

APPROVED



**AN ARD-CHÚIRT
THE HIGH COURT**

[2026] IEHC 636

Record No. 2024 1000 JR

BETWEEN/

A.G.

APPLICANT

-AND-

THE INTERNATIONAL PROTECTIONS APPEALS TRIBUNAL

AND THE MINISTER FOR JUSTICE, HOME AFFAIRS AND MIGRATION

RESPONDENTS

JUDGMENT of Mr. Justice Conleth Bradley delivered on the 21st day of September 2026

CONTENTS

INTRODUCTION.....	3
<i>Preliminary</i>	<i>3</i>
<i>Background</i>	<i>3</i>
THE PROCEEDINGS.....	4
<i>The Applicant’s case: sequence and summary</i>	<i>5</i>
<i>Overview of judgment.....</i>	<i>6</i>
DISCUSSION AND DECISION.....	9
<i>General approach to credibility</i>	<i>9</i>
<i>Decision dated 9th June 2024</i>	<i>12</i>
<i>Papers-only appeal</i>	<i>13</i>
<i>The 2015 Act.....</i>	<i>17</i>
<i>Assessment & decision on the first issue</i>	<i>20</i>
<i>Remaining Grounds</i>	<i>33</i>
Adverse credibility findings	34
SUMMARY AND CONCLUSION	46
PROPOSED ORDER	48

INTRODUCTION

Preliminary

1. In these proceedings, the Applicant, who is a Georgian national, seeks to challenge a decision of the first named Respondent (“the IPAT” or “the tribunal member”) made on 9th June 2024 affirming the recommendation of the International Protection Office (“the IPO”) refusing him refugee or subsidiary protection declarations.

Background

2. The Applicant had claimed international protection on the basis of an allegation that, because he supported the United National Movement Party (“UNM”) by hanging posters on the street, he was assaulted by members of the Georgian Dream Party.
3. The Applicant applied for asylum in Ireland on 22nd June 2022. He completed the IPO questionnaire on 13th July 2022 and attended an interview at the IPO on 11th August 2023 pursuant to s. 35 of the International Protection Act 2015 (“the 2015 Act”).
4. The Applicant was refused international protection by the IPO on 2nd October 2023.
5. A Notice of Appeal dated 11th October 2023 was sent under cover of a letter from the Applicant’s solicitor dated 12th October 2023. In that letter, sent on the Applicant’s behalf, an oral hearing was requested.
6. Under cover of correspondence dated 5th July 2024, the refusal by the IPAT dated 9th June 2024 was notified to the Applicant. The first part of this refusal decision rejected the request for an

oral hearing and the decision proceeded to deal with the Applicant's appeal, which included the question of credibility, on a papers-only basis.

THE PROCEEDINGS

7. By order dated 25th November 2024 and perfected on 26th November 2024, the High Court (Siobhán Phelan J.) granted the Applicant leave to apply, by way of judicial review, for an order of *certiorari* quashing the decision of the IPAT dated 9th June 2024 affirming the recommendation made by the IPO refusing him refugee or subsidiary protection declarations.
8. The Applicant's Statement of Grounds was date stamped 6th August 2024 and the application for judicial review was also filed on 6th August 2024.
9. The Affidavit of the Applicant's solicitor, Mr. Brian Trayers, dated 2nd August 2024 was sworn in compliance with Practice Direction HC81. The Applicant's Grounding Affidavit was sworn on 2nd August 2024.
10. The proceedings were brought four days outside of the 28-day statutory limit, and the reason for this delay is set out in the Affidavit of the Applicant's solicitor, Mr. Brian Trayers, and is also addressed at para. 15 of the Applicant's Affidavit dated 2nd August 2024. No issue is being made by or on behalf of Respondents in relation to this delay of four days. I am satisfied that the explanation set out by Mr. Trayers and by the Applicant addresses this matter and accordingly I shall extend the time for the Applicant to bring this application for judicial review.

11. In terms of the other reliefs sought, at the initial hearing on 29th April 2026, it was indicated on behalf of the Applicant that similar issues had been raised in another case which had been heard before the High Court (Sara Phelan J.) and where judgment had been reserved.
12. Phelan J. delivered judgment in *BB v IPAT and Anor* [2026] IEHC 450 (“*BB*”) on 9th July 2026.
13. The parties subsequently made written and oral submissions at a resumed hearing on 23rd July 2026 on the applicability of the decision in *BB* to the facts of the Applicant’s case.

The Applicant’s case: sequence and summary

14. In summary, the case made and sequentially presented on behalf of the Applicant can be described in the following three propositions:
 - (a) First, a challenge was made to the adverse credibility findings made by the IPAT in two respects: (i) it was submitted that he should have been given prior or advance notice of the adverse credibility findings; (ii) it was further submitted that there was a lack of clarity in relation to the adverse credibility findings made by the IPAT which referenced the lack of evidence proffered by the Applicant regarding his alleged support of UNM by erecting posters which led to the physical assault on him. These matters are set out at paras 15 and 16 of the Applicant’s Statement of Grounds dated 2nd August 2024, which also included arguments in relation to what the Applicant was *not* asked at the s. 35 interview and the lack of any reference to insufficient evidence in the s. 39 report;
 - (b) Second, the Applicant takes issue with the failure to provide an oral hearing in relation to his appeal and the decision of the IPAT to determine the appeal on a papers-only basis. Relevantly, this ground of challenge also referred to the issues raised in the

covering letter submitted by the Applicant's solicitor dated 12th October 2023 as to why it was being argued that an oral hearing was necessary: the Applicant contended that whilst the IPO had made findings that his account of matters was vague and insufficient, the IPO did not specify what detail was missing or what was insufficient. It was argued, therefore, that adducing evidence under oath at an oral hearing was required to address the adverse findings made against the Applicant (including adverse credibility findings of which he had not been notified). A further general argument was made on behalf of the Applicant by reference to two additional decisions made by the same tribunal member which contained a verbatim analysis as to whether an oral hearing should be held and which, it was submitted, was confirmatory of a lack of engagement by the tribunal member with the facts and circumstances of the Applicant's particular case. Ms. McKeogh BL, for the Applicant, pointed to sections of the earlier part of the decision of the IPAT dated 9th June 2024 which were repeated verbatim in all three reports;

- (c) Third, the Applicant argues that the IPAT had inadequate regard to his submissions and the account given by him.

Overview of judgment

15. Notwithstanding this sequential presentation of the grounds of challenge on behalf of the Applicant, the first issue in fact addressed by the tribunal member in his decision dated 9th June 2024 was that recorded at para. [1.27], where he decided (after considering matters at paras [1.1] to [1.26])) (i) not to direct an oral hearing and (ii) to proceed, rather, by way of a papers-only appeal:

“[1.27] Having regard to all of the foregoing, the Tribunal does not direct an oral hearing and will proceed on the papers.” (Underlining added in this judgment).

16. For the reasons set out in this judgment, I am of the view that the manner in which the tribunal member assessed this initial issue and decided pursuant to s. 43(b) of the 2015 Act not to have an oral hearing and to proceed on a papers-only basis was unlawful in that there was a lack of engagement with the Applicant's application for an oral hearing.
17. The finding made by the Tribunal Member at para. [1.27] was the hinge upon which the remainder of the decision from para. [2.1] onwards turned.
18. In this sense, the determination at para. [1.27] operated as a form of procedural synecdoche. Although concerned with the question of an oral hearing, it determined the procedural basis upon which the Applicant's substantive claim, including credibility, would thereafter be assessed on a papers-only basis.
19. Borrowing the terminology used by the High Court (Haughton J.) in *O'Flynn Capital Partners v Dún Laoghaire Rathdown County Council* [2016] IEHC 480, the first finding not to direct an oral hearing and to proceed on a papers-only basis "tainted" the subsequent papers-only assessment.
20. Therefore, whilst the Applicant's grounds of challenge and the presentation of the case did not follow the chronological approach and structure of the tribunal member's decision of 9th June 2024 (*i.e.*, first, the determination of the oral hearing question and second, the substantive assessment including adverse findings in relation to credibility), this judgment addresses the matters in the sequence set out in the decision of the tribunal member dated 9th June 2024.

