

**THE HIGH COURT  
JUDICIAL REVIEW**

[2021] IEHC 781

[2020 702 JR]

**IN THE MATTER OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT, 2000  
IN THE MATTER OF THE INTERNATIONAL PROTECTION ACT, 2015**

**BETWEEN**

**SK**

**APPLICANT**

**AND**

**THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL  
AND THE MINISTER FOR JUSTICE AND EQUALITY**

**RESPONDENTS**

**JUDGMENT of Mr. Justice Cian Ferriter delivered on the 14th day of December, 2021**

**Introduction**

1. In these judicial review proceedings, the applicant, who is a 25 year-old Georgian national, seeks an order of *certiorari* quashing the decision of the first named respondent ("IPAT") dated 9th September, 2020 which affirmed the recommendation of the International Protection Office ("IPO") that the Applicant be given neither a declaration of refugee status nor a subsidiary declaration and also an order of *certiorari* quashing the decisions of IPAT dated 27th July, 2020 and 17th August, 2020 refusing the applicant's request that his appeal to IPAT be given an oral hearing pursuant to s. 43 (b) of the International Protection Act, 2015 ("the 2015 Act").

**The Applicant's grounds of challenge**

2. In relation to his challenge to IPAT's decisions to refuse to hold an oral hearing in relation to his appeal, the applicant contends that the Tribunal's decisions (and in particular the decision of 17th August, 2020) fail to discharge his Irish and EU law rights to fair procedures and to an effective remedy in the determination of his claim for refugee status, and, in particular, that IPAT's operative decision of 17th August, 2020 ("the oral hearing decision") failed to consider the relevant issues raised in the detailed written submissions filed on behalf of the applicant on 5th August, 2020 relating to the assessment of sexual orientation (and the intrinsically personal issues that arose on the applicant's case in that regard) and the need for an oral hearing. It is asserted that the oral hearing decision of 17th August, 2020 simply failed to engage with those detailed written submissions at all and rather relies on broad references to unrelated case law pertaining to credibility assessments in general. It is also contended that the oral hearing decision was irrational.
3. In relation to his challenge to IPAT's decision of 9th September, 2020, the applicant mounts three lines of challenge, as follows:
  - (a) that IPAT failed to carry out its assessment of his appeal on an individual basis as required by s.28(4) of the 2015 Act, in circumstances where the applicant's application was based on his well-founded fear of persecution due to his membership of a particular social group, being LGBT persons, in circumstances where IPAT did not first determine the applicant's sexual orientation but rather

determined that issue last having looked at a variety of other aspects of the applicant's narrative relating to his claim;

- (b) That IPAT erred in law in failing to have regard to relevant considerations, namely relevant country of origin information in relation to the absence of effective state protection for LGBT persons in Georgia;
- (c) That IPAT's decision was irrational in a number of identified respects namely:
  - i. *"In particular, the Tribunal conflated plausibility and credibility and engaged in impermissible speculation and conjecture in relation to how the Applicant should have acted and behaved in the particular circumstances, when it determined that the Applicant should have attended the police following the attack on him. It is not rational to expect the Applicant to have done so when the Georgian police routinely ignore those who are subjected to homophobic attacks and themselves are complicit in their persecution.*
  - ii. *Further or in the alternative, the Tribunal made a negative credibility finding against the Applicant in relation to referring interchangeably to him having been attacked in a 'park' and in a 'square', where the Applicant does not speak English and has at all times been aided by different interpreters and translators from his native Georgian.*
  - iii. *Further or in the alternative, the Tribunal made an irrational finding against the Applicant in relation to having been uncertain as to the identities of the men who attacked him, information he could not have known in the circumstances.*
  - iv. *Further or in the alternative, the Tribunal's assessment of the Applicant's self-realisation of his sexuality states that his account is contradictory. The Applicant's account was not contradictory and there was no evidence before the Tribunal to come to that irrational conclusion."*

#### **Background**

4. The applicant arrived in Ireland on 21st July, 2019 and applied for international protection pursuant to s.15 of the 2015 Act. His application was based on an asserted well-founded fear of persecution in Georgia at the hands of his family and Georgian society due to his membership of the LGBT social group. He alleged that he had suffered physical violence due to his sexual and romantic relationship with another man.
5. On 25th August, 2019, the applicant completed his Application for International Protection Questionnaire. On 4th February, 2020, pursuant to s.35 of the 2015 Act, the Applicant was interviewed by an international protection officer.
6. On 19th February, 2020, in a report prepared pursuant to section 39 of the 2015 Act, and pursuant to s. 39(3)(c) of the 2015 Act, the IPO recommended that the applicant be given neither a refugee declaration nor a subsidiary protection declaration.

