THE HIGH COURT

[2024] IEHC 303

2023 993 JR

BETWEEN:

E.D. and A.D. (Zimbabwe)

APPLICANTS

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

***Ex Tempore* JUDGMENT of Ms .Justice Mary Rose Gearty delivered 14th May 2024**

1. Introduction

1.1 These Applicants seek to quash deportation orders. They claim that the reasons the orders were made are not clear and that the reasons should have been stated separately. The application to review the orders was late, and no reason was offered for an initial delay of over a month.

1.2 The Applicants are not entitled to the Orders sought. The application was made outside the 28-day limit imposed by statute and I will not extend the time within which to apply. I have considered the substance of the claims in reaching this conclusion. The deportation orders are good on their face and, when read with earlier decisions in the same case, they do not require further explanation. The matters which the Minister was obliged to consider have been taken into account and, reading the orders along with the relevant decisions of the International Protection Appeals Tribunal ("IPAT"), it is clear why the deportation orders issued.

1.3 There is no statutory requirement for a separate decision in respect of information received under s.50 of the International Protection Act 2015 ("the 2015 Act") to be made in writing. What is required is that the Applicants

understand the reasons for the deportation orders. s.50 ensures the continuing responsibility of the Minister to maintain the prohibition on refoulement.

2. <u>Time Limits</u>

2.1 The first issue arising is the question of whether this application is out of time. An application to challenge a deportation order must be made within 28 days of notification of the decision, according to s.5(2)(oj) of the Illegal Immigrants (Trafficking) Act 2000, as amended by the 2015 Act. This section sets out the time limits applying under the 2015 Act but does not mention s.50, which is the section under which new information may be put before the Minister before a decision on whether to make a deportation order is reached.

2.2 The deportation order was issued in May of 2023 and the application for review was not made until August of 2023. This was out of time within the terms of s.5 (and, if this does not apply, it is also out of time within O.84 RSC which imposes a time limit of three months). I am satisfied that the 28-day limit applies here, as any other time limit would be incompatible with the legislation as a whole.

2.3 Section 5 refers specifically to s.51 but not to s.50. The Applicant sought to argue that a decision to accept information under s.50 is a separate decision to a decision to deport under s.51 and is not included in the statutorily imposed time-limit of 28 days. This cannot be correct for the reasons set out below.

2.4 The Applicant relies on *A.W.K. v The Minister for Justice* [2020] IESC 10 but that is authority, it seems to me, for the opposite conclusion. As in *AWK*, the section in question here, s.50, is a necessary staging post on the way to a s.51 decision. As in *A.W.K.*, the section should be read in its context. The effect of a different time limit (and three months is the time limit argued for, as set out in O.84) would be that an interim decision on new information submitted under s.50 could be challenged long after a deportation order had been made by a Minister under s.51, who did not realise that her earlier decision was about to be reviewed. That simply does not make sense. To use the words of McKechnie J. in *A.W.K*, the result would be discordant with the remaining legislation.

2.5 Further, to allow a challenge to a s.50 decision *after* a s.51 decision has issued and 28 days have passed would not be conducive to a fair and effective system of deportation. Allowing a challenge to the process by which an order was made at any time within three months while confining any other challenge to the deportation order to a period of 28 days does not make logistical sense.

2.6 In *Y v The Minister for Justice and Equality*, [2021] IEHC 82, as the Applicant notes, the Court allowed an extension of time. The time in question was much shorter and the main argument made was substantial and was accepted by the Court. That applicant had no idea why strong evidence of a link to a religious organisation had been ignored and the Minister was obliged to spell out why the new information had not changed the decision in respect of deportation.

2.7 Here, it is obvious that the new information submitted was irrelevant to these Applicants. For reasons set out below, the new information could not change the initial decisions not to grant refugee status and it was clear that this information could not affect a decision to deport. Not only am I satisfied that the information submitted was considered by the Respondent, it is clear that it did not change her view. There is no statutory requirement for a separate s.50 decision where this is so and I agree with my colleague, Barrett J., in his decision in *X v The Minister for Justice and Equality*, [2021] IEHC 32 to this effect.

2.8 The Applicant is not entitled to an order of *certiorari* or *mandamus*, primarily because the application is out of time and there has been no sufficient reason offered for this delay. The only averments addressing delay referred solely to matters arising in July 2023, but the application was out of time by June of 2023.

2.9 I will now set out my views on the strength of case as these arguments have not persuaded me that it is unfair to refuse these reliefs on the grounds of time.

3. <u>The Relevant Provisions and Case Law</u>

3.1 Section 51 of the 2015 Act provides for circumstances in which an order for deportation may be made. s.51(3) of the 2015 Act requires that the applicant be

notified of the reasons for the order, so in this instance there is a specific requirement to set out the reasons. There is no such provision in s.50, which allows an applicant to send information to the Minister, asking her to consider it before issuing an order under s.51. This is what happened here: new and updated country of origin information ("COI") was sent to the Minister.

3.2 The 2015 Act provides that where new information is submitted, the Minister must consider refoulement again. She cannot just adopt the decisions of the International Protections Office ("IPO") and IPAT without doing so. If she does not adopt these decisions, the Minister will usually have to explain why. This is exactly what occurred in the *Y* case, and it is mandated by *Mallak v. Minister for Justice* [2012] 3 I.R. 297. An explanation is required in such cases so that an applicant may understand the reasons for a decision.

3.3 In the case of *Y*, Barrett J. decided that an applicant must not be in a position where she is guessing why deportation has been ordered. By contrast, in *X*, the same Judge ordered that there was no requirement for a separate reasoned decision as the reason was obvious. There, IPAT had rejected X's account that he was homosexual, hence any COI about risks to gay men in his country of origin was irrelevant to X, as it could not affect him.

