THE HIGH COURT
JUDICIAL REVIEW

[2026] IEHC 551

Record No. 2025 1557 JR

BETWEEN

P.C.D.

APPLICANT

AND

INTERNATIONAL PROTECTION APPEALS TRIBUNAL

AND

MINISTER FOR JUSTICE, HOME AFFAIRS AND MIGRATION

RESPONDENTS

RULING of Ms. Justice Siobhán Phelan, delivered on the 28th day of July, 2026

INTRODUCTION

1. These proceedings are one of number of challenges, currently more than fifty, brought by way of judicial review against decisions of the International Protection Appeals Tribunal ("the IPAT") to refuse an extension of time to lodge a notice of appeal under the International Protection Act, 2015 (Procedures and Periods for Appeals) Regulations 2017 ("the 2017 Regulations").

2. The proceedings were commenced by filing papers in the Central Office in October, 2025, in respect of a refusal to extend time for an appeal to IPAT communicated on the 6th of October, 2025.

3. The issues raised in these proceedings have previously been rejected by the High Court (O'Regan J.) in three cases, *G.B. -v- The International Protection Appeals Tribunal and Anor* [2025] IEHC 543; *YSA v. The International Protection Appeals Tribunal and Anor* [2026] IEHC 39 and *SMMZ v. The International Protection Appeals Tribunal and Anor* [2026] IEHC 38. Accordingly, when the leave application was opened before the High Court in November, 2025, the matter was adjourned to a holding list without leave being granted pending a determination of appeals against these decisions before the Court of Appeal. The proceedings have been adjourned in the said holding list from time to time thereafter without leave being granted. On the 21st of May 2026, the Court of Appeal heard appeals in *GB* and *YSA,* having been satisfied that those cases cover all relevant issues. Judgment in those appeals is awaited.

4. On this application, heard on the 24th of July, 2026, the Applicant seeks an interlocutory order restraining the implementation of a deportation order made in respect of her on the 17th of September, 2025, pending the outcome of test cases heard by the Court of Appeal. The Minister is neutral on the question of the grant of leave but opposes the grant of injunctive relief on this application.

BACKGROUND

5. It appears that the Applicant arrived in the State on or about the 16th of June, 2024 and made an international protection application. The Applicant's claim for international protection was premised on her having been in an abusive relationship with her ex-husband in South Africa. It appears this relationship ended in or around 2006 with a divorce being granted to the Applicant's ex-husband in 2008.

6. The Applicant was interviewed by an International Protection Officer (IPO) under s. 35 of the International Protection Act, 2015 ("the 2015 Act") on the 19th of February, 2025 and a recommendation pursuant to s. 39(3)(c) of the 2015 Act was made in respect of the Applicant on the 16th of May, 2025. The Applicant claimed that in or around 2010, she told her ex-husband that she wanted to reopen the divorce ruling, following which she was harassed and threatened by her ex-husband. The Applicant claimed that she returned to Eswatini where, following the death of her father, she was ostracised by her family. The Applicant claimed that in 2024, she was informed by her family that it had been arranged that she would remarry her ex-husband.

7. In its s. 39 Report, the IPO noted that South Africa has been designated a safe country of origin under s. 72 of the 2015 Act and the International Protection Act 2015 (Safe Countries of Origin) Order 2018 (No. 121 of 2018, as amended by S.I. No. 32 of 2024 and SI No. 327 of 2024) and proceeded on the basis that South Africa would be considered to be a safe country of origin in relation to the Applicant's application unless the Applicant submitted serious grounds for considering the country not to be a safe country of origin in her particular circumstances and in terms of her eligibility for international protection.

8. The IPO accepted as a material fact that the Applicant was in an abusive marriage and divorced her husband in 2008. The IPO found a number of credibility issues, however, with her claim to have been threatened by her husband subsequently and was being forced to remarry him by her family. Ultimately, these claims were not accepted as credible by the IPO and various inconsistencies in the Applicant's account were identified and recorded in the s. 39 report.