21. Further, as Sara Phelan J. observed at para. 75 of her judgment in *BB*, there is no obligation on a tribunal member to notify the applicant of the refusal of an oral hearing under s. 43(b) of the 2015 Act “*separately and in advance of the substantive appeal decision or, in other words, the Tribunal is not required to notify the applicant of whether or not the substantive appeal hearing is proceeding on a papers-only basis. However, this does not absolve the Tribunal of its responsibility to engage with the substance of the applicant’s request for an oral hearing, however minimal, in its decision and it is this lack of engagement and failure to give reasons by the Tribunal that means that the applicant has been successful on this occasion.*”
22. As I set out in this judgment, that finding in *BB* applies *mutatis mutandis* to the Applicant’s case here.
23. Accordingly, in the concluding part of this judgment I have indicated that I shall quash the entire decision given that the second issue addressed was informed by the finding in relation to the first issue. This should not be construed as meaning that I am of the view that there should have been an oral hearing. No such finding is made in this judgment. Rather, I have determined that the tribunal member erred by the manner in which he decided whether or not there should be an oral hearing and this finding expressly underpinned the carrying out of the subsequent ‘papers-only’ assessment from paras [2.1] to [8.1] in the decision.
24. In the order which I propose to make (set out at the end of this judgment), I shall, therefore, extend the time for the Applicant’s challenge, quash the decision of 9th June 2024 and remit the matter to a different tribunal member. It is entirely a matter for that tribunal member to decide whether an oral hearing should, or should not, be directed.

25. Strictly speaking it is not necessary for me to address that part of the Applicant's challenge (which were asserted as the initial grounds) in relation to paras [2.1] to [8.1] of the decision dated 9th June 2024 (*i.e.*, including the adverse credibility findings) as they cannot be decoupled from the finding at para. [1.27] which I have determined was unlawfully made.
26. However, for completeness and having regard to (i) the fact that leave was granted to raise these grounds and (ii) the sequence in which the grounds were presented by the parties, I have considered and discussed these matters in this judgment on a strictly *obiter* and limited basis and on the hypothetical assumption that the initial decision not to direct an oral hearing and to proceed on the papers only was not incorrect or unlawful.

DISCUSSION AND DECISION

General approach to credibility

27. By way of a general observation, in *R.A. v RAT* [2017] IECA 297 ("*R.A.*"), the Court of Appeal (Finlay Geoghegan J., Irvine J. and Hogan J.), in a judgment delivered by Hogan J., set out the approach (at para. 47) that a court should adopt in judicial review proceedings when addressing the question of credibility.
28. In *R.A.*, the Court of Appeal endorsed what is, having regard to its universal invocation by the Superior Courts, the seminal judgment of the High Court (Cooke J.) in *I.R. v Minister for Justice* [2009] IEHC 353; [2015] 4 I.R. 144 ("*I.R.*"), as follows:
- "47. Having reviewed much of the pre-existing case-law on this topic, Cooke J. then set out the following principles which have been consistently followed ever since ([2015] 4 I.R. 144, 151-152):*

“So far as relevant to the issues dealt with in this judgment it seems to the Court that the following principles might be said to emerge from that case law as a guide to the manner in which evidence going to credibility ought to be treated and the review of conclusions on credibility to be carried out:-

‘(1) The determination as to whether a claim to a well-founded fear of persecution is credible falls to be made under the Refugee Act 1996 by the administrative decision-maker and not by the Court. The High Court on judicial review must not succumb to the temptation or fall into the trap of substituting its own view for that of the primary decision-makers.

(2) On judicial review the function and jurisdiction of the High Court is confined to ensuring that the process by which the determination is made is legally sound and is not vitiated by any material error of law, infringement of any applicable statutory provision or of any principle of natural or constitutional justice.

(3) There are two facets to the issue of credibility, one subjective and the other objective. An applicant must first show that he or she has a genuine fear of persecution for a Convention reason. The second element involves assessing whether that subjective fear is objectively justified or reasonable and thus well founded.

(4) The assessment of credibility must be made by reference to the full picture that emerges from the available evidence and information taken as a whole, when rationally analysed and fairly weighed. It must not be based on a perceived, correct instinct or gut feeling as to whether the truth is or is not being told.

- (5) A finding of lack of credibility must be based on correct facts, untainted by conjecture or speculation and the reasons drawn from such facts must be cogent and bear a legitimate connection to the adverse finding.*
- (6) The reasons must relate to the substantive basis of the claim made and not to minor matters or to facts which are merely incidental in the account given.*
- (7) A mistake as to one or even more facts will not necessarily vitiate a conclusion as to lack of credibility provided the conclusion is tenably sustained by other correct facts. Nevertheless, an adverse finding based on a single fact will not necessarily justify a denial of credibility generally to the claim.*
- (8) When subjected to judicial review, a decision on credibility must be read as a whole and the Court should be wary of attempts to deconstruct an overall conclusion by subjecting its individual parts to isolated examination in disregard of the cumulative impression made upon the decision-maker especially where the conclusion takes particular account of the demeanour and reaction of an applicant when testifying in person.*
- (9) Where an adverse finding involves discounting or rejecting documentary evidence or information relied upon in support of a claim and which is prima facie relevant to a fact or event pertinent to a material aspect of the credibility issue, the reasons for that rejection should be stated.*
- (10) Nevertheless, there is no general obligation in all cases to refer in a decision on credibility to every item of evidence and to every argument advanced, provided the reasons stated enable the applicant as addressee, and the Court in exercise of its judicial review function, to understand the substantive basis for the conclusion on credibility and the process of analysis or evaluation by which it has been reached.’’*

29. In summary, the principles identified in *I.R.* emphasise that I should not be concerned with substituting my own view on credibility for that of the primary decision-maker.

30. Rather, I am required to determine whether the process by which the credibility assessment was reached (*i.e.*, the manner of the decision) was lawful, fair and in accordance with the requirements of the 2015 Act and the consequences which the tribunal member's decision not to direct an oral hearing and to proceed on a papers-only basis, had on the subsequent assessment carried out.

Decision dated 9th June 2024

31. The IPAT decision is dated 9th June 2024 and was communicated by letter dated 5th July 2024.

32. The decision sequentially addresses the following matters:

- (1) Introduction and case history from paras [1.1] to [1.27] which refer to and apply relevant caselaw. This initial section of the decision set out the tribunal member's determination not to have an oral hearing and to assess the application on a papers-only basis;
- (2) an outline of the Applicant's claim from paras [2.1] to [2.3];
- (3) the issue of nationality/statelessness at para. [3.1];
- (4) the assessment of facts and circumstances from paras [4.1] to [4.8];
- (5) an analysis of a well-founded fear at para. [5.1];
- (6) the conclusion on qualification for refugee status at para. [6.1];
- (7) an analysis of serious harm from paras [7.1] to [7.3];

(8) the tribunal member's conclusion on qualification for subsidiary protection and his overall conclusion at para. [8].

33. As stated, the structure of the decision of the tribunal member dated 9th June 2024 addressed, in the first instance, the Applicant's request for an oral hearing at paras [1.1] to [1.27] and directed, for the reasons referred to in those paragraphs, not to hold an oral hearing and to proceed on a papers-only basis. Having done so, the tribunal member then went on to address the Applicant's substantive claim for international protection, including the assessment of credibility. The starting point for my consideration of the Applicant's challenge is, therefore, the initial determination not to have an oral hearing and to proceed on a 'papers-only' basis.

34. It is that matter which I now address.

Papers-only appeal

35. The Applicant contends that, in the circumstances of his case, the IPAT erred in making adverse credibility findings without putting matters to him first in an oral hearing. It is submitted that in failing to conduct an oral hearing and in deeming s. 43 of the 2015 Act to be satisfied, the decision that an oral hearing was not required in the interests of justice was irrational, unfair and unlawful.

36. On behalf of the Applicant, much emphasis was placed on the letter dated 12th October 2023 from the Applicant's solicitor, Brian Trayers Solicitor, to the IPAT.

37. This letter stated as follows:

"Dear Sirs,

We refer to the above named and to yours of the 2nd October 2023 with enclosures and request an oral hearing in respect of [his] appeal. In particular, in circumstances where the IPO at first instance made a number of findings to the effect that the Applicant's account was vague or lacking in detail, but without suggestion of what the detail missing may be. The Applicant requires an oral hearing to address the findings made against him, including adverse credibility findings, which they were not on notice of. The Applicant also requests an oral hearing in order to give evidence under oath in support of their claim.

We would request that a decision regarding an oral hearing be made and provided to our offices, before a decision as to the application issues in order that we may take instructions and, if necessary, provide further submissions.