7. The s.39 report also included a finding under s.39(4)(e) that the applicant's country of origin is a safe country of origin within the meaning of s.72 of the 2015 Act as Georgia has been designated by the Minister for Justice and Equality as a safe country of origin by the International Protection Act 2015 (Safe Countries of Origin) Order 2018.
8. On 20th March, 2020, the applicant's solicitors submitted, pursuant to s. 41 of the 2015 Act, a Notice of Appeal of this recommendation to IPAT, requesting an oral hearing on behalf of the applicant. As the report of 19th February, 2020 had included a finding under s. 39(4)(e), the accelerated appeal procedures provisions of s.43 of the 2015 Act applied. Pursuant to s. 43(b), the Tribunal, unless it considers it is not in the interests of justice to do so, shall make its decision in relation to the appeal without holding an oral hearing.
9. On 27th July, 2020, the Tribunal wrote the applicant's solicitors stating that it was not in the interests of justice to hold an oral hearing, pursuant to s. 43(b).
10. On 5th August, 2020, the applicant's solicitors submitted written submissions to the Tribunal indicating why it was in the interest of justice to hold an oral hearing in relation to the applicant's appeal.
11. On 17th August, 2020, the Tribunal decided that it was not in the interests of justice to hold an oral hearing in relation to the applicant's appeal ("the oral hearing decision").
12. On 9th September, 2020, the Tribunal affirmed the decision of the IPO that the applicant be given neither a declaration of refugee status nor a subsidiary protection declaration.
13. It might be noted that the only interview which was conducted with the applicant in person throughout the process was the s. 35 interview which was conducted on behalf of the IPO on 25th August, 2019. The Supreme Court in *IX v Chief International Protection Office* [2020] IESC 44 upheld the lawfulness of this general approach of the IPO to the conduct of interviews and finalisation of s. 35 reports and recommendation.
14. I propose to deal firstly with the challenge to IPAT's refusal to grant the applicant an oral hearing in respect of his appeal, as the outcome of that challenge if successful stands to have a material bearing on the lawfulness of the Tribunal's ultimate decision on the substantive appeal.
15. While the applicant included in his Statement of Grounds a challenge to IPAT's initial decision of 27th July, 2020 refusing an oral hearing, I believe the point is well made by counsel on behalf of the respondents that this decision was only an interim decision which was overtaken, subsequent to the furnishing by the applicant of detailed written submissions on the oral hearing issue on 5th August, 2020, by the Tribunal's subsequent decision of 17th August, 2020. In fairness, counsel for the applicant focussed on the alleged infirmities of the 17th August, 2020 decision in his own submissions and I propose to confine my analysis to that latter decision in the circumstances.

#### **Section 43 of the 2015 Act and principles applicable to same**

16. As Georgia has been designated as a safe country of origin for the purposes of the procedures under the 2015 Act, the “accelerated” appeal procedures prescribed in s. 43 of the 2015 Act applies. S. 43 provides as follows:

*“43. Where the report under section 39 includes any of the findings referred to in section 39 (4), the following modifications shall apply in relation to an appeal under section 41 by the applicant concerned—*

- (a) the appeal shall be brought by notice in writing within such period, which may be a shorter period than that prescribed for the purposes of section 41 (2)(a), from the date of the sending to the applicant of the notification under section 40, as may be prescribed under section 77,*
- (b) notwithstanding the provisions of section 42, the Tribunal, unless it considers it is not in the interests of justice to do so, shall make its decision in relation to the appeal without holding an oral hearing, and*
- (c) the notification referred to in section 40 (1) shall include a statement informing the applicant concerned of the effect of the modifications referred to in paragraph (a) and (b).”*

17. As can be seen, s. 43(b) provides that the tribunal shall make its decision in relation to an accelerated appeal without holding an oral hearing *“unless it considers it is not in the interests of justice to do so”*.

