

## THE HIGH COURT

## JUDICIAL REVIEW

[2018 No. 198 J.R.]

BETWEEN

A.A. (PAKISTAN)

APPLICANT

AND

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

RESPONDENTS

(No. 2)

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 11th day of February, 2019

1. In *A.A. (Pakistan) v. International Protection Appeals Tribunal (No. 1)* [2018] IEHC 769 I rejected an application for a certiorari of an IPAT decision. The applicant now seeks leave to appeal.

2. I have considered the caselaw on leave to appeal as set out in *Glancre Teoranta v. An Bord Pleanála* [2006] IEHC 250 (Unreported, MacMenamin J., 13th November, 2006) and *Arklow Holidays v. An Bord Pleanála* [2008] IEHC 2, per Clarke J. (as he then was). I have also discussed these criteria in a number of cases, including *S.A. v. Minister for Justice and Equality (No. 2)* [2016] IEHC 646 [2016] 11 JIC 1404 (Unreported, High Court, 14th November, 2016) (para. 2), and *Y.Y. v. Minister for Justice and Equality (No. 2)* [2017] IEHC 185 [2017] 3 JIC 2405 (Unreported, High Court, 24th March, 2017) (para. 72). I have received helpful submissions from Mr. Eamonn Dorman B.L. for the applicant and from Mr. Nick Reilly B.L. for the respondents.

**Applicant's first question**

3. The first question of proposed exceptional public importance is "*in finding that an applicant's failure to apply for International Protection in the U.K. undermines his/her claim for protection, is there any significance to be attached to concerns in relation to the U.K.'s former "fast-track procedure" which was found to be "unlawful"*."

4. That question is totally fact-specific. It is a matter for the tribunal to consider and weigh any explanations by the applicant. The question does not raise a matter of any, still less exceptional, public importance. That is reinforced by the word "*former*" in the question, emphasising that the fast-track procedure no longer applies.

5. More fundamentally, I did not find that there was no significance to be attached to the former fast-track procedure. That is a matter for the IPAT to weigh and consider in deciding any individual case.

6. Furthermore, the applicant's evidence in any event was that he travelled to the UK to study and had legal advice there. It is not a case that really turns on this issue anyway because this was not a situation where the applicant has established to the satisfaction of the tribunal that he was all set to make an asylum claim on arrival in the UK but was deterred from doing so because of a reasonably held view that the fast-track system there was illegal. The notion of an asylum claim rather only seems to have entered the applicant's mind after his UK visa was cancelled.

7. For each of those independent but mutually reinforcing reasons this point cannot be the basis for grant of leave to appeal. I might finally observe under this heading that insofar as the applicant makes the point that it cannot have been intended in the No. 1 judgment that Ireland should conform its approach with illegality conducted by the UK (para. 38 of applicant's written submissions) one can safely assume that that wasn't the point being made - rather the general point was that divergences in immigration approaches with the neighbouring jurisdiction may create distortions undermining immigration control. That was not intended to be a particularly prescriptive comment.

**Applicant's second question**

8. The second proposed question of exceptional public importance is "*what are the 'special circumstances' as set out by the Court of Appeal in A.O. v. Refugee Appeals Tribunal* [[2017] IECA 51] *which would compel an international protection decision-maker to engage in an investigation into the authenticity of a document relied on by an applicant for international protection*". I dealt with this in *M.S.R. v. International Protection Appeals Tribunal (No. 2)* (Unreported, High Court, 4th February, 2019) and insofar as relevant the reasons there apply here as to why this point fundamentally misunderstands European Convention law.

**Applicant's third question**

9. The applicant's third proposed question of exceptional public importance is "*in the assessment of the weight of the material in an international protection application is a decision-maker required to apply the benefit of the doubt to a material fact, or to an applicant's account in general*".

10. It is hard to see how this point gets off the ground. It is well established that the benefit of the doubt only applies where the applicant's general credibility has been established. Thus it can only apply to a specific element of the account within an overall context where such general credibility has been established. That is clear from both art. 4(5)(e) of the qualification directive 2004/83/EC and s. 28(7)(e) of the International Protection Act 2015. The applicant doesn't need to appeal in order to find out that these provisions say what they say.

11. In any event, the principle of the benefit of the doubt is not referred to in the judgment so it can hardly be a point for leave to appeal in this case. Furthermore it is only referred to in the applicant's written submissions at the substantive hearing in the context of reciting the decision under challenge, not as the basis for any submission as to the invalidity of that decision.

12. The suggestion was made in submissions that in not extending the benefit of the doubt to all aspects of the applicant's story, the tribunal was not taking into account all matters referred to in s. 28 of the 2015 Act, but that is a misunderstanding. The tribunal considered all material matters but did not extend the benefit of the doubt to matters that the applicant had not substantiated because the applicant's general credibility had not been established. That is what both the Act and EU law requires.

13. The question was reformulated in the body of the applicant's submissions as follows "*the question of exceptional importance, then, is whether an international protection decision-maker may dismiss any particular material fact based on adverse credibility findings made on other material facts, or whether each material fact is entitled to be determined on a stand-alone basis coupled with the benefit of the doubt*".

14. However, this misunderstands the process involved. It is up to the applicant to establish the elements of the claim subject to the provisions of the Act and the qualification directive, including the shared duty where appropriate. If the applicant fails to substantiate a particular element, the element may still be upheld if the benefit of the doubt applies. Conversely an applicant may lack credibility on certain matters but may still be in a position to substantiate a particular material fact. An applicant cannot complain if, as here, he fails to substantiate a material fact and does not get the benefit of the doubt in relation to that fact because he is lacking in general credibility. That is simply the effect of the legal provisions referred to above. Mr. Dornan stressed that the applicant's account was consistent in certain respects but that does not amount to an establishment of an applicant's general credibility or entitle him to the benefit of the doubt. Otherwise, as referred to in the No. 1 judgment, one would be handing out international protection simply for keeping one's story straight.

**Public interest in an appeal**

15. In the No. 1 judgment at para. 7, I noted that at para. 4.9 of the decision under challenge, the tribunal listed ten pages of factors militating against the applicant's credibility, as part of an unusually detailed, 50 page consideration of his claim. A large accumulation of such adverse factors means that even if, counterfactually, the applicant had a point of exceptional public importance under any of the foregoing headings, this is not an appropriate case in which to explore any such issue because any one such item is hardly decisive in a context of a lengthy catalogue of matters undermining the applicant's credibility. It is therefore neither decisive of the case nor in the public interest for such an appeal to be allowed.

**Order**

16. The application is dismissed.