Please find enclosed completed notice of appeal against the recommendation under Section 39(3)(c) with grounds of appeal attached.

Please note that this appeal is submitted without prejudice to any challenge by way of judicial review to the decisions of the IPO.

Yours faithfully

BRIAN TRAYERS

SOLICITOR"

(emphasis and underlining in the original letter).

38. It was submitted on behalf of the Applicant that the reference in this letter to “[i]n particular, in circumstances where the IPO at first instance made a number of findings to the effect that the Applicant's account was vague or lacking in detail, but without suggestion of what the detail missing may be. The Applicant requires an oral hearing to address the findings made against him, including adverse credibility findings, which they were not on notice of”

represented the first basis upon which the request for an oral hearing was made; this was later characterised as the “detail” ground.

39. The second basis, later characterised as the “oath” ground, was the reference in the above letter to “[t]he Applicant also requests an oral hearing in order to give evidence under oath in support of their claim.”

40. At para. 17 of the Applicant’s Statement of Grounds dated 2nd August 2024, the following is stated:

“The Respondent erred in failing to conduct an oral hearing and in deeming section 43 to be satisfied and applicable. Insofar as the Applicant’s credibility could be impugned without matters being put to them, the decision that an oral hearing was not required in the interest of justice was irrational, unfair and unlawful.”

41. Reference is made *inter alia* at para. 18 of the Applicant’s Statement of Grounds to the IPAT’s findings in relation to the medical report and, in particular, question 33 in the s. 35 interview as *not* providing a basis for an adverse credibility finding. Reference is also made to Country of Origin Information (“COI”) and Georgian police practices and procedures.

42. At para. 20 of the Applicant’s Statement of Grounds dated 2nd August 2024, the following is stated:

“The Respondent in error of law, and contrary to s.28 [of the 2015 Act], failed to have regard or adequate regard to submissions made by the Applicant’s legal representatives in relation to seeking an oral hearing and the interests of justice in that regard. Inter alia, in failing to consider the submissions to the effect that “The Applicant requested an oral

hearing in order to give evidence under oath in support of their claim” and where the cover letter of the Applicants solicitors further states “In particular, in circumstances where the IPO at first instance made a number of findings to the effect that the Applicant’s account was vague or lacking in detail, but without suggestion of what the detail missing may be. The Applicant requires an oral hearing to address the findings made against him, including adverse credibility findings, which they were not on notice of.” The First Respondent at paragraph [4.5] concludes (as the IPO did) that the Applicant was vague and lacking in detail adopting the finding of the IPO without addressing the complaint made in the notice of appeal, or without clarifying what was vague or lacking in detail. Further in the alternative, these findings of the Respondent are made in error of law and are lacking in clarity.”

43. In summary, the Applicant argues that his request for an oral hearing was based, first, on grounds of “detail” (*i.e.*, it was contended that because the IPO’s decision on credibility was itself insufficiently clear, an oral hearing was warranted) and grounds in relation to “oath” (*i.e.*, the Applicant wished to address these matters under oath at an oral hearing).
44. During the hearing, the Applicant also emphasised ‘Ground 3’ of the Grounds of Appeal in the appeal from the initial decision of the IPO. The Grounds of Appeal were submitted as part of the Notice of Appeal under cover of the letter from Mr. Trayers Solicitor dated 12th October 2023.
45. This ground of appeal (Ground 3) *inter alia* contended that the IPO had erred in law in failing to perform its duty of investigation and inquiry under the shared burden of proof and referred to paras 190, 196, 199 and 200 of the UNHCR Handbook. It was further stated that the IPO

had assessed the credibility of the Applicant’s account of events without the benefit of specific up-to-date Country reports and that the IPO failed to comprehensively investigate the core of the Applicant’s claim in the context of specific up-to-date country information. It further alleged as follows: that it was “*evident from COI that supporters of parties campaigning against the Georgian Dream Party face threats of violence and harassment*” (and referred to an extract from a Freedom House report of 2023); that “[v]oter intimidation has been a long-standing, ingrained part of the Georgian Dream Parties tactics around elections” (and referred to an extract from a Freedom House report of 2019); that alleged “[h]igh-level corruption remains a huge issue in Georgia, with accusations spreading through all areas within the judicial system” (referencing “<https://transparency.ge/en/blog/alleged-cases-high-level-corruption-periodically-updated-list>”) and further alleged that “[t]his corruption has been particularly visible within the police force” (and referred to extracts from Amnesty International, 2019; EurasiaNet, 2019 and Transparency International Georgia, 2020 (referencing a further report “*Farid Osmanov, ‘Police Reform in Georgia’, Blavatnik School of Government, University of Oxford (2020)*”)).

46. Ground 3 further contended that “[t]he Applicant submitted at his interview that he attempted to report the incident to the police but that they would not listen to him. The idea that the police may overlook injustices carried out by supporters of the Georgian Dream Party is consistent with COI and should have assisted in establishing the Applicant’s credibility”.

The 2015 Act

47. A number of the provisions of the 2015 Act are relevant to the facts of the Applicant’s case when addressing the question of whether or not to hold an oral hearing.

48. Section 39(3)(c) of the 2015 Act refers to “[t]he recommendation of the international protection officer in relation to the application shall be based on the examination of the application and shall be that ... the applicant should be given neither a refugee declaration nor a subsidiary protection declaration.”
49. Section 39(4)(e) of the 2015 Act refers to “[w]here a report under this section includes a recommendation of the international protection officer referred to in [s.39(3)(c)], the report may also include one or more of the following findings ... that the applicant’s country of origin is a safe country of origin.”
50. Georgia is a designated safe country and s. 43(b) of the 2015 Act *inter alia* provides for an accelerated appeal procedure in certain cases as follows: “[w]here the report under s.39 includes any of the findings referred to in s.39(4), the following modifications shall apply in relation to an appeal under [s. 41] by the applicant concerned...notwithstanding the provisions of s.42, the [IPAT], unless it considers it is not in the interests of justice to do so, shall make its decision in relation to the appeal without holding an oral hearing”.
51. Therefore, having regard to s. 39(4)(e) of the 2015 Act, where, for example, the IPO makes a finding pursuant to s. 39(4)(e) of the 2015 Act that an applicant’s country of origin is a safe country of origin, which was the case here, s. 43(b) of the 2015 Act provides that an IPAT shall make its decision in relation to an appeal without holding an oral hearing unless it considers it is not in the interests of justice to do so, i.e., the default position is not to hold an oral hearing unless the interests of justice require otherwise.

52. In *S.K. v IPAT and Ors* [2021] IEHC 781, the High Court (Ferriter J.), albeit against a different factual background, observed at para. 16 of his judgment that where Georgia had been designated as a safe country of origin, the accelerated appeals procedure prescribed in s. 43 of the 2015 Act applied.
53. In *G.A. & N.G. v IPAT and Ors* [2022] IEHC 440 (“*G.A. & N.G.*”), the applicants, a husband and wife, were both Georgian nationals and had failed in their claims for international protection. The High Court (Heslin J.) observed at para. 2 of his judgment that “[i]n circumstances where Georgia has been designated as a safe country of origin, the ‘default’ position, having regard to s. 43 of ... the 2015 Act ... is that IPAT shall decide an appeal without holding an oral hearing, unless it considers that it is not in the interests of justice to do so. The request for an oral hearing was refused”.
54. At para. 138 of his judgment in *G.A. & N.G.*, Heslin J. found that the applicants did have an opportunity to be seen and heard “face to face” by virtue of “the interview conducted by the relevant international protection officer which gave rise to the report pursuant to s. 35(12) of the 2015 Act.”
55. Further, at para. 144 of his judgment in *G.A. & N.G.*, Heslin J. elaborated on this point, stating that “[n]ot only has there been a face-to-face interview in the present case, which took place after the submission by the applicants of the relevant Questionnaire, the procedures laid down in the 2015 Act which have, without doubt, been complied with in the present case, are in my view sufficiently flexible in the context of what was a *de novo* hearing, wherein the applicants had every reasonable opportunity to adduce any and all evidence which they wished to put

before IPAT. That this was to be done in written form takes nothing away from how meaningful the opportunity was.”

Assessment & decision on the first issue

56. The default position under s. 43(b) of the 2015 Act, therefore, is that in certain circumstances the assessment should be ‘papers-based’ without holding an oral hearing unless the tribunal member considers it is not in the interests of justice to do so.

