

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL

International Protection Act, 2015

Decision No: 1782461-IPAP-16

Appellant: XXX XXX

Nationality: Malawian

Language of Appellant: Chichewa

Solicitors for Appellant: XXX XXX

Tribunal Member: **Byron wade**

Hearing Date: 24th January 2018

I.P.A.P. Number: 1782461-IPAP-16

Person ID: 949644-15

Present at the Hearing:

Appellant: XXX XXX

Barrister: XXX XXX BL

Presenting Officer: XXX XXX

Interpreter: XXX XXX

[1] Introduction:

- [1.1] The Appellant is a thirty-three-year old man from Malawi who made a claim for protection to the Refugee Applications Commissioner/International Protection Officer on the 9th November, 2015 on the basis that if returned thither he should face suffering on account of flooding there.
- [1.2] My power to make this recommendation or decision is derived as follows:
- [1.3] The International Protection Act, 2015 was commenced on the 31st December, 2016. By its terms, that Act abolished the Refugee Appeals Tribunal and established in its place the International Protection Appeals Tribunal ('IPAT').
- [1.4] Sub-section 71 (1) of that Act by its terms provides that the business of the Refugee Appeals Tribunal under the relevant Subsidiary Protection Regulations are transferred to the IPAT. Sub-section 71 (7) of the same Act effectively provides that I was deemed appointed a member of the IPAT on commencement. Then, Sub-section 70 (8) of the same Act provides that on commencement of the 2015 Act, a Subsidiary Protection appeal that was pending before the Refugee Appeals Tribunal shall be determined in accordance with the Subsidiary Protection Regulations, 2006 to 2013.

[2] Case Facts & Documents:

[2.A] The Claim

- [2.1] The Appellant made the following allegations in support of his claim (which I have summarised as the main *facta probanda* therein):
- [2.2] He was born in Malawi on XX/XX/19XX and lived in in XXX village, Chikwawa district which is in the southern part of the country, a few hours drive from Blantyre.
- [2.3] He came to Ireland in 2012 to study (S35Int, p4,q8.1) whereafter he returned to Malawi and was married there on XX/XX/20XX (S35 Int, p4,q7);
- [2.4] He studied at various colleges in Ireland from his time of arrival in 2012 to March/April, 2015 (S.35 Int, p5,q9.1-9.8). His sponsor died as a result of flooding which took place in the Chikwawa district between January and March, 2015 (S35 Int, p6, q9.14).
- [2.5] His village was damaged to such extent that nobody can live there now (S35 Int, p6,q9.17). The land is waterlogged and swampy now. The inhabitants were moved to camps run by the Malawian government, but those camps are disease-prone and generally undesirable places to inhabit.
- [2.6] If he returns to Malawi he would not have protection and would have no place to sleep and probably no food and he has nobody there except his wife (S35 int, p6, q10.1);
- [2.7] He sought asylum here and was refused, just as he was later refused subsidiary protection (the latter on the 12th October, 2017). It is from those refusals that he now appeals.

[2.B] Documents

[2.13] The Appellant submitted a number of documents including the following:

Original passport;

Garda National Immigration Bureau card;

Copy Certificate of Marriage XX/XX/20XX;

Certificate of Death XX/XX/20XX XXX XXX;

Certificate of Birth XX/XX/19XX XXX XXX;

Certificate from Chileka Police Station 18/05/2015 re, applicant and Mrs. XXX XXX;

Various letters from Irish schools & colleges re this Appellant.

Notice of Appeal dated 6th November, 2017.

Submissions dated 23rd January, 2018.

C.O.I., namely:

Climate Change Adaptation in Malawi by USAID;

Why Climate Change is a Human Rights Violation dated 27/2/15 by SPLINTER;

Catholic Church in Malawi Wants Climate Policy Enactment dated 6/8/15 by The Nyasa Times;

High Unemployment Rate Continues to Cripple Malawi's Economy dated 11/7/17 from Capital Radio Malawi;

Poverty, Inequality and Unemployment dated 20/6/16 by www.mwnation.com;

Floods Displace 200 Families in Malawi dated 8/2/17 from www.malawi24.com;

CHRR, CEDEP Fault Compromised Activists for Criticising Donors on Lake Malawi Water Project dated 17/7/17 by The Nyasa Times.