9. More particularly it was pointed out by the IPO that the claim provided at interview was not consistent with her claim in her Questionnaire. For example, she did not disclose any issues following her return to Swaziland in 2014 on her questionnaire despite her claim at interview that she had issues with her brothers and was treated as an outcast which led to her health deteriorating.

10. Other inconsistencies in relation to problems resurfacing with her ex-husband were also identified in that she claimed on her Questionnaire that these problems only began in Swaziland when she made the decision to pursue the assets she was due under the order of divorce court, but at interview she gave no evidence of any effort to pursue assets despite being questioned as to why her husband would want to remarry her in 2019. When this was put to her, she claimed she had emailed the divorce court and that she would produce the email and the response received, but she failed to do so.

11. The IPO highlighted the fact that the Applicant never claimed any problems with her family in her questionnaire despite claiming at interview that she had hidden from them for five years in her country of origin. She also answered inconsistently about where she was living in Eswatini between 2014 and 2024.

12. By reason of the range of credibility issues identified and the absence of supporting documentation in relation to the issues she faced after her divorce, the IPO considered that it was not credible that she was threatened by her husband and was being forced to remarry him.

13. The Minister then considered the Applicant's application for permission to remain pursuant to section 49 of the 2015 Act. The Minister's decision under section 49 of the 2015 refusing permission to remain and the IPO's recommendation under section 39(3)(c) of the 2015 Act issued to the Applicant on the 29th of July, 2025.

14. There is no dispute in these proceedings that the Applicant and her solicitor received the decisions. Although no appeal against the International Protection Officer's recommendation under s. 39(3)(c) of the 2015 Act was received by the IPAT within the prescribed time period, it is claimed in these proceedings that the Applicant attended with her solicitor to sign a notice of appeal and gave instructions for the appeal to be lodged within the time period. It is said that owing to an internal administrative error in her solicitor's office, the appeal was filed away without being transmitted to the IPAT.

15. As no appeal was received from the Applicant, on the 25th of August, 2025, the Minister issued his decision refusing to give the Applicant a refugee or subsidiary protection declaration. The Applicant was informed in correspondence, seemingly not

copied to her solicitors, that decision on her international protection application had become final in the absence of an appeal.

16. It appears that the Applicant contacted her solicitor by email on the 26th and 30th of August, 2025, raising queries in respect of this correspondence but it is claimed that her correspondence was overlooked by her solicitors who did not engage in communication with the IPAT or the Minister at that stage. Thus, there were two significant failings in the management of the Applicant's file, firstly, in failing to lodge the appeal in time, despite instructions in this regard, and secondly, in failing to address important correspondence from the Applicant when a decision issued on the basis that no appeal had been lodged.

17. The Minister then conducted a *refoulement* consideration pursuant to s. 50 of the 2015 Act. A decision under s. 50 of the 2015 Act was made on the 17th of September, 2025. It was concluded that repatriating the Applicant to South Africa or Eswatini would not be contrary the prohibition of *refoulement* as contained in s. 50 of the 2015 Act.

18. A Deportation Order in respect of the Applicant was signed on the the 17th of September, 2025. The Deportation order and arrangements letter were sent to the Applicant on the 26th of September, 2025 . At this point, it was finally appreciated by the Applicant and her solicitors that no appeal had been lodged on her behalf.

19. Thereafter, on the 30th of September, 2025, the Applicant's solicitors submitted an application to the IPAT to extend the time for her to lodge a notice of appeal against the International Protection Officer decision.

20. The application to extend time was refused by the IPAT by decision of the 6th of October, 2025. The IPAT concluded that the Applicant had not demonstrated special circumstances as to why the notice of appeal was submitted after the prescribed period. Accordingly, the IPAT refused the application to extend time.

21. There has been no challenge to the lawfulness of the Deportation Order in these proceedings and the primary relief sought is an order of *certiorari* quashing the decision refusing to extend time for an appeal against the decision of the IPO.