57. This is the first sequential issue which I am required to address.

58. In the exercise of this discretionary power under s. 43(b) of the 2015 Act when assessing where the interests of justice lie, it is a fundamental requirement that a tribunal member must consider an applicant’s request for an oral hearing fairly, reasonably and in accordance with the statutory purposes: the corollary of ‘the presumption of constitutionality’ is that “*proceedings, procedures, discretions and adjudications which are permitted, provided for, or prescribed by an Act of the Oireachtas – [here s. 43(b) of the 2015 Act] – are to be conducted*” in a manner which conforms to the constitutional guarantee of basic fairness of procedures: see Walsh J. in *East Donegal Co-Operative Ltd. v Attorney General* [1970] I.R. 317 at p. 341.

59. Further, at para. 59 of his judgment in *K.S. v The IPAT and Ors* [2026] IEHC 13, the High Court (Ferriter J.), having reviewed the applicable authorities, observed *inter alia* that “*there is no hard and fast rule and each case will fall to be assessed on its own facts. There may be a spectrum of cases between “pure” demeanour-type rejection of personal credibility to cases where an objective assessment of the case advanced by an applicant on its own terms demonstrates that the case cannot stand up.*”

60. It is, therefore, important to address the facts and circumstances which arise in an individual case.

61. As stated, it is contended by the Applicant at Ground 20 of the Applicant's Statement of Grounds, that the tribunal member in his decision dated 9th June 2024 did not engage with the grounds seeking an oral hearing in relation to "detail" and "oath" as set out on behalf the Applicant in the letter of 12th October and enclosure.

62. It is further argued that whilst the tribunal member's decision dated 9th June 2024 may be longer than the example of the IPAT decision which was at issue in the *BB* case, the Applicant submits that this decision was not 'particular' or 'referable' to the Applicant and his particular circumstances, but was in fact a reiteration or replication of two other decisions (22nd April 2024 and 24th March 2025) made by the same tribunal member.

63. As a general observation, it is not surprising that the decisions of tribunal members will follow a common template in terms of the structure of a decision and in relation to the identification of the issues which they are required to address in each case and having regard to the facts and circumstances of each case.

64. Further, again generally, it is not surprising that references to various decisions of the Superior Courts, and particular extracts from those decisions, will be similar or the same in decisions of tribunal members.

65. However, the question which arises in this case is (i) whether the Applicant's argument that because the IPO's finding of adverse credibility was itself insufficiently clear, an oral hearing was warranted (the 'detail' ground); and (ii) that the Applicant wished to address these matters under oath (the 'oath' ground) at a convened oral hearing, was (a) required to be considered by the tribunal member and (b), if so required, whether the tribunal member's assessment in the decision dated 9th June 2024 engaged with these matters and did so in a manner which complied with caselaw, including the recent decision of Phelan J. in *BB*.

66. In summary, in *BB*, Phelan J. held, on the facts of that case, there was, first, a failure by the IPAT to explain why the appeal in that case could be determined on a 'papers-only' basis and, second, there was a lack of engagement by the IPAT with the applicant's proposal that he should have an oral hearing so that he could call his wife as a witness for the purposes of his appeal and, specifically, to back up his statement of being threatened.

67. I do not consider, for the reasons set out in this judgment – having regard *inter alia* to the facts and circumstances of this case, to the decisions of the same tribunal member dated 22nd April 2024, 24th March 2025 and 9th June 2024 and the failure of the tribunal member from, for example, para. [1.17] onwards in the decision dated 9th June 2024, to engage with the precise facts and circumstances of the Applicant's case, and the request made on his behalf for an oral hearing – that there is any merit in the argument made on behalf of the Respondents that the two 'grounds' raised in the letter of 12th October 2023 had not been included in the Applicant's Notice of Appeal and, therefore, did not have to be considered by the tribunal member. Further, Part 7 of the Notice of Appeal document (which was enclosed in the letter of 12th October 2023) provides for paper-based appeals and *inter alia* states at para. 7.1 that "*You may set out below*

any reasons why you are of the view that it is in the interests of justice that an oral hearing be held in your case.”

68. In addition, I have, for the following reasons, determined that the decision of the tribunal member made on 9th June 2024 not to direct an oral hearing and to proceed on a ‘papers-only’ basis, did not engage with the Applicant’s request for an oral hearing and does not, therefore, satisfy the requirements outlined by Phelan J. in *BB*. As mentioned earlier, I propose, therefore, to quash the IPAT’s decision dated 9th June 2024 and remit the matter to be reconsidered by a differently constituted tribunal member.

69. Similarly, notwithstanding the initial oral submissions made on behalf of the Respondents at the hearing on the first day, the Applicant, in para. 20 of his Statement of Grounds (set out above), has set out the legal grounds which require to be addressed and has done so with the requisite particularity required under O. 84 of the Rules of the Superior Courts 1986, as amended (“the RSC 1986”).

70. Save for any late applications to amend, the principle that the parameters of a judicial review application are informed by the Order granting leave, the Statement of Grounds and the Statement of Opposition and the respective grounding affidavits – see *A.P. v DPP* [2011] IESC 2; [2011] 1 I.R. 729 – applies as much to a respondent as it does to an applicant.

71. Here the Statement of Opposition on behalf of the Respondents dated 3rd June 2025 stated at para. 7 that “[i]t is denied that the first Respondent erred in law and acted contrary to section 28 of the International Protection Act 2015 with regard to the submissions in relation to

seeking an oral hearing as pleaded in paragraph 20 of the Statement of Grounds. This was expressly considered in the decision” (underlining added in this judgment).

72. I do not consider, however, that this ground of opposition is made out having regard to the assessment at paras [1.1] to [1.27] in the decision of the tribunal member dated 9th June 2024 (which are addressed presently).

73. As referred to earlier in this judgment, the legal standard to be applied was concisely captured at para. 61 of the judgment of Phelan J. in *BB* (and which I gratefully adopt).

74. Here Phelan J. *inter alia* observed that “[t]he limited nature of the material provided by the applicant meant that the Tribunal was not required to issue a separate prior decision on the request for an oral hearing, nor was it required to invite further submissions before deciding the substantive appeal. Nonetheless, once the Tribunal addressed the request for an oral hearing in its final decision, it was required to demonstrate that it had considered whether, in the particular circumstances of the appeal, the interests of justice required departure from the statutory default position under s.43(b)”. It is this aspect of the correlative decision of the tribunal member dated 9th June 2024 which I consider to be in error.

75. At para. 67 of her judgment in *BB*, Phelan J. stated that “*whilst the statutory basis for the accelerated procedure was noted by the Tribunal and whilst the Tribunal referred to the factual background, the Practice Note and the existing jurisprudence, the Tribunal failed to specify why, in this particular case, it could “proceed to make a determination on the Appellant’s claims having regard to the claims made heretofore on the papers only.” It could be said that the Tribunal’s rationale may be implied from §13-§14 of the impugned decision but that is not*

sufficient in my view and any applicant, including the applicant in the present case, is entitled to cogent reasons, however brief, such that the rationale for the decision-making is clear, and such rationale should not have to be presumed or assumed by any applicant”.

76. In this case, the issue raised by the Applicant in para. 20 of his Statement of Grounds is properly enjoined and the Respondents’ position, as expressed at para. 7 of the Statement of Opposition, is that the issues raised by the Applicant, were expressly considered in the decision of 9th June 2024.

77. However, whilst the Applicant did not identify any witness other than himself, I consider, for the following reasons, that there has been a lack of engagement by the tribunal member in his decision dated 9th June 2024 with the request made on behalf of the Applicant for an oral hearing pursuant to the provisions of s. 43(b) of the 2015 Act.

78. As referred to earlier, in the decision of 9th June 2024 the tribunal member addressed the question of an oral hearing at paras [1.1] to [1.27].

