



**THE HIGH COURT
JUDICIAL REVIEW**

**[2026] IEHC 470
Record No. 2025/1931 JR**

BETWEEN

O.A.S.A.

APPLICANT

AND

THE CHIEF INTERNATIONAL PROTECTION OFFICER

AND

THE MINISTER FOR JUSTICE, HOME AFFAIRS AND MIGRATION

RESPONDENTS

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL

NOTICE PARTY

**JUDGMENT of Ms. Justice Siobhán Phelan, delivered on the 14th day of
July, 2026**

INTRODUCTION

1. By *ex parte* Order made on the 26th of January, 2026, the Applicant was given leave to seek relief by way of judicial review in respect of first-instance decisions made in the international protection process. The decisions challenged include: (i) the recommendation of the International Protection Office (“IPO”) that international protection be refused, signed on the 19th of August, 2025; and (ii) the permission-to-remain decision dated the 25th of November, 2025. Both decisions were notified by letter dated the 26th of November, 2025
2. The Applicant also challenges the reports prepared under s. 35(12) of the International Protection Act 2015 (‘the 2015 Act’) following interviews conducted on the 4th of March, 2024 and the 17th of July, 2025
3. Before instituting the within proceedings, the Applicant lodged an appeal to the International Protection Appeals Tribunal (“IPAT”) on a precautionary or without prejudice basis on the 1st of December, 2025. A stay on the appeal to the IPAT was not ordered at *ex parte* leave stage but leave to seek interlocutory relief including a stay on the determination of the IPAT appeal was granted.
4. The IPAT appeal is now listed for remote oral hearing by audio-visual link on the 16th of July, 2026 at 10.00 a.m. IPAT has indicated that an appeal will typically only be postponed where there is a relevant Court order in place. The Applicant accordingly contends that a stay is necessary if the judicial review proceedings are not to be overtaken by the appellate process. The Applicant now seeks interlocutory relief on notice to the IPAT and the Minister restraining or staying the further processing, hearing and/or determination of his appeal before IPAT pending the determination of these judicial review proceedings.

BACKGROUND

5. The Applicant claims to be a Palestinian national from Rafah, Gaza. He says that he fled Palestine on the 1st of March, 2024, arrived in the State on the 2nd of March, 2024 and claimed international protection on the 4th of March, 2024. His claim is based, in

substance, on the conflict in Gaza, extensive violence, bombing, and fear for his life and safety. The Applicant's case before this Court places particular emphasis on the allegedly defective manner in which the IPO assessed his nationality before rejecting his claim to be from the Palestinian Occupied Territories.

Section 35 Interview Process

6. The IPO assessment in this case was based on two in person interviews conducted pursuant to s. 35 of the 2015 Act approximately sixteen months apart, at each of which he was assisted by an interpreter. Between his first and second s.35 interviews (which took place respectively on the 4th of March, 2024 and the 17th of July, 2025), the Applicant provided a Palestinian Authority birth certificate recording, *inter alia*, his identity, date and place of birth, his parents' names, Palestinian nationality and a Rafah address. The Applicant complains that the IPO attached little probative weight to this document on the stated basis that its authenticity could not be verified.
7. Emphasis is also placed on behalf of the Applicant on some of the questions asked and answers given during the interviews in light of the approach subsequently taken by the IPO to the assessment of his claim. Specifically, it is pointed out that he was asked a number of questions at the said interviews regarding his knowledge of Palestine which he answered correctly. However, he was asked a question which he did not know the answer to, being in relation to the "*1950 Armistice Agreement*". It is pointed out on behalf of the Applicant that the interviewer returned to this question and it is contended that the IPO attached undue significance to the fact that the Applicant was unable to answer it.
8. For completeness, it should also be recorded that the IPO explored the issue of documentation with the Applicant in some detail. When the Applicant stated that the Palestinian Authority did not issue passports, the interviewer put to him that he had seen such passports in other cases. The Applicant was also asked if he had a utility bill for his home address or an ID card but he said "*no*" and did not elaborate. The Applicant was expressly informed at the start of the second interview that the interviewer was having trouble establishing his nationality. He was reminded during the second interview that it had been suggested to him at the previous interview that he contact the

Palestinian Mission in Ireland who might be able to assist him with proof of nationality. He responded that he had not gone to them. When asked why he could not get his parents to send him documents, he replied merely that it is difficult to get paperwork in Palestine.

9. In view of the contention that his claim was not assessed by reason of the rejection of his nationality, it should be recorded that the Applicant was also asked, in several different ways, what specifically happened to him in Palestine and why he left. He did not respond by reference to an event or incident. In response to a direct question as to what caused him to leave Palestine when his family remained, he replied:

“There was no future for me there. I was coming here hoping for work. Im [sic] not working yet and am waiting for the permit. I didn’t have any proof/ID documents. Their [sic] okay in Gaza, my uncles and aunts are okay, and some are killed.”

10. He was also questioned about his journey to Ireland. When it was put to him that the journey he had described could not have occurred within the timeframe identified, he changed his account, stating that he had travelled by air, although he could not identify the airline, rather than arriving at Dublin Port as recorded in his questionnaire. He attributed that inconsistency to the interpreter. He was unable to state clearly whether he had taken a direct flight to Ireland or had travelled through other countries.
11. His account also changed as regards the passport he travelled to Ireland on. On a first account he claimed the smuggler had taken it but when this was probed, he claimed to have destroyed it himself.

Section 39 Report

12. The s.39 report prepared setting out the results of assessment by the IPO following the two interviews conducted with him rejected the Applicant’s asserted nationality. It concluded that the Applicant had not established, on the balance of probabilities, that he was a national of the Palestinian Occupied Territories.

13. As set out in the s. 39 report, the only document submitted in support of the Applicant's claimed nationality was a birth certificate. The document was not rejected outright as evidence relevant to nationality. Rather, the report recorded that its provenance could not be verified '*with certainty*'. The absence of any other documentation, such as a utility bill, or of photographs linking the Applicant to the Palestinian Territories was taken into account in the report's conclusion that little probative weight could be attached to the birth certificate
14. The s. 39 report considered the Applicant's answers concerning the absence of documentation, his journey to Ireland and his experiences in the Palestinian Territories. Those matters informed the report's finding on nationality.
15. Specifically, the IPO decision-maker relied on information published by the Mission of the State of Palestine in Ireland ('the Palestinian Mission'), which indicated that documents issued in Palestine for use in Ireland must be legalised by the Palestinian Ministry of Foreign Affairs and authenticated by the Palestinian Mission and the Department of Foreign Affairs. The report recorded that, despite having been advised to contact the Palestinian Mission for assistance with his documents, the Applicant had not done so.
16. The s. 39 report also noted that, despite being asked, the Applicant was unable to describe a single incident that he had witnessed or that had affected him in Palestine
17. The report further noted that the Applicant had given differing accounts of what had happened to his passport. In his application form, he stated that the smuggler had taken it, whereas, when questioned at interview, he stated that he had disposed of it himself.
18. The s. 39 report also stated that, because establishing the Applicant's country of origin was fundamental to the assessment of his claim, there was "*no basis to further assess this application for international protection.*"
19. The s. 39 report also contains findings that the Applicant "*obviously, in collusion with others*" sought to gain asylum illegally and that his "*application and initial interviews were totally false.*"

20. Although he arrived in the State on the 2nd of March, 2024 and applied for international protection on the 4th of March, 2024, a gap of two days, the s. 39 report recorded a finding under s. 39(4)(c) that the Applicant failed to apply as soon as reasonably practicable.
21. The report proceeds to recommend that the Applicant be given neither a refugee declaration nor a subsidiary protection declaration.