22. By email dated the 26th of February, 2026, the Applicant's request through her solicitor for an undertaking not to deport pending a determination of proceedings was refused, without response from the Applicant's solicitors. The Applicant missed a presentation date at GNIB on the 28th of May, 2026 as, as she explains, she did not have money to pay for her train fare. She presented the next day having borrowed money. By letter dated the 2nd of July, 2026, the request for an undertaking was repeated, pointing out that undertakings had been given in other cases. On the 3rd of July, 2026, the request for an undertaking was again refused noting that proceedings remained at pre-leave stage. Thereafter, leave to issue a motion seeking interlocutory relief was granted.

23. In support of this application for injunctive relief, the Applicant has exhibited COI dating to March, 2020 in respect of Victims and Survivors of Sexual and Gender Based Violence in Eswatini and Violence against Women including available State Protection in South Africa dating to March, 2024. COI confirms the adoption of protective legislation and positive legal developments in Eswatini but gender stereotypes persist and many women are forced to remain in abusive relationships because they have nowhere else to go. COI also documents significant problems of gender-based violence in South Africa. The COI exhibited in the grounding affidavit to the present application identifies significant and persistent difficulties concerning gender based and domestic violence and effective access to State protection in both countries. I note, however, that the COI considered in the s. 50 *refoulement* decision is more current, dating to August, 2025.

24. I refer to the Chronology appended hereto which has been adapted from the Chronology appended to the Minister's written submissions opposing injunctive relief.

ANALYSIS AND DECISION

25. The principles governing the grant of an interlocutory injunction or stay in judicial review proceedings are well established. In *Okunade v. Minister for Justice, Equality and Law Reform & Ors* [2012] 3 IR 152, a case involving an application for an injunction restraining the enforcement of deportation orders against a mother and young child, Clarke J. held (para. 104):

(a) The court should first determine whether the applicant has established an arguable case; if not the application must be refused, but if so then;

(b) The court should consider where the greatest risk of injustice would lie. But in doing so the court should:-

(i) Give all appropriate weight to the orderly implementation of measures which are prima facie valid;

(ii) Give such weight as may be appropriate (if any) to any public interest in the orderly operation of the particular scheme in which the measure under challenge was made; and

(iii) Give appropriate weight (if any) to any additional factors arising on the facts of the individual case which would heighten the risk to the public interest of the specific measure under challenge not being implemented pending resolution of the proceedings;

(iv) Give all due weight to the consequences for the applicant of being required to comply with the measure under challenge in circumstances where that measure may be found to be unlawful.

(c) In addition the court should, in those limited cases where it may be relevant, have regard to whether damages are available and would be an adequate remedy and also whether damages could be an adequate remedy arising from an undertaking as to damages.

(d) In addition, and subject to the issues arising on the judicial review not involving detailed investigation of fact or complex questions of law, the court can place all due weight on the strength or weakness of the applicant's case"

26. In *Okunade* Clarke J. emphasised the default position that an applicant will not be entitled to an injunction, observing (at para. 110) that:

"*The default position is, therefore, that an applicant will not be entitled to a stay or an injunction... Significant weight needs to be attached to the implementation of decisions made in the immigration process which are prima facie valid*."

27. When applying the test set out in *Okunade*, the Court must first consider whether an arguable case has been established. If that threshold is met, the Court must then consider where the greatest risk of injustice lies, giving appropriate weight to the orderly implementation of measures which are *prima facie* valid, the public interest in the orderly operation of the immigration system, any case-specific public interest factors, and the consequences for the Applicant if required to comply with a measure which may later be found unlawful. Importantly, it was acknowledged in *Okunade*, that if an applicant can demonstrate that deportation, even on a temporary basis, would cause more than what one might describe as the ordinary disruption in being removed from a country in which the relevant applicant wished to live:

> "*such as a particular risk to the individual or a specific risk of irremediable damage then such factors, if sufficiently weighty, could readily tilt the balance in favour of the grant of an injunction or a stay*".

28. The availability and adequacy of damages is also relevant, although in deportation cases damages will frequently provide little or no practical answer to the consequences of removal. The strength or weakness of the underlying case may also be considered where the issues do not require detailed factual investigation or complex legal analysis.

