



**THE HIGH COURT  
JUDICIAL REVIEW**

**[2026] IEHC 456**

**Record No. 2026 875 JR**

**IN THE MATTER OF SECTION 5 OF THE ILLEGAL IMMIGRANTS  
(TRAFFICKING) ACT 2000 (AS AMENDED), AND IN THE MATTER  
OF THE INTERNATIONAL PROTECTION ACT 2015**

**BETWEEN**

**K. L.**

**APPLICANT**

**AND**

**THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL AND  
THE MINISTER FOR JUSTICE, HOME AFFAIRS AND MIGRATION**

**RESPONDENTS**

**RULING of Ms. Justice Siobhán Phelan, delivered on the 10<sup>th</sup> day of July,  
2026**

**INTRODUCTION**

1. This is an application for leave, on a substantial grounds basis, to seek orders of *certiorari* in respect of:

- i. the decision of the International Protection Appeals Tribunal (hereinafter “the IPAT”) dated the 27<sup>th</sup> of April, 2026, affirming the recommendation that the Applicant be refused refugee status and subsidiary protection status; and
- ii. the subsequent decisions of the Minister dated the 26<sup>th</sup> of May, 2026, refusing international protection and permission to remain pursuant to the International Protection Act, 2015.

## **BACKGROUND**

2. The Applicant is a national of Malawi, born in 1998. He claims to be a gay man and asserts that he suffered violence and threats in Malawi on account of his sexual orientation. He claims to have been assaulted in his youth following discovery of a same-sex relationship and later threatened by the parents of a male partner.
3. The Applicant arrived in Ireland in May, 2023 and applied for international protection in August, 2023. He filled out a questionnaire in which he referred to receiving a summons from the police but not to being attacked. During s. 35 interview he referred to several attacks but not to the police summons, until this failure to do so was raised with him at the end of his interview. During his section 35 interview, significant attempts were made to clarify dates and details as to where he was living at particular times but without real clarity being achieved.
4. Of note, the Applicant recounted a secret relationship he claimed to have been in from 2019 to 2022. He told the IPO, as recorded in the signed record of the interview, that:

*“in the night on 2022, in September, that’s when the family of my partner came to me, and they knocked on the door, I wen [sic] out. They said we gave you a warning and I said that it was over but they told me my partner admitted to it. I tried to lie, but as they had the evidence they started accusing me and they had sticks, and they beat me. After they beat me I was nearly killed. I asked God to help me. They said this is your lesson if you continue we will kill you or go to the police. That’s when I said I need to pull myself back but I love this person so I wanted to meet or try and call him to meet. I knew there was going to be consequences.”*

5. The application was refused by the International Protection Office (hereinafter “IPO”) with reliance being placed on identified inconsistencies in the Applicant’s evidence, including introduction of new elements and omission of previously stated elements.
6. An appeal was lodged to the IPAT. The claim to have been beaten in 2022 was repeated and relied upon in submissions lodged in support of the Applicant’s appeal to the IPAT by his former solicitors.
7. A hearing was convened before the IPAT in March, 2026. Before the IPAT the Applicant relied upon evidence of participation in LGBTQI+ events and organisations in Ireland, including photographs showing attendance at pride events, a letter from a named Irish LGBT group, certificates of participation in community activities, and country information concerning treatment of LGBTQI+ persons in Malawi.
8. The IPAT rejected the Applicant’s claim that he is a gay man, finding significant inconsistencies in the chronology and circumstances of the relationships and incidents relied upon as constituting persecution. The Tribunal accepted that the Applicant participated in activities organised by LGBTQI+ groups in Ireland but concluded that such participation did not establish, on the balance of probabilities, that he was gay.
9. Before the IPAT, the Applicant claimed for the first time that he was the victim of a knife attack which he claimed occurred in 2018. This had not previously been mentioned. In addition, a further significant inconsistency as between the different accounts given emerged during the hearing and was relied upon in the negative decision relating to a material element of the Applicant’s claim. In contrast with the very specific and detailed evidence to the IPO in relation to the physical attack he claimed to have endured in 2022 as set out above at para. 4 and the submissions lodged on his behalf subsequent to the negative recommendation of the IPO, the IPAT decision records the following with regard to the Applicant’s evidence at the IPAT hearing with respect to events in 2022 as follows (at para. 35):

