THE HIGH COURT

JUDICIAL REVIEW

[2024] IEHC 12

Record no. 2023/140JR

Between:

M.B.

Applicant

and

INTERNATIONAL PROTECTION APPEALS TRIBUNAL and THE MINISTER FOR JUSTICE AND EQUALITY

Respondents

Judgment of Mr Justice Cian Ferriter dated 12 January 2024

Introduction

1. In these judicial review proceedings, the applicant seeks an order of *certiorari* quashing the decision of the first respondent ("IPAT" or "the Tribunal") of 18 January 2023 affirming the recommendation of the International Protection Office ("IPO") that the applicant be refused a declaration as a refugee and refused subsidiary protection status. The essential grounds of the applicant's international protection claim was that he had a well-founded fear of persecution if returned to his home country, Sierra Leone, by reason of his significant involvement with the All People's Congress (APC), an opposition political party in Sierra Leone. The Tribunal rejected the credibility of many aspects of his claim, although it did accept that that the applicant was an ordinary member of the party and had accompanied the former first lady of Sierra Leone on a trip to the UK. The Tribunal did not accept that these facts would lead to a risk of persecution or serious harm in light of the country of origin information. In these proceedings, the applicant challenges one adverse credibility finding and the Tribunal's approach to its assessment of the country of origin information.

Background

2. The applicant is a 44-year-old man from Freetown, Sierra Leone. He made a claim for international protection to the Minister for Justice and Equality on 10 August 2020 on the basis that, if returned to Sierra Leone, he would face persecution based on his political opinion and membership of a particular social group. The applicant claims that he was a politically active member of the All People's Congress political party ("APC"). He claimed he was an organising secretary and a youth leader with the APC. He said that he had been given a role as a bodyguard for the former First Lady of Sierra Leone (i.e. the then-President's wife), a role which he occupied from 2012 to 2017. He left Sierra Leone in November 2017 when he travelled to the United Kingdom on a six-month visa when he accompanied the former First Lady as a bodyguard. He overstayed his visa there and did not claim asylum.

3. The applicant travelled from the UK to Ireland in August 2020 and made his claim for protection here on 10 August 2020. His case was that, after his arrival in the UK, a conflict broke out in Sierra Leone between supporters of his party, the APC, and the rival SLPP political party in the run up to a general election being held in March 2018. The APC lost to its main rival party, the SLPP, in that election and there was harassment and intimidation of APC supporters by SLPP supporters which was not prevented by the authorities. There was a parliamentary bye-election in the applicant's constituency in August 2018. The applicant says that his home was targeted because of his support for and activism in the APC. He claims that SLPP supporters vandalised his home and threatened that they would beat him and kill him. He says that his wife called him from Sierra Leone when he was in the UK and advised him not to come home because his life was at risk. The applicant says that he decided to not to return to Sierre Leone with the First Lady's entourage given what he had been told by his wife. The applicant believes that the police in Sierra Leone accused him of inciting violence at the 2018 general election and the later bye-election in his constituency notwithstanding that he was in the UK at the time. His case was that, if returned to Sierra Leone, the police would imprison, torture and kill him. The applicant said that his wife had died in December 2020 as a result of complications from injuries suffered in a beating inflicted upon her by members of the SLPP.

Procedural History

4. The applicant attended an interview pursuant to section 13(2) of the International Protection Act 2015 ("the 2015 Act") on the 10 August 2020. He filled out his International Protection Questionnaire on the 9 September 2020 and attended an interview pursuant to section 35 of the 2015 Act on the 13 April 2022.

5. The applicant's application for international protection was refused at the first instance by the International Protection Office ("IPO") by decision (pursuant to section 39 of the 2015 Act) dated 3 June 2022. While the IPO accepted that the applicant was a member of the APC and had worked as security for the former First Lady, the IPO rejected his assertions that he was a youth leader and organiser within the APC and that he was accused of inciting violence and that his home was vandalised.

6. By notice of appeal dated 6 July 2022, the applicant appealed the recommendation of the IPO to the Tribunal. The Tribunal held an in-person hearing on 22 November 2022.