3.4 Y, by contrast, had not established his membership of a religious group members of which, IPAT accepted, were at risk of persecution. The s.50 information produced was a membership card and other proof that he did belong to the group. This demanded a response and an explanation as to why the decision not to grant refugee status was unaffected by the new evidence.

4. Section 50 and 51 Requirements in this case

4.1 The Applicant came here from Zimbabwe. The second Applicant is a child, the first Applicant is her mother. The first named Applicant, in her interviews and questionnaire, claimed that her fiancé and sons disappeared after attending a

political rally, having earlier defected from a rival political party. She claimed to fear persecution by that political party. The IPO and IPAT rejected her account of events in respect of the political claims and the disappearances, due to inconsistencies. These findings of fact were not the subject of review or appeal. They are not at issue in this hearing.

4.2 The first Applicant also argued that she would be subject to persecution on the grounds of gender if she returned to Zimbabwe. This too was rejected by IPAT and that finding was not reviewed nor is the decision at issue in this hearing.

4.3 The Applicants, having been refused refugee status, sent details of updated COI to the Respondent in May of 2022. This is central to the claims made as it is submitted that this COI was not considered.

4.4 The COI included political events and other matters which would have been relevant to the case had the Applicants' original version of events been accepted, but it was not. There was no updated information in respect of gender-based violence in Zimbabwe. The Respondent decided to deport both Applicants and did not refer in the notice to the specifics of the COI submitted.

4.5 The wording of the deportation order here was identical to that in the *X* case and the principle of comity requires that I follow it unless I can see a good reason to depart from it. I do not and I agree with Barrett J.

4.6 The Applicant argues that the same Judge departed from his own ruling in *X* in the later case of *Y*. This is not correct. In *Y*, the updated information sent under s.50 was directly relevant to that applicant's case, ostensibly led to a new situation and it was crucial that the material evidence be addressed in the Minister's decision. Here, there is nothing to disturb the credibility findings so the updated COI is neither here nor there – it cannot affect the decision. The s.50 procedure, as applied here, was the end of a long, detailed and fair process, which was well documented.

4.7 This Applicant's case was decided on the basis that her account was not credible. That being the case, there was nothing in the COI that could change

the effect of the IPAT decision. The Minister was entitled, having considered the COI, to discard it and to follow the IPAT decision. As occurred in X.

4.8 The Applicants had to persuade me that *X* was wrongly decided. In *Y*, the same judge held for the applicant, but the facts were very different. This case is almost identical to *X*; in both cases the new information could not bear on the Applicants' circumstances as it was irrelevant to their cases on the facts.

5.1 The Applicants sent in new COI and they complain that there was no specific communication with them as to the effect of the COI. The letter in response, contrary to what was submitted to me, did not promise that a separate decision would issue in respect of the COI. That letter, dated 18th July 2022, makes it clear that the COI will be considered and only then will deportation be decided upon. It is clear from that letter that the next decision issuing will be one in which the Applicants learn if they are to be deported or not.

4.9 No other written decision is required by statute, nor is it mandated by the case law unless the reasons for the deportation decision are not clear, in the sense used in *Mallak* and applied in *Y*. Here, it was clear why the Applicants were being deported. There was no reason for the Minister to change her view: the COI was not relevant to the Applicants' circumstances.

5. <u>Evidence that Information was Considered</u>

5.2 The Applicants argued that, quite apart from the argument that the COI sent under s.50 required a separate decision in writing to explain the reasons why it was rejected, the deportation order served on them under s.51 should have specifically referred to the COI sent as otherwise the issue regarding the COI was decided in secret and/or not considered. It was submitted that exhibiting a note to the file, stating that the COI had been considered, was not sufficient to prove that the Respondent considered the information in the file.

5.3 The deportation order states that provisions in respect of refoulement have been complied with. Further, the affidavit of Mr. Boyle makes it clear that the

Respondent did consider the information, and this was not challenged. In those circumstances, I am satisfied that the COI submitted was considered.

5.4 This ruling simply applies the comments of Hardiman J. in G.*K. v. Minister for Justice and Equality* [2002] 2 I.R. 418. pp. 426-427:

> "*a person claiming that a decision making authority has, contrary to its express statement, ignored representations which it has received must produce some evidence, direct or inferential, of that proposition before he can be said to have an arguable case*."

These Applicants have not produced any such evidence to refute the Minister's express statement, nor have they challenged the averment in that regard.

6. Article 8 - Grounds not Pleaded

6.1 The Applicants submit that the decision to deport is contrary to Article 8 of the European Convention on Human Rights. This was not pleaded and no leave was granted to amend the statement of grounds. There is a reason to confine cases to the points pleaded. No application to amend the statement of grounds was made so this argument will not be considered.

6.2 The fact that Article 8 was raised in submissions before the IPO, as happened here, is an argument against considering this issue. It was clearly an argument that was considered by the Applicants before the case began but they chose not to repeat the argument in their challenge to the s.51 deportation orders.

6.3 O.84 is clear on this point and the case law is even more emphatic. The Supreme Court in *A.P. v. Director of Public Prosecutions* [2011] IESC 2; [2011] 1 I.R. 729 confirmed that an applicant and the High Court are confined to the grounds as pleaded unless and until an application to amend the statement of grounds has been made and granted. No application to amend has been made. I am bound by the decision of the Supreme Court.

7. Conclusions

7.1 For the reasons set out above, the application is refused on the primary ground that it is out of time, a limit of 28 days, imposed by the relevant statute.

7.2 The Applicants were unable to provide any reason which would permit me to depart from the general rule as to costs and the Respondent is entitled to an Order for costs.