*“The Appellant gave evidence that his boyfriend’s parents threatened him in 2022. The Tribunal sought to clarify as to whether the Appellant was only threatened or was he, in fact, also attacked in 2022. The Tribunal put to the Appellant that within his s. 35 interview, he stated that he was beaten to the*

*point where he thought he would be killed. The Appellant responded that this was incorrect and that he was only threatened in 2022 but rather, he was attacked in 2018. Overall, the Appellant gave inconsistent evidence as to whether he was attacked or merely threatened in 2022.”*

**10.** The IPAT further noted (at para. 37) that:

*“The Tribunal spent considerable time trying to establish the timeline of events with respect to each attack and threat and precisely where the Appellant was living during these events. Throughout the hearing, the Appellant gave unclear, vague, and internally inconsistent answers. The Tribunal finds that his credibility is significantly undermined by the discrepancies throughout his international protection process. The Appellant was unable to adequately address and recount for these inconsistencies.”*

**11.** At para. 47 of its decision, the IPAT concluded its assessment of the facts and circumstances in clear terms stating:

*“...the Tribunal does not accept the Appellant’s core claim relating to his sexual orientation or the alleged persecution arising therefrom.”*

**12.** In reaching this conclusion, the IPAT expressly considered the documentary evidence submitted in relation to the Applicant’s involvement with various named organisations in Ireland but found that these could not upset the negative inferences to be drawn arising from the host of inconsistencies and ambiguities in the Applicant’s evidence in relation to his experiences in Malawi. The IPAT decision dated the 27<sup>th</sup> of April, 2026, issued under cover of letter dated the 28<sup>th</sup> of April, 2026. The Applicant claims he attended with his solicitor on the 1<sup>st</sup> of May, 2026. He sought new representation on the 28<sup>th</sup> of May, 2026 following receipt of the Minister’s decisions refusing international protection and permission to remain. Proceedings were filed in the Central

Office on the 18<sup>th</sup> of June, 2026 and the leave application was listed for the morning of the 6<sup>th</sup> of July, 2026 (and then adjourned together with the rest of that list to the 8<sup>th</sup> of July, 2026).

13. In the papers lodged in the Central Office, the record of the s. 35 interview omitted that part of the record (two pages) which contained the Applicant's account of the attack in 2022. This evidential omission is strange given the central significance of this account in the decision to refuse. When questioned in relation to the evidence given at interview in respect of the 2022 assault during the hearing of the leave application, counsel tendered an unfiled supplemental affidavit, sworn earlier that day (8<sup>th</sup> of July, 2026) but not previously adverted to. This supplemental affidavit exhibited the two missing pages from the interview record. It was averred that these pages had not been contained on the file obtained from the Applicant's previous solicitors but had since been obtained from the Applicant.
14. In my view, the two pages omitted from the s. 35 interview record related to the evidence which was of especial relevance to the adverse credibility findings made by the IPAT, bearing heavily on the assessment of the strength of any challenge to the decision of the IPAT in reliance on them. The fact that the omission from filed papers was not noticed until after the date first listed for hearing of the leave application is concerning. The explanation on affidavit for the fact that the pages were missing in the first place is less than satisfactory.

### **SUBSTANTIAL GROUNDS THRESHOLD AND TIME LIMITS**

15. The impugned decisions are subject to s. 5 of the Illegal Immigrants (Trafficking) Act 2000 (hereinafter "the 2000 Act"). Accordingly, leave may only be granted where substantial grounds are demonstrated.
16. The applicable principles are well established. The Applicant must establish an arguable, weighty and reasonable legal challenge rather than one which is merely tenuous or speculative.