7. The applicant tendered a variety of material in support of his appeal, including written legal submissions containing references to country of origin ("COI") material which had been submitted to the IPO and written legal submissions made to the Tribunal which also included reasonably extensive reference to COI. Oral submissions were also made to the Tribunal and the COI information was referred to at the closing submission stage of the hearing.

8. The applicant's application for international protection was refused in the decision issued by the Tribunal on 18 January 2023 ("the decision") .

The Tribunal's Decision

9. It is useful at this point to give an overview of the material parts of the decision.

10. Having set out the relevant background and summarised the applicant's case, the Tribunal conducted its *"Assessment of facts and circumstances"* being the assessment required under s.28(4) of the 2015 Act. Under the heading *"Country of Origin Information"*, the

Tribunal held (at para. 30) that *"In arriving at the credibility findings in this decision, the Tribunal accepts that the appellant's account of material events does not, in a general sense run counter to the available COI"*.

11. As part of the material submitted in support of this case, the applicant furnished the Tribunal with a copy of the *Satellite Newspaper*, a Sierra Leonean newspaper, dated 21 May 2019 and the Tribunal then considered that material (at para 31). This newspaper contained an article on the front page, with a follow up to the article on an inside page, that alleged that the applicant was being sought by police for allegedly inciting violence. The applicant was named in the headline to the article appearing on the front page and a photograph of him appeared on the inside page (p. 2 of the newspaper). The article referenced a clash between SLPP and APC supporters in the applicant's constituency at the time of the parliamentary bye-elections of that constituency on 26 August 2018. The article stated that *"It is believed that one of the wanted persons,* [M.B.] *who the police said was accused of inciting the violence left the country long before the said incident"*.

12. The decision (at para. 31) noted in relation to the article as follows:

> *"The Tribunal has had regard to the publication which the Appellant has adduced in support of his claims. The IPO has questioned why the paper would carry a front page article referring to the Appellant, on 21st May 2019, alleging that he was wanted in connection with inciting violence around the 2018 election. The IPO suggested that the publication of the article may have been of 'dubious provenance'. The IPO went on to find, that on the balance of probability, the article was not accepted as a credible source. In light of the foregoing, and for the purpose of the within hearing, the Tribunal obtained the original document submitted by the Appellant and produced same in the course of the within hearing for the benefit of the parties. In so doing the Tribunal noted that the size and appearance of the paper page (being the cover page of the paper) was different from the remainder, or body of the publication (which itself was in uniform appearance). The Tribunal openly enquired why such a discrepancy was apparent. [The] Appellant directed the Tribunal to the on-line edition of the publication. The physical document therefore has an unusual appearance, which reasonably raises questions as to its authenticity. In all circumstances, the Tribunal must consider the appropriate*

weight to be afforded this document which have been adduced by the Appellant in support of his case."

13. The Tribunal then referenced *A v. Secretary of State for Home Department* (Pakistan) [2002] Imm A R 318 which stated as follows:

> *"Some are "genuine" to the extent that they emanate from a proper source, in the proper form, on the proper paper, with the proper seals, but the information they contain is wholly or partially untrue. Examples are birth, death and marriage certificates from certain countries, which can be obtained from the proper source for a "fee" but contain information which is wholly or partially untrue. The permutations of truth, untruth, validity and "genuineness" are enormous. At its simplest we need to differentiate between form and content; that is whether a document is properly issued by the purported author and whether the contents are true. They are separate questions. It is a dangerous oversimplification merely to ask whether a document is "forged" or even "not genuine". It is necessary to shake off any preconception that official looking documents are genuine… and to approach them with an open mind."*

14. The Tribunal concluded that *"Ultimately, the Tribunal will have regard to the appropriate weight to attach to this document, after looking at all of the evidence in the round"*.

15. The Tribunal then went on to note that it did not accept the applicant's explanation for his failure to seek international protection in the UK despite opportunity, and that the absence of such an application could adversely affect the credibility of his claims overall (para. 32). The Tribunal (at para. 33) then rejected an explanation provided by the applicant in relation to information appearing on his UK visa application which stated that he was the father of an eleven-year-old child and that he had resided with his wife and child.