18. S. 43(b) represented a change in the legal position which had obtained under the Refugee Act, 1996, where, if an applicant for refugee status came from a designated safe country of origin, there was no facility for an oral hearing at all and any appeal proceeded on an accelerated, *“papers-only”* basis.

19. The relevant provisions of the 1996 Act were considered in some detail by Cooke J. in the case of *SUN v. The Refugee Applications Commissioner & Ors* [2013] 2 IR 555 (“SUN”). The issue in that case was summarised by Cooke J. as follows (at paragraph 28):

*“[28] The issue that these provisions raise in the context of the present case, accordingly, concerns the effectiveness of the remedy by way of appeal to the Tribunal where an applicant has been automatically deprived of an oral re-hearing before the Tribunal by reason only of the fact that a finding has been included in the s. 13 report to the effect that the applicant is a national of a designated ‘safe country’. In particular, where, as in the present case, the primary ground upon which the negative recommendation has been based is a finding of a lack of personal credibility on the part of the applicant in the claim which has been advanced, can an appeal to the Tribunal conducted exclusively on paper be considered an ‘effective remedy’ in the sense of art. 39 when the applicant does not have the opportunity of persuading the court or tribunal dealing with the appeal of his credibility by personal observation and persuasion?”*

20. Cooke J then went on to reason as follows:

*"[40] Where, as in the present case, a claim for asylum has been rejected in a s. 13 report upon the basis that the applicant has been found not to be telling the truth, the issue of personal credibility is clearly fundamental to the appeal and, accordingly, to the character of the appeal procedure as providing a remedy which is effective to rectify the basis upon which the claim has been rejected. Where, as here, the events and facts described by an applicant are of a kind that could have taken place (as opposed to matters which are demonstrated to be impossible or contradicted by independent evidence), but have been rejected purely because the applicant has been disbelieved when recounting them, it is, in the judgment of the court, clear that the effectiveness of the appeal remedy as a matter of law is dependent upon the availability to the applicant of an opportunity of persuading the deciding authority on appeal that he or she is personally credible in the matter.*

21. It does not appear that the decision of Cooke J. in *SUN* has been considered to date by the Supreme Court. Counsel for the respondents drew my attention to a decision of Stewart J. in the case of *RM v. Minister for Justice* [2015] IEHC 441 where, in clearly obiter comments, Stewart J. states that she "*absolutely rejected the submission made by the applicants that, as a result of the decision of Cooke J. in SUN, where an applicant was refused a grant of refugee status based upon negative credibility findings then the discretion exercised by the Commissioner to apply s. 13 (6) of the Refugee Act, 1996 (as amended) is unlawful when the decision is grounded upon credibility.*" In any event, I do not see that that observation applies to the arguments advanced on behalf of the applicant in this case as it does not address the question of *when* it might be appropriate to hold an oral hearing in the interests of justice pursuant to s.43(b).

22. Counsel for the applicant was careful to emphasise that he was not making the case that the applicant was entitled to an oral hearing as a matter of right. He is clearly correct in that regard in light of the decisions of the Court of Justice in the case of *M.M.* in response to two separate references from the Supreme Court relating to the scope of the right to be heard, as a matter of EU law, in the context of the statutory regime that then applied, pre-the 2015 Act, of a bifurcated approach to the consideration of claims for asylum and claims for subsidiary protection. In *M.M. v. Minister for Justice and Equality* [2018] 1 ILRM 36 the Supreme Court (O'Donnell J., as he then was) held, following the preliminary ruling of the CJEU on the second question referred to it by the Supreme Court, that:

*"The decision of the European Court of Justice makes it clear that in the Irish context which existed at the time of the decision here, and where the decision on subsidiary protection was a separate decision taken after the determination of the asylum process, it was permissible to make that decision on the basis of a written procedure, so long as the procedures adopted were sufficiently flexible to allow the applicant to make his case. .... Exceptionally, it may be necessary to permit an oral interview". (At paragraph 25).*