17. Where proceedings are not commenced within 28 days of the impugned decision, the Applicant must also provide an evidential basis for extending time on the basis of “*good and sufficient*” reasons (s. 5(2) of the 2000 Act).

## DISCUSSION AND DECISION

*Ground 1(a): Failure to consider documentary evidence before assessing credibility*

18. The principal complaint advanced concerns paragraph 39 of the IPAT decision where the IPAT stated:

*“The Appellant had several photos of him attending a pride parade and photos which indicated that the Appellant was involved in an LGBTQI+ organisation in Galway. The Appellant had a reference from the same organisation detailing his involvement with the organisation and detailing the possible persecution he would face as a gay man in Malawi. In addition, the Appellant gave evidence that he attends gatherings with this organisation, they discussed their mental health, read books and that he also volunteered with this organisation. While the Tribunal accepts that he attended and participated in these events, the totality of this evidence does not establish, on the balance of probabilities, that the Appellant is a gay man. The Tribunal finds the culmination of the written statements and photographic evidence to be of limited probative value in establishing that the Appellant's sexual orientation when viewed alongside the significant credibility concerns identified.”*

19. With reference to paragraph 39 of the Decision, it is contended that the IPAT first formed an adverse view regarding credibility and only thereafter turned to the photographs, letters and supporting material emanating from a local named Irish LGBT+ group.
20. There is some force in the submission that evidence supportive of an asserted LGBTQI+ identity should ordinarily be considered as part of the overall assessment of credibility

and ought not be treated as an entirely separate exercise. However, that is not what appears from the decision read as a whole.

21. The IPAT expressly identified the photographs, participation in pride events, volunteering activities, attendance at gatherings, and the reference from a named Irish LGBT group. It accepted such participation had occurred. The IPAT then concluded that this evidence did not establish the Applicant's sexual orientation when considered in conjunction with what it regarded as significant difficulties in his own account.
22. This is not a case where evidence was overlooked. Rather, it is a case where evidence was considered but assigned limited weight. It seems to me that viewed in the context of the claim advanced, the manner in which these documents are treated in the Tribunal decision does not fall foul of any principle established in *A.S. v. IPAT* [2023] IEHC 53 or *I.R. v. Minister for Justice* [2015] 4 I.R. 44; [2009] IEHC 353.
23. In *A.S.* the court accepted that the IPAT “*compartmentalised*” the evidence with the result that medical evidence corroborative of the applicant’s claim was not considered as part of the credibility assessment. The position in this case is distinguishable because the IPAT identified the applicant’s documentary evidence, including the material from the identified Irish LGBT group, Amnesty, Human Rights Watch and country material, referred to UNHCR guidance on Sexual Orientation and Gender Identity (“SOGI”) claims, including self-identification, difference, stigma and shame and expressly accepted that the applicant attended and participated in LGBTQI+ events locally but found that the written statements and photographic evidence were of “*limited probative value*” in establishing sexual orientation when viewed alongside the significant credibility concerns.
24. These documents could not address fundamental inconsistencies in the Applicant’s personal account and were not relevant to a negative credibility assessment based on those inconsistencies.
25. The central *I.R.* principle is that credibility must be assessed by reference to the “*full picture*” emerging from all available evidence, fairly weighed and rationally analysed. The applicant’s submissions expressly rely on principle 4 and principle 9 from *I.R.*, including the requirement to give reasons where *prima facie* relevant documentary evidence is discounted. *I.R.* requires credibility to be assessed by reference to the full picture of the evidence, not instinct or gut feeling.

