[2025] IEHC 27

THE HIGH COURT

JUDICIAL REVIEW

[2024/32JR]

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:

E.A.

APPLICANT

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL AND THE MINISTER FOR JUSTICE

RESPONDENTS

JUDGMENT of Mr. Justice Barry O'Donnell delivered on the 22nd day of January, 2025

INTRODUCTION

1. This short judgment is concerned with an application made by the applicant seeking to amend the statement of grounds in these judicial review proceedings. That application was opposed by the current respondents. As the underlying proceedings are concerned with matters

relating to the International Protection Act 2015, the identity of the applicant has been anonymised.

2. The court in this application is not adjudicating on the substance of the full application for judicial review, but it is necessary to rehearse the general nature of the claim to understand this application. For the reasons explained briefly below I have been satisfied that the application to amend should be allowed.

BACKGROUND

3. The applicant was granted leave to apply for judicial review on the 19 February 2024. As originally formulated the applicant sought orders quashing a decision of the International Protection Appeals Tribunal (IPAT) that was notified to the applicant on the 22 December 2023. In very brief terms, the grounds upon which the applicant was permitted to seek those orders were that she had claimed to have been the victim of sex trafficking. The applicant is from Nigeria and claims to have been trafficked from her home country to Ireland, via the UK, entering the State in May 2022. The applicant applied for international protection in June 2022.

4. Following an adverse ruling at first instance the applicant appealed to the IPAT in August 2023 and the initial adverse ruling was affirmed by the IPAT on the 18 December 2023. While the overall case is argued in more detail in the pleadings, the gravamen of the case as currently formulated is that the IPAT assessment of the credibility of her claims was flawed to the extent that the court should quash that decision and remit the matter for a fresh hearing.

5. The respondents filed opposition papers in late May 2024. In those papers the respondents stood over the process before IPAT and denied that the applicant was entitled to

the relief claimed. A feature of the opposition papers, as set out in detail in an affidavit sworn on the 30 May 2024 by John Moore, an official in the Minister's Immigration Delivery Service, was that a detailed description was given of the steps taken by the State in response to the challenges presented by human trafficking. Mr. Moore's affidavit suggests that where a non-national believes they are a victim of trafficking and does not otherwise have permission to remain in the State they may *either* apply for international protection or they may liaise with the Human Trafficking Investigation and Coordination Unit of An Garda Síochána. Hence, the State appears to suggest that a person in those circumstances is presented with a binary decision. In turn this appears to be grounded in the proposition that there can only be one legal basis for a person to be granted leave to remain in the State.

6. Mr Moore also referred to and exhibited an undated document "*Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking*", which provides information on "*the administrative arrangements which apply where a foreign national is identified as a person suspected of being a victim of human trafficking and the Minister for Justice and Law Reform is required to consider that person's immigration status in the State*." The applicant submitted that these are the same administrative arrangements that were the subject of substantive criticism by the High Court in *P. v. Chief Superintendent of the GNIB and other*s [2015] 2 ILRM 1.

7. The application to amend the statement of grounds was brought by notice of motion dated the 1 November 2024, approximately 11 months after the grant of leave. The application was grounded on affidavits sworn by the applicant's solicitor, Brian Trayers on the 18 October 2024 and 6 November 2024. Thereafter the parties exchanged a number of additional affidavits.

The new claims that the applicant wishes to bring involve a new relief and two additional legal grounds. The applicant seeks to include an application for a declaration in the following terms:

> "*A declaration that the exclusion of an applicant for asylum, such as the Applicant in this case, from being identified as a victim of trafficking because she is in the asylum system is unlawful and contrary to the requirements of Directive 2011/36/EU and/or Article 4 ECHR.*"

8. The new grounds are as follows:

> "*The IPAT erred in the manner in which it dismissed the evidence of Ruhama at 4.9. While Ruhama may not be a fact-finding body in the sense in which the IPAT is such, nevertheless it is a Government funded body with considerable expertise and a key role in the system for identifying victims trafficking. The Applicant was assessed by Ruhama as having "many of the indicators of" a victim of human trafficking. There was no attempt by the Tribunal to consider this assessment or what the indicators of a victim of human trafficking were."* and
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> *" Insofar as the system put in place by the National Referral Mechanism exhibited by the Respondents at "JM3" to the Affidavit of John Moore means that fact that the Applicant is in the asylum system is treated as preventing her from being formally identified as a victim of trafficking pursuant to Directive 2011/36/EU, that system and treatment is unlawful and contrary to Directive 2011/36/EU and/or Article 4 ECHR as incorporated by the European Convention on Human Rights Act, 2003. The fact that the Irish authorities do not identify a victim when she is in the asylum system means that she could not benefit from the several rights/benefits to which a victim of trafficking is entitled*

under the said Directive including the recovery and reflection period. Further or in the alternative, and without prejudice to the aforesaid, the first three respondents erred in failing, at any stage, to refer the Applicant to the Anti Human Trafficking section An Garda Siochána."