16. The decision then summarised a series of alleged internal consistencies and implausibilities which had been advanced by the Presenting Officer to the Tribunal as adversely affecting the applicant's overall credibility. These were as follows:

- *"It was not plausible that his home would be targeted and vandalised while he was in the United Kingdom, far away from any involvement in local political campaigning.*

- *That it was not plausible that the article would suddenly appear and be published a significant time after the impugned events were said to have occurred.*

- *That the Appellant had not sought protection or assistance from his political contacts and comrades in circumstances where he claimed threats such as he had.*

- *That the Appellant had not claimed asylum in the United Kingdom.*

- *That the Appellant was vague in terms of his role as organising secretary and youth leader within the APC. The Appellant was unable to identify policy matters on a range of issues, other than to speak in the most broad and generic terms."*

17. The Tribunal then concluded (at para. 35) that the combination of all of the foregoing issues adversely affected the applicant's credibility overall i.e. the unusual appearance of the physical newspaper document, with reasonably raised questions as to its authenticity, and the fact that it was not plausible that the article would suddenly appear and be published a significant time after the impugned events was said to have occurred, along with the other matters relating to the applicant's failure to claim protection in the UK; the inconsistencies in his UK visa application material; and the lack of possibility that his home would be targeted and vandalised while he was in the UK far away from any involvement in local political campaigning; that he had not sought protection or assistance from his political comrades in light of the threats he claimed had been made against him and that he was vague in terms of his role as organising secretary and youth leader within the APC.

18. The Tribunal noted the applicant's failure to seek protection in the United Kingdom Para. 35 states as follows:

> *"The Tribunal does not accept the Appellant explanation for not seeking protection in the UK. The Tribunal notes the death certificate presented; however, the Tribunal also notes paragraph 2.3.8 of the Appellant's submissions to the IPO which claim as follows: "In December 2020, his wife died of an illness which he*

believes was exacerbated by the threats against him." Ultimately it would appear that the Appellant is at best speculating in this regard. Returning to the issue of the Satellite newspaper, the Tribunal finds that it is unable to attach any weight to the said article."

19. Having conducted that analysis, the Tribunal then stated (at para. 35) that *"Returning to the issue of the Satellite Newspaper, the Tribunal finds that it is unable to attach any weight to the said article"*.

20. Taking these adverse credibility findings into account, the first respondent sets out at para. 36 that:

"the Tribunal finds on the balance of probabilities that the following core facts of the Appellant's claim have been accepted: that the Appellant is a 43-year-old Muslim, male, widower, from Freetown, Sierra Leone. That the Appellant was an ordinary member of the APC (as per his membership card), who was recruited to accompany the former first lady, Sia Nyama Koroma to the United Kingdom. That the Appellant then overstayed his visa permission to the United Kingdom."

Grounds of challenge

21. The applicant in these proceedings challenges the credibility findings related to the Satellite newspaper article and the Tribunal's overall approach to its treatment of and findings in relation to COI.

The Satellite Newspaper article

22. As noted above, the Tribunal found that it was "*unable to attach any weight"* to the Satellite newspaper article ("the article").

23. The applicant, in his statement of grounds, was given leave to argue (at "legal ground" 5) that *"the Tribunal member did not provide adequate reasons for rejecting the validity* [of the] *newspaper article (Satellite Newspaper dated 21st May 2019), which mentions the applicant, and for giving it no weight at all"*.

24. At the hearing before me, counsel for the applicant advanced his case in relation to the rejection of the article evidence as a form of *Keegan* irrationality on the basis of that an outright rejection of the contents of the article did not flow from the factual premise that its physical appearance was unusual. Counsel for the respondents made the fair objection to this submission that it was not the case for which leave had been granted.

25. In his written submission, the applicant relied on the principles set out by Cooke J. in *I.R v Minister for Justice, Equality and Law Reform and Another [2009] IEHC 353* and in particular his holding that where an adverse finding involves discounting or rejecting documentary evidence or information relied upon in support of a claim and which is *prima facie* relevant to a fact or event pertinent to a material aspect of the credibility issue, the reasons for that rejection should be stated (at para. 11).

