THE HIGH COURT

JUDICIAL REVIEW

[2017 No. 136 J.R.]

IN THE MATTER OF SECTION 5 OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT, 2000 AND IN THE MATTER OF THE REFUGEE ACT, 1996

BETWEEN

M.M.

APPLICANT

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL

RESPONDENT

JUDGMENT of Ms. Justice O'Regan delivered on the 21st day of February, 2017

1. The applicant seeks leave to apply by way of judicial review to quash the decision of the respondent of 24th January, 2017 where the respondent determined that the applicant was not eligible for subsidiary protection.

2. The *ex parte* docket, grounding affidavit and statement of grounds in this matter are all dated 15th February, 2017. Submissions have also been filed bearing date 15th February, 2017.

3. The applicant came to Ireland on 8th September, 2013 and applied for asylum on 9th September, 2013. Having failed in his asylum application he made an application on 10th April, 2014 for subsidiary protection. This application was refused on 19th October, 2015. The applicant appealed on 7th December, 2015 and on 25th January, 2017 the decision of 19th October, 2015 was affirmed.

4. The decisions impugned runs to 18 pages.

5. The applicant complains that in assessing the concept of "real risk" the respondent required an excessive showing of likelihood instead of giving the term its plain and ordinary meaning. In legal argument in this regard reference is made to the definition of "real" which suggests that if there is at least some prospect of something happening then the risk is real and not artificial.

6. In Case C – 465/07 *Elgafaji v. Staatssecretaris van Justite* [2007] OJ C 008 the European Court of Justice discussed Art. 15(c) of the Qualification Directive, 2003 and stated that the definition in Art. 15(c) cover "a more general risk of harm" involving "an exceptional situation" characterised by "such a high degree of risk that substantial grounds would be shown for believing that the person would be subject individually to the risk in question."

7. The suggestion therefore on behalf of the applicant that real risk is established if there is at least some prospect of something happening is not reasonable, arguable or weighty in all of the circumstances.

8. For the reasons above, I believe that the second ground relied upon by the applicant does not reach the threshold sufficient under s. 5 of the 2000 Act as amended on the basis that this ground is again based on the assertion that "there is, at least, some prospect of a prosecution."

9. The final ground upon which leave is sought is on the basis that the respondent erred in failing to have regard to evidence submitted by the applicant concerning the prevalence of prosecutions of persons in Algeria for the offence of irregular exit. This evidence was country of origin information. In the submissions produced it is stated that the country of origin information that supported the applicant's claim was ignored.

10. At para. 3.10 the decision states "all of the documentation provided has been fully considered." At para. 6.15 it was accepted that Algerian law criminalised irregular exits from the country. At para. 6.18 the Tribunal indicated that it needed to be satisfied that there was a real risk, not a mere possibility. At para. 6.19 it is stated:—

> "The Tribunal has consulted all of the COI on file including the UK Home Office, Country of Origin Information Report – Algeria, 17th January, 2013, in an effort to determine if the appellant's claim can find any clear substantiation. It cannot, in the Tribunal's assessment."

11. At para. 22 of *G.I. v. Minister for Justice & Ors.* [2015] IEHC 682 Humphreys J. considered the question of whether or not the Tribunal in that matter had failed to take into account country of origin information and he states:—

> *"22. At p. 9 of his decision, the Tribunal Member recites the terms of regulation 5 of the 2006 Regulations, and at p. 16 he recites that he has perused the documents submitted. As the decision on its face purports to have taken the documents into account, the onus is on the applicant to show that this is not the case, an onus which has not been discharged. The right to a narrative discussion of the evidence submitted could only arise if documentary evidence was being positively rejected, as opposed to a situation where it was insufficient to take the applicant over the line."*

12. I am satisfied that the applicant has not discharged the onus of proof pursuant to s. 5 of the 2000 Act.

13. In all of the circumstances the application for leave is refused on the basis of the foregoing.