



THE HIGH COURT

[2026] IEHC 518

[Record No. 2024/1055JR]

BETWEEN

J.R. (GEORGIA)

APPLICANT

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL

AND THE MINISTER FOR JUSTICE

RESPONDENTS

Ruling of Mr. Justice Barr on Leave to Appeal delivered ex tempore on 24 July 2026.

Introduction.

1. This is a ruling in relation to an application brought by the respondents for leave to appeal against the judgment of this court delivered on 27th May 2026, reported at 2026 IEHC 325.

2. In that judgment, the court set aside the decision of the International Protection Appeals Tribunal (hereinafter “IPAT”) on the grounds that the applicant ought to have been afforded an oral hearing of his appeal. That conclusion was based on the evidence that had been put before the tribunal in advance of the appeal hearing at the time when a request for an oral hearing had been made. That evidence was contained in a medical report furnished by Dr. Joan Elizabeth Giller, who had formed the opinion that the applicant was suffering from complex post-traumatic stress disorder, severe depression and generalised anxiety disorder. She was also of the view that these conditions had adversely impacted on his memory.
3. The conclusions reached by the court in the substantive judgment were set out in the following way at paras 40 – 42:

“40. I am satisfied from reading Dr Giller’s report that on the balance of probabilities the applicant was suffering from significant psychiatric conditions in the form of CPTSD, depression and anxiety when he filled out his questionnaire and had his interviews.

41. As these appear to have been conducted without the applicant having a legal representative present, I am satisfied that as that evidence was obtained from him when he was very sick, the interests of justice required that his appeal be heard on oral evidence, rather than on the evidence obtained during interviews when he was very unwell, as found by Dr Giller.

42. I hold that for the appeal hearing to have been held on the basis of documentary evidence obtained when the applicant was very sick and was without the assistance of a lawyer, was unfair. I hold that the requirements of a fair appeal required that there should have been an oral hearing.”

4. On this basis, the decision of the IPAT was set aside and the matter was remitted back for a fresh appeal hearing.

Submissions in relation to the Granting of Leave to Appeal.

5. On behalf of the respondent, Mr. Mark W. Murphy SC submitted that this was an appropriate case in which the court should grant leave to the respondent to appeal to the Court of Appeal. He based that submission on the following grounds: firstly, it was submitted that in reaching its decision, the court had added a further criterion to the criteria that had been set down by Ferriter J. in *KS v IPAT* [2026] IEHC 13, where the judge had stated that ordinarily an oral appeal hearing may be necessary where the application for international protection has been rejected on the basis that the applicant had been found not to be telling the truth and thus the issue of personal credibility was clearly fundamental to the appeal. He had further held that where there were disputed accounts of a relevant incident or event, it would probably be necessary to hold an oral hearing. Similarly, it had been held that where credibility findings were based on the demeanour of the applicant, an oral hearing would also probably be necessary.
6. Counsel submitted that the decision in the present case, which had held that where there was credible evidence that the applicant had been labouring under a significant psychological impairment when completing his questionnaire and when having his interviews, that the requirements of a fair appeal hearing may dictate that an oral hearing was necessary. It was submitted that this was a new ground that had not been contained in the *KS* judgment.
7. It was further submitted that it was very often the case that applicants for international protection would suffer from some form of psychological impairment. In addition,

while many of them may have been assigned solicitors, very often legal representatives were not present at the early stages of the asylum application process. It was submitted that in the circumstances envisaged in this case, that could be a significant burden placed on IPAT to consider having oral appeals in a significant number of cases.

8. It was submitted that the judgment would appear to be authority for the proposition that the presence of these two circumstances, being the presence of a psychological impairment and the absence of a lawyer, without more, would be a sufficient basis on which to conclude that an oral hearing was required. It was submitted that this was a significant development in the law and therefore it was appropriate that that development should be considered by way of an appeal to the Court of Appeal.
9. Secondly, it was submitted that there was no evidence presented on behalf of the applicant that he was fit to undergo an oral appeal, notwithstanding that he had requested same. It was submitted that it was appropriate that the Court of Appeal should determine whether an oral hearing was necessary when there was no evidence that the applicant was fit to undergo such form of appeal.
10. Thirdly, it was submitted that while the applicant in this case had requested that there should be an oral hearing and while he had furnished a copy of Dr. Giller's report, he had not requested the oral hearing on the basis that his ability to properly represent himself at the questionnaire stage or in his interviews had been impaired due to his psychological condition, such that an oral appeal was necessary to enable him to properly put his application before the tribunal. It was submitted that in these circumstances the Court of Appeal should be allowed to determine whether in the absence of such assertion, the request for an oral hearing based on medical evidence could be properly entertained.