79. As with his decisions dated 22nd April 2024 and 24th March 2025 (copies of which were furnished at the hearing of this judicial review application), the tribunal member in the decision of 9th June 2024 referred to a number of authorities in the same terms as in his other decisions. These authorities included the following: *VZ v Minister for Justice* [2002] 2 I.R. 135; *SUN (South Africa) v RAC* [2012] IEHC 338; [2013] 2 I.R. 555; *VJ v Minister for Justice* [2019] IESC 75; *MOOS v RAC & Anor* [2008] IEHC 399; *AW v ORAC* [2013] IEHC 71; *MARA (Nigeria) (an Infant) v Minister for Justice and Equality* [2014] IESC 71; [2015] 1 I.R. 561; *SHI v IPAT* [2019] IEHC 269; *SK v IPAT* [2021] IEHC 781; *TB v IPAT* [2022] IEHC 275; *ZK*

v Minister for Justice [2023] IECA 254; *MA v RAT* [2015] IEHC 528; *FP v IPAT* [2022] IEHC 535; *CC v IPAT* [2023] IEHC 636; *GR & Ors v IPAT* [2023] IEHC 638; and *G.A. & N.G. v IPAT and Ors* [2022] IEHC 440.

80. The fact that a tribunal member adopted the same (in some instances *verbatim*) or similar analysis in relation to legal authorities in three different appeal decisions is not, of itself, dispositive of the issue raised by the Applicant; rather, the relevant question relates to how the tribunal member applied the rationale in the relevant jurisprudence to the facts and circumstances of the Applicant's case, *i.e.*, how did he engage with the Applicant's particular circumstances in addressing this first question of whether or not to have an oral hearing or to proceed on a 'papers-only' basis.

81. As stated, particular emphasis was placed on the covering letter from the Applicant's solicitor dated 12th October 2023 and the references to seeking an oral hearing in "*circumstances where the IPO at first instance made a number of findings to the effect that the Applicant's account was vague or lacking in detail, but without suggestion of what the detail missing may be. The Applicant requires an oral hearing to address the findings made against him, including adverse credibility findings, which they were not on notice of*" and that "[t]he Applicant also requests an oral hearing in order to give evidence under oath in support of their claim".

82. At para. [1.4] of his decision dated 9th June 2024, the tribunal member stated that the Applicant "was given an opportunity to set out his reasons for seeking an oral hearing at part [7] of the Notice of Appeal. No reasons were submitted by the [Applicant] other than a bald assertion that the issue of credibility warrants an oral hearing in circumstances where according to the Applicant in Ground 11 of his submissions attached to the Notice of Appeal he (the Applicant)

will at their oral hearing give [viva] voce evidence to clear up each of the credibility issues or alleged inconsistencies.” The [Applicant] does so without engaging in specifics or stating what [viva] voce evidence he intends to submit to displace any adverse credibility findings.” Whilst a similar approach is adopted at para. [1.4] in the appeal decisions of the tribunal member dated 22nd April 2024 and 24th March 2025, they are sufficiently different to reflect the different facts in those cases.

83. At para. [1.5] of the decision dated 9th June 2024, the tribunal member stated, by reference to a number of the authorities cited earlier, that these authorities did not suggest that all issues of credibility required an oral hearing. After citing some of this caselaw, the tribunal member *inter alia* stated at paras [1.14] and [1.15] that the Supreme Court had made it clear that not all credibility issues would require an oral hearing. It was a matter that depended on the case being made.

84. Paragraphs [1.5] to [1.15], which largely address relevant caselaw, are in the same terms in each of the decisions of the tribunal member dated 22nd April 2024 and 24th March 2025 and the decision in this case of 9th June 2024. They appear, however, to reflect an accurate summary of the applicable jurisprudence and the fact that these particular paragraphs are the same or similar is not a basis for granting the reliefs claimed by the Applicant.

85. The tribunal member’s stated approach in addressing such an appeal was also stated in the same terms at paras [1.15] and [1.16] in each of the decisions dated 22nd April 2024 and 24th March 2025 and also in the decision in this case of 9th June 2024.

86. In this regard, the tribunal member found that the 2015 Act set out “*as a default, that accelerated appeals proceed without an oral hearing, and that it is only if the Tribunal is satisfied that it is not in the interests of justice to proceed on the papers only that this position is altered and an oral hearing held*” (para. [1.15]); and “[f]rom this starting point, the Tribunal considers that there are two distinct aspects of an appeal to be looked at; first, what the [Applicant] has advanced or had advanced on his behalf and whether that satisfied the Tribunal that it is not in the interests of justice to proceed on the papers only, and second whether the Tribunal, having independently reviewed the papers, considers that it is not in the interests of justice to proceed on the papers only.” (para. [1.16]).

87. Again, up to this point the fact that the tribunal member’s approach is set out in the same terms in each of the decisions dated 22nd April 2024 and 24th March 2025 and 9th June 2024 would not entitle the Applicant to the reliefs sought.

88. However, the purported application to the facts in each of the cases commences at para 1.17 of the respective decisions.

89. In the three decisions dated 22nd April 2024, 24th March 2025 and 9th June 2024, in terms of this first issue, the tribunal member expressly stated that there were no new elements in each of the applicants’ cases which required to be heard and that no issues had been raised about the conduct of the interview or any misinterpretation of any particular fact which required clarification and the issues were capable of being advanced on the papers. (The decision dated 25th March 2025 was somewhat contextualized in that it contained a reference to confusion by the applicant in that case on the date of his interview which issue was not present in the decision dated 22nd April 2024 or the decision in this application for judicial review dated 9th June 2024).

90. Further, all three decisions then referred to the following similar finding or cognate words at para. [1.17] to the effect that “[t]he *credibility findings in this case are capable of objective assessment on the papers and are not based on subjective factors arising from the oral hearing such as demeanour type findings. He has had an opportunity to set out any additional information or clarifications in his notice of appeal but has declined to do so.*”

91. Save for that aspect of the decision dated 25th March 2025 as just set out, there does not appear at this juncture to be any attempt by the tribunal member to assess the precise facts and circumstances of each of the three appeals decisions.

92. I am only concerned with the decision dated 9th June 2024.

93. In the context of that decision, the tribunal member makes no contextual reference to the grounds argued for by the Applicant for an oral hearing, *i.e.*, in “*circumstances where the IPO at first instance made a number of findings to the effect that the Applicant’s account was vague or lacking in detail, but without suggestion of what the detail missing may be. The Applicant requires an oral hearing to address the findings made against him, including adverse credibility findings, which they were not on notice of*” or that “[t]he Applicant also requests an oral hearing in order to give evidence under oath in support of their claim”.

94. At para. [1.18] of each of the decisions dated 22nd April 2024, 24th March 2025 and 9th June 2024, the tribunal member refers to an extract from section 4.5.1 of the IPAT’s Administrative Practice Note of May 2023 which *inter alia* stated that there was no obligation on the IPAT to enter into correspondence in relation to the issue of an oral hearing and there was no obligation

to make a discrete finding in relation to same. All submissions were to be made at the time of the lodging of the Notice of Appeal.

95. Paragraphs [1.19] in each of the decisions dated 22nd April 2024, 24th March 2025 and 9th June 2024 refer to legal authorities in the same terms.

96. Each of the decisions at para. [1.20] refer to the respective applicants being legally represented, the tribunal member noted that no new evidence was sought to be introduced at Part 6B of the Notices of Appeal in each of the three cases and the decisions dated 22nd April 2024 and 24th March 2025 make a different reference in each case to the Part 5 grounds of appeal.

97. The findings and references at paras [1.21] and [1.22] in the decisions dated 22nd April 2024, 24th March 2025 and 9th June 2024 are the same and each of the decisions arrive at the same conclusion in the same terms at para. [1.23], as follows: *“The fact that the [Applicant] has been given this opportunity to address these points and declining to do so in anything other than the generic statement that he wants to address the credibility findings in an oral hearing does not mean that he hasn’t had the opportunity to set out his claim on appeal and it does not convince the Tribunal that this is the particular type of case where the interests of justice require an oral hearing”*.

98. In the decisions dated 22nd April 2024, 24th March 2025 and 9th June 2024, the tribunal member addressed the second of the two central considerations at paras [1.24] to [1.26] in the same terms as follows:

“[1.24] Separately, the Tribunal has an independent duty to review the claim and assess whether there are any independent reasons which require, in the interests of justice,

that an oral hearing he held. The Tribunal considers that the [Applicant] was given an adequate opportunity to set out his claim in his IP005 form, His Questionnaire and his Interview, that he was assisted by interpreters during this process and that there is no procedural unfairness about any of this.

[1.25] The Tribunal also does not consider that there are areas of his claim that fairness requires be probed further or that he has not been given the opportunity to adequately address. Having independently reviewed the papers, the Tribunal considers that if an oral hearing was granted, it would be for no purpose other than for the [Applicant] to simply restate his claim. The Tribunal does not consider that there are issues that ought to be put to him for further clarity, nor indeed that there is anything ambiguous in relation to his claim that needs to be clarified for the Tribunal to carry out its functions.

