THE HIGH COURT

JUDICIAL REVIEW

[2009 No. 861 J.R.]

IN THE MATTER OF THE REFUGEE ACT 1996, IMMIGRATION ACT 1999 AND THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000 AND STATUTORY INSTRUMENT 518 OF 2006

BETWEEN

A.B.

APPLICANT

AND

REFUGEE APPEALS TRIBUNAL AND THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENTS

JUDGMENT of Mr. Justice Colm Mac Eochaidh delivered on the 8th day of February 2013

These proceedings comprise an application for judicial review of the decision of the respondent Tribunal and consequential decision of the respondent Minister refusing a declaration of refugee status. Leave to seek judicial review was granted by Cooke J. on the 11th of June 2012, and an amended statement grounding the application was filed. Eight complaints were maintained against the decisions in suit can be summarised as follows:

> (i) The Tribunal Member relied on factual errors and on an erroneous understanding of the information and documentation before him.
>
> (ii) Credibility findings were based upon errors of fact and/or misunderstandings.
>
> (iii) Credibility findings were based on personal speculation and conjecture and failed to have regard to the applicant's credibility in the light of accepted UNHCR guidelines.
>
> (iv) The Tribunal failed to take account of identification documentation.
>
> (v) The credibility findings are unreasonable.
>
> (vi) Credibility findings failed to take account of explanations m clarification.
>
> (vii) Credibility findings were not supported by reasons or adequate reasons.
>
> (viii) The Tribunal failed to give adequate weight to the mixed ethnicity of the applicant and, as such, factors which corroborated his account of persecution and the circumstances which caused him to flee Burundi.

In what appears to be a particularisation of the first ground, it is also alleged that the Tribunal failed to have proper regard to country of origin information. In a particularisation of ground (iv), it is said that the Tribunal Member failed to have any due or proper regard for the personal and applicant-specific documentation submitted.

The Refugee Appeals Tribunal delivered its decision in this matter on 5th June 2009. The applicant was represented by two lawyers and was assisted by an interpreter.

This decision of the RAT contains a lengthy and well written account of the applicant's claim. No complaint is made as to its the accuracy. The essential elements of the applicant's claim are that he left Burundi on 30th March 2004 and arrived in Ireland the following day, having travelled via Kenya and the Netherlands. He claims to be of mixed Hutu and Tutsi heritage. The applicant says that he was a technician employed by the National Radio Station of Burundi and as such was considered to be a journalist by profession. He says his father was killed during a genocidal episode in 1972. By 1992, Hutu survivors of the genocide formed a political organisation known as FRODEBU, which invited the applicant to join their activities, but he declined. It is said that this refusal laid the seeds of the trouble he subsequently faced. FRODEBU won elections in 1993 but the President of the State was killed three months later.

Members of FRODEBU formed CNDD, leaving Burundi and regrouping in the Democratic Republic of Congo before deciding to return to Burundi to commence military activities. The applicant was approached and asked to assist in preventing the National Radio Station from broadcasting and to assist with the broadcasts of a rebel radio station from the Democratic Republic of Congo. The applicant refused this assistance. Nonetheless, an emissary named Pascal Mbogo was sent to the applicant with money in an attempt to bribe the applicant. Pascal was apparently killed and his money was taken and the applicant was accused of or associated with these events. Further attempts were made to persuade the applicant to engage in rebel activity but he declined.

The applicant claimed that he was contacted again in 1995 to assist with the sabotage of the National Radio Station. Thereafter, he was contacted in 2004. He claims that on 1st March 2004, he was arrested by government troops, which government now comprised some of the former rebels. His cousin came to his assistance during this period of arrest and detention and he advised him to escape. He also claims that his cousin was subsequently arrested. His own house was ransacked and his wife and her children retreated to the centre of the country.