First Limb of Okunade Test

29. In terms of the first limb of the *Okunade* test, namely whether arguable grounds are demonstrated, the weight of High Court authority is against the Applicant. However, the decisions which are adverse to the Applicant have been appealed to the Court of Appeal and judgment is awaited. The Minister has remained neutral on the application for leave and has not on this application sought to attack the arguability of the Applicant's proceedings (whilst reserving his position on the substantive proceedings), albeit reminding me that I am entitled to have regard to the fact that there are numerous decisions of the High Court against the Applicant.

30. Having considered the written submissions in support of the leave application and being familiar with many of the cases currently adjourned pending the outcome of the appeals to the Court of Appeal, I am satisfied that the pending appeals raise issues of importance which bear on questions of access to remedies in a significant number of cases. In the absence of a decision from the Court of Appeal guiding the proper exercise of the extension of time jurisdiction of the IPAT and noting observations of Costello P. when ruling on a similar application before the Court of Appeal in *T v. IPAT & Ors.* on the 20th of March, 2026, that the grounds of appeal "*could be strong*", I am not prepared to deal with this application on the basis that there are no arguable grounds for contending that the refusal of an extension of time was unlawful in this case.

31. In the light of the negative High Court decisions, however, I consider that I am constrained in my ability to find the grounds arguable as this would require me to find that there was a basis for concluding that these decisions were wrong. Accordingly, I have decided that I will only address arguability if necessary to do so to decide this application, having first addressed the balance of justice considerations which arise under the second limb of the *Okunade* test.

Second Limb of Okunade Test

32. In *CC v. Minister for Justice* [2016] 2 IR 680, [2016] IESC 48 the Supreme Court considered an application for an injunction preventing the applicant's deportation pending an appeal to the Court of Appeal. Clarke C.J. held, citing *Okunade*, that the overriding principle is minimising the risk of injustice:

> *"Thus, the overarching principle is said to be one applicable in all cases where a court has to make a short-term and summary decision as to what is to happen pending a fuller hearing. The approach of the court in such circumstances has to be to act in such a way as to minimise the risk of injustice."*

33. As pointed out on behalf of the Minister in this case on the question of balance of risk, the Deportation Order is not only *prima facie* valid, but it has also not been challenged. The presumption in favour of the enforcement of deportation orders which are *prima* *facie* valid has been found to particularly strong where they are unchallenged (see *N. v. International Protection Appeals Tribunal* [2026] IECA 39, *Cosma v. Minister for Justice* [2007] 2 IR 133, [2006] IEHC 36 and *PO v. Minister for Justice* [2015] IESC 64, *OOA v. Minister for Justice* [2019] IECA 123 and *KRA v. Minister for Justice (No 4)* [2016] IEHC 703).

34. It bears note from a balance of justice perspective that in most cases where a deportation order has been treated as *prima facie* valid following an international protection application, the issue has arisen in circumstances where the applicant has had the benefit of an appeal to IPAT such that the Court in refusing to look behind a deportation order does so in reliance on the fact that the Applicant's rights are protected through the statutory process in place. In this case, I do not have the reassurance of the safeguards afforded through the international protection process because the Applicant, through the failings of her legal advisors for which it appears she is personally blameless, has not had the benefit of an appeal to the IPAT. It seems to me that this is an important distinguishing feature between this case and many of the cases identified before me in argument and means that some caution is required in the application of these cases as precedent.

35. In ruling on a similar application to this one in *T v. IPAT & Ors.* on the 20th of March, 2026, however, Costello P. observed that pending a decision that the applicant in that case was entitled to an extension of time, both the IPO decision and the deportation order stood outside the proceedings and were valid and should be given significant weight. She made this finding notwithstanding that the relief that was sought in those proceedings went to the basis upon which a deportation order was made. I therefore accept that there is a very strong presumption against granting an injunction restraining deportation on foot of a presumptively valid deportation order, even where the Applicant has not had the benefit of all the protections of an appeal to the IPAT. As submitted on behalf of the Minister, I accept that the presumption arises from the public interest in the enforcement of lawful deportation orders and in maintaining the efficacy and integrity of the immigration system and requires weighty countervailing considerations to justify the exercise of discretion to grant injunctive relief preventing the Minister from enforcing deportation.