Permission to Remain Decision

22. A decision refusing the Applicant permission to remain, dated the 25th of November, 2025, was also issued. The decision was accompanied by a document entitled ‘Examination of File’ (‘the Examination of File’), completed under s. 49(3) of the 2015 Act. With reference to the s. 39 report, that document expressly noted that the Applicant’s asserted nationality had been rejected and that he had failed to provide reasonable explanations for discrepancies raised with him during interview. On foot of those findings, the Examination of File recorded that, having considered the information submitted, the decision-maker concluded that the common good in maintaining the integrity of the international protection and immigration system outweighed the features of the case tending to support a grant of permission to remain.

Appeal to the IPAT

23. Notwithstanding a decision to proceed by way of judicial review to seek relief in respect of the s. 39 decision, the Applicant submitted a “*without prejudice*” appeal to the Tribunal on the 1st of December, 2025.

Judicial Review Proceedings

24. Judicial review proceedings were filed in the Central Office of the High Court on the 22nd of December, 2025.

25. In the case pleaded in his Statement of Grounds and for which leave was granted *ex parte* on the 26th of January, 2026 (Bradley J.), the Applicant contends that the impugned decision under s. 39 of the 2015 Act is flawed not merely by reason of a deficient or inadequate assessment, but is the result of no lawful substantive assessment of the protection claim at all. On his case, the rejection of nationality meant that no further, proper assessment of his claim to fear persecution or serious harm in Gaza was carried out. It is contended that notwithstanding the rejection of the Applicant's nationality, the application ought to have been assessed in line with ss. 2, 7, 8, 13, 28 and 39 of the 2015 Act and in accordance with Article 4 of Directive 2004/83/EC by considering all relevant circumstances, including by providing clear and objective reasons for findings on his nationality, whether he was stateless and/or identifying his country of former habitual residence.
26. The permission to remain decision under s. 49 of the 2015 Act also relied on the conclusions reached in the s.39 report, including the rejection of the asserted nationality and the conclusion that there was no basis to further assess the international protection application. In these proceedings, the Applicant says that the alleged unlawfulness in the s.39 report infected the s.49 decision.
27. Although proceedings were served on the Chief State Solicitor's Office and IPAT and the originating Notice of Motion was first returnable to the 4th of March, 2026, no Opposition papers have yet been delivered in this case.

Concerning a Stay of the IPAT Appeal

28. Following the grant of leave on the 26th of January, 2026 (Bradley J.), correspondence passed between the parties with a first return date on the originating Notice of Motion of the 4th of March, 2026. On its first listing in the Registrar's List on the 4th of March, 2026, these proceedings were adjourned for five weeks to the 15th of April, 2026. The IPAT indicated in correspondence in April 2026 that it did not propose to participate in the proceedings and that it would not grant a stay of the appeal absent a Court order. In the absence of such a stay, the matter was transferred to the Judge's List on the 1st of May, 2026.

29. In advance of the listing in the Judge's List, the IPO and the Minister, by letter from the Chief State Solicitors Office dated the 27th of April, 2026, contended that the proceedings should be struck out in light of the Supreme Court decisions in *Amariei v. The Chief Appeals Officer* [2026] IESC 22 (*Amariei*) and *A.B. v. Chief International Protection Officer* [2026] IESC 23 (*A.B.*).
30. It was pointed out in the correspondence from the Chief State Solicitor's Office that the requirement to exhaust an adequate alternative remedy is now the "default position" and reliance was placed on the fact that the IPAT provides a full (*ex nunc*) and effective remedy for all complaints, even those relating to fair procedures and judicial review will only lie where the very high thresholds identified in the judgments are met. It was contended that the alleged defects or failures contained in the pleadings could be dealt with by the IPAT.
31. By reply dated the 15th of May, 2026, the Applicant did not agree to the proceedings being struck out and maintained that his IPAT appeal did not constitute an adequate alternative remedy in the circumstances of this case. It was contended that the present case falls within the category of exceptional cases identified in *Amariei* and *A.B.* and is fundamentally different to *A.B.* and *G.T.* where the complaints made concerned alleged deficiencies in assessments that had in fact been carried out. This case was said to be different because the entirety of the Applicant's claim would fall to be considered for the first time on appeal because no lawful substantive assessment at all had taken place at first instance. A substantive response was sought as to why the Respondents considered the case to be governed by *A.B.*
32. By email dated the 10th of June, 2026, IPAT confirmed that the Applicant's appeal had been listed for remote audio-visual hearing on the 16th of July, 2026. A further request for a stay or adjournment was made by the Applicant's solicitors on the 21st of June, 2026 but as no confirmation was received that the appeal would not proceed, liberty to bring this motion was granted on notice to the Respondents and it was directed that the Notice of Motion seeking interlocutory relief should be made returnable to the 10th of July, 2026, for hearing on that date.
33. By further letter dated the 17th of June, 2026, the Applicant's solicitor again wrote to the Chief State Solicitors by reference to its request for a stay pointing out that the

appeal hearing had been scheduled for the 16th of July, 2026 and requesting a response by close of business on the 18th of June, 2026. Separately, by letter dated the 21st of June, 2026, a letter was written to the IPAT, repeating the request for an undertaking and warning that if an undertaking were not provided, the Applicant anticipated seeking liberty from the High Court to bring a motion seeking a stay of the oral hearing, returnable to the 3rd of July, 2026. A response was sought before close of business on the 24th of June, 2026.

34. On the 25th of June, 2026, the Chief State Solicitor's Office replied to again refuse to give an undertaking pointing out the similarities between this case and *A.B.* where it was also complained that there had been grave breaches of fair procedures in how the IPO considered the claim at first instance, it was complained that highly material documents had not been considered and that the IPO had not determined a core element of the substantive claim for protection. Furthermore, in *A.B.*, there was no automatic entitlement to an oral hearing. It was pointed out by the Chief State Solicitor's Office in this letter that even though the Supreme Court found the complaints advanced to be "*concerning*", it nonetheless found that in the absence of any extra context, indicative of a failure at an institutional level to provide a functioning system in which an application for international protection may be adjudicated upon, it was not appropriate to intervene by way of judicial review.