The RAT ultimately decided to reject the applicant's case on the basis of his lack of credibility. The credibility findings may be summarised as follows:

> (i) Given that the applicant was invited to join FRODEBU and claims he refused and in addition was critical of CNDD (their offshoot) since 1994, it was not credible that he would be asked to sabotage the National Radio Station in 1995.
>
> (ii) The documents purporting to establish that he worked for the National Radio Station and the other personal identification documents cannot be authenticated.
>
> (iii) The applicant's evidence was not credible in respect of the number of radio stations broadcasting in Burundi.
>
> (iv) The applicant gave contradictory evidence in respect of when the army came to the radio station where he worked. The first time he claimed it happened in 1993, then in 2003 and then changed his story back to 1993.
>
> (v) It was not credible that the CNDD rebel group did not contact the applicant until 2004 - nine years after the alleged killing of Pascal Mbongo.
>
> (vi) It was not credible that the applicant was arrested as he would not have been questioned prior to the alleged visit of his cousin (a commander). Further, the warrant submitted by the applicant cannot be authenticated.
>
> (vii) The applicant's testimony as regards his escape is deemed not credible. The Tribunal was of the view that his uncle and cousin who allegedly aided his escape would have suffered consequences as a result.
>
> (viii) The failure of the applicant to seek asylum in a country other than Ireland given he transited through Kenya and the Netherlands was deemed inconsistent with a person fleeing persecution.
>
> (ix) Further, the Tribunal does not believe the applicant has provided a full and true explanation of how he travelled to the State.
>
> (x) The manner of the applicant's entry into Ireland was deemed not credible. In the Tribunal's opinion it was not credible that a trained immigration officer at Dublin airport would not detect that the passport used by the applicant was false.
>
> (xi) The Tribunal does not believe that the applicant fled Burundi for the reasons he has advanced and does not believe he will be persecuted on his return if he is sent back.
>
> (xii) The Tribunal believes that the applicant has contrived a story and that his failure to tell the truth was exposed in cross examination and the resulting contradictions in his story.
>
> (xiii) Finally, the Tribunal found the applicant's demeanour to be evasive and contradictory in giving evidence.

Having identified these numerous credibility findings, the Tribunal said:

> *"The cumulative effect of the foregoing observations in relation to the applicant's credibility materially and detrimentally affects the veracity of what he purports to state and the substantive trust [sic] of his claim. Having considered paragraph 204 of the UNHCR Handbook in relation to the Applicant's general credibility, I cannot accord the Applicant the benefit of the doubt. He has contrived a story for the Tribunal, which I reject, and his failure to tell the truth during his appeal has been exposed in cross-examination.*
>
> *In assessing the credibility of the applicant, I have had the opportunity of hearing and observing the manner in which the evidence was given and his demeanour. I found him to be evasive and contradictory in his evidence as to its contents and presentation and I found his story to be inconsistent, contradictory, implausible, and wholly lacking in credibility. I found the Applicant to be deliberately evasive and vague."*

The applicant makes a complaint that the credibility findings breach Regulation 5(1)(b) of S.I. 518 of 2006, specifically the requirement that regard be had to all of the available information and documentation which has been placed before the decision maker. In particular, it was submitted that the Tribunal had applicant specific documentation comprising the applicant's original Burundian National Identity Card; original Radio Television Nationale du Burundi Identity and Access Cards; an original Journalist Organisation Membership Card; a copy of an Arrest Warrant; a copy of a document from the radio station granting annual leave to the applicant and copies of emails sent to the applicant. It is stated that the documentation has the potential to establish and/or corroborate the account of the relevant parts of his life given by the applicant.

In support of this part of the case, counsel on behalf of the applicant refers, in particular, to the judgment of Cooke J. of 24th July 2009, in *I.R. v. RAT & Another* [2009] IEHC 353, and in particular to paras. 30 to 32 thereof where the learned judge said as follows:

> *"30. In the Court's judgment, the process employed by the Tribunal member in reaching the negative credibility conclusion as disclosed in the Contested Decision was, therefore, fundamentally flawed because the documentary evidence which had been expressly relied upon before the Commissioner and in the notice of appeal and which was on its face relevant to the events on which credibility depended, was ignored, not considered, and not mentioned in the Contested Decision. It is correct, as counsel for the respondents submitted and as is confirmed by the case law summarised at the beginning of this judgment, that a decision-maker is not obliged to mention every argument or deal with every piece of evidence in an appeal decision at least so long as the basis upon which the lack of credibility has been found can be ascertained from the reasons given. However, in the view of the Court, that proposition is valid only when the other arguments and additional evidence are ancillary to the matters upon which the substantive finding is based and could not by themselves have rendered the conclusion unsound or untenable if shown to be correct or proven.*
>
> *31. That cannot be said to be the case here. When the Tribunal member says in the decision, 'He claims to have spent six months in prison on account of his political activities ', and then finds that the applicant lacks the political knowledge one would expect from someone with that commitment, the Tribunal member is clearly indicating that he believes the applicant was never in prison or, at least, never imprisoned for the political offences he claimed. But if the documents are authentic and are correctly translated, the applicant was indeed in prison and the premise on which the conclusion*

has been made is therefore no longer tenable. The process is, therefore, flawed and the analysis incomplete.

32. Accordingly, the Court finds that the Contested Decision in this case is sufficiently flawed to warrant its being quashed The Tribunal member has erred in law in failing to consider all of the relevant evidence on credibility and adequately and objectively to weigh it in the balance in reaching a conclusion on that issue. Where, as here, documentary evidence of manifest relevance and of potential probative force is adduced and relied upon, the Tribunal member is under a duty in law to consider it and if it is discounted or rejected as unauthentic or unreliable or otherwise lacking probative value, there is a duty to state the reason for that finding. "

Counsel for the respondent refers to the well known passage in the decision of JR. where Cooke J. enumerates principles to be applied in conducting a credibility assessment, and in particular, reference is made to the following points which are of relevance to this case:

"4) The assessment of credibility must be made by reference to the full picture that emerges from the available evidence and iriformation 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.

…

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. ..

9) Where an adverse finding involves discounting or rejecting documentary evidence or iriformation 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.

. . . 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. "

I am also referred to the decision of McDermott J. in *BAO v. RAT & Another* [2012] IEHC 384:

"2.8 In approaching this issue it must also be recalled that the onus is on the applicant on appeal to the Tribunal to demonstrate that he has a genuine fear of persecution for a Convention reason and secondly, to establish that fear is objectively justified or reasonable and, therefore, well-founded. It is in that context that the relevant principles to be found in para. II of the judgment of Cooke J fall to be applied"

McDermott J. also said:

"2.9 Cooke J also noted that there is no general obligation for a decision on credibility to refer to every item of evidence and every argument advanced provided the reasons stated enable the applicant as the addressee of the decision and the court in exercising 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"

Counsel for the respondents points out that the applicant's purported identity and documents supporting his claim that he worked in a radio station are referred to in paragraph 6B of the Tribunal's decision where it is said that these documents could not be authenticated. In addition, specific reference is made to the Radio Television Nationale du Burundi Access Card submitted on behalf of the applicant which refers to him as journalist rather than a technician. A detailed analysis is apparent in the decision of the Tribunal Member in relation to the cross-examination of the applicant which takes place based upon these submitted documents. The alleged Arrest Warrant is expressly referred to by the Tribunal where the member says that it cannot be authenticated and it is stated that there are inconsistencies relating to the applicant's alleged arrest. The alleged email from the applicant's wife is also expressly referred to in the decision.

Counsel for the respondents refers to a decision of Hedigan J. in *J(J)A v. RAT* (Unreported, High Court, 15th October 2008) where he said:

"It is of course necessary for a Tribunal member to take account of all relevant statements and documentation presented by an applicant. This obligation is now set out in Regulation 5(1) of the European Communities (Eligibility for Protection) (Regulations 2006) S.I 518 of 2006. It does not follow, however, from the absence of an express reference in a decision to a document that account was not taken of that document. It is for the Tribunal Member to decide whether or not a document merits specific reference, depending on his or her assessments of its probative or corroborative value. "

Reference is also made to the decision of Clark J. in G.A. v. RAT (Unreported, High Court, 31st March 2009) where she said:

"There is a very clear line of decisions from this Court that there is no absolute obligation on a Tribunal Member to expressly consider each and every document or piece of information adduced by or on behalf of an applicant and that the absence of an express reference to a document does not mean that the document was not considered. The degree to which it may be argued that a decision-maker should have had express reference to a document must depend on the nature and quality of the document and the degree to which it relevant to an applicant's claim and the determination of his or her asylum application and/or appeal. "

It is noteworthy that in the *I.R. v. RAT* decision, the decision of the Tribunal was struck down " *...because the documentary evidence which had been expressly relied upon before the Commissioner and in the notice of appeal and which was on its face relevant to the events on which credibility depended, was ignored, not considered and not mentioned in the Contested Decision* ".