26. In my view, the Tribunal both properly reasoned, and set out reasons, for its conclusion that it would not attach any weight to the article and that conclusion cannot be said to be irrational. It is clear that the Tribunal proceeded on the basis that (i) the atypical physical appearance of the newspaper raised question marks as to its authenticity i.e. concerns as to the form of the document; (ii) the timing of the article was implausible given the length of time between the events which it purported to address and the time of publication i.e. concerns as to the content of the document. (Insofar as counsel for the applicant contended that no finding was made on this aspect, I not accept that this is so; in my view, there is a clear finding to that effect in the first sentence of para. 35 of the decision); and (iii) given that there were a series of other claims of the applicant which were rejected by the Tribunal as lacking credibility, his overall credibility was not accepted. The implausibility of both the form and content of the newspaper, in the context of a finding of a lack of general overall credibility, were such that the Tribunal decided to attach no weight to the article. In my view, those were findings which were open to the Tribunal, were not irrational, were adequately reasoned in the Tribunal's decision and the reasons for those findings are evident from the terms of the decision as discussed above.

Alleged failure to consider country of origin information

27. It is fair to say that the applicant's primary case related to how, he contends, the Tribunal addressed the question of COI. The applicant contends that the Tribunal erred fundamentally, on the basis of the facts which it did accept (i.e. that the applicant was an ordinary member of the APC who was recruited to accompany the former First Lady to the UK) in its assessment of the COI before the Tribunal in light of those facts.

28. Counsel for the applicant contended that the Tribunal's failure to properly assess and apply the COI before it in fact vitiated its reasoning more generally, on the basis that the Tribunal would or should not have made the general findings of lack of credibility if it had properly assessed the COI in the first place.

29. In making this argument, the applicant relied on the judgment of Simons J. in *K. v. IPAT* [2023] IEHC 6. In that judgment, Simons J. notes (at para. 37) the requirements of s. 28(4) of the 2015 Act which requires, *inter alia*, that the assessment by the Tribunal shall take into account all relevant facts as they relate to the country of origin at the time of taking a decision on the application. After making reference to the explanation provided by the Court of Appeal in *R.A. v. Refugee Appeals Tribunal* [2017] IECA 297 as to the proper approach to be adopted in the assessment of COI, Simons J. noted (at para. 40) that, in most cases, *"country of origin information will be of use in ascertaining whether the social, political and other conditions in the country of origin are such that the events recounted, or the mistreatment claimed to have been suffered, may or may not have taken place"*. The flaw in the Tribunal decision considered by Simons J. in that case related to the Tribunal deferring any consideration of the COI until after it had already purported to make findings of fact adverse to the applicant (see para. 44). Simons J., understandably, held that that this was to approach the matter the wrong way around. As noted by Simons J. (at para. 47), the correct approach is that the *"decision maker should ask whether, having regard to the country of origin information, the applicant's story* [could] *have happened"*. The Tribunal, in that case, erred in deferring consideration of COI until after the Tribunal had already whittled down the findings of fact. Simons J. there noted: *"It should be emphasised, of course, that saying that regard should have been had to the country of origin information does not amount to saying that the specific allegations made by any particular applicant for international protection will be found to be credible. The point is, rather, that in order to properly assess those allegations and to reach*

a reasoned view in relation to credibility, it is important to understand the political context" (at para. 48).

30. As noted earlier, in the *"Assessment of facts and circumstances"* section of the decision in the case before me, the Tribunal held, under the heading *"Country of Origin Information"*, that *"In arriving at the credibility findings in this decision, the Tribunal accepts that the appellant's account of material events does not, in a general sense run counter to the available COI"* (para. 30). The Tribunal then went on to note one of the pieces of COI submitted by the applicant (which related to an article from the *Sierra Leone Telegraph* headed *"Political violence as elections approach in Sierra Leone"*) and COI relied upon by the IPO from the European Union Election Observation Mission Final Report (on elections in Sierra Leone in 2018). In my view, the Tribunal member approached COI correctly in this context by accepting that the applicant's account of events did not run counter to the available COI and by then, from that correct starting point, and with that in mind, going on to determine the credibility of the various material aspects of his claim. This is consistent with the authorities i.e. to use the COI at this stage of the analysis to help assess whether the applicant's story could have happened. This of course did not and could not preclude the Tribunal from thereafter determining that material aspects of the applicant's story were not in fact credible notwithstanding that those aspects may not in themselves have been contrary to available COI.