35. The Chief State Solicitors Office referred to the fact that the Supreme Court found that the alleged flaws identified in *A.B.* reflected a situation of individual mishap/defect/illegality and did not reach the type of fundamental denial of justice that would require, despite the otherwise adequate remedy of an appeal to the IPAT, that the Court give leave to apply for judicial review in the exigency of justice. The Chief State Solicitors Office further referred to the fact that the type of fundamental denial of justice referred to was further described by the Supreme Court (at para. 90 of its judgment) as relating to the "*functioning/ability of the entire system to provide a process which guarantees an applicant the right to have their claim determined in accordance with natural and constitutional justice.*"

Application for a Stay

- 36.** On the 26th of June, 2026, the Applicant obtained liberty to issue a notice of motion seeking a stay of the IPAT appeal, returnable on the 3rd of July, 2026. The application for interlocutory relief was grounded on an affidavit sworn by the Applicant's solicitor. The grounding affidavit set out the procedural history and exhibited correspondence with the Chief State Solicitor's Office concerning the requested stay. The solicitor deposed that the Applicant would be prejudiced if his appeal proceeded. It was contended that there was a real risk that the IPAT appeal would result in the first assessment of the merits of the Applicant's protection claim and that this would also affect the proper determination of his application for review of the permission-to-remain decision. The solicitor stated that the application was brought to preserve the *status quo* pending the determination of the substantive judicial-review proceedings.
- 37.** On the 3rd of July, 2026, an application for a short adjournment was made to allow for the filing of a replying affidavit and consideration of an intervening decision of the High Court in *A.S. v. Chief International Protection Officer* [2026] IEHC 422. The matter was adjourned to the 10th of July, 2026 for hearing with liberty to file a replying affidavit by the 8th of July, 2026, in circumstances where there was some urgency due to the scheduled IPAT hearing listed to proceed on the 16th of July, 2026.
- 38.** A replying affidavit was sworn on the 8th of July, 2026 by an Assistant Principal Officer at the IPO, opposing the grant of a stay. In this affidavit, it is acknowledged that the first and fundamental step in any application for international protection is to satisfactorily establish a person's nationality or nationalities as the general rule in the asylum context is that a country is expected to be able and willing to protect its citizens. The IPO deponent points out that the Applicant did not submit a passport or identity document in support of his claim to be Palestinian, albeit he did submit a translated copy Palestinian birth certificate dated the 13th of March, 2017, which he claims was sufficient to establish his identity.
- 39.** The IPO's deponent refers to page 7 of the s. 39 report which records that the IPO finding that the copy birth certificate could not be authenticated or verified by it and it consequently found that little probative value could be placed on the document. The IPO's deponent contends that this finding must be read in the broader context of the

great lengths the s. 35 interviewer went to urge the applicant, in share co-operation with him, to seek the assistance of the Palestinian Mission in Ireland to obtain original documentation in support of his claim that he is Palestinian (1st s. 35 interview, Q. 42) and to procure documentation through family (1st s. 35 interview, Q. 43).

40. The IPO's deponent further addresses the use of the word "*verification*" in the s. 35 report, stating that its meaning is context dependent. The obligation of confidentiality to the Applicant was referred to as meaning that the IPO could not contact the Palestinian authorities to enquire as to whether the birth certificate was genuine and has been issued by them. It is further pointed out that the IPO determine nationality by several different means and this will depend on the type of document presented, if any. Where national identity documents with biometric features are presented, these documents can be scanned using the IPO's Keesing machine to give an indication of the documents authenticity and he confirms that a number of such machines are in use by the IPO.
41. It is explained that even where documents are authenticated, a question mark may still lie over the probative value of the document which may have been obtained illegally or may contain false factual content. This means that these documents require to be assessed in conjunction with other factors and all the evidence including an applicant's knowledge of the claimed local area, culture and language. The IPO deponent notes the existence of a concern arising from the COI with respect of "*some nationalities where documents are routinely obtained on a false basis.*" The reputable databases used to assess documents which do not contain biometric or security features are also referenced by name. He confirms the existence, to the IPO's knowledge, of websites which offer high quality editable identity or other documents, including Palestinian documents, in exchange of a fee and which appear on their face to be real.
42. It is confirmed in evidence on behalf of the IPO that IPO decision-makers are trained and informed (with UNHCR input) that documents such as birth certificates are indicators of nationality but should not be used as proof of nationality in isolation. If also relying on an applicant's geographical, political or cultural knowledge of the country, decision makers are instructed to do sufficient research prior to the interview. Decision-makers are advised not to rely on obvious general knowledge questions such

as the capital or currency but rather, to be more specific to the area or location the applicant claims to be from, bearing in mind the applicant's personal circumstances and how much knowledge the person may be expected to have. It is confirmed in evidence that it is the IPO policy that credibility issues should be put to the applicant and any explanation provided must be considered with such findings made on the balance of probabilities.

43. Furthermore, it is confirmed on behalf of the IPO in evidence, that decision-makers are also instructed that if they are rejecting nationality, the analysis for refugee status and subsidiary protection should end there and, given the consequences, it is necessary for decision makers to apply close and rigorous scrutiny to a person's claimed nationality, *"showing thorough and detailed analysis and reasoning, before it can be rejected"* (para. 19, Affidavit of Assistant Principal Officer at the IPO sworn on the 8th of July, 2026). Where the claimed country is not accepted, decision makers are not required to identify any other nationality, as the applicant's credibility as to the very core of a claim is rejected and no further analysis is required.
44. Addressing the injunction application and the concern articulated that if the Tribunal accepts the Applicant's claimed nationality on appeal, the credibility of his underlying claim would be assessed for the first time is said not to be borne out by a fair reading of the s. 39 report which the IPO deponent claims demonstrates that attempts were made to establish the underlying elements of the Applicant's claim. Express reference is made to p. 11 of the s. 39 Report where the IPO finds:

"[d]espite being asked, it has not been possible to establish, to a satisfactory degree, what, if any threat or danger the applicant experienced in Palestine, nor the precise nature of his engagement, if any, with the occupied forces therein. Further, he was unable, despite repeated questioning, to describe a single incident he had witnessed, or which affected him."