36. The fact that this injunction is sought in a context where the Applicant has not had the benefit of an appeal to the IPAT remains relevant in my view in terms of questions of personal risk to the Applicant which could outweigh the Minister's countervailing interest on an application of the *Okunade* test. Depending on the nature of the decisions made in the process and the material in evidence in respect of the case made by an applicant for protection, the extent to which a court on an injunction application can be satisfied that there is no real risk to an applicant if deported in the absence of an appeal to the IPAT will vary and will require an analysis on the facts of each case as to the risk or impairment of rights established.

37. In *Okunade*, Clarke J. identified what an applicant might have to establish to rebut the presumption against restraining a deportation order, such as:

> "*the practical consequences of being deported pending the conclusion of the judicial review process such as the relevant conditions in any country to which the applicant is likely to be deported*."

38. In addition, Clarke J. further suggested that there may:

> "*be some cases where the presence of the applicant for the hearing of the judicial review proceedings is necessary*"

or

> *"a particular risk to the individual or a specific risk of irremediable damage"*.

39. In this case there is, in my view, insufficient basis for concluding that deportation would cause more than ordinary disruption. As already noted, the Minister has considered, and refused, the Applicant's application for permission to remain under s. 49 of the 2015 Act. That required consideration of the matters identified in s. 49(3) of the 2015 Act, namely, (a) the nature of the applicant's connection with the State, if any, (b) humanitarian considerations, (c) the character and conduct of the applicant both within and (where relevant and ascertainable) outside the State (including any criminal convictions), (d) considerations of national security and public order, and (e) any other considerations of the common good. In addition, the Minister considered the Applicant's asserted private and family rights, including her rights under Article 8 of the ECHR and concluded that the Applicant should not be granted permission to remain. That decision has not been challenged. I therefore do not accept that the removal of the Applicant would have such serious or significant consequences to her private and family life such that her deportation should be restrained.

40. In respect of the Applicant's fears which are identified at paragraph 22 of her affidavit as a fear of her ex-husband (from whom she has been divorced since 2008, he having remarried in the meantime) in South Africa and a fear that her family in Eswatini would force her to return to that marriage, I have regard to the fact that there is a valid IPO decision, a valid s. 50 decision and valid deportation order and that the s. 50 decision and deportation order, stand separately from the Applicant's claims in these proceedings, all of which have proceeded on the basis that the Applicant's claims do not substantiate an entitlement to remain in the State.

41. In particular, the IPO decision accepted that the Applicant was in an abusive relationship with her ex-husband but they divorced in 2008. The IPO concluded that the Applicant faced no further issues with her husband after this. As noted on behalf of the Minister, in rejecting the credibility of the Applicant's claim that she faced issues with her husband and her family after 2008, the IPO relied on objective matters of internal inconsistency to reject the credibility of these claims. The issues identified by the IPO are apparent on the record. Based on the IPO's credibility assessment, which has not been impugned, the likely conditions that the Applicant would face if returned to South Africa or Eswatini do not give rise to a credible risk of harm having regard to her personal narrative which has been rejected on a reasoned basis. I reach this conclusion notwithstanding issues identified in COI exhibited in support of this application in respect of gender-based violence in both South Africa and Eswatini because little weight can be attached to COI of this nature where the Applicant's personal credibility is not accepted by reason of inconsistencies and contradictions in the account she has given. COI does not address fundamental inconsistencies in the Applicant's personal account and the fact that there are difficulties of gender-based violence in both countries does not mean that the Applicant is at risk in circumstances where the claimed basis for risk has been rejected on grounds related to her personal credibility.