31. The applicant separately sought to contend that the Tribunal, in the section of the decision dealing with the analysis of serious harm, fundamentally erred in finding, in the context of an assessment of a whether there was a risk of serious harm to the applicant if returned to Sierra Leone, *"that there is nothing in the available COI to suggest that the appellant will be targeted simply by virtue of his general profile and/or because of his APC membership"*(para. 46). It was submitted that this manifestly did not reflect the COI information before the Tribunal and that there was a complete failure by the Tribunal to engage with that COI material.

32. Before evaluating that submission, it is necessary to note that part of the applicant's pleaded case was that this finding was invalid because, *inter alia*, *"it was accepted that the applicant was the organising secretary for the APC youth group in his area and that because of his work for the party, he was selected to travel with the former First Lady to the UK and given a diplomatic visa"*. Counsel for the respondent properly pointed out that these assertions

are not correct. It is clear that the Tribunal did not accept that the applicant was the organising secretary for the APC youth group in his area, in light of the findings contained at para. 36 of the decision which confined the factual findings on the various elements of the applicant's contended-for case to his ordinary membership of the party and the fact he was recruited to accompany the former First Lady to the UK.

33. Counsel for the applicant further contended that it was inherent in acceptance of the finding that he was recruited to accompany the former First Lady to the UK that he must have been active to a significant degree in the APC. This does not necessarily follow, particularly in light of those aspects of the applicant's story which the Tribunal expressly rejected. However, I do not have to resolve that issue in light of the findings which I will shortly come to.

34. The applicant pointed to a series of COI material put before the Tribunal (both in the written submissions which had originally been furnished to the IPO and which were also before the Tribunal, and in further written submissions furnished to the Tribunal in the context of the appeal to the Tribunal) which made clear that even ordinary members of the APC faced the risk of persecution or serious harm by virtue of their membership of the party.

35. The relevant paragraph of the Tribunal's decision (para. 46) stated as follows:

> *"As to ground (b) above, that is to say: torture or inhuman or degrading treatment or punishment of a person in his country of origin. The Tribunal notes that Sierra Leone has been recorded as having a poor human rights record. In that regard the United States, Department of State Report on Human Rights records: 'Significant human rights issues included credible reports of: unlawful or arbitrary killings by the government; cruel, inhuman, or degrading treatment or punishment by the government or on behalf of government; harsh and life-threatening prison conditions; arbitrary arrest or detention; serious government corruption; existence of laws criminalizing consensual same-sex sexual conduct between adults, although the laws were not enforced; and existence of the worst forms of child labor. <u>However, the Tribunal finds that there is nothing in the available COI to suggest that the Appellant will be targeted simply by virtue of his general profile and/or because of his APC membership</u>**.** Whilst the Tribunal acknowledges and recognises the documented history of political tensions in Sierra Leone, the Tribunal finds that the accepted elements of the Appellant's claim do not*

provide a basis for finding that there are substantial grounds for believing that should the Appellant return to his country of nationality that he will face a real risk of serious harm under this subsection." (Emphasis added).

36. It can be seen that the Tribunal referenced only one piece of COI in this section of the decision, being an extract from a US Department of State report on human rights for Sierra Leone for 2021. The extract refers to significant human rights issues including credible reports of, *inter alia*, *"arbitrary arrests for detention"*. Under that heading in the body of that report, it is stated *"the Constitution and law prohibit arbitrary arrest and detention, but human rights groups such as Amnesty International and the HRCSL indicated that the SLP* [i.e. the ruling party] *and chiefdom police occasionally arrested and detained persons arbitrarily, including members of opposition parties"*. Counsel for the respondents fairly pointed out that when one goes to the detail later in that section of the report, that general statement is put in context by a reference to the arrest of an APC politician and Member of Parliament and three others such that it cannot be taken to be a statement of a risk of arbitrary arrest and detention simply by virtue of membership of the APC.