26. In this case, it cannot reasonably be contended that the IPAT's credibility findings were other than based on the full picture and not on instinct or gut feeling. The IPAT's reasoning for rejecting the Applicant's credibility was that his accounts of the first relationship varied materially. By way of example, the date and circumstances of the alleged assault shifted, the account of the second relationship was inconsistent as between interview and oral evidence, an alleged 2018 knife attack had not been previously mentioned, there was inconsistency as to whether he was attacked or merely threatened in 2022 and his account of living/commuting between Mzuzu, Blantyre and Balaka was found implausible (due to distances involved) and vague. Far from gut feelings, these are specific credibility findings grounded in identified discrepancies.
27. The IPAT then considered whether the participation evidence from local Irish sources relating to the period since his arrival in the State could cure those deficiencies and concluded that it could not. In my view, a reasonable basis for contending that this is inconsistent with the requirement in *I.R.* to make credibility findings based on the full picture has not been established.

28. I am not satisfied that substantial grounds have been demonstrated on this basis.

*Ground 1(b): Reasons for discounting the letter from a named Irish LGBT group and photographs*

29. It is further argued that the Tribunal's observation that the documentary evidence was of "*limited probative value*" was insufficiently reasoned.
30. Considered in isolation, paragraph 39 might appear terse. However, the reasons for assigning reduced weight to this material are apparent from the decision as a whole.
31. The IPAT had already identified what it regarded as material inconsistencies concerning the duration and timing of the Applicant's relationships, uncertainty regarding assaults and threats allegedly suffered, and implausibility's regarding where the Applicant resided during important periods of the narrative.
32. The photographs and reference established involvement with LGBTQI+ organisations in Ireland. The IPAT accepted as much. The IPAT's conclusion was that such

involvement did not satisfactorily resolve the credibility concerns already identified regarding the Applicant's account of his sexual orientation and experiences in Malawi.

- 33.** I am not persuaded that substantial grounds are established for contending that the reasoning is inadequate in that it fails to convey why the claim was rejected or precludes a review of the sustainability of the decision reached.

*Ground 1(c): Failure to consider aspects of Irish-based LGBTQI+ activity*

- 34.** The Applicant submits that the IPAT failed to engage with evidence concerning his involvement with No. 4 Youth Service and a relationship with another man in Ireland.
- 35.** The difficulty with this complaint is that the impugned decision expressly records evidence concerning the Applicant's participation in LGBTQI+ activities in Galway and attendance at gatherings organised by a named local Irish LGBT group. No decision-maker is required to refer expressly to every item of evidence advanced and the Applicant does not claim to be in a relationship with other man referred to in this part of his claim.
- 36.** The decision demonstrates awareness of the Applicant's participation in LGBTQI+ community activities. The fact that this evidence did not persuade the Tribunal does not establish that it was ignored.
- 37.** No substantial grounds arise.

*Ground 1(d): Failure to apply the DSSH model*

- 38.** The Applicant contends that the IPAT failed to apply the “*difference, stigma, shame and harm*” (“DSSH”) model referred to in EUAA materials and in submissions made on his behalf.
- 39.** While such materials may provide useful guidance in assessing Sexual Orientation and Gender Identity/Expression (“SOGIE”) claims, I am not persuaded that a decision-maker is under a legal obligation to structure its reasoning by express reference to any

particular analytical model and no authority was identified on behalf of the Applicant for such a proposition.

- 40. What is required is a lawful assessment of credibility, informed by relevant evidence and applicable legal principles.
- 41. The decision contains extensive consideration of the Applicant's claimed realisation of his sexuality, his relationships, his family and community interactions and the consequences he says flowed from these matters.
- 42. The absence of express reference to the DSSH framework does not mean that it was not applied and does not, in itself, disclose a stateable legal error.

