THE HIGH COURT

2018 No. 916 JR

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

AND IN THE MATTER OF THE INTERNATIONAL PROTECTION ACT 2015

Between:

H

Applicant

– and –

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

Respondents

JUDGMENT of Mr Justice Max Barrett delivered on 11th July, 2019.

1. On 01.12.2017, Mr H, a national of Pakistan and a practising Shia Muslim, made a claim for international protection on the basis that if returned to Pakistan he would be subjected to threats or physical harm by virtue of his religion and would not be able freely to profess his religion. By letter of 17.05.2015, he was advised that it had been recommended that he be given neither a refugee declaration nor a subsidiary protection declaration. He appealed that decision to the International Protection Appeals Tribunal, essentially on the basis that he has a well-founded fear of persecution in Pakistan by reason of his religion. By letter of 03.10.2018, he was advised that he had been unsuccessful in that appeal. The within proceedings have ensued. Three lines of criticism were levelled at the decision of the IPAT (the 'Impugned Decision'). Thus:

> **(1) criticism was made of the suggestion in the Impugned Decision that Mr H could visit his family in a named place in Pakistan where they currently reside**. The court respectfully declines to consider this criticism. It is not in the statement of grounds and was not the subject of leave.
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> **(2) criticism was made that the Impugned Decision does not indicate whether jurisdiction is derived from s.32(1)(b) of the International Protection Act 2015 or otherwise (which section introduces a concept of 'settle' when addressing the availability of internal relocation which, it is alleged, differs from the concept of 'stay' in reg.13(5) of the EU (Subsidiary Protection) Regulations 2013 and Art.8(1) of Council Directive 2004/83/EC), and without the IPAT indicating its views on this point**. The court respectfully declines to consider this criticism. It is not in the statement of grounds and was not the subject of leave.
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> **(3) criticism was made that the Impugned Decision (i) in finding at para.5.12 that country of origin information (COI) does not suggest widespread societal discrimination against Shia is irrational and based on a preferential regard to the country reports before the IPAT, (ii) in its findings at paras.5.19-20 that the increased security presence in a named city (the 'Named City') would allow Mr H freely and openly to practise his faith in that city upon relocation is irrational and based on a preferential regard to the country reports before the IPAT (iii) in finding that Mr H (and, at para.5.21, his wife and children) can relocate to the Named City was made without assessment of various relevant matters, and (iv) in the determination that there is no risk from State actors and effective State protection in the Named City from non-State actors was irrational and based on a preferential regard to the country reports before the IPAT and made without fair assessment of all factors.**

2. As to criticisms (1) and (2) the court declines to consider these criticisms. Neither features in the statement of grounds and neither was the subject of leave.

3. Turning to criticism (3), in this regard the court was referred, *inter alia*, to (i) *KD (Nigeria) v. The Refugee Appeals Tribunal and anor* [2013] IEHC 481, in particular to the consideration at para.28 as to the principles that apply to an assessment of an internal relocation alternative, (ii) *DVTS v. MJELR* [2008] 3 IR 476, esp. 496-7, and (iii) *MAUH (Pakistan) v. MJE* [2012] IEHC 572, esp. para. 26. The following points might be made regarding this case-law:

> – as to (ii), two points might be made. First, the COI in that case contained conflicting information. In this case, when it comes to the Named City to which relocation is considered plausible, there was no conflicting information before the IPAT (and despite a thorough analysis at the hearing of the within application no such conflicting information was identified). Second, insofar as there was (and there was) other conflicting COI information before the IPAT – though not about the Named City – the decision-maker proceeded exactly as contemplated in *DVTS*, 497, with a consideration of the conflict and a reasoned decision for such conclusions as are reached in this regard (see Impugned Decision, para.5.11).
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> – as to (iii), para.26 is concerned with the position of the Ahmadiyya community, not with Shias. However, even if the court were to accept (and it does) "*that the concept of religious freedom cannot be confined to private conscience to the exclusion of public manifestation of religion"* (*MAUH*, para.26, quoting from the Opinion of AG Bot in *Bundesrepublik Deutschland v. Y* (Case C-71/11), Z (Case C-99/11)), one of the reasons why the IPAT accepts the plausibility of relocation to the Named City is because such confinement/exclusion would not now be required there (see Impugned Decision, para.5.20).

4. As to criticism (3) more generally, (1) the IPAT's decision is duly reasoned and justified, to the extent even of making some findings that favour Mr H, albeit that he is disappointed with the ultimate conclusion, (2) there is (a) a striking regard to the various information that was before the IPAT and (b) nothing in the reasoning of the IPAT that is either irrational or unreasonable, (3) when it comes to the assessment of the position for Shias that pertains in the Named City, (a) this assessment is not controverted in the material that was before the IPAT, (b) it was not notably challenged on affidavit, (c) despite a thorough trawl by counsel for Mr H at the hearing, he was unable to point to any contradictory information concerning the Named City, and (d) is an assessment which appears both reasonable and rational.

5. Having regard to all of the foregoing, the reliefs sought must respectfully be refused.