This is not a case where documentary evidence was ignored or not referred to by the decision maker. Neither is it a case where the documentary evidence and the facts said to be supported by such documents were central to the issue of credibility, perhaps with the exception of the Arrest Warrant. In this case, the applicant gave an extraordinarily detailed and lengthy account of events spanning many years. A most careful report of thethis account of events and circumstances is given by the Tribunal Member and these are then subject to a detailed analysis.

Credibility was rejected in this case by reason of inconsistencies and contradictions in the applicant's account of events and all of these are carefully explained and set out in the decision of the Tribunal. No-one reading the decision can be in any doubt as to why credibility was rejected. I find no fault with the manner in which credibility has been assessed and whilst it is true to say that the applicant specific documentation was not subject to microscopic analysis or individual rejection, the documentation is referred to in the decision of the Tribunal and its possible probabtive value is overcome by the inconsistencies and contradictions in the applicant's own tale. In my opinion, a decision maker must be entitled to engage in such a balancing exercise and to decide that unauthenticated documents which support or corroborate aspects of an applicant's account are ultimately not of assistance where there is a weight of inconsistency and contradiction on the other side of the scales. That, in my view, is precisely what happened in this case.

Reliance on Speculation and Conjecture. Failure to appreciate the Political Situation in Burundi
The applicant makes complaint that the Tribunal placed reliance on the nine year gap in contact between the applicant and the persons who caused him difficulties as a basis for impugning credibility. Complaint is also made that the Tribunal does not appear to accept that the applicant was subsequently arrested. It is stated that country of origin information outlined that the rebel group signed a power sharing agreement in 2003 and were preparing for assimilation in to the Burundian military forces. The complaint in this regard appears to be that the Tribunal failed to assess that the years 2003 and 2004 were critical times for the rebels which would support, according to the applicant, the theory that the applicant was approached or targeted at this particular time.

Complaint was made in respect of the finding which rejected the applicant's explanation as to why he was not arrested between December 2003 and 2004. The applicant explained that the rebel forces had joined the government in December 2003 and that they did not have members in the police force as the old army was still in play. Country of origin information stated that combatants of the rebel forces had signed a ceasefire agreement but that they had not yet integrated into the police or the military. It was suggested that this is of particular probative value.

It is evident from the decision of the Tribunal Member that extensive regard was had to the political situation in Burundi and that detailed analysis took place of the country of origin information. For example, it is stated in the decision that paragraph 6.39 (page 42) of the UK Home Office Burundi Country Report 2004 submitted to the

Tribunal by the applicant:

> *" ...was read in its entirety to the applicant which states that there were nine radio stations in Burundi in 2003, two of which were controlled by the government. The applicant replied that only one radio station was controlled by the government and when the paragraph was read again the applicant maintained his answer was correct but added that normally the government controlled one station but he does not know if the other was hidden."*

Other sections of the country of origin report were also read to the applicant and he was asked to comment about how the content of that report and his description of events in Burundi contradicted each other.

I accept the submission made by counsel on behalf of the respondents that it is well settled law that where an applicant fails to establish subjective credibility, there is no requirement on an assessor to consult objective country of origin information. This principle is apparent from the decision of Peart J. in Imafu v. RAT (Unreported, High Court, 9th December 2005) and it has been confirmed in subsequent cases. In *S.(B) v. Minister for Justice, Equality and Law Reform* (2nd May 2008) Peart J said.