9. The applicant accepted that while the point about the treatment of the Ruhama information could be treated as a relatively net addition, canvassing a failure to have sufficient regard to relevant matters, the second point was more substantial and likely to add to the duration of the ultimate trial. In addition, if the amendment is permitted, the second point likely will require the respondents to engage in a substantive reply, with the costs associated with that additional work.

10. In terms of explaining why the application to amend was raised at such a remove from the initial application for leave to apply for judicial review, the applicant frankly stated that the point had not been addressed initially as a result of error on the part of the counsel who drafted the proceedings. The issue was raised when senior counsel was instructed to settle legal submissions, and having regard to the fact that the respondent's opposition papers had raised the issue of the State's response to the issue of human trafficking.

THE APPLICABLE CRITERIA

11. The parties in large part agreed as to the criteria that the court should apply in considering an application of this type. As noted by Phelan J. in *N.Z. and Others v. Minister for Justice* [2023] IEHC 545, having regard to *B.W. v. Refugee Appeals Tribunal (No.1)* [2015] IEHC 725 and *Keegan v. Garda Siochana Ombudsman Commission* [2012] 2 IR 580, the basic criteria are that leave will be permitted to amend to include a new point if the point is arguable,

if there is an adequate explanation for the point not having been pleaded, and if the other party was not unfairly or irremediably prejudiced.

12. Those criteria were the subject of detailed consideration by Humphreys J. in *Habte v. Minister for Justice* [2019] IEHC 47, where at paragraph 32 the court summarised sixteen principles that could be identified from a review of the caselaw. It is not necessary to set out those principles in detail in this ruling, but they have been taken into account in this ruling.

DISCUSSION

13. It seems to the court that the points that have been raised are certainly arguable and I am satisfied that if the points were raised at the stage when the initial application for leave was made the court would have granted leave to pursue those grounds, even applying the higher standard for leave applicable in cases under the 2015 Act. I note that the respondents contend that in the factual circumstances of this case they consider that this point is not one that can succeed. However, the court is not concerned with the ultimate outcome of the proceedings – or more particularly the ultimate success or failure of the new points. Instead, the relevant metric is whether the points are arguable, and in that regard I am satisfied that the points sought to be made are substantial and arguable. The fact that there may well be good arguments to be made by the respondents at the trial will be a matter for the trial judge.

14. I am also satisfied that the explanation for the failure to include the points initially is satisfactory. The relevant caselaw, particularly *Keegan*, makes clear that this is a situation in which inadvertence or error on the part of lawyers can be accepted as a valid explanation. I am conscious here that the issues raised are matters of consequence both from the point of view of the overall question of the State's response to applicants for international protection who also

claim to have been trafficked, and from the individual perspective of this applicant. In those premises I consider that there is a real rick of injustice if the amendment was not permitted.

15. There is no doubt that the respondents will suffer some prejudice by the amendments. There will be a need to amend the Statement of Opposition and likely a need to adduce further evidence. This will involve the State incurring further costs. Likewise, the hearing of the case will take more time and also increase the costs faced by the State. However, the respondents have not identified any other prejudice than what can be described as logistical prejudice. The introduction of the points will not mean that a trail date will have to be set aside, as no trial date has been allocated, and there is no suggestion that witnesses are no longer available or that it would otherwise be unfair to ask the respondents to deal with the new points.

16. In those premises the court is satisfied that the application to amend the proceedings should be permitted. My provisional view is that the respondents should be entitled to the costs of this application on the basis that while the applicant was successful the need for the application was triggered by inadvertence or error on the applicant's side. Provisionally it seems to me that the costs order should be stayed pending the determination of the proceedings. In case the parties wish to argue for any other formulation of the costs order and in order to give directions regarding the consequential pleadings I will list the matter before me for further argument at 10.30 on Thursday 30 January 2025.