*Ground 1(e): Failure to engage with country information*

- 43. This ground gives me greatest pause.
- 44. The country information before the IPAT disclosed that same-sex conduct remains criminalised in Malawi and that LGBTQI+ persons experience stigma, discrimination and risk of abuse. The material relied upon by the Applicant included reports from Human Rights Watch, Amnesty International and the U.S. State Department.
- 45. The IPAT's treatment of country information is notably brief and there is no engagement with the documented difficulties of LGBTQI+ persons in Malawi. However, the decisive issue in the case was not country conditions but whether the Applicant had established that he was a gay man and had experienced the events relied upon. At para. 52, the IPAT says that considering the COI, there is no reasonable chance of persecution on any Convention ground. Understood literally, that sits uneasily with the Malawi COI if the Applicant were accepted as gay. Reading the decision holistically, however, para. 52 must be read as predicated on the earlier finding that the Applicant had not established he was gay or had suffered abuse by reason of sexual orientation.
- 46. It is clear from the decision as a whole that the IPAT did not find Malawi safe for gay men. Instead, it found the Applicant had not proved he was within that class. The adverse credibility finding was based on personal, internal inconsistencies, not on the basis that it did not align with objective conditions discernible in COI. The IPAT identified inconsistencies about the duration of relationships, dates of assaults, whether

threats or attacks occurred, and the feasibility of residence/commuting between Mzuzu, Blantyre and Balaka. Having rejected the Applicant's core factual claim, the IPAT concluded that he had not established membership of the relevant social group giving rise to the asserted risk.

47. This case is distinguishable from *K v. IPAT* [2023] IEHC 6 because the COI relating to the treatment of same sex couples in Malawi is not corroborative of the Applicant's claim because his narrative is rejected for reasons which are entirely related to his own narrative and are not impacted by COI. As noted by Simons J. in *K v. IPAT*, the Court of Appeal has held that the obligation on the part of the decision-maker is to consider only relevant country of origin information (*R.A. v. Refugee Appeals Tribunal* [2017] IECA 297). The obligation under s. 28(4) of the International Protection Act, 2015 is similar to assess applications on an individual basis taking into account "relevant" facts relating to the country of origin. It is noted also that the decision in *K v. IPAT* made it very clear that the "inconsistencies" relied upon to reject the protection application did not withstand scrutiny. The same cannot be said in this case.
48. Country information cannot compensate for a finding that the underlying account has not been made out. The IPAT was entitled to conclude that, notwithstanding adverse conditions for LGBTQI+ persons in Malawi, the Applicant had not established that he belonged to that category. When that conclusion was reached based on inconsistencies in the claim made and not on the basis that events of the nature described were not likely to have happened, then the country-of-origin information is not relevant to the credibility assessment. In this case, the decision to refuse was squarely based on the inconsistencies as between different accounts the Applicant had given. In the circumstances of this case, a tenable claim cannot be made that a failure to consider COI is undermining of the decision.
49. While the reasoning could undoubtedly have engaged more fully with the country material to explain that while it showed that LGBTQI+ persons experience stigma, discrimination and risk of abuse in Malawi, it nonetheless did not assist the Applicant's claim. While this was obviously because it was not accepted that he had been persecuted based on his sexual orientation having regard to the material discrepancies in the account he gave, it would have been preferable had this been expressly stated. Nonetheless, it cannot reasonably be argued that the decision is flawed because of the

treatment of COI as it is plain from the decision as a whole that the IPAT disbelieved the Applicant not because a gay person in Malawi would not experience persecution but because the Applicant's personal account was disbelieved for reasons associated with inconsistencies and implausibility in his personal narrative. Conditions in Malawi could have no bearing on this decision on the facts of this case. In the circumstances, I am not satisfied that any deficiency identified is capable of affecting the outcome reached.

**50.** Accordingly, substantial grounds are not demonstrated.

*Ground 1(f): Failure to consider explanations for inconsistencies*

**51.** Finally, reliance is placed upon the Applicant's explanation that difficulties with dates and chronology arose because of traumatic experiences and the lapse of time since certain events occurred.

**52.** The difficulty with this argument is that the decision records repeated efforts by the IPAT to clarify timelines and events and expressly notes that the Applicant's explanations did not satisfactorily resolve the inconsistencies identified.