All of the documentation provided by the Appellant (including the documentation listed above) has been fully considered.

[2.14] The International Protection Officer also adduced some documents, namely:

Malawi Floods Kill 176 People from The Guardian, dated Jan 2015.

US Department of State: *Country Report on Human Rights Practices 2016 – Malawi*, 03 March 2017;

Amnesty International Report 2015/16 – The State of the World's Human Rights – Malawi, 24 February 2016.

All of the above documentation provided, by both sides, has been fully considered.

[3] Nationality / Statelessness:

[3.1] The Appellant claims to be a national of Malawi. On the balance of probabilities, I believe him, for the following reasons: He submitted a copy of his Malawian Passport in support of his claim; it is *prima facie* genuine. It bore Irish visa stamps. He also speaks Chichewa, the native language of that country.

[3.2] Having accepted, for present purposes, that the Appellant is a national of Malawi, I shall now consider the facts in the claim along with the representations of the parties on these issues.

[4] Analysis of Facts and Circumstances:

[4.1] Overall, I found this Appellant's evidence credible. My reasons follow.

[4.A] Individual Position and Personal Circumstances

[4.2] As written above, this Appellant seems to be a man in his early thirties, originally from Malawi. He is married, and his family had land and/or herds in that country.

[4.3] Also as stated already, his nationality appears reasonably well established, and I accept that he is Malawian. His age, education and work history, as reported, appear uncontroversial and I see no reason to disbelieve same.

[4.B] Relevant Facts, Statements and Documentation

[4.4] I have assessed the credibility of the Appellant's claim having had regard to all relevant matters. I treat of the main *facta probanda* as follows:

[4.B.1] The 2015 Floods in Chikwara

It is accepted for the purpose of this report, and on the balance of probabilities, that severe flooding took place in Chikwawa district of Malawi. The applicant claims that such flooding took place between the months of January to March 2015 (S35Int, p6, q9.15). The occurrence of such flooding and its resulting in the death of 176 people is reported in the *Guardian* newspaper on 17 January 2015, *op. cit.* The article confirms that the flooding killed more than 176 people and displaced at least 200,000 others leaving homes and schools submerged in water and roads washed away by the deluge. It specifically stated that in Chikwawa "*which is 27 miles from Blantyre... traditional leaders sent dugout canoes to rescue stranded villagers, some finding shelter in trees*".

[4.B.2] Other Considerations

Also, in this case I think it fair to characterise some of the Appellant's statements as admissions against interest. For example, he has never said that any person is pursuing or seeking to persecute or harm him. It had been easy for him to invent such a story, but he refrained from so doing.

Also, he has admitted to having effectively abandoned his wife to a life of begging on the side of the road. That selfish act of abandonment gives rise to a standing reproach to him as a husband. However, his straightforward admission, that he committed it, stands to his credit as a narrator.

Admissions against interest generally bolster the admitter's credibility (*e.g. Ranbaxy Laboratories Ltd. -v- Warner Lambert Co. [2005] IEHC 178*) and it is no different here.

Overall then and as to the story he tells, I find his account coherent and plausible.

Moreover and from the C.O.I. adduced (*op. cit.*), I see that there really were serious floods in Malawi back around the time that this man mentions. Hence the extrinsic evidence backs up, to a good extent, what he himself claims. In other words, his story is in line with reputable Country-of-Origin Information.

For those reasons I believe this Appellant's story.

[4.C] Some Statutory Indicators of Credibility

[4.24] As to those indicators of credibility as set out by the Minister for Justice and Equality in Sub-article 13 (4) of the European Union (Subsidiary Protection) Regulations, 2013, I comment as follows:

(13 (4) (a) & (b)) This Appellant has made adequate efforts to substantiate his identity. As set out above, I have accepted that he is Malawian, as he claimed. He submitted an original passport which bears the stamps recording his prior stay in Ireland.