[1.26] For the same reasons as set out above, the Tribunal does not consider that depriving him of the opportunity to restate that which has already been said is contrary to the interests of justice. The Tribunal has borne this in mind throughout its assessment of the case and has always borne in mind the possibility of directing an oral hearing if such became necessary on any particular point. No such point arose during the Tribunal's assessment of the Appeal."

99. The IPAT then concluded at para. [1.27] in the same terms in the decisions dated 22nd April 2024, 24th March 2025 and 9th June 2024, as follows: “[1.27] *Having regard to all of the foregoing, the Tribunal does not direct an oral hearing and will proceed on the papers.*”

100. When the decisions of the tribunal member dated 22nd April 2024, 24th March 2025 and 9th June 2024 are placed against each other and compared, there is no substantive difference in the

language used in the respective assessments. Not only are the same (or similar) words employed but the numbering in the paragraphs from paras [1.1] to [1.27] are virtually identical.

101. Whilst I am only concerned in this case with the decision of the tribunal member dated 9th June 2024, it can be observed that the assessment as set out in the paragraphs outlined above may be framed in such a broad manner as to be generally applicable to the circumstances of the three applicants involved, in the sense of being common to each of their situations. As mentioned earlier, the fact that references are made to caselaw and that the summary of those decisions is, for example, the same or similar in each of the three decisions, seems to me to be unremarkable, in and of itself, and not a basis for granting any relief.
102. However, when it comes to the application of the established legal principles to the particular circumstances of the Applicant there is a lacuna in the assessment.
103. An individualised or personal assessment is absent – in terms of being ‘particular’ or ‘referable’ to the Applicant - from the first issue as to whether or not to hold an oral hearing or proceed on a ‘papers-only’ basis. There is, therefore, an absence of a basis which would subtend the statement at para. 7 of the Statement of Opposition that “[i]t is denied that the first Respondent erred in law and acted contrary to section 28 of the International Protection Act 2015 with regard to the submissions in relation to seeking an oral hearing as pleaded in paragraph 20 of the Statement of Grounds. This was expressly considered in the decision.” That ground of opposition is not made out.
104. In addition, there is no reference from paras [1.1] to [1.27] of the decision dated 9th June 2024 to the particular claims made on behalf of the Applicant in the letter of 12th October 2023 that

in circumstances where the IPO initially made adverse credibility findings to the effect that the Applicant's account was vague or insufficiently detailed but did not set out or notify the Applicant as to what the missing detail may be, an oral hearing was required to address this (the 'detail' claim) and that this would also facilitate the giving of evidence under oath by the Applicant (the 'oath' claim).

105. I do not consider, notwithstanding the assertion in para. 7 of the Respondents' Statement of Opposition, that the tribunal member's decision dated 9th June 2024 did engage with the grounds seeking an oral hearing which were raised by and on behalf of the Applicant, including in the letters and documentation submitted on 12th October 2023.

106. Accordingly, for the reasons set out above, I consider that there was a lack of engagement by the tribunal member with the Applicant's posited grounds for the holding of an oral hearing rather than a 'papers-only' assessment. The subsequent assessment which was carried out by the tribunal member at paras [2.1] to [8.1] was predicated on this first finding. Therefore, I shall extend time for the bringing of this application, quash the entire of the decision of 9th June 2024 and direct that the matter be remitted for reconsideration by a new tribunal member.

Remaining Grounds

107. Given my decision and proposed order, it is not necessary for the purpose of this judgment to determine the grounds which were advanced first in time by the Applicant.

108. The following discussion, therefore, is strictly *obiter* and, given my findings on the first issue, is necessarily caveated and conditional upon the hypothetical assumption that the initial

decision not to direct an oral hearing and to proceed by way of papers only was *not* incorrect or unlawful.

Adverse credibility findings

109. Much of the Applicant's arguments under this ground of review centred on the "*Assessment of Facts and Circumstances*" which was the sub-heading at section 4, paras [4.1] to [4.8] of the decision of the tribunal member dated 9th June 2024.
110. It is unsurprising – given this sub-heading and the assessment of facts and circumstances as they applied to the Applicant – that this part of the tribunal member's decision did not contain the same error in the manner of the earlier finding not to hold an oral hearing and proceed on a papers-only basis.
111. Under this ground of review, it was contended that the tribunal member had erred in finding that the Applicant had submitted insufficient evidence that he was at risk if returned to Georgia because of his claim that he had been beaten up by Georgian Dream Party supporters whilst erecting posters for the UNM, by failing, for example, to produce emails, texts or communications to place him as a party supporter or worker.
112. In a somewhat nuanced distinction, the Applicant argues that his circumstances can be distinguished from other cases and that, for example, his was not a case where he had documentation in his possession and did not furnish those documents when requested to do so. He pointed to the s. 35 interview and instances 'Question 33' which asked whether he could submit the medical report of when he was hospitalised within 10 days and his response was that he did not have it but that if he could get it, he would.

113. At section 4 of the decision dated 9th June 2024, the tribunal member set out his assessment of ‘the facts and circumstances’ which applied to the Applicant and this is provided for in s. 28 of the 2015 Act (s. 28 of the 2015 Act is headed ‘*Assessment of facts and circumstances*’).

114. At para. [4.1] of his decision, the tribunal member refers to the then applicable version of s. 28(7) of the 2015 Act, as follows:

“[4.1] Section 28(7) of the International Protection Act, 2015 provides as follows:

“(7) Where aspects of the applicant’s statements are not supported by documentary or other evidence, those aspects shall not need confirmation where the international protection officer or, as the case may be, the Tribunal, is satisfied that—

(a) the applicant has made a genuine effort to substantiate his or her application,

(b) all relevant elements at the applicant’s disposal have been submitted and a satisfactory explanation regarding any lack of other relevant elements has been given,

(c) the applicant’s statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant’s case,

(d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so, and

(e) the general credibility of the applicant has been established.””

115. As currently formulated (at the time of the delivery of this judgment), s. 28(7) of the 2015 Act provides as follows:

“Where aspects of the applicant’s statements are not supported by documentary or other evidence, those aspects shall not need confirmation where the international protection officer or, as the case may be, the Tribunal, is satisfied that

(a) the applicant has made a genuine effort to substantiate his or her application,

(b) all relevant elements at the applicant’s disposal have been submitted and a satisfactory explanation regarding any lack of other relevant elements has been given,

(c) the applicant’s statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant’s case,

(d) [deleted]

(e) the general credibility of the applicant has been established taking into account the time at which the applicant applied for international protection.”

116. Section 28(7)(d) of the 2015 Act – (“(d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so”) – was deleted by s. 293(b) of the International Protection Act 2026 (“the 2026 Act”) on 12th June 2026.

117. The insertion of the words “*taking into account the time at which the applicant applied for international protection*” to the initial version of s. 28(7)(e) of the 2015 Act was effected by s. 293(c) of the 2026 Act on 12th June 2026.

118. The tribunal member referred to the deficiency in the Applicant’s evidence *inter alia* at paras [4.2] and [4.3] of the decision dated 9th June 2024 in the following terms:

“[4.2] Thus, the 2015 Act places considerable emphasis on documentary and supporting evidence in relation to a claim. The [Applicant] has submitted very little evidence in support of his claim especially in relation to the central plank of his case which is that he is at risk if returned to Georgia because he was beaten up by Dream [P]arty supporters while putting up posters for the National Movement party. This was a one-off situation for the [Applicant] who did not put up posters again for the party. The [Applicant] failed to provide any evidence of the alleged attack or any contemporaneous medical supporting documentation. The Tribunal finds it not credible that the [Applicant] would not have or have sought to get this medical evidence to support his claim. At interview at question 33 he stated he does not have it but can get it — no further medical evidence has been adduced in this respect. The Tribunal notes the [Applicant] did not show the medical report to the Georgian police either. This evidential [deficiency] is compounded by the failure to satisfactorily answer questions relating to the paucity of the [Applicant’s] evidence in this regard. In the Tribunal’s view it undermines the central claim of the [Applicant] regarding the credibility of his claim for asylum.

[4.3] Aside from his failure to display a rudimentary knowledge of the party the [Applicant] has produced no evidence in respect of his work putting up posters such as emails, texts or any communications to place him as a party supporter and worker. [I]t is surprising that there is no evidence of these threats being made. The [Applicant] failed in this regard in the Tribunal’s view by [giving] vague, non-specific and undetailed answers in relation to the alleged work for the party.”