> *"The first and essential matter for determination is whether the story can be believed It is only when that hurdle has been successfully overcome that country of origin information can assist in the assessment of whether the alleged fear of persecution is subjectively an object to be justified "*

In this connection, Cooke J. emphasised in *I.R. v. RAT* (supra.) as follows:

> *"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 " [Emphasis added]*

Clark J. in *V.O. v. Minister for Justice Equality and Law Reform* (Unreported, 23rd January 2009, said:

> *"As the story of alleged persecution was found to be simply not credible, there was no obligation on the Commissioner to seek out country of origin information, especially in the extraordinary situation where the applicant produced absolutely no documentation himself"*

Whilst the circumstance pertaining to the failure to produce country of origin information does not pertain in this case, the other comments above by Peart J. and Cooke J. are apposite. It is apparent from reading the very detailed decision of the Tribunal that the Tribunal Member had read the information provided, and indeed had put selected parts of it directly to the applicant for his comments. It is to be recalled that in this case, the Tribunal Member, having carefully listed credibility findings (a) to (j), notes that "*the cumulative effect of the foregoing observations in relation to the applicant's credibility materially and detrimentally affects the veracity of what he purports to state the substantive trust of his claim*" *(sic).* In addition, the decision maker, referring to the decision of the High Court in A.M T v. the Refugee Appeals Tribunal (High Court, 14th May, 2004) says that he had considered that decision of the High Court and finds that the applicant is not personally believable. The decision of Peart J. in *Ojelabi v. The Refugee Appeals Tribunal* [2005] IEHC 42 is referred to by the Tribunal Member and there is also an express reference to the decision of Peart J. in *Imafu v. The Minister for Justice Equality and Law Reform* (supra):

> *"In my view, the decision in Hovart and of David Panick Q. C. in Ahmed could not be extended to mean that in every case, no matter how unbelievable the applicant is found to be on the pure credibility' issue, the Tribunal Member must indulge in a pointless exercise, namely looking at amounts of country of origin information ... "*

On the face of the decision, the Tribunal Member acknowledges the legal requirement for a finding of subjective credibility before progressing to analyse country of origin information. It is clear that the Tribunal Member understands that if an applicant for

international protection is not believable, not credible or in the words of this Tribunal Member, not personally believable, there is no requirement to proceed with a detailed analysis of country of origin information and in this, he is correct. In these circumstances, I reject this complaint made by the applicant.

In the context of a complaint alleging factual errors by the Tribunal, reference is made to the finding that "*a warrant to arrest [the applicant] would have been issued by the government and not the FBD or the CNDD*". It is claimed on behalf of the applicant that the warrant was issued by the Government of Burundi and not by these rebel forces. However, the explanation for the finding of the Tribunal Member advanced at the hearing is that the Tribunal were referring not to the issuing authority but to the rebel forces having sufficient influence to cause the warrant to be issued. Whatever the explanation for that, and I do accept this explanation advanced by counsel for the respondents as being a proper explanation of what the Tribunal intended to say, I do not regard this part of the Tribunal's extensive decision to be of such moment as to warrant a quashing of the decision. It is an insignificant finding.

The second error of fact is said to be contained in the following phrase in the decision of the Tribunal:

> *"The applicant's account of his journey from Burundi and his entry into Ireland using a passport which did not bear his photograph is not credible."*

The applicant insists that he never gave evidence that the passport on which he travelled did not bear his photograph. This finding is referable to an earlier part of the Tribunal's decision where the circumstances of his arrival in Ireland were described as follows:

> *"The applicant used a passport supplied by the agent which was red in colour with a few signs and an emblem which he could not recollect, nor does he know its country of origin as he did not see it. The agent gave him the passport when necessary which he returned and heeded the agent's instructions not to look at the inner pages because it would look suspicious to the authorities. The only recollection he has of the agent telling him that if asked by an Immigration Officer, he should answer he lived in Brussels at an address that he had learned by heart but which, unfortunately, he has since forgotten. "*

Later on, the Tribunal Member says:

> *"He is unaware if the passport bore his photograph because being in trouble he followed the agent's instructions and did not look at the passport as ordered. He presented the passport at Immigration Control and then returned it to the agent."*

In the asylum application process, the applicant was interviewed pursuant to s. 11 of the Refugee Act 1996, and at p. 21 of the transcript thereof, questions were asked about the circumstances in which the applicant arrived in Ireland as follows:

> "Q. What happened when you went to Immigration on your arrival in Ireland?
>
> A. They asked me for my passport. I showed him my passport, they looked at it and I passed through.
>
> Q. Can you clarity - you say that you did not renew your passport since 1995, how then did you have a passport?
>
> A. The photograph on the passport did not look okay. The name on it was an African name. The person I travelled with told me to say, if I was asked, I was from Brussels. It was a false passport. I went before my cousin asked me for a photograph. I do not know if that photograph was used for the passport."