23. O'Donnell J. then went on to make a number of observations as to the appropriate approach that might be taken (in the context of the statutory regime that then applied) to dealing with matters of "credibility". He distinguished between two senses in which the concept of "credibility" can arise: the first (the "classic sense" of credibility) being whether an account of disputed facts is to be believed or not; the second being where credibility is used in the sense of whether a particular conclusion should or should not be accepted as flowing from a particular state of facts. He gave the following examples to draw out the distinction between these two different conceptions of credibility (at paragraphs 29 and 30):

"29. *To take another example, the law may provide that if a certain legal test is satisfied on the facts, (in this case a risk of serious harm), then certain consequences must follow (subsidiary protection). Some applicants may therefore present a case on paper which if accepted would establish a classic case for subsidiary protection. They may for example argue that they have been tortured by a group still in power in the country. Or an applicant may say that he or she belongs to a particular grouping or family which has been subjected to serious violence in the country in question, and that that treatment of that group has been verified by unimpeachable accounts from reputable international agencies. Such cases may raise a question of credibility in the classic sense: is the applicant to be believed when they contend they have suffered that treatment, or is the applicant to be believed when they say that they are a member of the particular group or family?*

30. *A different issue may arise when someone puts forward a number of matters arising from their background, education, and experience, and contends by consequence they are at risk of serious harm. In such a case, the issue may not be whether the applicant is telling the truth, but rather whether the asserted conclusion follows from those facts. Any such conclusion may be expressed in general terms of belief or credibility, i.e. that it is not credible that such matters would give rise to a risk of serious harm. Even if used in that way, it is quite a different conclusion from that in the example just discussed: in this case, any such conclusion does not reflect at all on the veracity of the account. It may be important in a particular case to distinguish clearly between these cases most particularly since the necessity for some oral or personal process is clearly more pressing where the veracity of the witness is the central issue."*

24. It is important to emphasise that the decision in *MM* was not dealing with s.43(b). However, in my view, the analysis engaged in by O'Donnell J. on the different conceptions of credibility is of assistance here as it chimes with the approach taken by Cooke J. in *SUN* i.e. that when an applicant's credibility has been rejected in the classic sense of the applicant being disbelieved in relation to his or her account of matters which could have taken place (as opposed to matters which are demonstrated to be impossible or contradicted by independent evidence), the interests of justice may require an oral hearing on the appeal to ensure that the appellant's credibility can be justly determined.

25. The applicant invoked UNHCR guidance in relation to claims to refugee status based on sexual orientation and/or gender identity: *UNHCR, Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (23 October 2012)*. Relevant excerpts from those guidelines were included in the applicant's written submissions of 5th August, 2020 to IPAT in the context of the applicant's request for an oral hearing on appeal. In these guidelines, under the heading "*credibility and establishing the applicant's sexual orientation and/or gender identity*" it states as follows:
62. *Ascertaining the applicant's LGBTI background is essentially an issue of credibility. The assessment of credibility in such cases needs to be undertaken in an individualized and sensitive way. Exploring elements around the applicant's personal perceptions, feelings and experiences of difference, stigma and shame are usually more likely to help the decision maker ascertain the applicant's sexual orientation or gender identity, rather than a focus on sexual practices.*
64. *The applicant's own testimony is the primary and often the only source of evidence, especially where persecution is at the hands of family members or the community. Where there is a lack of country of origin information, the decision maker will have to rely on the applicant's statements alone. Normally, an interview should suffice to bring the applicant's story to light. Applicants should never be expected or asked to bring in documentary or photographic evidence of intimate acts. It would also be inappropriate to expect a couple to be physically demonstrative at an interview as a way to establish their sexual orientation."*
26. However, it should be noted that the reference to "*credibility*" in the UNHCR Guidelines, as applied to any given set of facts as found by an IPO and which are the subject of an appeal to IPAT, could embrace both a credibility question in the classic sense (i.e. was the applicant's account disbelieved as being untrue) and in the broader sense of the applicant's case as to well-founded fear of persecution not being regarded as flowing from the applicant's (accepted) account of matters.
27. In my view, the approach outlined by Cooke J. in SUN and the analysis of O'Donnell J. in MM provide considerable assistance in assessing the principles should guide the exercise by IPAT of its discretion under s. 43(b) in assessing whether in any given case it is not in the interests of justice to make a decision on an appeal without holding an oral hearing. Accordingly, where the issue of personal credibility is fundamental to the appeal and where the credibility of the applicant's account of the events and facts subtending his or her case is in issue in the classic sense i.e. where the events and facts are of a kind "*that could have taken place (as opposed to matters which are demonstrated to be impossible or contradicted by independent evidence), but have been rejected purely because the applicant has been disbelieved when recounting them*" (Cooke J. in SUN at paragraph 40), the interests of justice are likely to merit an oral appeal.
28. A useful touchstone in that regard can be drawn from the terms of s.28(7)(c) of the 2015 Act, albeit arising in the separate statutory context of a consideration of whether aspects