42. I also consider, as the IPO did that, even on the Applicant's own account, she remained in South Africa and Eswatini for years after the divorce from her husband without being subjected to treatment which she claims to fear. I attach weight to the fact that South Africa is a safe country of origin and it has been found following assessment by the IPO that the Applicant has not identified serious grounds for contending that it is not safe for her. I note also that the Minister has considered and determined that the Applicant's repatriation to South Africa or Eswatini would not breach the prohibition of *refoulement* contained in s. 50 of the 2015 Act and this decision is not challenged. In all these circumstances, I am not satisfied that there is sufficient basis on the evidence for concluding that the Applicant faces a real risk of harm at the hands of her ex-husband, from whom she has been divorced since 2008.

43. The Minister has placed some emphasis on the fact that even if the Applicant was successful in these proceedings, she would have no entitlement to remain in the State and the Deportation Order would remain valid because the lodging of a late appeal to the IPAT does not have suspensive effect on the deportation order or on the deportation of an individual. I note that in *A v. IPAT and B v. IPAT* (18th of July, 2022), MacMenamin J. found it unlikely that the Minister would seek to exercise a power to deport while an application to extend time is being considered by IPAT. I would similarly consider it unlikely that the Minister would seek to exercise that power where an extension of time has been granted and an appeal is proceeding. As those are not the facts here, it is not an issue with which I need concern myself, save to note that refusal of an extension of time challenged in these proceedings is undermining of the Applicant's claim to an entitlement to remain in the State.

44. Finally, as stressed on behalf of the Minister, in grounding this application, the Applicant has not claimed that she would be unable to maintain these proceedings if she was returned to South Africa or Eswatini. The need to illustrate, clearly and with evidence, how the prosecution of proceedings would be impeded unless an injunction is granted has recently been highlight by this Court in *N v. International Protection*

Appeals Tribunal [2026] IECA 39. The Applicant has suggested that if she were to be deported, and then ultimately successful in these proceedings, the practical utility of these proceedings would be undermined. The Minister does not agree with that proposition and maintains that if the Applicant were to be successful in these proceedings, there is no obvious reason why her presence in the State would be required to allow the Tribunal to reconsider its decision.

45. It is further contended that thereafter, if the Tribunal acceded to the extension of time request, it would be open for the Applicant to seek a revocation of the Deportation Order and, unless there are national security or criminality issues, there is no reason to believe that such an application would not be successful. I was referred in submissions to the fact that this point was accepted recently by the Court of Appeal in *T v. IPAT* (Court of Appeal Record No. 2026/6). As reflected in the agreed counsels' note of the judgment in *T v. IPAT,* Costello P. stated**:**

> *"The Appellant says that if he is deported, it renders the appeal moot. I am satisfied that the decision of Bolger J in GT shows this is not the case. The same arguments were advanced in that case as in this case. Bolger J concluded that the least risk of injustice favoured not restraining deportation taking into account the absence of evidence of a real risk that the applicant's rights would be breached. Based on evidence before me, that applies in this case.*
>
> *There is the possibility of the Applicant's return to the frontiers of the State if successful in these proceedings and if granted an extension of time. In answer to that, Mr Hanrahan SC referred to fact that it would be criminal offence for Appellant to enter the State without a visa. I have to say, given the circumstances in which the whole international protection system operates, by definition many if not the vast majority of applicants will be persons who (if they were not refugees) require visas. Technically they may have committed an offence but the whole point is that their international protection application will be considered. The question of whether the permission to land provisions of section 4 of the Immigration Act 2004 would prevent the Appellant attending the frontier of the state and seeking international protection, appears to me to be very slight. It seems far more likely that he would be allowed to make his application if his*

appeal was successful, his extension of time successful and he sought for his deportation order to be revoked under s.3(11) of the Immigration Act 1999."