11. It was submitted that as the case appeared to establish a new ground on which an oral hearing of an appeal may be necessary and where it was likely that such circumstances could arise in a significant number of cases in the future, it was appropriate that leave to appeal should be granted.
12. In resisting that application, Mr. Hanrahan SC on behalf of the applicant submitted that the judgment delivered by the court was very case specific. It had not set down any general rule that where an applicant was suffering from an any form of psychiatric disorder that he was automatically entitled to an oral appeal.
13. It was submitted that the judgment had very carefully and in a detailed way gone through the report furnished by Dr. Giller. It was on the basis of her conclusion that the applicant had been suffering from CPTSD, severe depression and generalised anxiety disorder, that the court had come to the view that he had been suffering from a very significant impairment when filling out his questionnaire and when undergoing his interviews. It was submitted that the court had not set down any general rule that an oral hearing was always necessary, because the court had used the word “*may*” when stating that in the presence of severe psychiatric disorder an oral hearing may be necessary.
14. It was submitted that the wording of the judgment did not impose any far-reaching or new criterion that would mandate the holding of an oral hearing in a large number of cases. Accordingly, it was submitted that there were no good reasons why an appeal should be allowed in the present case.

Discussion and Conclusions.

15. The provisions of s. 5 (6) (a) of the Illegal Immigrants (Trafficking) Act 2000, are well known. The section provides that the decision of the High Court shall be final unless a certificate of leave to appeal is granted. The section provides that leave shall only be granted where the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Court of Appeal.

16. The meaning of the words “*a point of law of exceptional public importance*” and that an appeal be “*desirable in the public interest*” were considered by MacMenamin J. in *Glancré Teoranta v An Bord Pleanála* [2006] IEHC 250, as follows:

“I am satisfied that a consideration of these authorities demonstrates that the following principles are applicable in the consideration of the issues herein.

1. The requirement goes substantially further than that a point of law emerges in or from the case. It must be one of exceptional importance being a clear and significant additional requirement.

2. The jurisdiction to certify such a case must be exercised sparingly.

3. The law in question stands in a state of uncertainty. It is for the common good that such law be clarified so as to enable the courts to administer that law not only in the instant, but in future such cases.

4. Where leave is refused in an application for judicial review i.e. in circumstances where substantial grounds have not been established a question may arise as to

whether, logically, the same material can constitute a point of law of exceptional public importance such as to justify certification for an appeal to the Supreme Court (Kenny).

5. The point of law must arise out of the decision of the High Court and not from discussion or consideration of a point of law during the hearing.

6. The requirements regarding "exceptional public importance" and "desirable in the public interest" are cumulative requirements which although they may overlap, to some extent require separate consideration by the court (Raiu).

7. The appropriate test is not simply whether the point of law transcends the individual facts of the case since such an interpretation would not take into account the use of the word "exceptional".

8. Normal statutory rules of construction apply which mean inter alia that "exceptional" must be given its normal meaning.

9. "Uncertainty" cannot be "imputed" to the law by an applicant simply by raising a question as to the point of law. Rather the authorities appear to indicate that the uncertainty must arise over and above this, for example in the daily operation of the law in question.

10. Some affirmative public benefit from an appeal must be identified. This would suggest a requirement that a point to be certified be such that it is likely to resolve other cases."

17. I have considered the submissions made on behalf of the respondent as to why an appeal should be allowed in this case. Having considered those submissions, I am of the view that it is not appropriate to grant a certificate for leave to appeal in this case.

18. I have reached that decision for the following reasons: firstly, while it was submitted that the substantive decision in this case set out a novel criterion that was not included in the judgment of Ferriter J. in the *KS* case; that ignores the fact that in that judgment, the learned judge expressly recognised that the category of cases where an oral appeal would be required in the interests of justice, was not closed. At para. 59 of his judgment, which had been cited in the substantive judgment in this case, Ferriter J. stated that there were no hard and fast rules in relation to when an oral appeal would be required. He stated that each case would fall to be assessed on its own facts. He stated that the overriding requirement was that the appellant should get an opportunity to fairly make his case.
19. In these circumstances, while it could be said that the substantive judgment in this case recognised a further set of circumstances in which an oral appeal could be required in the interests of justice, the judgment was not making any groundbreaking new law in that regard. It was merely an application of a long established principle that the court or tribunal deciding a contested matter must be satisfied that the parties appearing before it have been given a fair opportunity to present their case either at first instance or on appeal. If the appeal is to proceed on the basis of a papers only appeal, it is essential that the party appealing the original decision, had been given a fair and adequate opportunity to put his case forward at the initial stage if his appeal is going to be determined on the evidence presented at that stage.
20. I am not satisfied that the substantive judgment in this case represents any new or groundbreaking development in the law. It is merely the application of well known and long established principles that it is unfair to conduct an appeal based on evidence if that evidence was obtained from a person at a time when they were significantly