This, then, would appear to be the basis of the suggestion in the Tribunal's decision that the photograph on the false passport was not his own. The applicant himself had informed the Tribunal and the Office for Refugee Applications that the photograph on the passport "did not look okay". I find no fault with this conclusion by the Tribunal as it is based upon the evidence and account given by the applicant himself.

Failure to have due regard to explanations provided by the applicant
It is submitted that the Tribunal failed to take into account the explanation advanced by the applicant as to why he was approached by the CNDD (the Hutu rebel faction) in 1995. The applicant explained that he was approached by this faction because of his Hutu ethnic connection and the fact that his father, also a Hutu, had been killed in the genocide of 1972. It appears to me that the Tribunal was given a full explanation as to the circumstances in which the applicant says he was contacted by this group and asked to join them.

The Tribunal has also given a clear reason as to why, in his view, this was not plausible. It is expressly stated by the Tribunal that the applicant had refused to join the group in 1992 and in 1995 and that notwithstanding his refusal to sabotage the station in 1995, they had sent money to him with the intention of bribing him. It was implausible to the Tribunal that the group would implicate themselves by revealing their plans to him without knowing whether or not he would report this activity to the authorities because he had expressed disdain and disinclination to have anything to do with this rebel group.

In my opinion, this is precisely the sort of balancing exercise which the Tribunal is entitled, indeed obliged, to engage in and it is the very exercise that this Court must not interfere with. I am not entitled to replace my view of the explanation given by the applicant with the rejection of that explanation due to its implausibility which was made by the Tribunal.

Events between 1992 and 2004
The Tribunal Member gives the following account of an exchange which took place at the hearing:

> *"The applicant was asked did anything unusual happen in the country between 1992 and 2004. He claims that when the President was killed, there was a coup and the army came to the station in September/October 1993. He then changed his mind on two occasions, claiming the year was 2003 and finally settling for 1993.*
>
> *The applicant was referred to paragraph 4.19, page 14 of the [Burundi country of origin] Report in its entirety, but in particular "the group ...had seized the radio station" and he was told he could have been in the country. The applicant replied that the question asked was did anything happen while was working in the station and he had not completed his answer. Mr. Brennan told the applicant that he had changed the years as set out above and he had not mentioned 2001. He replied that he commenced narrating about the events in 1993 and he found it difficult to explain what had occurred years before.*

The applicant was asked the reason he commenced narrating the events that occurred eleven years previously rather than speaking of events in 2001 which would be fresh in his mind. He replied that the coup following the death of the President in 1993 affected the country 'the most' and the coup in 2001 which involved one high officer and ordinary soldiers was over in 24 hours and it did not have a big effect on the populace. "

The Tribunal records its conclusions on this aspect of the applicant's evidence in the following terms:

"The applicant's explanation at 3.1(g) for not mentioning the incident in 2001 is disingenuous and wholly lacking in credibility. He claimed that the army came to the station in 1993/2003/1993. If the applicant was working in the station, he should have been aware of the events in 2001 without any promptings by Mr. Brennan. "

This finding is one of twelve credibility findings made by the respondent. On balance, it seems that the conclusion is unfair and it would appear that the applicant has provided a valid explanation for not having referred immediately to events in 2001. It is likely that there was confusion on the part of the Tribunal and on the part of the applicant in respect of this particular exchange. However, the finding does not come close to being dispositive of the applicant's claim and is not of central significance. It is one finding amongst many, and if it is in error, such error is not of itself sufficient to justify intervention by this Court in the decision of the Tribunal.