(13 (4) (c)) As indicated elsewhere herein, the Appellant's account is generally coherent and plausible.

(13 (4) (d)) This man sought asylum here in November, 2015, which was quite a while after he arrived here on that particular sojourn. His visa had just run out. That lateness in applying would generally count against him, but in this case, he has done enough otherwise to establish his credibility.

(13 (4) (e)) I find that the Appellant's general credibility has indeed been established, as aforesaid.

[4.25] In the circumstances, and for the reasons already set out above, I believe this Appellant's story. Hence I now proceed to look at the legal consequences thereof.

[5] Analysis of Well-Foundedness of Fear:

[5.1] Having determined which material facts of the Appellant's claim are accepted (i.e. essentially all of it), I now consider whether same gives rise to a right to asylum or subsidiary protection.

[5.A] Persecution

[5.2] I now consider whether the harm feared by the Appellant, should he return to his country of origin, constitutes persecution.

[5.3] The stated reason for this man's claim is his fear of the consequences of a natural disaster, namely, the flooding that hit his home area of Malawi in early 2015. I therefore now examine whether same constitutes 'persecution' for present purposes.

[5.4] The governing definition of 'persecution' here is that in Section 7 of the International Protection Act, 2015. In particular, Sub-section 7 (1) thereof and by its terms provides the definition in principle, albeit by reference to another instrument, namely, the European Convention on Human Rights (which latter instrument was incorporated into our domestic law by way of the European Convention on Human Rights Act, 2003). More specifically, Sub-article 15 (2) of that Convention is pointed out as containing the things that constitute

persecution, namely: killing (Article 2), torturing (Article 3), enslavement (Sub-article 4.1) and 'punishment without law' (Article 7).

[5.5] Sub-section 7 (2) of the 2015 Act then by its terms sets out some examples of persecution. It is striking that not only all of the acts mentioned in Sub-article 15 (2) of the Convention, but also all of the acts mentioned in Sub-section 7 (2) of the 2015 Act, are clearly volitional acts. Moreover, the relevant will is, in each case, the will of some human being (as opposed to the will of God or nature or some other entity).

[5.6] In reading the Statute, we may and ought to apply the so-called *ejusdem generis* rule (cf. *Bennion on Statutory Interpretation*, 5th edn., paragraph 379; also, *Elliott -v- Commissioner of Valuation* [1935] 1 I.R. 607) so that even though the relevant list of examples is not exhaustive, yet any other examples must conform to the same set of things. In the instant case, that must be made up of other human action, conduct or behaviour.

[5.7] I am fortified in so opining by the frequent references, in the Act, to 'actors' of persecution (e.g. Sections 8, 30 and 31) which refer to human beings too.

[5.8] Even on the broadest view of 'persecution' (or of 'serious harm' for that matter), all such 'actors' are people, whether they be State actors or non-State actors; cf. *J.T.M. -v- Minister for Justice* [2011] IEHC 393 at para. 12. Furthermore, and were there any room left for doubt, our High Court has explicitly approved a dictum of a foreign common-law Court's interpretation of broadly the same provisions, to the effect that hardship, caused by something other than human agency, cannot constitute persecution (or serious harm); cf. *P.E. -v- Minister for Justice* [2009] IEHC 603 at para. 13.

[5.9] In that case our High Court quoted with approval from a leading decision of the Australian High Court (*cf. A v. Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225, at 247-248) as follows:

“By including in its operative provisions the requirement that a refugee fear persecution, the Convention limits its humanitarian scope and does not afford universal protection to asylum seekers. No matter how devastating may be epidemic, natural disaster or famine, a person fleeing them is not a refugee within the terms of the Convention. And by incorporating the five Convention reasons the Convention plainly contemplates that there will even be persons fearing persecution who will not be able to gain asylum as refugees.”
[my emphasis]

[5.10] At the hearing before me, Counsel for the Appellant argued to the effect that the Malawian government was itself guilty of persecution, because it has not done enough to relieve this man's suffering. However, I disagree strongly. It is a brave but convoluted argument, and has no basis either in law or fact. The Appellant himself admits that the Malawian government has been housing and feeding the flood victims since the floods struck about three years ago. Camp inmates are free to leave the camps. The standard of food, accommodation and hygiene are evidently not to this man's liking. The dangers inherent in sleeping rough were also stressed to me. However, there is no conceivable way, in which some subjectively-judged inadequacy in provision of state charity, could be equated with 'persecution' or 'serious harm'.