45. The IPO deponent refers to the recent decisions of the Supreme Court which clarify the law and confirm that the application of its earlier decision in *Stefan v. Minister for Justice* [2001] 4 I.R. 403, [2001] IESC 92 as authority for the proposition that the

Applicant is entitled to a fair first instance decision is incorrect. He contends that the very grant of leave must now be reconsidered in light of *A.B.* and *Amariei*, decided since leave was granted, which it is contended establish that leave should be refused if the alternative remedy can vindicate the Applicant's position adequately and effectively. It is contended on the law as refined in recent Supreme Court judgments, the Applicant fails to establish arguable grounds for the purpose of an injunction application.

46. Addressing the second limb of the test, the balance of convenience, it is deposed that the Applicant had the benefit of a functioning system at first instance, was interviewed twice and was urged to take steps to obtain any original identity documents, which he did not do. It is contended that the s. 39 report followed upon a full and extensive consideration of his application. It is further contended that the appeal to IPAT is perfectly adequate to deal with the underlying claim for international protection. It is pointed out that a previous concern that he would not be afforded an oral hearing is addressed by the fact that the scheduled appeal is due to proceed by way of an oral hearing. In all the circumstances it is contended that there is no matter of sufficient substance that might tend to tip the balance in his favour and accordingly, the default position, namely, that the statutory appeal should be pursued, ought to prevail.
47. In addition to affidavit evidence, I had the benefit of written and oral submissions from both sides when the matter came before me for hearing on the 10th of July, 2026.
48. In written submissions, in addition to the authorities already mentioned, I am referred to *Okunade v. Minister for Justice* [2012] 3 IR 152, [2012] IESC 49 (*Okunade*), *G.T. v. An International Protection Officer* [2026] IEHC 267 (*G.T.*), *M.D. (A Minor) v. Board of Management of a Secondary School* [2024] IESC 11 (*MD*), *S.A. (Zimbabwe and South Africa) v. CIPO & Ors.* [2024] IEHC 477 (*S.A.*), *Wen Wei v. Minister for Justice and the Commission of An Garda Síochána* [2024] IESC 58 (*Wen Wei*), *A.S. v. Chief International Protection Officer* [2026] IEHC 422 (*A.S.*), Case C-585/16 *Alheto* and Case C-756/21 *XX v. International Protection Appeals Tribunal*. In oral submissions, I was also referred on behalf of the Applicant to the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection (Reissued, February, 2029), specifically paras. 89, 93, 101 and 105 in relation to the assessment of nationality and where nationality cannot be established, statelessness.

49. On this application, the Applicant submits that the Court should grant interlocutory relief staying the scheduled appeal hearing before IPAT because, if the IPAT appeal proceeds, the substance of these judicial review proceedings may be rendered moot. He says that this would deprive him of the opportunity to have this Court determine the lawfulness of what he describes as a fundamentally flawed first instance process.
50. The Applicant places reliance on *Okunade* and submits that the greatest risk of injustice lies in refusing a stay. He further relies on the recognition in *G.T.* that the Court may take into account the possibility that requiring an applicant to proceed with an appeal may deprive him of an effective remedy in the judicial review proceedings.
51. The Applicant accepts that the recent decisions of the Supreme Court in *Amariei* and *A.B.* are adverse to his application in significant respects. He nevertheless maintains that those authorities preserve the possibility of judicial review where there has been a fundamental denial of justice, a fundamental flaw in the decision-making process or a default of fundamental requirements. The Applicant submits that this case falls within that exceptional category because the IPO's rejection of nationality meant that the substance of the protection claim was never lawfully assessed at first instance.
52. The Applicant seeks to distinguish this case from *G.T.* In that case, as submitted by the Applicant, the alleged flaw was the failure to consider material corroborative evidence which could be placed before IPAT at an oral hearing. The Applicant says that his case is different because the appeal will be required to conduct the first substantive assessment of his claim. He says that this is not a case of missing evidence, but one of a missing assessment.
53. The Applicant further relies on the decision of the High Court in *A.S.* in which the decision of the IPO was quashed by reason of an asserted inability to authenticate a Tazkira (identity document from Afghanistan) in circumstances where the Court identified precedent in the UK for retaining an expert to assess the authenticity of a Tazkira, an option which it was considered could have been open to the IPO to assist in terms of document verification in discharge of its special duty of enquiry. Reference was also made to the EUAA "*Practical Guide on Evidence and Risk Assessment*"

(2024) in relation to the assessment of documents, including a consideration of the document by reference to its type, content, form, nature, author.

54. The Respondents oppose the grant of a stay. They rely on the presumptive validity of the impugned decisions and on the public interest in the orderly and timely operation of the statutory international protection scheme. They contend that the Applicant has an adequate alternative remedy by way of a full appeal to IPAT.
55. The Respondents further rely on the Supreme Court's clarification in *A.B.* and *Amariei* that judicial review of a first instance decision will generally not be available where the statutory appeal can provide an adequate remedy. They say that the alleged errors in this case can be ventilated before IPAT, which is empowered to conduct a full appeal and to reach its own findings. They seek to distinguish the decision of the High Court in *A.S.*, which they also contend is wrongly decided.

LEGAL PRINCIPLES

56. It is common case that the applicable test is that identified in *Okunade*. Accordingly, the Court must first consider whether the Applicant has established an arguable case. If so, the Court must then consider where the greatest risk of injustice lies, giving appropriate weight to the orderly implementation of *prima facie* valid measures, the public interest in the operation of the statutory scheme, any case-specific public interest factors, and the consequences for the Applicant if required to comply with a measure later found to be unlawful. The availability and adequacy of damages, and in appropriate cases the strength or weakness of the Applicant's case, may also be relevant.
57. Since *Okunade*, the Supreme Court has emphasised the importance of presumptive validity and the undesirability of statutory processes being placed unnecessarily in limbo. In the international protection context, *A.B.* (read together with *Amariei*) have clarified the very limited circumstances in which judicial review may proceed notwithstanding the availability of a statutory appeal. The established default position favours implementation of valid immigration and protection decisions unless sufficiently weighty countervailing factors are established.