of an applicant's statements which are not supported by documentary or other evidence should not need confirmation by the IPO or IPAT. In that provision it is stated that such statements can be accepted without documentary or other evidential support where:

*"The applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case".*

29. As counsel on behalf of the applicant here fairly accepted, there might well be cases where an applicant's credibility is rejected on the basis that his or her account of events is objectively discredited by available country of origin information or other publicly available evidence or data. However, it was submitted that the case made on behalf of the applicant here was that his account was coherent and plausible on its own terms (particularly when it is borne in mind that apparent contradictions in relation to e.g. his narrative of self-realisation as a gay man could be explained by the shame and social stigma that often attaches, in homophobic societies, to gay self-realisation) and where it could fairly be said that the applicant's narrative on its face did not run counter to the country of origin information submitted on behalf of the applicant which demonstrated that Georgia remained a homophobic society where the authorities very often did not provide appropriate protection for members of the LGBT community.
30. While of course a wide discretion such as that contained in s.43(b) based on "the interests of justice" is not susceptible to any hard and fast rule, it seems to me that the following matters should normally be taken into account by IPAT under s.43(b) when considering an application for an oral hearing in the context of a sexual orientation/gender identity case:
- (i) Was the applicant's credibility rejected by the IPO on the basis of a rejection of the veracity of the applicant's account of matters which related to his or her sexual orientation or gender identity and feared persecution in relation to same?
  - (ii) Was the applicant's account *prima facie* coherent and plausible bearing in mind that, in the case of sexual orientation and self-realisation of same, inconsistencies may in fact be an inherent part of the applicant's self-realisation narrative?
  - (iii) Did the applicant's account not otherwise run counter to available specific or general information relevant to the applicant's case which can be objectively ascertained e.g. country of origin information in relation to the attitude of the police or other authorities to members of the applicant's particular social group, in this case the LGBTI section of society?
  - (iv) In light of the foregoing, would the credibility questions arising in the appeal be most justly resolved by the Tribunal hearing oral evidence on the appeal?

**Applicant's Submissions to IPAT on need for oral hearing**

31. In the introduction to written submissions filed with IPAT in support of the applicant's application for an oral hearing for his appeal pursuant to s.43(b), it was submitted that:

"[1] ....that it is not in the interests of justice that this matter be determined without an oral hearing. It is apparent that the negative finding of the IPO was based entirely on adverse credibility findings. SK is lawfully entitled to an effective remedy and challenges the negative credibility findings as a matter of fact and law. The only effective remedy in this case can be to review, in fact and law, the oral evidence of the appellant. Moreover, it is well established that credibility must be assessed having regard to the full picture that emerges from the evidence. In the circumstances, an oral hearing is necessary to ensure SK's credibility is properly assessed in the round.

[2] In respect of the report under Section 39, the most striking element about the IPO's rejection of SK's account is that it is based on credibility findings that are not reflected in the available country of origin information and premised entirely on a clichéd, outdated and, frankly, an irrational understanding of sexuality.