37. Even accepting for argument's sake that this piece of COI did not support a conclusion of risk of serious harm (or, indeed, persecution) for a mere member of the APC, there was, on the face of it, a conflict in the COI before the Tribunal in that the applicant had in the two sets of written submissions that were before the Tribunal pointed to various pieces of COI which suggested that supporters or members *simpliciter* of the APC had been targeted with violence during the 2018 elections in Sierra Leone and since then.

38. The COI referenced in the applicant's submissions to the IPO included an AFP report headed *"Violence fears ahead of Sierra Leone run-off vote"*, dated March 2018, which referred, *inter alia*, violence being reported *"between SLPP and APC supporters in the southern city of Bo, as well as several other cities where some lodgings were burned"*. A Guardian article from March 2018 headed *"Sierra Leone: Violence fears as tense election reaches run-off"* referenced, *inter alia*, a report confirming that there had been street brawls between supporters of the APC and SLPP in the capital of Freetown. An article in the Sierra Leonean paper *Cocorioko* titled *"Post election attacks create over 2,000 refugees in Sierra Leone"*, dated April 2018, referenced houses and properties belonging to opposition supporters [i.e. APC supporters] being burned down and destroyed and physical attacks and victimisation

of *"peaceful individuals or groups that are believed to be supporters of the APC party"*. The separate written submissions put before the Tribunal for the Tribunal hearing referenced a US State Department country report for Sierra Leone 2019 (dated March 2020) which referenced, *inter alia*, the arrest of three APC members during a parliamentary bye-election in the country.

39. While counsel for the respondents contended that the thrust of the COI material related to potential persecution or serious harm being inflicted on APC politicians or activists, I cannot safely conclude that this is so on the basis of the material before the Tribunal as noted above, which suggested that supporters or members *simpliciter* of the APC had been targeted with violence during the 2018 elections in Sierra Leone and since then. In the circumstances, in my view, it behoved the Tribunal, at a minimum, to engage in some analysis of the material put before it by the applicant which supported the view that even ordinary members of APC (i.e. APC members who were not themselves politicians or activists) faced the risk of violence, arbitrary detention or other persecution or serious harm in Sierra Leone by virtue of their political affiliation and to explain why it was not accepting this COI, or why it preferred other COI, if that was in fact the Tribunal's position.

40. While the position is not as stark as that which obtained in the *E.L. v. IPAT* [2019] IEHC 699 (where Humphreys J. set aside a decision to the effect that there was no COI that indicated a risk of persecution to political journalists in Albania, when Humphreys J. found that there was *"a wealth of material"* before the Tribunal to the contrary (para. 20), it is nonetheless the case that there was a failure here by the Tribunal to take into account relevant COI material and/or to justify the preferment of one piece of COI (the piece quoted by the Tribunal at para 46 of its decision as set out above) over others (being the COI which I have summarised at para 38 of this judgment). This failure is contrary to the obligations on the Tribunal as confirmed in *D.V.T.S. v. Minister for Justice* [2008] 3 IR 476 where Edwards J. held (at paras 43) that:

> *"While this court accepts that it was entirely up to the Refugee Appeals Tribunal to determine the weight (if any) to be attached to any particular piece of country of origin information it was not up to the Tribunal to arbitrarily prefer one piece of country of origin information over another. In the case of conflicting information it was incumbent on the Tribunal to engage in a rational analysis of the conflict and to justify its preferment of one view over another on the basis of that analysis."*

41. Accordingly, in my view, the decision must be quashed on this ground and the matter remitted to the Tribunal for a fresh determination.

Conclusion

42. For the reasons outlined in this judgment, I will grant an order of *certiorari* of the Tribunal's decision of 18 January 2023 and remit the matter to a new Tribunal for fresh determination.