58. In *Amariei* and *A.B.* the Supreme Court stressed that the statutory appeal mechanism is ordinarily the appropriate remedy for errors occurring during the international protection process. Judicial review before completion of the appeal process will generally only be available where there is a fundamental denial of justice, a systemic defect, or an appeal is incapable of curing the identified defect. The central principle emerging from *A.B.* and *Amariei* is that judicial review ordinarily should not interrupt a statutory appellate process capable of correcting the alleged defect. Intervention by way of judicial review before exhaustion of the appellate process is exceptional.
59. Accordingly, mere disagreement with credibility findings, factual assessments, or evidential weight will normally be matters for appeal. Judicial review is generally not available where a full merits appeal remains available. The relevant question is therefore not merely whether the IPO decision is arguably unlawful. It is whether the alleged illegality is of a character that IPAT cannot effectively cure.
60. In *G.T.*, this Court considered the effect of *A.B.* (read together with *Amariei*) in the context of an application to restrain an IPAT appeal pending judicial review of an IPO decision. The Court refused the stay, attaching significance to the capacity of an oral IPAT hearing to address the alleged defect in the first instance process and to the fact that the applicant would not be left without a remedy if a future IPAT decision were itself legally flawed.
61. As confirmed in *G.T.*, this recent Supreme Court line of authority undoubtedly weakens the legal grounds for substantive relief upon which leave was granted and which now arise for consideration again on this application. It cannot be presumed that because leave was granted that sufficiently arguable grounds upon which to base injunctive relief has been demonstrated, as what constituted substantial grounds before the decision in *A.B.*, may no longer reach the arguability threshold required for relief under *Okunade* principles.
62. In addition, arguability and the strength of the grounds advanced are not determinative on this application, as even if this hurdle is overcome, it remains necessary to also consider the balance of justice. The interests of justice test which applies under the second limb of *Okunade* is also affected by the decision in *A.B.* because the Supreme Court have placed beyond doubt the weight to be given to the importance to the

statutory process being allowed to run its course unchecked unless it is established that the alternative remedy of the appeal is incapable of curing the identified defect and the fact that the fundamental interests of justice consideration informs a determination of whether an adequate, alternative remedy is provided through the appellate process.

ANALYSIS AND DECISION

Overview

- 63.** As summarised above, in the s. 39 report prepared in this case, the IPO rejected nationality, drew adverse credibility conclusions and indicated that there was no basis to assess the protection application further. It also made findings under s.39(4) of the 2015 Act, including findings based on inconsistency and delay. The Applicant has raised multiple complaints about the first instance process and decision.
- 64.** Notwithstanding the undoubtedly significant findings made at first instance insofar as the Applicant is concerned, the Supreme Court in *A.B.* and *Amariei* make clear that judicial review should not normally be used to interrupt or bypass a statutory appeal where that appeal is capable of providing an adequate remedy but leaves open the possibility of the grant of a stay in cases where, exceptionally, the alleged defect arguably constitutes a fundamental flaw in the process which is not curable on appeal.

First Limb of Okunade

- 65.** The first question under *Okunade* is whether the Applicant has established an arguable case for the substantive relief sought in these proceedings. In addressing that question, it is necessary to take account of the decisions in *A.B.* and *Amariei*. Those decisions do not alter the formulation of the first limb of the *Okunade* test, but they bear directly on the arguability of judicial-review proceedings brought before the exhaustion of an available statutory appeal.
- 66.** The inquiry therefore has two related components. The first is whether the Applicant has identified an arguable illegality in the first-instance process or recommendation.

The second is whether, notwithstanding any such illegality, the appeal to IPAT is capable of providing an adequate and effective remedy. If the alleged defect can be addressed effectively through the statutory appeal, the Applicant will not ordinarily have an arguable entitlement to interrupt that appeal by judicial review. If, on the other hand, the alleged defect is of such a character that the appeal cannot provide an adequate remedy, the proceedings may fall within the exceptional category preserved by *A.B.* and *Amariei*.

67. The decisions in *G.T.* and *A.S.* illustrate the application of these principles in different factual and procedural circumstances, but neither determines the present application by factual analogy alone. I note that only *G.T.* relates to an application for a stay applying the *Okunade* test. The Court in *A.S.* was engaged in deciding whether to grant substantive relief in judicial review proceedings and this decision was not governed by the test in *Okunade*.
68. In *G.T.*, the alleged defect concerned the failure to consider material corroborative evidence from the applicant's wife. An oral appeal had been listed before IPAT, at which the wife could give evidence and the Tribunal could assess the claim afresh. The Court concluded that the statutory appeal provided an effective means of addressing the alleged omission.
69. In *A.S.*, by contrast, the Court identified what it considered to be a general approach to Afghan Tazkiras under which documents of that kind were treated as incapable of verification without proper consideration of the means by which their authenticity might be assessed. The Court regarded that approach as having a systemic character and as giving rise, on the evidence and arguments in that case, to a fundamental flaw in the decision-making process.
70. It seems to me that the significance of *A.S.* is not that every systemic error is necessarily beyond correction by IPAT, nor that an individual error must always await an appeal. The systemic nature of the issue in *A.S.* was material because it supported the conclusion that the problem concerned the functioning of the first-instance system itself, rather than an error confined to the assessment of one applicant's evidence.

71. It is important in this regard, therefore, to distinguish between the existence of an error at first instance and the availability of an effective remedy for that error. The fact that IPAT may assess the claim afresh does not retrospectively validate an unlawful IPO process or recommendation. The relevant question is whether the Tribunal, by conducting a full and independent assessment of the appeal, can provide an effective remedy for the consequences of the alleged unlawfulness.
72. Errors such as a failure to consider evidence, an error in the weight assigned to that evidence, inadequate reasons on an individual issue, or an unfair adverse credibility finding will ordinarily be capable of being addressed on a full merits appeal. The appellate body can consider the omitted material, receive further evidence, hear the applicant and reach its own findings. An alleged defect may stand differently where it amounts to a complete denial of the procedural or substantive rights required for the existence of a functioning decision-making process, or where it arises from an institutional practice that prevents the statutory system from determining claims in accordance with law.
73. The expressions “*fundamental defect*”, “*fundamental denial of justice*”, “*systemic failure*” and “*defect incapable of remedy on appeal*” should not be treated as interchangeable. A systemic failure may provide compelling evidence of a fundamental denial of justice, but an error is not rendered fundamental merely because it is serious. Equally, the relevant question is not solely whether the error is systemic. The ultimate inquiry is whether the statutory appeal can provide an adequate and effective remedy in the circumstances of the individual case.
74. Obvious examples of “*curable*” omissions appear to arise where there has been an alleged failure to consider a particular item of evidence, failure to refer to a relevant matter, failure to give adequate reasons on some point, error in weighing evidence or failure to address a corroborative witness or document. In such instances the appeal body can still fully examine the matter and provide a fair determination.
75. On behalf of the Applicant, it is contended that this is not a case of a curable defect but meets the criteria for being treated as an exceptional case. On the Applicant’s case, this is because it is not merely a case where evidence was omitted but rather the rejection

of nationality meant the substantive protection claim was not assessed at all and in consequence the process is fundamentally flawed.

