

## THE HIGH COURT

## JUDICIAL REVIEW

[2018 No. 794 J.R.]

BETWEEN

F.B. (ALGERIA)

APPLICANT

AND

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

RESPONDENTS

**JUDGMENT of Mr. Justice Richard Humphreys delivered on the 23rd day of July, 2019**

1. The applicant has had a slightly more complex than usual immigration history. He was refused asylum by the Refugee Applications Commissioner and on appeal by the Refugee Appeals Tribunal. He was then refused permission to remain in the State based on marriage to an Irish citizen. He became the subject of a deportation order; and an application to revoke that order under s. 3(11) of the Immigration Act 1999 was refused. He was then refused subsidiary protection by the International Protection Office and, in the latest in the sequence of adverse decisions, on appeal by the International Protection Appeals Tribunal, a decision which he now challenges. The only positive that has fallen in his favour is that the very making of the subsidiary protection application required the deportation order to be revoked pending the finalisation of the protection process. In the present proceedings I have received helpful submissions from Mr. Garry O'Halloran B.L. for the applicant and from Ms. Catherine Duggan B.L. for the respondents.

**Facts**

2. The applicant is a national of Algeria born in 1980. He claims that a brother was arrested and disappeared in 1994 due to his association with the Front Islamique du Salut. Another brother of the applicant left Algeria and was granted asylum in Ireland in 2001. The applicant came to the State on 8th August, 2008 and himself applied for asylum. In his original application he made no reference to having been arrested or tortured. He married an Irish citizen on 14th May, 2009 and on 2nd September, 2009 applied for permission to remain based on that marriage, which was refused. The Refugee Applications Commissioner rejected the application for asylum as did the Refugee Appeals Tribunal on appeal. A deportation order was made against the applicant on 12th March 2012. On 17th November, 2014 the applicant applied for revocation of the order and made further submissions on 23rd January, 2015, 4th April, 2016, 27th September, 2016 and 21st February, 2017. On 4th May, 2017 the Minister rejected the revocation application. On 21st September, 2017 the applicant applied for subsidiary protection. On 10th October, 2017 the deportation order was revoked in light of that application.

3. On 29th January, 2018 the applicant was informed by the International Protection Office that the subsidiary protection claim had been refused and on 16th February, 2018 a notice of appeal was submitted to the International Protection Appeals Tribunal. An oral hearing took place before the tribunal on 7th June, 2018 with Ms. Lisa McKeogh B.L. appearing for the applicant.

4. On 23rd August, 2018 the tribunal rejected the appeal and the applicant was so notified on or about 3rd September, 2018.

**Procedural history**

5. The present proceedings were filed on 3rd October, 2018 very slightly out of time. The delay has been explained on behalf of the applicant and that is not challenged by the respondents, so accordingly time should be extended. The primary relief sought is an order of *certiorari* directed to the subsidiary protection refusal by the tribunal.

6. I granted leave on 8th October, 2018. The substantive notice of motion was made returnable for 22nd October, 2018 and a statement of opposition was filed on 29th January, 2019. The applicant is not pursuing grounds 1 and 5, and I now turn to the remaining grounds set out in the applicant's statement of grounds.

**Ground 2: alleged irrationality in findings made regarding the applicant's exposure to serious harm**

7. This ground contends that "*the decision should be quashed because of the IPAT's irrational findings made with respect to the applicant's exposure to serious harm by reason of his illegal exit from Algeria*".

8. The tribunal's finding at para. 5.3 explains at some length that the applicant himself "*claims that he does not face any severe punishment for illegal exit*" and also has regard to country material. Thus, it is not irrational.

**Ground 3: alleged irrationality in findings made regarding the applicant's affiliation with his brother**

9. This ground contends that "*the decision should be quashed because of the IPAT's irrational findings made with respect to the Applicant's affiliation with his brother and the reasons his brother was granted international protection*".

10. At para. 4.1, the tribunal had regard to various inconsistencies in the applicant's evidence, in particular that there was no mention of an arrest or torture in the s. 8 interview under the Refugee Act 1996. To that extent it can hardly be said the decision was irrational. The thrust of the applicant's written legal submissions at para. 20 is that there were two errors in the tribunal's approach. Firstly, that it focused on the position of terror suspects but the applicant "*certainly is not a suspected terrorist. It remains the case that he is inextricably linked with his brother*". Secondly, that "*the reliance placed on the fact that [the other brother] regularly returns to Algeria without encountering hostile treatment*" is erroneous because the brother travels on an Irish passport.

11. However, the tribunal member who saw and heard the applicant is better placed than the court to assess his credibility, and that member considered the explanations provided. When it was put to the applicant by the International Protection Office that his family lived safely in Algeria "*he stated that his family lived in private and nobody knew their name was [B]*". The tribunal was entitled to rely on the fact that the family lived there safely and that the brother went to Algeria regularly, albeit on an Irish passport, a fact which the tribunal expressly acknowledged. Perhaps that was not the most favourable view possible but it was a view the tribunal was entitled to take. It certainly fell within the range of reasonable assessments that was open to it.

**Ground 4: alleged irrationality in assessment of country information**

12. This ground contends that *"the decision should be quashed because of the IPAT's irrational assessment of the general thrust of the country of origin information"*.

13. No irrationality has been made out under this heading. Indeed, even the Strasbourg court has in recent times been prepared to accept returns to Algeria as not necessarily occasioning a violation of art. 3 the ECHR: see *A.M. v. France* (Application No. 12148/18, European Court of Human Rights, 29th April, 2019). The general thrust of developments in Algeria has been positive, as noted by O'Donnell J. in *Y.Y. v. Minister for Justice and Equality* [2017] IESC 61 [2018] 1 I.L.R.M. 109, para. 48, where he said, after reviewing country materials in that case, that *"it is apparent therefore that as discussed in passing in [J.K. v. Sweden (Application No. 59166/12, European Court of Human Rights, 4th June, 2015)] ... the position in Algeria has not been static in recent years, and that there appears to be general agreement that it has improved"*. One need not even mention the well-publicised major democratising changes in Algeria that have taken place in very recent times, and there is nothing immediately to suggest that those would be adverse to the applicant in the sense of altering the *"general thrust"* of the country material in a negative way.

**Order**

14. Accordingly, I will allow the extension of time for the making of the application up to the date on which it is made and I will dismiss the proceedings.