**53.** This is therefore not a case where explanations were ignored as occurred in *Bujari v. Minister for Justice* [2003] IEHC 18. Rather, they were considered and rejected. It was a matter for the decision-maker to assess the evidence in this regard and the conclusion that explanations did not satisfactorily resolve the inconsistencies identified was plainly a conclusion open to the IPAT on the facts in this case given the nature and extent of the inconsistencies identified. The extent to which it is necessary to address explanations provided for inconsistencies provided will also depend on the nature of the explanation. In *Bujari*, a failure to disclose the fact that the applicant's father was a Serb collaborator and that this was the cause of his parents killing and his fear of returning to Kosovo was explained by deep shame which made it extremely difficult to reveal these facts. It is clear from *Bujari* that the extent of the obligation to engage with explanations offered for inconsistencies is fact specific and will depend on the nature of the inconsistency and the explanation offered.

54. No substantial grounds arise from the complaint made in these proceedings having regard to the nature of the inconsistencies and such explanation as was offered.

#### *Ministerial Decisions*

55. The challenge to the subsequent Ministerial decisions is entirely dependent upon establishing that the IPAT decision is legally infirm.
56. As I am satisfied that the Applicant has failed to demonstrate substantial grounds capable of impugning the IPAT decision, it follows that no independent basis arises for challenging decisions predicated upon it.

#### *Extension of Time*

57. An extension of time of some 20 days would be required in this case before substantive relief could be granted. As I have not been persuaded that the Applicant has established substantial grounds for challenging the IPAT decision, it may not strictly speaking be necessary to consider the time issue which arises.
58. For completeness, however, I note that while an attempt is made on affidavit of the Applicant's solicitors on record to ground an extension of time by reference to the time taken to obtain a full set of papers after they were retained and the fact that gaps in their papers were identified, it is noteworthy that the Applicant only contacted his present solicitors by email on the 28<sup>th</sup> of May, 2026, after the statutory 28 day time limit had already expired and the solicitor's affidavit is silent in relation to this initial period which resulted in the challenge being already out of time when the solicitors on record were consulted.
59. Although the Applicant swears an affidavit explaining that it was his intention to challenge the refusal of international protection to him from receipt of the IPAT decision dated the 28<sup>th</sup> of April, 2026, it only became "*clear that my then solicitor was unable to challenge my case in the High Court*" when he received the final decision of the Ministerial Decisions Unit (MDU) dated the 26<sup>th</sup> of May, 2026. There is no explanation for why it was not clear to him prior to this date that his former solicitors were not

progressing a challenge on his behalf given the applicable time limits for challenge by way of judicial review.

- 60.** In circumstances where the time limit for bringing proceedings had expired on the date of receipt of the MDU decision, it seems to me that there is no adequate explanation for why the Applicant did not take steps more quickly to secure alternative legal representation if his former solicitors. Notably he does not address on affidavit whether he had any reason to believe that his former solicitors had agreed to bring a challenge on his behalf which belief could justify him not seeking alternative representation until after the time limit had expired.
- 61.** In my view, the grounds advanced for delay in progressing an application for leave to proceed by way of judicial review during the statutory period are not sufficient to provide substantial grounds for an entitlement to an extension of time as there is no proper explanation as to why the Applicant did not seek alternative legal representation before the time limit expired.

## **CONCLUSION**

- 62.** While aspects of the reasoning in the IPAT decision might have been more fully elaborated, the decision demonstrates engagement with the Applicant's narrative, his documentary evidence, his participation in LGBTQI+ activities in Ireland. Reference is also made to the country information, albeit in a context where due to the absence of personal consistency and coherence, the IPAT concluded that it was not established that the Applicant was gay or had been subjected to persecution or harm in consequence of his sexual orientation.
- 63.** The essence of the decision is a credibility finding. The IPAT identified a series of inconsistencies and implausible elements which it regarded as undermining the Applicant's claim that he is a gay man and that he had suffered persecution in Malawi on that basis.
- 64.** None of the grounds advanced disclose an arguable legal error of sufficient substance to satisfy the threshold imposed by s. 5 of the 2000 Act.

**65.** Accordingly, I refuse leave to seek judicial review in respect of the IPAT decision and the consequential Ministerial decisions.