119. The tribunal member determined that the Applicant had failed to provide any evidence of the alleged attack or any contemporaneous supporting medical reports. He found that it was not

credible that the Applicant would not have or would not have sought to obtain such supporting medical evidence in the circumstances.

120. On behalf of the Applicant, it was submitted that this was an incorrect characterisation of what the Applicant had said in his s. 35 interview where the question and answer at Q. 33 was as follows:

“Q.33. Can you please submit the medical report in 10 days?”

A. I don’t have it. If I can get it, I will.”

121. At paras 5 and 6 of the Applicant’s Affidavit sworn on 2nd August 2024, the Applicant avers as follows:

“(5) At the interview I was asked “can you please submit the medical report in 10 days” to which I replied “I don’t have it. If I can get it, I will.”

(6) After the interview I was unable to get a medical report from the hospital.”

122. It was submitted on behalf of the Respondents that the Applicant had still not furnished any details of his attempts to obtain a medical report which had been the position before the tribunal member and remained the position at the hearing of this judicial review challenge as per the Applicant’s Affidavit.

123. At para. [4.4] of the decision dated 9th June 2024, the tribunal member confirmed his approach as follows: notwithstanding the significance that the statutory process placed on documentary support for a claim of international protection, he – the tribunal member – was required to assess the Applicant’s claim by reference to s. 28(7) of the 2015 Act and with a view to

assessing whether the Applicant's claim could nevertheless be accepted as credible. The tribunal member described this as being referred to as the "lifeboat provision" in the authorities.

124. The tribunal member then further addressed these matters at paras [4.5] to [4.8] of his decision dated 9th June 2024.
125. Therein, the tribunal member described the Applicant's claim overall as "*very vague and lacking in detail*". The tribunal member found it difficult to believe that the attack occurred in the manner and circumstances described based on the information furnished by the Applicant and this, together with the insufficient detail and evidence relating to the claim, undermined the Applicant's credibility. He stated that the Applicant's claim that he was in danger was unsupported and predicated on bald assertions which did not stand up to the scrutiny of interview (para. [4.5] of the decision dated 9th June 2024).
126. The tribunal member stated that the Applicant's stated attempt to engage with the Georgian police and the suggestion that they did nothing to assist him was not supported by any reliable evidence adduced by the Applicant. The tribunal member stated that the County of Origin Information ("COI") indicated that Georgia had a system of checks and balances where the Applicant could engage with higher authorities. The tribunal member further determined at para. [4.6] that "[t]his further erodes the credibility of the [Applicant] who even if it were to be accepted that the [Applicant] was subjected to some verbal threats in the aftermath of the election and even the potential physical one off assault, he has not satisfied the Tribunal that any such acts in any way qualifies as a reason to flee Georgia in circumstances where it is a safe country, with a legitimate police force and a number of cities and town[s] where relocation would be an option. Indeed at question 53 of [the] interview when asked why he did not relocate

internally the [Applicant] stated “Yes, why not”. Options such as Batumi and Tbilisi were put [to] the [Applicant] as possible locations. In the Tribunal’s view it would pose a negligible risk to the [Applicant] to relocate to Tbilisi with its population of 1.2 million.”

127. The tribunal member stated at para. [4.7] of his decision dated 9th June 2024 that he was of the view that Georgian COI did not support the Applicant’s case in the manner suggested in the submissions. He added that the Tribunal had *“conducted its own analysis of the question of relocation and is not satisfied based on the evidence submitted by the [Applicant] that if he relocated he would have to live a life of undue hardship and when compared with the alleged danger of remaining in the locality where he had been based. It seems completely reasonable that the [Applicant] would consider relocating internally in Georgia.”*

128. The tribunal member then summarised his position on credibility at para. [4.8] of his decision as follows:

“Having regard to the foregoing, the only aspect of the [Applicant’s] claim that is credible, on the balance of probabilities, is his Georgian nationality. There are no areas of genuine uncertainty in this case to which the benefit of the doubt might be applied. In that regard, the Tribunal wishes to make clear that just because the [Applicant] has presented his claim in the most generic, superficial and non-specific manner, unsupported by relevant contemporaneous documentary evidence this does not mean that he should be afforded the benefit of the doubt. The benefit of the doubt only arises where parts of a claim are established as credible, or the [Applicant] is generally credible, and there is a genuine uncertainty about other parts of the claim. That is not the case here.”

129. I consider that the tribunal member's determination on credibility, as set out above, comes within the category of authorities, reviewed by the High Court (Bolger J.) in *S v IPAT* [2025] IEHC 4 and in *H v IPAT* [2024] IEHC 598, where the question involved a lack of corroborative evidence which was necessarily a matter to be addressed by an applicant and his or her legal advisors rather than coming within those tranche of cases (sought to be relied upon by the Applicant here) where an IPAT (or tribunal member) had raised a particular matter or issue for the first time on appeal which had not been previously put to an applicant.
130. Similar issues were also addressed by the High Court (Heslin J.) in *G.A. & N.G.*, where again the relevant authorities were reviewed, including how s. 28(7) of the 2015 Act was to be interpreted.
131. In referring to the decision of the High Court (Ferriter J.) in *Morchiladze v IPAT and Ors* [2021] IEHC 732, Heslin J. stated as follows at paras 78 to 80 of his judgment in *G.A. & N.G.*:
- “(78) It is fair to say that there are a number of similarities insofar as the facts in Morchiladze and the present case are concerned. Just as in this case, the applicant in Morchiladze was a Georgian national who sought international protection and who claimed to be in fear of attack and serious harm from non-State actors. The applicant in Morchiladze also appealed an adverse decision by the IPO and, in refusing the appeal, [the] IPAT noted that the applicant had not furnished any documentation to vouch any aspect of a number of claims made including, inter alia, that he had established business ventures and that he had authority from the Georgian authorities to import vehicles.*
- (79) At para.16 of his judgment, Ferriter J. noted that matters in respect of which no documentation was provided were matters which went to the core contention made by*

the applicant in support of his application for protection. Although the core contention in the Morchiladze claim was that the applicant feared for his life because of threats made by creditors arising from his failed business ventures, the issues in the present case, in respect of which no documentation was provided, are no less central to the first named applicant's claim. Having quoted s. 28(7), Ferriter J. stated the following, at para. 26:

“26. This provision was described by counsel for the respondents as a ‘lifeboat provision’ for an applicant in circumstances where it permits the acceptance by the IPO or Tribunal of an applicant's statements not supported by documentary or other evidence if the various statutory conditions in s. 28(7) are satisfied, i.e. it provides for an exemption from the normal rule to the effect that statements of the applicant may not be accepted if they are not supported by documentary or other evidence.”

(80) Any fair and objective reading of the entire of the Tribunal's decision reveals that there was no mis-application of s. 28(7). What Ferriter J. said of the applicant in Morchiladze at para. 27 of his judgment can also be said of the first named applicant in the present proceedings, namely:

“27. At each relevant stage of the process (AIPQ, IPO section 35 interview, notice of appeal, appeal submission stage) opportunity was given to the applicant to provide documentation in support of his claims. The applicant had the benefit of legal advice at appeal stage. However, the applicant never at any stage in the process submitted any documentation to substantiate his claim, notwithstanding that it might be expected that core elements of his claim would be readily capable of documentary substantiation...”

