THE HIGH COURT

JUDICIAL REVIEW

[2018 No. 251 J.R.]

BETWEEN

B.B.A. (INDIA)

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 14th day of December, 2018

1. The applicant originates from Indian Kashmir, and was born in 1988. He was sent to the U.K. in 1998 aged ten and returned to India in 2007. He then applied for a visa on 18th July, 2012 to study in the U.K. and returned there in August, 2012. He did not apply for international protection in that country.

2. He appears to have travelled to Ireland on or about September, 2014, and applied for asylum approximately two months afterwards. That was refused by the Refugee Applications Commissioner. He then sought subsidiary protection, which was refused by the International Protection Office. Those decisions were appealed to the International Protection Appeals Tribunal, which rejected the appeals on 27th February, 2018.

3. The present proceedings were filed on 29th March, 2018, the primary relief sought being *certiorari* of the IPAT decision. I granted leave on 23rd April, 2018. I have received helpful submissions from Mr. Paul O'Shea B.L. for the applicant and Mr. Alexander Caffrey B.L. for the respondents.

Affidavit delivered without leave

4. On 5th September, 2018, the applicant's solicitor swore an affidavit in which it was proposed to exhibit certain documents which were not put before the tribunal, but which the applicant claims would have made a difference if the tribunal had properly considered all up to date country information. Only one of those items could reasonably have been something that the tribunal could have been even conceivably obliged to consider, namely the Human Rights Watch Annual Report, 2017. It is not remotely workable for the tribunal and each of its members to maintain a round-the-clock watch on the internet for newspaper articles about each and every country, or for such occasional statements, reports or press releases as might be issued from time to time by NGOs such as Amnesty International. The Human Rights Watch Annual Report, by contrast, is properly mainstream country information of the type to which one could argue that the tribunal can be expected to have general regard.

5. The Central Office system indicates that the affidavit was not filed and the copy produced is not marked as filed. Leave to file was not specifically sought on behalf of the applicant even when I pointed out that it had not been filed, so it does not seem necessary to take any action in relation to this affidavit. Thus it is not part of the case, but even if it was it does not entitle the applicant to succeed. Even if I had been formally asked to allow this affidavit to be filed, which I wasn't, and had I been minded to allow that, which I wasn't, it would not have been appropriate to do so because the point simply is not pleaded. The grounds set out in the statement of grounds do not include the argument that the tribunal's decision is unlawful because it failed to consider this extraneous material, so on any view the applicant is not entitled to succeed under this heading.

The shared burden of proof

6. Mr. O'Shea attempts to argue that the burden of showing that an internal protection alternative is available is on the State rather than the applicant. However, he did not make this point to the tribunal, and indeed the submissions made to the tribunal quote para. 196 of the UNHCR handbook, which refers to the general duty being on the applicant, qualified by a shared duty. Under those circumstances the applicant is not entitled to make such a point for the first time to the court. Thus it is not surprising that Mr. O'Shea says he is "*not pushing*" this point.

7. In case I am wrong about the applicant's entitlement to raise this issue now, I can comment briefly on it in any event. Mr. O'Shea submits that the UNHCR internal relocation guidelines, entitled "Internal Flight or Relocation Alternative", July, 2003, should have been referred to but were not. As the UNHCR guidelines are not law, an otherwise lawful decision cannot be quashed for failure to comply with them. The attempt is being made to use the guidelines to launch an argument that the burden of showing the internal relocation option is available lies on the respondent. That is somewhat contradicted by the UNHCR handbook, which as noted refers to a shared duty (para. 196) and by the fact that the UNHCR guidelines claim that the burden being on the respondent in certain respects is consistent with this shared duty (para. 33).

8. The International Protection Act 2005 is an implementation of EU law. The long title refers to its purposes as including to give further effect to directives 2001/55/EC, 2004/83/EC and 2005/85/EC. European standards are represented in the discussion in Hailbronner and Thym, *EU Immigration and Asylum Law*, 2nd ed. (C.H. Beck/Hart/Nomos, 2016) at pp. 1164 to 1165 by Judge Harald Dörig, in relation to art. 8 of the qualification directive (referring to the recast version but the same point applies to the original). That discussion refers to the UNHCR guidelines mentioned above but also to a judgment of the German Federal Administrative Court (Bundesverwaltungsgericht) of 10th May, 2004, No. 9 C 434.93 *Neue Zeitschrift für Verwaltungsrecht* 1994 p. 1123 to the effect that *"[i]t is the general duty of an applicant to explain that his fear of persecution extends to the territory of his home country as a whole…But in the case of an IPA [internal protection alternative], this only means that he has to describe the facts and events which fall in his personal sphere"*. That amounts to the well-established shared burden: see *O.P. v. Minister for Justice and Equality* [2010] IEHC 513 (Unreported, Ryan P., 22nd October, 2010), *K.D. (Nigeria) v. Refugee Appeals Tribunal* [2013] IEHC 481 [2013] 1 I.R. 448, *E.I. v. Minister for Justice, Equality and Law Reform* [2014] IEHC 27 (Unreported, Mac Eochaidh J., 30th January, 2014) and *K.M.A. (Algeria) v. Refugee Appeals Tribunal* [2015] IEHC 472 (Unreported, Eagar J., 16th July, 2015). Here, neither the general circumstances in the places concerned nor the personal circumstances of the applicant led to the conclusion that internal relocation would be unavailable, so this point does not assist this applicant on these facts.

Alleged unlawfulness of refusal of protection on internal relocation grounds
9. Regulation 7(1) of the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006) reflecting art. 8 of the qualification directive provides that protection may be refused if "*the applicant can reasonably be expected to stay in a part his or her country of origin where there is no well-founded fear of being persecuted or real risk of suffering serious harm*". Regulation 7(2) prefers that the decision-maker "*shall have regard to the general circumstances prevailing in that part of the country [of origin] and to the personal circumstances of the applicant*". The applicant has previously lived in Delhi for eight months and Bangalore for seven months (see para. 5.8 of the tribunal decision), has been in Calcutta, and indeed also returned to India from the U.K. as an adult. The tribunal identified places in India where internal relocation was an option, and in doing so considered the personal circumstances and attributes of the applicant and the general circumstances in the parts of the country concerned. It concluded that in the light of those factors, it would be reasonable to expect the applicant to stay there.

10. By contrast with, for example, *A.A. (Pakistan) v. International Protection Appeals Tribunal* [2018] IEHC 497 (Unreported, High Court, 31st July, 2018), the tribunal here has stated and applied the correct test. Those findings were perfectly reasonable and lawful on the material before the tribunal member, who of course saw and heard the applicant and was best placed to assess his fears regarding internal relocation. The applicant's submission that, for example, his points were not given due weight are simply a complaint that the tribunal did not agree with him, as the weight to be assigned to the various evidential factors is quintessentially a matter for the decision-maker. The Human Rights Watch Report, 2017, which the applicant did not see fit to put before the tribunal, does not create any fundamentally different picture to the findings arrived at by the tribunal, even if it were properly part of the case, which it isn't.

Order
11. The tribunal considered that its conclusion that the applicant could relocate to a large city in India was an "*objective common sense appraisal of the reality … having regard to the applicant's own evidence and COI*" (para. 5.8(c)). That was an entirely justifiable approach. The application is dismissed.