[3] The IPO's assessment of SK's sexuality alone was so inherently flawed, and departs so outrageously from acceptable norms relating to the ascertainment of sexual orientation in international protection applications, for that reason alone an oral hearing should be granted".

32. The written submissions, in a section headed "credibility", addressed case law relating to the test for assessing whether an applicant is entitled to international protection by reference to sexual orientation and then, in a section headed "self-identification and credibility", referenced various paragraphs from the UNHCR Guidance Note, and made submissions which were very critical of what it contended was the IPO's fundamentally flawed approach to its assessment of the applicant's account of his realisation as a gay man stating e.g. (at paragraph 25):

*"The IPO in the Section 35 interview did not seem to be cognisant at all of the particular reasons why SK might feel compelled to hide his sexuality or the significant cultural reasons why he would attach feelings of shame to this. There seems to be absolutely no understanding by the IPO of why he might feel embarrassed, nervous or scared about revealing intimate details of his sexual orientation in the course of an invasive interview with a complete stranger, having been the victim of persecution in his country of origin. (at paragraph 26). Particularly egregiously, the IPO then probed SK on intimate aspects of his personal sexual life with men and women, drawing a negative credibility finding when he failed to provide detail. Perhaps most shockingly of all, the IPO then proceeded to say that having had "many" heterosexual relationships and "only" one homosexual relationship served to undermine his claim – something that really has no basis in reality".*

33. The submission then went on to address country of origin information in relation to the prevalence of homophobia in Georgia which, it was submitted, entirely supported the applicant's case of well-founded fear of persecution if returned to Georgia.

## **The Oral Hearing Decision**

34. In its oral hearing decision of 17th August, 2020, IPAT ruled as follows:

*"The Tribunal notes the contents of your submissions dated 5th August 2020.*

*The Tribunal has considered your submissions in respect of section 43(b) of the International Protection Act, 2015. The Tribunal is not satisfied that the interests of justice requires an oral hearing of the appeal in the instant case.*

*The fact that the Appellant's credibility in respect of his substantive international protection claim was not accepted by IPO is not a basis, in and of itself, for an oral hearing to take place on appeal. The Tribunal will assess the relevant elements of the Appellant's appeal in accordance with the 2015 Act with reference to all of the material before it. The Tribunal is satisfied that any issues of credibility and eligibility for refugee status or subsidiary protection status can be dealt with by way of written submissions.*

*According to Stewart J. in R.M. (an infant) -v- Minister for Justice Equality and Law Reform & ors [2015] IEHC 441 (Unreported, High Court, 9th July 2015):*

*"I absolutely reject the submission made by the applicant that, as a result of the decision of Cooke J. in S.U.N. (supra), where an applicant is refused a grant of refugee status based upon negative credibility findings then the discretion exercised by the Commissioner to apply s.13(6) of the Refugee Act 1996 (as amended) is unlawful where the decision is grounded upon credibility. There is no legal basis for this contention and, in fact, it flies in the face of the established authorities. The lawfulness of a papers-only appeal is set out clearly in the decision of McGuinness J. in V.Z. v. Minister for Justice, Equality and Law Reform & ors. [2002] 2 IR 135 and Birmingham J.'s decision M.O.O.S v. Refugee Applications Commissioner & anor. [2008] IEHC 399, and referred to in a recent decision of this Court T.C. [Zimbabwe] v. Minister for Justice, Equality and Law Reform & [2015] IEHC 404"*

*See also Mac Eochaidh J. in M.A v. Refugee Appeals Tribunal [2015] IEHC 528 (Unreported, High Court, 31st July, 2015) and Keane J. in S.H.I. v. The International Protection Tribunal [2019] IEHC 269 (Unreported, High Court, 3rd May 2019).*

*The decision in M.A.R.A. (Nigeria) (an infant) v. Minister for Justice and Equality [2015] 1 I.R. 561 requires the Tribunal to provide the Appellant a complete opportunity to present his claim however as noted by Keane J. in S.H.I., this can be achieved by a papers only appeal:*