76. The Applicant's argument requires a distinction to be drawn between two aspects of the IPO process. The first is the evidential inquiry undertaken by the IPO. The second is the completed legal assessment required to determine whether the Applicant qualified for refugee status or subsidiary protection.
77. The record demonstrates that an evidential inquiry was undertaken. The Applicant was interviewed on two occasions. He was questioned about his asserted nationality, his identity documents, his journey to Ireland, his experiences in Gaza and his reasons for seeking protection. The s. 39 report considered his answers and made findings concerning nationality, documentation and credibility. It would therefore be inaccurate to characterise the first-instance process as involving no engagement at all with the protection claim.
78. It is, however, equally clear that the IPO did not complete the distinct legal assessment of the Applicant's eligibility for refugee status or subsidiary protection after rejecting his asserted nationality. The report stated that there was "*no basis to further assess*" the application. It did not proceed to make findings concerning, among other matters, the existence of a well-founded fear of persecution, the required Convention nexus, serious harm or any possible internal protection alternative.
79. The Applicant's complaint is therefore not accurately described by the assertion that no inquiry of any kind occurred. His more precise complaint, on the evidence, is that the IPO's rejection of nationality brought the legal assessment to an end before findings were made on the remaining elements of the protection claim. That is a material distinction.
80. Even though the s. 35 interview record and the s. 39 report demonstrate a broader assessment of the application than nationality alone, the assertion that the balance of considerations beyond nationality would not be assessed in making a recommendation that protection status is refused gives some platform for the contentions made that this case may be distinguishable from *A.B.* (and indeed *G.T.*) and aligns it more closely with *A.S.*, with the result that it is necessary to consider whether this case falls within the

category of fundamental defect or flaw case which survives the refinement of the test in *A.B.* and *Amariei*. The question is whether the absence of a completed first-instance determination on those elements makes the statutory appeal inadequate or whether IPAT can provide an effective remedy by undertaking the assessment required of it under the 2015 Act.

- 81.** What constitutes a fundamental defect or flaw which cannot be effectively remedied on appeal has not been exhaustively defined by the Supreme Court, but valuable guidance is provided through the examples given by the Court through its process of reasoning. Examples of what might constitute a fundamental flaw identified by the Supreme Court in *A.B.* include ignoring the requirement to conduct a personal interview, refusing to engage with or hear from the applicant as to any evidence, refusing to consider any submissions at all, a “*complete denial of rights*”, a failure so serious that there was “*no provision at all of a functioning first instance system of international protection in accordance with law.*” It appears from the foregoing examples offered by the Supreme Court that the flaw must go to the basic legality and integrity of the procedure. This is self-evidently a high threshold.
- 82.** The dividing line between a curable defect on appeal (in the sense of a defect for which an appeal is an effective remedy) which defect should result in a refusal to interfere by way of judicial review with an appellate process and an incurable one which is so fundamental as to amount to a complete denial of rights warranting court interference mid-process and the statutory jurisdiction of the IPAT, may not always be entirely clear. A good starting point is obviously a consideration of the jurisdiction of the IPAT.
- 83.** Sections 28, 41, 42 and 46 of the 2015 Act demonstrate that an appeal to IPAT is not confined to reviewing the legality or reasonableness of the IPO recommendation. The Tribunal is required to undertake its own assessment of the relevant elements of the application. At an oral hearing, the Applicant may give evidence, be represented, receive the assistance of an interpreter where necessary, call witnesses and address the matters relied upon against him. The Tribunal may receive further evidence and is not bound by the IPO’s findings on nationality or credibility.
- 84.** IPAT also has statutory powers to direct the attendance of witnesses, require the production of documents or things and give such directions for the purpose of the appeal

as appear reasonable and just. Those powers permit the Applicant to invite the Tribunal to obtain, or facilitate the receipt of, appropriate evidence concerning the authenticity, provenance or evidential value of the birth certificate. It is unnecessary for present purposes to decide whether those general powers should be characterised as an express power to “*appoint an expert*”. It is sufficient that the IPAT can receive expert evidence and take appropriate steps within its statutory jurisdiction to address an identified evidential deficiency.

- 85.** The fact that IPAT has jurisdiction to assess the claim afresh does not mean that every defect at first instance is automatically deprived of legal significance. Jurisdiction and adequacy are related but separate questions. It remains necessary to consider whether the particular prejudice alleged by the Applicant can be remedied through the appeal.
- 86.** In this case, the Applicant may contend before IPAT that his Palestinian nationality has been established; that the IPO gave insufficient weight to his birth certificate; that the attempts to verify or assess that document were inadequate; that the local-knowledge questions were inappropriate; that interpretation difficulties affected his answers; and that the adverse credibility findings were unfair or unsupported. He may give evidence concerning those matters, adduce further documentary or expert evidence and invite IPAT to reach its own findings.
- 87.** If IPAT accepts the Applicant’s asserted nationality, it may proceed to determine the substantive protection claim by reference to the evidence and the country conditions applicable at the date of its decision. If it rejects his asserted nationality, it must reach that conclusion by means of its own lawful and reasoned assessment. The Tribunal will not be required to adopt the IPO’s findings that the Applicant acted in collusion with others or that his application and interviews were “totally false”.
- 88.** The appeal cannot restore the historical fact of a completed first-instance decision on every element of the claim. The question arising under *A.B.* and *Amariei*, however, is not whether the appeal can recreate the process that should have occurred below. It is whether the statutory scheme, considered as a whole, affords an effective means of determining the Applicant’s entitlement to international protection and of remedying the practical consequences of the alleged first-instance errors.

- 89.** No equivalent system-wide practice to that found in *A.S.* has been established on the evidence presently before the Court. It is not contended that the IPO applies a general policy of refusing to assess Palestinian birth certificates or of treating such documents as inherently incapable of verification. The s. 39 report did not reject the birth certificate solely because documents of that class could not be verified. Rather, it considered the document together with the absence of other supporting material and the Applicant's answers concerning nationality, travel and documentation, and concluded that the evidence as a whole did not establish nationality on the balance of probabilities.
- 90.** Furthermore, the replying affidavit describes the procedures available to the IPO for the assessment of identity documents and distinguishes document authentication from the assessment of evidential weight. That evidence may not answer every criticism directed to the evaluation of the Applicant's birth certificate, but it weakens the contention that the decision reflects an institutional refusal to assess documents of that kind.
- 91.** The present complaints are therefore more properly characterised as alleged errors in the assessment of this Applicant's evidence than as evidence that the international-protection system was incapable of determining his claim. Those alleged errors may be serious, but seriousness alone does not establish that the statutory appeal is inadequate. The oral appeal permits the Applicant to contest the findings, adduce further evidence and obtain a fresh determination by an independent specialist tribunal.
- 92.** There is also a distinction to be drawn between the birth certificate and the Tazkira. The latter is a national identity document, albeit one which is easily falsified not least because it does not contain biometric features. In this case, the Applicant was asked if he could provide an identity document or a passport but he claimed he could not. It was suggested to the Applicant that he contact the Palestinian Mission in Ireland for assistance with his documents but he did not do so, despite it being no part of his case that he feared persecution from the Palestinian State, the only basis identified being that there was a war where he lived. These features do not appear to have been present in the *A.S.* case. The IPAT probed with the Applicant in this case getting other documents to substantiate his claim. He did not present so much as a photograph in Palestine or a utility bill giving his Palestinian address. Nothing of this kind is apparent from the facts

disclosed in *A.S.* as to the endeavours made by the IPO to work with the applicant in that case to substantiate his claim.

