[2020] IEHC 134

THE HIGH COURT

[2019 No. 621 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

(1)VH

APPLICANT

– AND –

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

RESPONDENTS

THE HIGH COURT

[2019 No. 620 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

(2) LH

APPLICANT

– AND –

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

RESPONDENTS

JUDGMENT of Mr Justice Max Barrett delivered on 12th March 2020.

I. Mr VH's Application.

1. Mr VH is a national of Albania who applied for international protection in the State on or around 9 January 2017. In a report of 28 February 2018, the International Protection Office recommended that Mr VH be given neither a refugee declaration nor a subsidiary protection declaration. This was affirmed by (the impugned) decision of the first-named respondent on 24 June last. These judicial review proceedings have ensued.

2. By way of background, Mr VH applied for international protection on the primary basis that if returned to Albania he would be subjected to persecution and/or serious harm arising from a land dispute involving his family. In addition, Mr VH asserted an entitlement to protection on the ancillary basis of his Roma ethnicity.

3. The first ground of objection concerns the International Protection Appeal Tribunal's ("IPAT") finding at para. 4.4.4 of the impugned decision, that:

> *"While the Appellant submitted a copy of a Declaration by…[Mr X], the purported head of village…in support of his claim, [1] it was not submitted in its original form and [2] is understood to have been obtained for the purposes of the Appellant's international protection application. [3] In particular, the Tribunal finds the statement 'the state law is still weak in Albania in order to guarantee the safety of its citizens', contained therein, to be an improbable declaration by a local Government official. For these reasons, the Tribunal finds this Declaration not to be credible."*

4. As to [1], it is appropriate, pursuant to s.28 of the International Protection Act 2015 ("Act of 2015"), for the IPAT to evaluate the nature/quality of such evidence as is placed before it. Here, however, the IPAT does not indicate that there was any inquiry as to why a copy was provided, nor does it indicate any reasons why, as a consequence of that inquiry, the Declaration was found to be objectionable. Thus, it seems to the court that there has been, in this regard, a breach of fair procedures and/or a failure to give reasons.

5. As to [2], just because evidence is self-serving is not of itself a basis for rejecting that evidence; were matters otherwise most of the evidence that, e.g., is heard or placed on evidence in court proceedings, could be jettisoned on that basis alone. The court has been referred, *inter alia*, in this regard to, and respectfully adopts the below-quoted reasoning, in:

   - *Kimbudi v. Minister of Employment and Immigration* (1982) 40 NR 566 (FCA) where Urie J., in his judgment for the Canadian Federal Court of Appeal, stated, inter alia, as follows, at para. 4:

     > "[T]*he* [Immigration Appeal] *Board was clearly wrong in holding, as it did, that there was no evidence that [the applicant] is known to the Angolan authorities. While the evidence to which I have referred may be characterized as self-serving, it is difficult for me to conceive what evidence would be available to him in Canada* [or here, in Ireland] *which would not suffer from that characterization.*"

   - *R. (S.S.) v. Secretary of State for the Home Department* [2017] UKUT 164 (IAC), that:

     > *"A reason, however brief…[*is*] needed for the designation…'self-serving', an expression which was, to a large extent, variable in meaning and provided little or no assistance."*

   - *M.J. (Singh v. Belgium: Tanveer Ahmed unaffected) Afghanistan v. Secretary of State for the Home Department* [2013] UKUT 253 (IAC), at para. 33, that:

     > "[W]*e agree with the point made…in submissions concerning the use of the term 'self-serving'. If that were the only basis upon which the judge had rejected evidence then we would find it to be lacking in proper reasoning. No doubt an appellant will generally, if not always, find it of assistance to put forward evidence that assists his case and to that extent such evidence may be regarded as 'self-serving', but that cannot in any sense be said to be a reason for marginalising it."*

6. As to [3], the IPAT does not point to any false information in the Declaration but to an unexplained sense on the part of the IPAT official that what is stated in the Declaration is something that is unlikely to be stated by a local (village) government official. There is no reasoning offered for this sense, so there is a failure to provide reasons. Additionally, insofar as the IPAT considers the Declaration not to be credible, in effect casting a burden

on Mr VH to establish the genuineness of the Declaration, without any mention of this at the hearing or thereafter, thus giving him no opportunity to discharge such burden, and then relying on his failure to discharge the burden so cast to assail his credibility, this seems to the court to involve a near-classic breach of fair procedures.