disadvantaged by virtue of suffering from a serious psychiatric disorder and by having to give evidence at a time when they did not have the assistance of a lawyer.

21. I am satisfied that the decision in this case will not represent some form of a Pandora's box which will give rise to multiple applications in the future for an oral hearing of appeals. The case is very much rooted in the detailed evidence that was given by Dr. Giller in her medical report. In addition, the court did not state that it is always necessary to hold an oral appeal whenever somebody states that they had been suffering from a psychiatric disorder when they filled out their questionnaire or had their interviews. The court deliberately used the word "*may*" to indicate that it is always a matter for the tribunal to decide whether it is necessary in the interests of justice in each particular case to hold an oral appeal. Thus, the court does not accept that the decision in this case represents a significant departure from established principles that will affect a significant number of cases into the future.
22. Turning to the second ground raised on behalf of the respondent, which was to the effect that the decision of the court should be appealed because the court had found that there was an obligation on the tribunal to hold an oral hearing on the basis of Dr. Giller's report; yet it was submitted that there was no evidence presented by the applicant that he was fit to present his appeal by way of an oral hearing. I am satisfied that this submission lacks substance. Where an applicant makes a submission requesting an oral hearing and that submission is made with the benefit of legal advice and the applicant does not request an adjournment or postponement of the oral hearing, it is implicit in the request that he is fit to undergo an oral hearing of his appeal.
23. The third ground on which it was submitted that the court should certify an appeal was to the effect that while the original notice of appeal had been lodged before Dr. Giller's report had been obtained, after the medical report had come to hand, the applicant had

made two further written submissions and had furnished a copy of the report. It was submitted that the applicant had not made the case that he was entitled to an oral hearing of his appeal because he had been suffering from any psychiatric impairment when he had filled out his questionnaire or had had his interviews. It was submitted that it would be appropriate to allow the Court of Appeal to determine whether in the absence of such a submission, the tribunal was obliged, having regard to the content of Dr. Giller's report, to accede to the request for an oral hearing of the appeal.

24. Having reviewed the submissions that were made subsequent to the presentation of Dr. Giller's report, and in particular the submissions by Ms. Clabby BL furnished on 16 May 2024, the court is satisfied that it was brought to the attention of the tribunal that the applicant had been suffering from a very serious psychiatric impairment at the earlier stages of the international protection application process.
25. In those written submissions, it had been clearly stated that Dr. Giller had found that the applicant was suffering from CPTSD, severe depression and generalised anxiety disorder. She also found that the applicant had difficulties with memory recall due to his poor psychological state. The submissions had gone on to state that as the tribunal was aware, such reports assist the tribunal with its inquisitorial function, and are to be considered and given weight regarding appropriate treatment throughout an appellant's international protection claim, as well as in any decision reached by the tribunal. The submission had gone on to refer to the IPAT Guidance Note on Medical Reports and to the UNHCR Handbook on Procedures and Criteria for determining Refugee Status, and in particular, paragraphs 206 – 212 thereof which dealt with mentally vulnerable appellants.
26. I am satisfied that in these circumstances a submission was made, albeit somewhat obliquely, that the applicant was a mentally vulnerable person when he had engaged in

the initial process seeking international protection and accordingly, he ought to be afforded an oral hearing of his appeal.

27. At the end of the day, the substantive judgment in this case is not of general significance. It is very case specific. It turns on the very detail psychiatric report furnished by Dr. Giller, which clearly indicated that the applicant had been labouring under a significant psychiatric disability for a considerable period of time. In these circumstances, I am satisfied that the substantive judgment herein does not raise a point of law of general public importance. Nor am I satisfied that it is desirable in the public interest that an appeal should be taken to the Court of Appeal.

28. Accordingly, I refuse the application for leave to appeal in this case.