

THE HIGH COURT

2018 No. 516 JR

C.

Applicant

v.

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL AND THE MINISTER FOR JUSTICE AND EQUALITY

Respondents

JUDGMENT of Mr Justice Max Barrett delivered on 21st December, 2018.

1. On (i) one set of evidence in one application ('Evidence A'), IPAT concluded that Mr O, a subsidiary protection applicant, had established he is gay; (ii) another set of evidence in a separate application ('Evidence B'), IPAT concluded that Mr C, a subsidiary protection applicant, did not establish he is gay. Evidence A/Evidence B respectively included, *inter alia*, what IPAT was entitled to (and did) find, in each application, was partly inconsistent evidence from Mr C/Mr O about a claimed gay relationship between the two men. Mr C seeks, *inter alia*, an order of *certiorari* quashing the IPAT decision concerning him.

2. The two applications did not feature, "*the same facts*" (*JN v. Minister for Justice* [2009] 1 I.R. 146, para.16), "*all but identical facts*" (*EG v. Refugee Appeals Tribunal* [2008] IEHC 400, para.32), or "*similar facts*" (*McMahon v. Leahy* [1984] IR 525, 537). They were different applications, yielding different decisions on different evidence. Unless one proceeds on the flawed basis that: the two applications featured largely similar evidence (they did not); and/or that IPAT, when determining Mr O's application made a finding as to Mr C's sexuality (it did not), there was no obligation on IPAT, when deciding Mr C's application, to explain its alleged 'departure' from the decision in Mr O's case. (As to *stare decisis*, it does not apply to IPAT (*JM (Malawi) v. The International Protection Appeals Tribunal and anor* [2018] IEHC 663, para.9)).

3. The impugned decision indicates that Mr O's evidence (at Mr C's appeal) was considered credible as to his own sexuality, but that Mr C's general credibility was not established. No legal flaw presents in this: Mr C's application was his to establish; Mr O aimed to provide corroborative evidence; IPAT validly reached its conclusion concerning Mr C by reference to *all* of Evidence B. The form of reasoning as offered in the impugned decision accords with e.g., *Meadows v. Minister for Justice, Equality and Law Reform* [2010] IESC 3 and *Mallak v. Minister for Justice, Equality and Law Reform* [2012] 3 I.R. 297.

4. Two further points remain. (1) Mr C initially received a negative recommendation under s.13 of the Refugee Act 1996. Under s.70(2)(c)(ii) of the International Protection Act 2015 that negative recommendation is deemed a recommendation under s.39(3)(b)/(c). Mr C contends that as the impugned decision affirms "*the recommendations made...pursuant to section 13 of the Refugee Act 1996 and the International Protection Officer pursuant to section 39(3)(c)*", there is error on the face of the record. The court respectfully disagrees: IPAT merely affirmed what was before it. (2) Mr C contends that IPAT, when considering his application, placed excessive weight on the discrepancy between the two men's evidence as to the physical relationship between them (if such there was). No leave for review on this ground was granted.

5. It follows that all the reliefs sought must respectfully be refused.