Manner of escape
Reference is made by the applicant to the finding as follows:

"There is no doubt in my mind that had his uncle and senior officer been complicit in his escape they would have been regarded as the prime suspects and would have suffered the consequences for helping him escape."

The complaint made here is that there is a failure on the part of the Tribunal to take into account the explanation provided by the applicant in relation to this issue. The applicant explained to the Tribunal that his cousin was a high-ranking official. The applicant also explained as the government had just come to power and did not yet "*have a strong presence*", this was why his cousin could aid him. As to this complaint, it seems to me that the manner in which the Tribunal Member dismissed the explanation given by the applicant was lawful, and as I indicated earlier, was the very sort of balancing exercise which the Tribunal is fully entitled to do.

The finding of the Tribunal in relation to this matter is in the following terms:

"... the applicant's testimony regarding his escape is not credible. There is no doubt in my mind that had his uncle and the senior officer been complicit in his escape, they would have been regarded as the prime suspects and would have suffered the consequences for helping him escape."

Complaint is also made in respect of the terms in which this credibility finding is made, saying that the finding is inherently unreasonable and speculative.

The finding is to be read by reference to the extremely detailed account of the applicant's cousin's involvement with the applicant's escape. The applicant says that on 1st March, 2004, his cook and a general worker called to his house at about 5 or 6 am. He unlocked the door and was met by three soldiers who arrested him and detained him in a bare room until noon. His cousin was a Commander in the Gendarmeriw worked in the Security Section of the Ministry for Defence visited him. Apparently, he was escorted to an office to meet his cousin and left alone with him. He claims that his arrest was related to his refusal to work for the CNDD and that he was accused of killing Pascal. The applicant says that his cousin said he would return in the evening and advise him how to escape. He returned at around 5.00pm and told the applicant that at 8.00pm he should roll on the floor of the cell and tell the soldiers his stomach was aching, that they would take him to the hospital and when he arrived in the Emergency Room he should go to the bathroom and hide there. The soldiers guarding him would be distracted by being required to buy cigarettes whereupon he would make his escape and go to his cousin's house. He followed these instructions and left the hospital and went to his cousin's house.

It appears to me that there is nothing unreasonable, unexplained, difficult to comprehend or unreasoned about the explanation given as to the lack of credibility attaching to this account of escape. On the applicant's version, his cousin visited him twice on the day of his escape. I found nothing unreasonable or in any way unlawful in the finding that the applicant's cousin would have been a prime suspect in his escape.

Failure to claim asylum before arriving in Ireland
At paragraph H. of the decision of the Tribunal, findings in relation to the applicant's journey to Ireland are in the following terms:

"I am satisfied from the facts before me that the Applicant's failure to seek asylum in any other country than Ireland, is not consistent with a person seeking to flee his pursuer and, therefore, it is imperative to seek asylum wherever one can. It is reasonable to expect a person to seek help at the first safe venue if one is in the grip of fear and thereby eradicate his fear when the opportunity first arises, as it did in and his reasons for not doing so is disingenuous and wholly lacking in credibility ... From the evidence before me, I do not accept that the applicant has provided a full and true explanation of how he travelled and arrived in the State."[sic]

According to the applicant, he left Burundi and flew to Nairobi and after ten hours layover he boarded a KLM flight to Amsterdam. Two hours later, he boarded a flight to Dublin. In relation to these events, the applicant is recorded as replying as follows:

"In response to the Tribunal Member. the applicant claims he did not seek asylum in Kenya or Amsterdam because he travelled with someone who said he was bringing him 'here '. He did not have a choice. When asked to classified [sic] 'here' he claims the agent did not tell him where they were travelling to and the agent told him he had to follow his instructions. When they left the precincts of Dublin Airport, he knew where he was.

He claims he did not ask the agent where they were travelling to because he was instructed by his cousin, who had arranged his travel, not to ask any questions but only to follow the agent. When they boarded the aircraft in Amsterdam, he did not hear the pilot announce their destination or 'maybe he was speaking in English and I did not understand'. He then added that he is unaware if the pilot spoke in English or another language, and even if he was aware that they were travelling to Dublin, he knew it was to be his ultimate destination. "

In these proceedings, complaint is made that the Tribunal Member failed to take into account and assess the applicant's explanation and clarification in relation to why he did not seek asylum before arriving in Ireland and therefore the finding is unsafe. I reject this complaint. The explanation given by the applicant as to why he did not seek asylum in the first safe country through which he

travelled is set out fully and the Tribunal Member rejects these explanations for clearly stated and comprehensible reasons. I find no fault with the manner in which conclusion is reasoned or with its rationality.