93. Unlike the position in *A.S.*, it seems to me that the issues which arise in this case relate to the treatment of this case only, rather than cases involving Palestinian birth certificates generally. In my view the position in this case is also more nuanced than in *A.S.* having regard to the terms of the IPO decision which does not assert an impossibility of verification or reject the birth certificate outright but proceeds to weigh the birth certificate with other evidence before making findings rejecting the claim on the basis that the evidence cumulatively did not establish nationality on the balance of probabilities. Furthermore, in opposing this application and to answer the Applicant's reliance on *A.S.*, the Minister relies on sworn evidence as to the system in place for authenticating documents. This affidavit explains the approach to the probative value attaching to some documents, including the Palestinian birth certificate. There was no such evidence in *A.S.*
94. The issues identified on behalf of the Applicant fall naturally within the parameters of a merits appeal. IPAT can hear the Applicant, receive the birth certificate and any further evidence, consider the alleged interpretation errors, review the nationality evidence and reach its own conclusions. The scheduled appeal is an oral hearing, which significantly reduces the force of the original concern that the case might be determined without an opportunity for the applicant to give evidence, a concern present at *ex parte* leave stage. The Applicant will have an opportunity to call additional evidence (including evidence authenticating the birth certificate). An application can also be made to the IPAT for the appointment of an expert where it is considered that there has been an inadequacy in the attempts made to verify the birth certificate. In making such a request, the Applicant may be expected to explain why he has not already taken this step himself, particularly as the obvious channel of verification by contacting the Palestinian Mission in Ireland, as had been suggested by the IPO to him, appears to have been ignored by the Applicant.
95. Certain defects have been identified and the strength of the contended for defects has been recognised by the fact that leave to proceed by way of judicial review was granted before the Supreme Court judgments in *A.B.* and *Amariei* were handed down. The

defects identified may be raised before the IPAT and the IPAT has jurisdiction to determine all issues afresh. The alleged errors concern the way the IPO assessed nationality, identity documentation, credibility, and the consequential refusal to proceed to a substantive assessment of the protection claim. Those issues are matters which can be placed squarely before IPAT. The Applicant may contend before IPAT that his Palestinian nationality is established, that the IPO erred in attaching little probative weight to his birth certificate, that the adverse credibility findings were unfair or unreasonable and that his claim based on conditions in Gaza requires substantive assessment. He may even be able to refer the IPAT to different documents now that the decision of the IPO provides clear guidance on the types of documents it might consider helpful to the assessment process. In these circumstances, I am not satisfied that the Applicant has established that the IPAT is incapable of providing an adequate remedy in this case.

96. It follows from the fact that the identified defects are curable on appeal that the alleged flaws in this case are not of the kind identified in *A.B.* as amounting to a complete denial of rights or a total failure to provide a functioning first instance process warranting intervention by way of judicial review. It bears repetition that the Applicant was interviewed not once under s.35 of the 2015 Act but on two occasions. As already stressed above, his asserted nationality, documentation, travel history, local knowledge and reasons for claiming protection were all addressed in the first instance materials, albeit in a manner which the Applicant contends was legally flawed. The case is therefore not analogous to one in which there was no interview, no hearing, or no engagement at all with an applicant's evidence.

97. In light of IPAT's full merits jurisdiction and the oral hearing available in this case, I am satisfied that the statutory scheme, considered as a whole, affords an effective means of determining the Applicant's entitlement to international protection and of remedying the practical consequences of the alleged first-instance errors identified on his behalf. I am supported as to the correctness of my conclusions in this regard by the judgment of the CJEU in *X v International Protection Appeals Tribunal and Others*, Case C-756/21 where at paragraph 63, the Court stated:

“The IPAT must be regarded as a court or tribunal of first instance, tasked with performing the judicial scrutiny function provided for in Article 39 of Directive 2005/85.”

- 98.** The CJEU added in its decision in *X* that IPAT is required to conduct a full, *ex nunc* review, may affirm or set aside an IPO decision, and may make a binding recommendation that refugee status or subsidiary protection be granted. I am satisfied that there is no ambiguity as to the jurisdiction of the IPAT. It performs the same function as the IPO in assessing all elements of a claim for protection, whilst in addition being independent of the Minister and in a position to require evidence addressed to identified deficiencies in the earlier assessment process.
- 99.** I have considered separately the Applicant’s contention that, because the IPO made no findings on the substantive protection criteria after rejecting nationality, IPAT may become the first body to complete a lawful assessment of the merits of his claim. That contention identifies a real procedural consequence of the approach taken in the s. 39 report. If the Applicant’s asserted nationality is accepted on appeal, the Tribunal may indeed be the first decision-maker to make findings on all the remaining elements of the protection claim.
- 100.** Before *A.B.* and *Amariei*, the asserted loss of a lawful first-instance determination might have carried greater weight in favour of immediate judicial intervention. Those authorities now require the adequacy of the remedy to be assessed by reference to the statutory scheme as a whole. They establish that an error is not rendered incapable of remedy merely because the appellate body must undertake an assessment that should have been completed at first instance.
- 101.** The Applicant has not been denied access to the protection process. He was interviewed twice, received the assistance of an interpreter and had an opportunity to provide documents and explain his claim. The alleged defect is that the resulting assessment and recommendation were incomplete or unlawful, not that he was denied any opportunity to participate or that the system refused to receive or engage with his evidence.

- 102.** The appeal before IPAT is a full merits appeal and is to be conducted by way of an oral hearing. The Applicant may give evidence, address the matters relied upon against him, challenge the treatment of his documentation and advance his substantive case for protection. IPAT must then determine the relevant issues by reference to the evidence before it and the applicable law. In those circumstances, the absence of completed findings at first instance does not, without more, render the appeal inadequate.
- 103.** This conclusion does not amount to a finding that an applicant has no interest in receiving a lawful first-instance determination. Nor does it minimise the importance of compliance by the IPO with its statutory duties. It reflects the narrower conclusion compelled by *A.B.* and *Amariei*: where the first-instance process has produced an allegedly defective or incomplete determination, but an independent full merits appeal can provide an effective determination of the claim, judicial review will not ordinarily interrupt the statutory process before that appeal has been exhausted.
- 104.** I do not wish to be understood as minimising the Applicant's complaint that the IPO's treatment of nationality had the effect of truncating the protection analysis. Grounds have been identified for concern relating to the treatment of the birth certificate in this case, as well as other findings. However, these complaints can be ventilated on appeal. If the IPAT accepts the Applicant's nationality, it may then proceed to assess the protection claim in light of the evidence and current country conditions. If the IPAT rejects the claim, it must do so lawfully, fairly and by reference to reasons which are amenable, if necessary, to judicial review.
- 105.** The challenge to the permission-to-remain decision under s. 49 requires separate consideration because IPAT does not determine the Applicant's entitlement to permission to remain. The conclusion that IPAT can provide an adequate remedy in respect of the international-protection claim does not, without more, establish that it can determine the legality of the existing s. 49 decision.
- 106.** The Applicant's pleaded case is that the s. 49 decision relied on, and was therefore affected by, the conclusions contained in the s. 39 report. To that extent, the challenge to the permission-to-remain decision is derivative of the challenge to the protection recommendation. If IPAT reaches findings favourable to the Applicant on nationality, credibility or the substantive protection claim, those findings may require the Minister

