

THE HIGH COURT

2019 26 JR

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

Between:

N

Applicant

– and –

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL

AND THE MINISTER FOR JUSTICE AND EQUALITY

Respondents

JUDGMENT of Mr Justice Max Barrett delivered on 29th July, 2019.

A. Introduction

1. Mr N is a national of Malawi who has applied for international protection in Ireland. In an IPAT decision of 21.05.2018 (the 'Impugned Decision'), the IPAT affirmed the recommendation of the International Protection Officer that Mr N should be given neither a refugee declaration nor a subsidiary protection declaration. Various concerns have been raised by/for Mr N concerning the Impugned Decision. However, at the hearing of the within application his case essentially 'boiled down' to concerns relating to the Spirasi report (a medico-legal report prepared by the Spiritan Asylum Services Initiative and submitted as part of Mr N's application).

B. The Spirasi Report

2. Three difficulties arise in the IPAT's treatment of the Spirasi report in the Impugned Decision:

(1) the Tribunal views "*the qualified nature of the psychological assessments*" (Impugned Decision, para.4.3.15), as touched upon by the author of the Spirasi report, as a factor which reduces the weight that should be assigned to those assessments. However, when the author of the report passes comment on the somewhat surprising results of the psychological assessments, his commentary is intended as an observation *in favour* of Mr N. So, for example, when the author of the Spirasi report states at p.7 of same that "*I would have expected much higher negative scoring*", this is because Mr N's discernible mood state suggested that Mr N was in truth in a worse condition than his scoring suggested. However, the IPAT clearly – and, regrettably, mistakenly – construes the author's commentary as working to the detriment of Mr N.

(2) under para.187 of the *UNHCHR Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Istanbul Protocol), a 'consistent/highly consistent' rating relates to physical symptoms only ("*lesion[s] and...the overall pattern of lesions*"). However, in the Impugned Decision the IPAT discounts the probative value of the Istanbul Protocol-related findings by reference to the qualified psychological assessment (see para.4.3.15), a line of reasoning that is, at best, unreasonable.

(3) there is now a long line of case-law which points, as one would instinctively expect, to a medico-legal report such as the Spirasi report not being capable of proving the truth of an individual applicant's account of events (see, e.g., *RS (Ukraine) v. IPAT (No.1)* [2018] IEHC 512, *RS (Ukraine) v. IPAT (No.2)* [2018] IEHC 743, *AMN v. RAT* [2012] IEHC 393 and *MZ (Pakistan) v. IPAT (No.2)* [2019] IEHC 315). Although the wording of the Impugned Decision is a little unclear in this regard, it does seem, from para.4.3.31 of the Impugned Decision, where criticism is levelled by the IPAT that the Spirasi report "*is not definitive of the cause of the Appellant's presentation*", that the IPAT anticipates a degree of determination by the Spirasi report that is not consistent with the above-mentioned case-law.

C. Some Ancillary Criticisms

3. A number of ancillary criticisms were made by Mr N, albeit that it is acknowledged in the written submissions of his counsel "*that each of these matters in their own right might not be seen as invalidating the decision*". This acknowledgement was followed by the effective concession at the hearing of this application that the success or failure of Mr T in the application turned on his complaints concerning the treatment by the IPAT of the substance of the Spirasi report. Nonetheless, these ancillary criticisms appear not quite to have been abandoned and the court treats with them hereafter:

(i) the IPAT's dismissal of the probative value of the police reports was weak.

(ii) the IPAT erred in law in rejecting the claim based on peripheral matters such as Mr N's date of marriage.

As to (i) and (ii), it seems to the court that Mr N is in truth asking the court in this regard to engage afresh in the weighing exercise that was done by the IPAT. That would be for the court to stray into the role of decision-maker. Moreover, the court considers in any event that the conclusions reached by the IPAT in this regard were conclusions that it could properly reach on the evidence before it.

(iii) the IPAT acted irrationally and unreasonably in finding it inconsistent for Mr N to claim that he sold land (a) to support his family and (b) to start a business.

The difficulty for Mr N is that at different times he offered ostensibly different rationales for the land-sale. One could reasonably and properly take the view that each explanation was incomplete and hence that all were reconcilable. Or one could reasonably and properly take the view that the IPAT did, which is that they were simply inconsistent.

(iv) the IPAT acted in breach of fair procedure and natural and constitutional justice in failing to put perceived

inconsistencies to Mr N at hearing in order to allow him to deal with those.

Mr N was given a full and fair hearing by the IPAT. It will inevitably be the case following such a hearing that the IPAT may reach adverse conclusions as to consistency. Provided a full and fair hearing is afforded to an applicant and, *inter alia*, the IPAT's obligation to bring to an applicant's attention any matter of substance or importance which the IPAT may regard as having the potential to affect its judgment (the court recalls in this regard the decision of Clarke J., as he then was, in *Moyosola v. Refugee Applications Commissioner* [2005] IEHC 218) it is open to the IPAT properly to reach adverse conclusions by reference to the evidence before it.

D. Conclusion

4. Having regard to its analysis at Part B ("*The Spirasi Report*"), the court concludes that the Spirasi report, a key document before the IPAT, was not properly considered by the IPAT in its decision. Specifically, the IPAT's reasons for discounting the probative weight of the Spirasi report were unreasonable and, in the case of point (1) (in Part B) above, irrational. No decision by any decision-making body is ever going to be perfect, and perfection is not a standard demanded by the law of the IPAT or other decision-making bodies. The court is mindful too that a large number of inconsistencies present in Mr N's application as a whole. Even so, the deficiencies identified in Part B above are of such significance as to require the court as a matter of law to grant the order of *certiorari* sought by Mr N and to remit the within matter to the IPAT for fresh consideration.