46. O'Donnell J. recently applied both the reasoning in *T v. IPAT* and in *G.T. v International Protection Appeals Tribunal* [2025] IEHC 220 (a s. 22 case where a full appeal to IPAT had already been available) in refusing an injunction in the case of *N.H.B (Algeria) v International Protection Appeals Tribunal & Ors* (Ruling of O'Donnell J. *Ex tempore*, 23rd of April, 2026) [High Court Record No. 2024/907]. The applicant in that case raised similar arguments in support of granting an injunction to those made by the Applicant in the instant proceedings and, similarly to *T v. IPAT* and the Applicant herein, had brought proceedings challenging the validity of IPAT's decision not to extend time to allow a late appeal. O'Donnell J. found that the applicant's arguments involved a high degree of speculation focussed on the possibility that if he were successful in the proceedings and obtained an extension of time that his application would by thwarted by operation of law. O'Donnell J. concluded (para. 27 of Written Note of *Ex Tempore* Ruling delivered on the 23rd of April, 2026):

> *"In all the premises, but particularly because of the correlation between the arguments made in this application and the arguments considered in G.T. v. IPAT and T v. IPAT, I am not satisfied that the applicant has made out a case for the grant of an injunction preventing effect being given to the deportation order. Hence that application will be refused."*

47. I am not persuaded that removal from the State on foot of a valid deportation order would impede the Applicant in maintaining these proceedings (which in any event will be largely guided by the decisions of the Court of Appeal on the two appeals heard) or would mean that the Applicant could not pursue a remitted application for an extension of time and, if successful on that application, pursue her appeal to IPAT.

48. It is submitted on behalf of the Applicant that she could not prosecute an "*out of State appeal*". While this submission appears instinctively correct, I heard no submissions as to the authority for this submission. In *Seredych v. Minister for Justice and Equality*

[2020] IESC 62, the Supreme Court recognised that it is necessary to be at the frontier or within the State to make an application for international protection but I do not read it as precluding the maintenance of a live application from outside the jurisdiction, provided the application has not been abandoned and circumstances do not exist to justify a conclusion that an applicant is not co-operating by reason of non-attendance.

49. Certainly, s. 16 of the 2015 Act contemplates that an applicant for international protection will be granted permission to remain in the State for the purpose of the examination of the application and any appeal and s. 16(3)(a) further provides that an applicant shall not leave or attempt to leave the State without the consent of the Minister but it could hardly be said that in the instant case the Applicant were leaving the State without the consent of the Minister if this were to occur on foot of a deportation order made by the Minister.

50. While s. 16(3)(a) plainly contemplates an applicant's presence in the State during the processing of the claim, it does not expressly state that departure from the State automatically terminates, invalidates or withdraws the application. Nor is departure from the State identified as a basis for deemed withdrawal of an application under ss. 37 or 45 of the 2015 Act. I note also, however, that Article 7.1 of the Procedures Directive provides that an applicant is to be allowed to remain in a Member State until the application for protection has been determined, which in the event that the Applicant were ultimately to succeed both in her judicial review and in her appeal against the refusal of an extension of time, may well mean that the Applicant would have a right to be permitted to re-enter the State and remain here pending a determination of her appeal.

51. While I am not persuaded that the decision in *Seredych* is necessarily authority for the proposition that an appeal could not be maintained once initiated in person and would need to hear further argument to so conclude and I proceed in this application on the basis that to obtain a declaration entitling him to protection status, the Applicant needs to be in the State.

52. I am not satisfied, however, that in the eventuality that these circumstances were to unfold and the Applicant were to be entitled to pursue her appeal before the IPAT on foot of a decision to extend time following remittal for fresh consideration in line with guidance from the Court of Appeal in allowing an appeal against the judgments of O'Regan J., that there is a real risk that the Applicant's legal rights would not be respected by the IPAT and the Minister. In such an eventuality, it is to be expected that both IPAT and the Minister would take the necessary steps to ensure that the Applicant's rights under EU law are respected and vindicated including by facilitating the Applicant's return to the State should this be necessary to pursue her right of appeal to the IPAT. Should they fail to do so, the Applicant would have a remedy before the Courts consequent upon any unlawful interference with her rights were such a future breach were to be established.

53. In this regard, I note that O'Donnell J. considered *Seredych v. Minister for Justice and Equality* [2020] IESC 62 in his decision in *N.H.B (Algeria) v International Protection Appeals Tribunal & Ors*. in the context of the case made that an applicant would experience obstacles if removed from the State before a decision on a revocation of deportation application but did not consider this argument to tip the balance of justice.