to reconsider the factual basis on which the refusal of permission to remain was made or may otherwise become material to any available review of that decision.

107. Conversely, if the Applicant maintains that the s. 49 decision contains an independent legal defect that cannot be addressed through the protection appeal or any available review process, that question may require determination in the substantive judicial-review proceedings. It does not follow, however, that the IPAT appeal must be restrained. The Applicant has not demonstrated that permitting the protection appeal to proceed will deprive him of an effective remedy in respect of the s. 49 decision.

108. The existing challenge to the permission-to-remain decision may be affected by the outcome of the IPAT appeal, but potential alteration of the factual or procedural context does not of itself establish an entitlement to prevent the specialist appellate body from determining the protection appeal assigned to it by statute. If the IPAT appeal results in findings favourable to the Applicant, or if additional evidence emerges, that may inform any review of the permission to remain decision. If the s.49 process is later shown to be legally flawed, the Applicant is not thereby deprived of access to judicial review.

109. I accordingly conclude that, even if the Applicant has identified arguable errors in the IPO's treatment of nationality, documentation, credibility and the substantive protection claim, he has not established an arguable basis for contending that the appeal to IPAT is incapable of providing an adequate and effective remedy for those errors. The alleged defects do not concern a refusal to interview the Applicant, a refusal to receive his evidence, a general policy of excluding Palestinian identity documents from consideration or any comparable failure in the functioning of the statutory system.

110. The Applicant's complaints concern the manner in which his evidence was assessed and the consequence of the adverse nationality finding for the remaining protection analysis. Those matters fall within IPAT's full merits jurisdiction and may be addressed at the scheduled oral hearing. The case therefore does not arguably fall within the exceptional category identified in *A.B.* and *Amariei* in which judicial review should interrupt the statutory appeal before the available alternative remedy has been exhausted.

111. For that reason, the Applicant has not established the requisite arguable entitlement to the interlocutory relief sought. That is sufficient to dispose of the application under the first limb of *Okunade*.

Second Limb of Okunade

112. In case I am wrong in that conclusion, I will address the balance of justice separately.

Under the second limb of the test, the focus is not on whether the alleged defects are legally curable, but on the practical consequences of granting or refusing the stay.

113. If the stay is refused, the Applicant will remain within the international-protection process. His appeal has suspensive effect and he does not face removal before the determination of that appeal. He is to receive an oral hearing at which he may give evidence, be represented, address the adverse findings, adduce further documentation and challenge the IPO's treatment of his nationality and credibility. IPAT will not be bound by the findings made in the s. 39 report.

114. I accept that allowing the appeal to proceed may render the existing challenge to the s. 39 recommendation moot, either wholly or in part. I also accept that the first-instance layer cannot literally be restored by the appeal. Those are procedural consequences that cannot be dismissed as wholly reversible.

115. They do not, however, expose the Applicant to the greater risk of injustice. If the appeal succeeds, he will have obtained an effective determination in his favour through the statutory process. If the appeal is dismissed after IPAT has lawfully and fairly addressed the matters said to have been omitted or mishandled at first instance, the statutory appeal will have provided the remedy contemplated by the legislation. If an illegality remains in the IPAT determination, or if a further legally material defect arises, the Applicant may seek judicial review after exhausting the statutory remedy.

116. The Applicant also relies on the seriousness of the adverse findings in the s. 39 report, including the statements concerning collusion and the description of his application and interviews as "*totally false*". I accept that those findings are serious and potentially prejudicial. Their existence nevertheless does not determine the appeal. IPAT must

undertake its own assessment and is not bound to adopt them. The oral hearing affords the Applicant an opportunity to challenge both their factual basis and the procedure by which they were reached.

117. On the other side of the balance lies the public interest in the orderly and timely operation of the international-protection system. The Oireachtas has entrusted IPAT with the function of conducting full appeals from adverse IPO recommendations. An oral hearing has been arranged and is capable of proceeding without exposing the Applicant to removal pending its determination. Restraining that process would prevent the specialist statutory tribunal from exercising the very jurisdiction designed to address errors in first-instance assessments.

118. The risk that the present proceedings may become moot does not, in itself, outweigh that public interest. An applicant does not ordinarily suffer a legally material injustice merely because an adequate statutory appeal provides the practical remedy sought and thereby removes the need to determine an earlier judicial-review challenge. Any independent issue concerning the legality of the s. 49 decision may be addressed separately if it remains live and material after the appeal.

119. Having regard to those considerations, I am satisfied that the greater risk of injustice lies in restraining the statutory appeal rather than in permitting it to proceed. The balance of justice therefore supports the refusal of the stay.

CONCLUSION

120. For the reasons set out above, I am not satisfied that the Applicant has established an entitlement to an order restraining the hearing or determination of his appeal before IPAT pending the determination of these proceedings.

121. The Applicant has identified matters that may arguably disclose errors in the first-instance assessment, including the treatment of his birth certificate, the findings concerning nationality and credibility, and the decision not to make findings on the remaining elements of the protection claim. He has not, however, established an

arguable basis for concluding that the scheduled oral appeal to IPAT is incapable of providing an adequate and effective remedy in respect of those matters. The alleged defects do not therefore bring the case within the exceptional category identified in *A.B.* and *Amariei*.

122. In any event, the balance of justice does not favour the grant of a stay. The Applicant remains within the protection process, is not exposed to removal pending the appeal, will have an oral hearing at which the relevant issues may be examined afresh, and retains the possibility of judicial review of the ultimate IPAT decision if a legally material defect remains. Those considerations outweigh the risk that the present proceedings may become moot or that IPAT may be the first body to make completed findings on every element of the substantive protection claim.

123. The application for interlocutory relief is therefore refused. I will hear the parties as to consequential orders, including the further management of the judicial-review proceedings and the costs of this application.