of the tribunal and its ability to manage its own business.

5. Taking all the foregoing into account it seems to me that the balance of convenience and justice leans massively against a stay in cases such as these. The only exception would be for test cases where there is public interest in the issue being determined as a test case and therefore a corresponding public interest in such test cases not becoming moot.

6. So in principle, in the *N.A.* case, which has been selected as a test case, there would be a stay, on the applicant's undertaking to process the proceedings expeditiously and, in the event of being unsuccessful, to lodge an application for leapfrog leave whether or not the applicant is also going to seek leave to appeal to the Court of Appeal. Without prejudice to what the judge hearing the substantive matter might think or what the appellate courts might think, from my vantage point as judge in charge of the asylum, immigration and citizenship list at the present time, I would respectfully venture to suggest that this might be a matter that would significantly benefit from being finalised in the earliest course possible, given the weekly inflow of new cases coming into the list, raising this point. So from that particular vantage point I would respectfully lend my support to the matter being dealt with by way of leapfrog appeal if the eventual substantive order is to be appealed at all by either side.

7. So the order will be as follows:

> i. as noted above, I am adding the IPAT as a notice party in each case;
>
> ii. because *N.A.* is a test case, in that case I will restrain the International Protection Appeals Tribunal from further processing the applicant's appeal to the tribunal on the applicant's undertaking to process the proceedings expeditiously and, if an appeal is to be pursued, to apply for leapfrog appeal to the Supreme Court in the event of those proceedings being unsuccessful, irrespective of whether the applicant also applies for leave to appeal to the Court of Appeal; and
>
> iii. in all of the other cases I will refuse the relief by way of a stay or injunction that has been sought.