*"It seems to me a point of signal importance that, in the words of Charleton J. in M.A.R.A. (Nigeria) (an infant) v Minister for Justice and Equality [2015] 1 I.R. 561 (at 575), an appeal to the tribunal under s.16 of the Refugee Act, whether it involves an oral hearing or not, provides a complete opportunity*

*to present any new facts or arguments; to reargue the points appealed; to call new evidence for or against the status of the applicant; and to plead the case afresh and in full. While in a papers only appeal there will be no opportunity to adduce new evidence viva voce credibility must be assessed anew by the tribunal without regard to any prior finding of the Commissioner on that issue, whether positive or negative.*

*The question, therefore, is not whether the tribunal was entitled to form a negative view about the applicant's credibility, but whether the applicant was first afforded an opportunity to deal with the credibility issues that led to the judgement of the tribunal against his interest."*

*In the event that the Appellant wishes to make further submissions in respect of any of the material before the Tribunal, the Tribunal will allow a further period of 5 working days for these to be submitted. The Tribunal will determine the appeal on the papers before it thereafter."*

### **Discussion**

35. In my view, the applicant is correct in his contention that the oral hearing decision simply fails altogether to engage with or take into consideration the substantive matters set out in his written submissions in support of his request for an oral appeal. Instead, the decision relies on general case law relating to the entitlement of IPO or IPAT to refuse to grant international protection on the basis of adverse credibility assessments and the fact that IPAT (and RAT before it) can assess credibility anew in a papers-only appeal. The applicant had not disputed these general propositions. Rather, the applicant, over the course of a substantive fourteen-page written submission, had detailed why in the particular circumstances of his case, given the manner in which the IPO had dismissed the credibility of his account of his sexual orientation, an oral hearing was necessary in the interests of justice to ensure that he achieved an effective remedy by way of appeal.
36. In my view, IPAT failed to lawfully discharge its assessment of the interests of justice, pursuant to s. 43(b) in light of the submissions made on the applicant's behalf. There was no engagement at all in the oral hearing decision with the actual case made in favour of an oral hearing. The impugned decision makes no reference at all to the case law relied upon in the applicant's written submission in support of his oral hearing request, nor does it make any reference to the UNHCR Guidelines or the relevant COI material referenced in the written submission.
37. It is no answer to the applicant's complaint, in my view, to say that the Tribunal in the oral hearing decision stated that it "*has considered your submissions in respect of s.43(b) of the International Protection Act, 2015*". Such a generic reference does not provide an answer to the flawed analysis which then follows in the decision – flawed, because it fails altogether to engage with the core submission in fact advanced by the applicant in support of his application.

38. In the circumstances, the Court will grant an order of *certiorari* against IPAT's decision of 17th August, 2020 and remit the matter to IPAT for a fresh determination pursuant to s.43(b) of the question of whether there should be an oral hearing in respect of this appeal.
39. It follows that, as the decision to refuse an oral hearing was unlawful, the subsequent decision of the Tribunal of 9th September, 2020 on the substantive appeal must also fall.
40. In my view, it would be incumbent on the Tribunal when freshly assessing the applicant's application for an oral hearing of his appeal pursuant to s.43(b) to have regard to the principles identified by me earlier in this judgment as drawn from the decision of Cooke J. in *SUN* and the analysis of O'Donnell J. in

in determining whether, contrary to the statutory default position of a "papers-only" appeal, it would be in the interests of justice to hold an oral hearing on the appeal.

41. In light of the fact that I am quashing the two IPAT decisions (of 17th August, 2020 and 9th September, 2020) and remitting the matter for fresh determination of the question of whether there should be an oral hearing, I do not think it would be appropriate to address the applicant's separate grounds of challenge to the contents of the IPAT decision of 9th September, 2020 on the appeal itself, many of which were bound up with the question of how the applicant's credibility was in fact addressed (allegedly unlawfully) in that decision. If the matter proceeds to an oral hearing following remittal and a fresh determination of the request for an oral hearing, any credibility assessment that might be performed in a fresh decision might well proceed on a fuller evidential basis and in the circumstances I do not think it will advance the interests of justice to express any view on the alleged legal shortcomings of the IPAT decision on the appeal itself.