7. The second ground of objection concerns the IPAT's finding at para. 4.4.5 of the impugned decision, that:

> *"The Appellant was vague in his account of a…2016 attack on his life, at both his oral hearing and at his section 35 interview. At interview, the Appellant stated that 'during my journey from work to home, I was stopped by four armed people in a car. They punched me badly. And they threatened me. They pressured me.' He said that he was punched 'in my face and my abdomen'. He was later asked to provide further details of the attack and he responded that 'during the communist regime in the '90s the…[*Name Stated] *family was powerful'. The Appellant was asked a further three times for the details of the attack and he simply responded, 'we fought all the time', 'as I said they put a gun to my head' and 'I was threatened by them'".*

8. Regrettably, the court must conclude again that this text seems to it to possess a legal deficiency in that there is no indication why the IPAT found the account of the attack to be so vague as to require further details or even some indication as to what further details it might have expected to be forthcoming. In this regard, the court recalls and respectfully adopts the following reasoning of the United Kingdom: Immigration Appeal Tribunal in *J.B. (Torture and III treatment - Article 3) DR Congo* [2003] UKIAT 12, at para. 7:

> *"The Adjudicator has given no indication about the areas in which he found the appellant to be vague. Given that the appellant appeared before him, if he had thought that the appellant needed to give more detail than he had, he should have sought such details and if the appellant had not provided the detail then the Adjudicator could properly have concluded that he had been evasive in his evidence. To describe a person's evidence as vague and use that as a ground for disbelief is, in our view, quite unsatisfactory unless of course the areas of lack of detail, which cause concern, are clearly spelt out".*

9. Effectively the same issue presents as regards the fifth ground of objection and the court would make the same point and reach the same conclusion in this regard as just stated in the preceding paragraph.

10. The third ground of objection concerns the IPAT's finding at para. 4.4.6 of the impugned decision, that:

> "*Given the appellant's lack of legal title or personal involvement in the contested matters, the Tribunal does not find the Appellant's unspecified [quaere* whether 'non-specific' is meant in this regard] *account of a 2016 attack to be credible."*

11. The court respectfully sees no logical nexus between any lack of legal title or personal involvement in a land dispute that is claimed to pertain between two families and the credibility of an account of a particular attack upon a member of one of the families concerned. Lack of legal title or personal involvement (and the court does not quite understand the 'personal involvement' point when Mr VH is a member of one of the families claimed to be involved in an inter-familial dispute) does not seem determinative as to whether a particular attack in fact occurred. Moreover, though the court makes this point solely by way of *obiter* observation, land disputes, one suspects, tend to arise in the main because there is a dispute over legal title, with perhaps none of the parties able to point to legally conclusive documentation or one or other (or both) of the parties refusing to accept that ostensibly conclusive documentation is correct.

12. The court understands the fourth ground of objection (the state protection ground of objection) to have been withdrawn.

13. The sixth ground of objection involves a complaint that the IPAT's rejection of Mr VH's claim on grounds of his Roma ethnicity is unreasoned. The focus of this ground is on paras. 4.4.12-13 of the impugned decision which state as follows:

> *"4.4.12. At hearing, the Appellant stated that when he went to the police station to report the…[*Stated Name*] family, they were told to 'go away gypsy' and 'you will have your rights when your party is in power'. He also stated that he suffered further racism in Albania but did not give any further details. At his section 35 interview, the Appellant was asked in what way he was treated differently as a Roma, and he stated that when he was a child, 'people called me a gypsy', that his teacher looked at him differently, and that his classmate beat him up.*
>
> *4.4.13. At hearing, the Appellant's brother stated that he experienced racism at school, and that while he was an excellent student, he didn't get what he deserved. At his section 35 interview, the Appellant's brother was asked in what way he was treated differently as a Roma, and he stated that when he was in school 'other students see you in a different way'.*
>
> *The Tribunal accepts on the basis of the COI submitted, that members of the Roma community may experience discrimination in accessing services such as education, employment and housing. However, the Appellant and the Appellant's brother's testimony, are not credible accounts of past discrimination on the basis of their mixed Roma ethnicity."*

14. Regrettably, the court must conclude that the bald, unreasoned rejection of credibility in the just-quoted text is in breach of constitutional law, statutory law (Act of 2015), the Qualification Directive, case-law, and all guidance of relevance, including the UNHCR Handbook.

15. This application was brought out of time. However, the Act of 2015 and, *e.g.*, *G.K. v. Minister for Justice, Equality and Law Reform* [2002] 2 IR 418, make clear that the court

may extend such time where there is "*good and sufficient reason*". The affidavit evidence before the court does not explain the entire period of delay. However, it seems to the court that it would be profoundly unjust if, in the face of the manifold deficiencies in the decision of the IPAT, as considered above, it was to find that there was not *"good and sufficient reason"* for an extension of time, the avoidance of such injustice being "*good and sufficient reason*" for the said extension.

II. Mr LH's application.

16. Mr LH is Mr VH's brother. An appeal against his failed application for international protection was unsuccessful before the IPAT on substantively identical grounds to his brother and is the subject of substantively identical objections. So, if Mr VH succeeded/failed in his application, it was always going to be the case that Mr LH would likewise succeed/fail. Thus, it suffices for the court to observe in respect of Mr LH's application that, having regard to same, it reaches the same conclusions, mutatis mutandis, as it has just reached in his brother's application.

III. Conclusion.

17. The court will grant an order of *certiorari* in respect of the IPAT decisions concerning each of Mr VH and Mr LH and remit the respective matters to the IPAT for fresh consideration.