[5.11] The Judgment in *D. -v- United Kingdom* [1997] ECJ 24 EHRR 423 was cited to me as a precedent for the aforesaid finding which was urged on me. However, that case is not any kind of authority for the decision I have to make. That case was about *refoulement* and nothing else; the instant case is about asylum and subsidiary protection.

[5.12] Therefore I find that this Appellant has not suffered persecution and faces no real risk of suffering it either, were he sent back to Malawi.

[6] Exclusion from Asylum

[6.1] This does not arise in the instant case.

[7] Conclusion on Asylum

[7.1] For the reasons given above, I affirm the Officer's recommendation that this Appellant be refused asylum.

[8] Analysis of Serious Harm

[8.1] Having determined which material facts of the Appellant's claim are accepted (that is, essentially all of it), on the grounds set out in the above Sections, I shall now proceed to analyse whether these facts provide a basis for a finding that he should face, if returned to his country of origin, a real risk of serious harm.

[8.2] As to that, I note that for present purposes, 'serious harm' is as defined in Section 2 of the International Protection Act, 2015. It is defined in effect as being one or more of (a) execution, (b) torture, inhuman or degrading treatment/punishment, or (c) serious and individual threat to life or person by reason of 'indiscriminate violence in a situation of international or internal armed conflict'.

[8.A] Grounds for Subsidiary Protection:

- [8.3] As indicated above, this man fears the poverty and homelessness that may dog him because of his village having been flooded some years ago. Having considered the matter at length, I come to the same conclusion as for persecution, namely, the subject of his fears cannot amount to 'serious harm' either. My reasons follow.
- [8.4] Much or of the law mentioned hereinafter was neither opened nor argued before me in the course of the hearing. However, it does not consist of any novel points not raised before me. Instead, it consists merely of development or exploration of the basic legal arguments applicable in essentially all applications for subsidiary protection that progress beyond the assessment of credibility. In any event, I am statutorily directed to conduct hearings 'as informally as is practicable ... consistent with fairness and transparency'.
- [8.5] As to the above-quoted statutory definition of 'serious harm', I apply the same hermeneutic maxims as mentioned above, as to 'persecution'. All of the above categories manifestly refer only to acts by other human beings, and not to natural disasters, 'Acts of God' *et cetera*. I am fortified in so thinking by the fact that, according to that same Act, both persecution and serious harm require 'actors' who are themselves human; *cf.* Section 30 of the 2015 Act.
- [8.6] In this case the Appellant's Solicitor and Counsel made submissions to the effect that the suffering which he fears comes from 'climate change'. Neither of them articulated the point very clearly as to how that could ever be shoe-horned into any definition of persecution or serious harm, but for discussion's sake I take their arguments at what I presume to be their height: That is, they ask me to accept that 'climate change' is real, that it is man-made to a significant extent, and that it is the cause of the floods in Malawi that

discommoded their Client. Only if I held with them on all three points, could I in any way attribute the floods to some form of human agency.

[8.7] But I cannot hold with them, and for at least two independent and distinct reasons. Firstly, it seems to me to stretch beyond breaking point the definition of 'inhuman or degrading treatment or punishment' to assert (as the Appellant apparently does) that some other people ever meted out 'treatment' or 'punishment' to him by, for example, burning fossil fuels in a country far away and perhaps long ago. The causal connection is far too tenuous; the chain of inference, far too long.