54. Having regard to the decisions of the Court of Appeal in *T v. IPAT* and O'Donnell in *N.H.B (Algeria) v International Protection Appeals Tribunal & Ors*. and applying *Okunade* principles in circumstances where the Applicant has no present entitlement to be in the State, has fallen short of showing that she would be at risk in South Africa or Eswatini or that her removal would cause anything more than the normal disruption to her family and personal life in Ireland, I am unable to conclude that the presumption in favour of enforcing a valid deportation order has been displaced by countervailing factors. The Applicant has not satisfied me that the second limb of *Okunade* has been met.

CONCLUSION

55. For the reasons set out above, I have decided that the Applicant's application for interlocutory relief restraining her deportation from the State should be refused. The balance of the evidence before the Court is that the Applicant is not at risk in South Africa or Eswatini, that her deportation would not have any impact on her outside the normal disruption arising from being removed from the State, and there is no evidence that the Applicant could not maintain these proceedings by way of judicial review from South Africa or Eswatini. If she were to succeed and ultimately persuade the IPAT to extend time for an appeal of her protection application, then it is not possible to speculate as to how this situation might properly be addressed, but the Minister can be expected to vindicate her rights in such an eventuality.

56. Whatever about the Applicant's interest in remaining in the State to prosecute an appeal before IPAT against the refusal of status in her case should she be allowed to do so, there is a fundamental public interest in the orderly operation of the immigration system which favours the refusal of interlocutory relief. It has not been established in grounding this application that South Africa is not a safe country for the Applicant and that she is at real risk from her former husband if returned there, both having regard to the adverse credibility findings made and the length of time since their divorce and the fact that she lived in both South African and Eswatini for many years without being subjected to treatment which she claims to fear.

57. I will hear the parties in respect of any consequential matters.

CHRONOLOGY

- **15 June 2024** — Applicant left Eswatini for Ireland via South Africa, Kenya and the Netherlands.
- **16 June 2024** — Applicant arrived in Ireland and applied for international protection.

First-instance protection process

- **19 February 2025** — Applicant attended her section 35 international protection interview.
- **16 May 2025** — The section 39 report recommended that the Applicant be given neither refugee status nor subsidiary protection, and found South Africa to be a safe country of origin in her case.
- **25 July 2025** — The section 49 decision was made refusing the Applicant permission to remain.
- **29 July 2025** — The Applicant was notified her of the section 39 recommendation refusing refugee status and subsidiary protection and of the refusal of permission to remain, and advised that any appeal had to be lodged within 15 working days.

Appeal deadline and late appeal

- **13 August 2025** — The Applicant attended her solicitors' office, signed the notice of appeal, and the appeal letter to IPAT was dated that day.
- **20 August 2025** — Due date for lodging the appeal.
- **25 August 2025** — The Minister's decision under section 47(5) refusing the Applicant international protection issues.
- **26 August 2025** — Applicant emailed Steer Law Solicitors stating she had received a letter saying she no longer had permission to remain and saying she had thought an appeal had been made on her behalf.

- **30 August 2025** — Applicant sent a further email to her solicitors asking whether she would receive a deportation letter.

- **17 September 2025** — The Minister made both the section 50 refoulement decision and the deportation order.

- **26 September 2025** — Deportation Order and section 50 decision issue to Applicant's solicitors.

- **30 September 2025** — Applicant's solicitors emailed IPAT lodging the notice of appeal and requesting an extension of time, stating that a staff member had filed away the file in error and that her emails of 26 and 30 August had not been brought to the solicitor's attention.

IPAT refusal and commencement of judicial review

- **6 October 2025** — IPAT refused to extend time, holding that the explanation amounted to an administrative error or office oversight and that no special circumstances had been shown.

- **17 October 2025** — Proceedings issue

- **12 November 2025** — First presentation date.

- **17 November 2025** — Leave application adjourned.

- **22 January 2026** — Second presentation date.

- **28 May 2026** — Applicant missed GNIB presentation.

- **29 May 2026** — Applicant attended GNIB and was given a further presentation date.

- **27 July 2026** — Next presentation date.