Findings based upon demeanour
The Tribunal Member says as follows:

> *"In assessing the credibility of the applicant, I have had the opportunity of hearing and observing the manner in which the evidence was given and his demeanour. I found him to be evasive and contradictory in his evidence as to its contents and presentation and I found his story to be inconsistent, contradictory, implausible and wholly lacking in credibility. I found the applicant to be deliberately evasive and vague. "*

Counsel for the applicant says that when relying on demeanour, the Tribunal Member does not say what in particular it was about the applicant's demeanour which caused him to reach the negative credibility findings. She also says that reliance on demeanour in refugee adjudications is fraught with difficulty. In my opinion, the credibility findings made by the Tribunal Member in this case are, to a very significant degree, based upon contradiction, inconsistency and implausibility. The Tribunal indicates that the applicant was evasive. The reference to demeanour is coupled with the reference to the evasiveness of the applicant but these observations by the Tribunal Member could not be seen as the basis upon which the credibility findings are made. It is wholly wrong to characterise the credibility findings in this case as based upon demeanour. That would be to deliberately misread the extensive and carefully written ruling of the Tribunal in this case. I reject this complaint.

Blanket negative credibility findings
In *Abdul Halim v. Minister for Justice, Equality and Law Reform and the Refugee Appeals Tribunal (RAT) and the Refugee Applications Commissioner* (Unreported, High Court, Smyth J. 3rd October 2002), the following passage appears and is relied upon to formulate a complaint in these proceedings:

> *"The advantages of a person such as the Tribunal has in observing the demeanour of a person are considerable (Hay v. O'Grady [1992] ILRM 689). However, in my judgment, the statement in the decision of the Tribunal . . . 'overall, I find the applicant's evidence to be entirely without credibility and I am satisfied that she has fabricated it for the purpose of her asylum application' . . . is not a decision (as so expressed) that was reasonable on the evidence placed before the decision maker such has been placed before the court. There was evidence upon which the Tribunal could have come to the view that certain matters were implausible and there was a lack of credibility such as could have led the Tribunal to a finding that the applicant was not a refugee within the meaning of s. 2 of the Refugee Act 1996. However, there was no warrant for the determination that the evidence was fabricated in the manner expressed. "*

The applicant makes complaint in these proceedings that the Tribunal makes a blanket negative credibility finding; finds that the applicant contrived a story for the Tribunal; finds him to be evasive and contradictory in his evidence and his story to be inconsistent, contradictory, implausible and wholly lacking in credibility. In written submissions to the Court, counsel for the applicant states as follows:

> *"The making of a blanket negative credibility finding in circumstances where the recommendation is characterised by factual errors, a failure of the Tribunal Member to consider applicant-specific documentation and country information which was before him and to properly consider clarifications and explanations presented by the applicant creates an inherent weakness in the recommendation above and beyond and in addition to those already addressed herein and as such the decision is not unsafe [sic]."*

I have rejected the complaint made in these proceedings in relation to alleged factual errors, the failure to consider applicant-specific documentation and country of origin information and the failure to consider clarifications and explanations. In my view, it is unfair to characterise the careful credibility findings in the decision of the Tribunal as blanket credibility findings. Such a phrase suggests a generic finding without analysis which is not reasoned or which would leave a reader uninformed as to the basis of such credibility finding. The very opposite is the case here. The case sought to be made on behalf of the applicant has involved an effort to deconstruct the credibility findings, observations and analysis of the applicant's case painstakingly put together by the Tribunal. In my opinion, the complaints addressed by the applicant to this Court, with one insignificant exception, have not stood up to any scrutiny and have been unwarranted. These proceedings have not advanced one sustainable gound and I refuse the reliefs sought.