[8.8] As to character of the thing, the Applicant's suffering from flooding does not appear to qualify as 'treatment' or 'punishment' in the relevant sense, or indeed perhaps anything other than in some Karmic sense. As to that I note the dicta of Cooke J. in *C.C. -v- Minister for Justice* [2012] IEHC 143, in which (at Paragraph 43 thereof), he holds that for the purposes of the S.P. Regulations, 'punishment' means 'a penalty or mistreatment inflicted as a sanction for some offence or transgression'.

[8.9] Secondly, as I understand it, 'anthropogenic climate change', not to mention 'climate change' *simpliciter*, (and the connection of any such things with the Malawian floods) are scientific theories rather than settled facts, or assumptions enshrined in law whereof I may take quasi-judicial notice. They are matters of expert scientific evidence, and no expert evidence was called or adduced or proffered in this case.

[8.10] At most, there are two pieces of paper – one, a document from an American governmental agency (USAID) which at best, admits the possibility that climate change exists, but takes no position on whether it is anthropogenic. The other document, emanating from some organisation called SPLINTER, asserts that 'Climate change is a human rights violation' but it is manifestly not written by any expert either in law or in meteorology, or any scientific

discipline at all; on its fact, that document describes its author as a 'nerdy activist'; hardly a persuasive qualification. *Au contraire*, it amounts to little more than a political screed.

[8.11] Hence and even were I empowered to decide on the issue, there is a dearth of evidence. I cannot decide either way on it.

[8.12] Hence and as indicated above, even taken at its height, the Appellant's evidence discloses no 'serious harm' for present purposes, as having been suffered by him in the past. Equally, there is essentially no indication whatsoever that this man will suffer such 'serious harm' in the future either. There is no 'real risk' of same in the relevant sense, *i.e.* in the sense of any risk greater than the merely fanciful; *cf.* Sections 2 & 28 of the International Protection Act, 2015, and also *Brown -v- Govt. of Rwanda*, unrep. (E.W.H.C., 8/4/09, para. 34) as endorsed by the E.Ct.H.R. in *Ahorugeze -v- Sweden*, unrep. (E.Ct.H.R., 27/10/11, para. 68).

[8.13] For all the reasons aforesaid, I am firmly of the view that this Appellant has suffered no serious harm, and that there exists no real risk that this Appellant should suffer serious harm (under categories 'a', 'b' or 'c' thereof), were he to be sent back to Malawi.

[8.14] As indicated above, I am satisfied that the Appellant stands no real risk of serious harm were he sent back to Malawi.

[8.15] Moreover there is in the written and oral evidence nothing whatsoever to suggest that this Appellant faces any other risk, from any other source or for any other reason, of being individually targeted by anyone for (a) execution, (b) torture, inhuman or degrading treatment or punishment.

[8.16] As to alternative 'c' (indiscriminate violence), I say as follows: As written above, I believe that this Appellant is a national of Malawi. Country-of-origin information does not indicate

that he would be at risk of serious harm in accordance with this subsection solely because of his nationality. There is no evidence of any armed conflict there.

[8.17] As a result of the foregoing analysis, and on the balance of probabilities, I make the following finding: The material or core elements of the Appellant's claim do not provide a basis for finding that there are substantial grounds for believing, that should he go back to his country of nationality, he should face any real risk of serious harm.

[8.18] As there is no real risk of serious harm, it becomes otiose to examine whether there is state protection or an internal flight option for this Appellant.

[8.19] Therefore I reject his claim.

[9] Exclusion from Subsidiary Protection

[9.1] Exclusion does not arise in this case.

[10] Compelling Reasons:

[10.1] I have considered whether compelling reasons arise in this case. They do not.

[10.2] As previously indicated, I am satisfied that any mistreatment, that this Appellant may have suffered, does not rise to the level of either persecution or serious harm, much less that of an 'atrocious' of any kind.

[10.3] Therefore, the doctrine of compelling reasons does not arise.

[11] Conclusion on Subsidiary Protection, & Overall Conclusion

[11.1] For the reasons given, I find that the Appellant is not entitled to subsidiary protection. Therefore, I affirm the recommendation made by the International Protection Officer, that he be given neither asylum nor subsidiary protection.

Byron wade

Member of the International Protection Appeals Tribunal

this day of February, 2018.