132. In his review of the authorities in *G.A. & N.G.*, Heslin J. also referred to the decision of the High Court (David Keane J.) in *S.H.I. v IPAT (No. 2)* [2019] IEHC 269 (“*S.H.I. (No. 2)*”), where Keane J. stated at para. 35 of his judgment that he did “*not accept that the State’s duty to cooperate with the applicant in assembling the elements necessary to substantiate his application extends to an obligation to go behind, or ‘tease out’, the applicant’s own voluntary statements, whether provided in the context of a properly conducted interview or in writing through his legal representatives. After all, regard must also be had to the applicant’s own shared duty of cooperation in the ascertainment of the relevant facts. As Dunne J. observed in A.C. v Refugee Appeals Tribunal & Anor [2007] IEHC 369 (Unreported, High Court, 19th October 2007), the applicant is not a passive participant in the process.*”
133. Both Heslin J. in *G.A. & N.G* and Keane J. in *S.H.I. (No. 2)*, referred to the following passage at para. 20 of the judgment of the High Court (MacEochaidh J.) in *M.A. v RAT* [2015] IEHC 528 (“*M.A.*”) in relation to an appeal on a papers-only basis:

“The essential case made by the applicant is that the Tribunal member should not have made new credibility findings against the applicant on a papers only appeal without reverting to him and putting these issues to him. I reject this argument. Where the Tribunal intends to make negative credibility findings based on the statements made by the applicant during the asylum process, whether on a papers only appeal or on an oral appeal, there is no obligation to revert to the applicant to give him or her an opportunity of explaining a perceived inconsistency, a contradiction, an implausible suggestion or any other circumstance arising from what the applicant has personally said, during the application process, which causes the Tribunal member to conclude that credibility should be rejected. The Tribunal is no more required to do this than would a judge be required on hearing implausible testimony or on noticing an inconsistency in evidence

to warn a witness that a negative credibility finding is imminent. The fact that the negative credibility finding is made on a papers only appeal is irrelevant.”

134. At para. 22 of his judgment in *M.A.*, MacEochaidh J. noted that an applicant had a full opportunity in an appeal, even a “papers-only” appeal to address any inconsistency, contradiction, implausibility or any other problem arising from what has been said during the asylum application process.
135. Separately, the High Court (Humphreys J.) had previously observed in *J.H. (Albania) v IPAT* [2018] IEHC 752, at para. 8 of his judgment that “[t]he applicant claims breach of s. 28(7) of the International Protection Act 2015 by the rejection of his credibility in the absence of documentary evidence. Rejecting credibility in the absence of documentary evidence is not a breach of s. 28(7). The submission made is a complete misunderstanding of that provision. Section 28(7) does not apply unless the applicant’s general credibility is established. Thus the point made is inherently self-contradictory. This applicant’s general credibility was not established - therefore the provision does not apply.”
136. There is no obligation to put to an applicant every inconsistency or the jot and tittle of every such finding.
137. Rather, where adverse findings on credibility have been made in relation to an applicant in an appeal determined only on the papers, an IPAT is not confined to considering only those findings in relation to credibility which had been made at first instance but can assess the entire claim and adopt a different position on credibility from that initially found.

138. Had there been no issue in relation to the tribunal member's determination in his decision dated 9th June 2024 not to direct an oral hearing and to proceed on a papers-only basis, I would not have found in favour of the Applicant's contentions that he should have been given prior notice of the adverse credibility findings made in this case. Nor would I have accepted that there was any lack of clarity in relation to the adverse credibility findings made by the tribunal member (outlined above) regarding the insufficient evidence proffered by the Applicant regarding his alleged support of UNM by erecting posters which led to the physical assault on him.
139. Of course, I repeat that my discussion of these matters is now purely hypothetical and *obiter* given that I have determined that the determination not to direct an oral hearing and to proceed only on the papers was unlawful and tainted the entire decision of 9th June 2024.
140. Turning to the third ground raised on behalf of the Applicant – as to whether there was an insufficient consideration of his substantive case – I have come, *obiter*, to a similar conclusion again on an *ex hypothesi* analysis.
141. As is generally common with decisions of the IPAT made under s. 46(3)(a) of the 2015 Act, in this case under the subheading at section 2 of his decision "*Outline of claim*", the tribunal member recorded the following at para. [2.3] of his decision dated 9th June 2025:
- "The [Applicant] provided documentation to the IPO which is listed in the IPO report. This includes identity documentation and references from people he has come in contact with since he came to Ireland to name some of the items. No further documents were submitted on appeal. The Tribunal has assessed any and all documents submitted as part of his claim." (Underlining added in this judgment).*

142. As set out above, with the exception of the decision not to hold an oral hearing and to proceed on a papers-only basis, the remaining grounds raised by the Applicant largely centred on the manner of the tribunal member's findings *inter alia* at paras [4.1] to [4.8] of the decision dated 9th June 2024. This analysis, in contrast with its determination in relation to the question of an oral hearing, does confirm an express engagement and assessment by the tribunal in its decision dated 9th June 2024 with the particular facts and circumstances of this Applicant's case.
143. Further, I do not consider that the Applicant has provided any evidence to displace the reference by the IPAT to having "*assessed any and all documents submitted as part of his claim*": see the decision of the Supreme Court (O'Malley J.) in *Rana and Ali v Minister for Justice* [2024] IESC 46, where reference was made to earlier decisions of the Supreme Court in *Balz v An Bord Pleanála* [2019] IESC 90; [2023] 3 I.R. 751, *G.K. v Minister for Justice* [2002] 2 I.R. 418; [2002] 1 ILRM 401.
144. Again, had there been no issue in relation to the tribunal member's determination in his decision dated 9th June 2024 not to direct an oral hearing and to proceed on a papers-only basis, I would not have found in favour of the Applicant's arguments as to whether there was an insufficient consideration of his substantive case.

SUMMARY AND CONCLUSION

145. The decision on the question of whether there should be an oral hearing pursuant to s. 43(b), or a papers-only assessment, is telescoped into the substantive appeal and is the first issue determined by the tribunal member.

146. The issue of whether an appeal should proceed by way of an oral hearing or on a papers-only basis pursuant to s. 43(b) of the 2015 Act is, therefore, a central and consequential question, the answer to which informs the manner in which an appeal is to be conducted and the nature of the evidential basis upon which a tribunal member's substantive assessment will be carried out.
147. In this regard, the determination by the tribunal member at para. [1.27] of his decision dated 9th June 2024 was not an isolated procedural step which can be severed from the rest of the decision. Rather, it was the link which fastened the conduct of the remaining appeal process by way of a papers-only assessment.
148. In making the determination as to whether or not to hold an oral hearing, I have concluded that the tribunal member failed properly to engage with the specific reasons advanced by and on behalf of the Applicant in support of his request for an oral hearing.
149. The issue is not whether the Applicant was necessarily entitled to such a hearing.
150. Rather, the error lies in the failure of the tribunal member to demonstrate an engagement with and consideration of the reasons put forward by, and on behalf of, the Applicant for an oral hearing and whether, in the particular circumstances of his case, the interests of justice required a departure from the statutory default position contained in s. 43(b) of the 2015 Act.
151. The determination at para. [1.27] of the decision dated 9th June 2024 was the procedural gateway through which the remainder of the appeal proceeded.

152. The subsequent assessment of the Applicant's international protection application was expressly predicated upon, and inseparable from, the decision not to direct an oral hearing and to determine the appeal on a papers-only basis.
153. In those circumstances, the procedural defect earlier identified in this judgment relating to the manner in which this decision was made is not severable from the remainder of the decision.
154. Accordingly, I shall extend time for the bringing of this judicial review application, grant an order of *certiorari* quashing the entire decision of the tribunal member dated 9th June 2024, and remit the matter for reconsideration by a differently constituted tribunal member.
155. Separately, I have, on an *obiter* and necessarily hypothetical basis, considered the other grounds put forward by the Applicant. Had the decision to proceed without an oral hearing been lawfully made, I would not have granted relief on those grounds. For the reasons set out in this judgment, I would not have been not persuaded by the submissions advanced in relation to the adverse credibility findings and the alleged failure to notify same or the contention that the tribunal member failed to adequately consider the substance of the Applicant's claim.

PROPOSED ORDER

156. Whilst I will hear submissions from the parties as to the precise terms of the order to be made at the for mention date, I propose to make orders extending the time for the bringing of this application for judicial review, quashing (by the grant of an order of *certiorari*) the entire of the decision of the tribunal member dated 9th June 2024 and directing that the matter be remitted for reconsideration by a new tribunal member.

157. My provisional view on costs, having regard to the Legal Services Regulation Act 2015, is that the Applicant, having been entirely successful in obtaining the quashing of the entire decision dated 9th June 2024, is presumptively entitled to his costs, including reserved costs, which costs shall be adjudicated upon by the Legal Costs Adjudicator in default of agreement. If the parties, however, seek a different order, or if any further ancillary or consequential matters arise, these can be addressed at the for mention date on Wednesday 7th October 2026 at 10:30am.

Appearances

158. Lisa McKeogh BL appeared for the Applicant instructed by Brian Trayers Solicitors.

159. Mark William Murphy SC and Maeve Brennan BL appeared for the Respondents instructed by the Office of the Chief State Solicitor.

CONLETH BRADLEY

21st September 2026