Neutral Citation: [2016] IEHC 529

THE HIGH COURT

JUDICIAL REVIEW

[2012 No. 719 J.R.]

BETWEEN

A. T. K.

APPLICANT

AND

PAUL CHRISTOPHER SITTING AS THE REFUGEE APPEALS TRIBUNAL AND

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENTS

JUDGMENT of Ms. Justice Faherty delivered on the 22nd day of August, 2016

1. This is a telescoped hearing, in which an application is made for an order of *certiorari* quashing the decision of the first named respondent dated 15th June, 2012.

Extension of Time
2. A short extension of time was required for the purposes of the within proceedings which the court was satisfied to grant.

Background and Procedural History
3. The applicant claims to be an Afghani national. He claims to have worked for a named company in Afghanistan as a specialist driver which involved shift work of twenty seven days per month transporting mine clearing equipment to US army camps. Before commencing work for this company he was a taxi driver in Afghanistan. His friend, a fellow taxi driver, informed him of an opening within the named employer for which he duly applied and was recruited. According to the applicant, he was employed for approximately ten months with this employer. A number of months after he was recruited he received the first of three threatening letters from the Taliban telling him to leave his job and accusing him of being a spy for the Americans. The applicant did not take the first of these letters seriously and continued to work without worry. Some ten days after the first letter, the second letter arrived. The applicant saw it after he returned home from his work shift. The day after, the third letter from the Taliban arrived. That night his family home was attacked by the Taliban. Shots were fired at the gate of the house; the applicant heard one burst of shots, followed by four or five other bursts. At the time he was upstairs in his home. He escaped by running over the back wall of his house and ran to his maternal aunt's house approximately 30 minutes away where he spent the night. The following morning, his maternal uncle rang him and advised him to leave. The applicant met with a trafficker by arrangement. They left on 6th September, 2011 and spent three to four days travelling through the mountains to Iran. Approximately thirty other people were being trafficked along with the applicant. The applicant spent twenty days in Iran. From there he travelled to Turkey in a van, with the driver's knowledge. He spent 25 days in Istanbul before travelling to France in a lorry. This driver was also aware of his presence. The journey took three days. He then bordered another lorry in France unbeknownst to the driver and spent 25 hours in this lorry. He disembarked in Dublin and took a taxi to O'Connell Street. The applicant applied for asylum on 9th November, 2011. An asylum questionnaire was completed and he underwent a s. 11 interview on 1st December, 2011. The Refugee Applications Commissioner denied the applicant refugee status in a decision dated 16th February, 2012. The rejection of the claim was largely on credibility grounds. Following an appeal to the Refugee Appeals Tribunal, in a decision dated 28th June, 2012 the Tribunal affirmed the Commissioner's recommendation.

The Tribunal's decision
4. The applicant's claim for protection was rejected by the Tribunal on credibility grounds. In the s. 6 analysis of the applicant's claim the credibility findings are set out as follows:

> "The principal element of this claim for asylum was that the appellant feared that the Taliban would 'persecute' him for allegedly working with a firm …..who supplied the NATO forces with mine-clearing capabilities. The Tribunal is satisfied that the claim made by the appellant to the effect that he had been employed by [the named employer] is so fundamentally lacking in credibility as not to be the case in fact. Accordingly and as he had contended that the only reason he faced persecution was on account of his purported employment by that company, that contention must also be found, logically, not to be the objective reality.
>
> The appellant presented several documents in support of his claim to have been employed by [the named employer] as a specialist driver. Although superficially those documents would not appear to engender much suspicion, it became glaringly evident that the appellant, although claiming to be intrinsically linked to them, was not and when questioned on them, his story dramatically fell apart.
>
> To take on as an example: an extract of his bank account statement, which he presented to the Tribunal on the day of the hearing. This extract comprises entries (lodgements and withdrawals) between the period 1st January, 2010 and 15th April, 2012. Quite clearly, there are deposits from [the employer] marked on it representing monthly salary lodgements. These vary from month to month but represent an average salary of US$514.72 a month between September, 2010 and April, 2011. There are also withdrawals made to the holder of the account, as the appellant alleges; himself. However, there were other significant withdrawals made to other persons such as [MT], [B] and [MR]. When the appellant was asked by the Tribunal who [MT]was, why his name appeared on the appellant's account statement, the appellant replied that he was 'an employee of……in the finance department' who was responsible for paying the appellant's salary and that the reason his named appeared on the appellant's account was due to the way [the employer] structured salary payments to its employees, such as the appellant which consisted of paying the appellant's salary not directly to his own account but instead firstly into the account of [MT] in the finance department who would then transfer the salary out of his account into the appellant's account. When the appellant was then asked who [A Q] was and why his name similarly appeared on the appellant's statement he replied that [A Q] was "the zone manager of [the employer]' and the reason his named appeared on the appellant's account was for the same reason as [MT's] name appeared i.e. that [the employer] first paid the appellant's salary into [MT's] account and that [MT] then transferred those funds to the appellant's account as his salary. Similarly, the appellant explained that [B] was his then current supervisor … (who had at that stage

(7/12/2010) replaced his previous supervisor) who was also responsible for using his own account to transfer the appellant's salary … into the appellant's account.

Quite apart from the inherent implausibility of such a scenario, the relevant entries in the appellant's account indicate that deposits were not received from these persons as salary, as contended for by the appellant, but that withdrawals were made from the appellant's account to these persons. The appellant has been hoisted by the petard of his own "mock up" documents and it has become evident that the relationship with [the employer] contended for is fictional. In those circumstances, the Tribunal affords the other documents, such as identity cards, "taliban letters" and such like, no weight."

Having concluded that the finding with regard to the bank statement/bank account was sufficient to dispose of the applicant's appeal, the decision-maker went on to make a number of other findings:

"

• The appellant claimed that his monthly salary was $700 per month. However, it is clear from the document purporting to be his bank account statement that his purported monthly salary averaged $514.72 and never exceeded $614.33 per month.

• The appellant contended at Q 75 of the s. 11 interview that he was unaware as to whether any of his family was harmed in the alleged Taliban attack on his home. Yet, he told the Tribunal that he has been in telephone contact with his uncle since leaving Afghanistan. The appellant admitted at the appeal hearing, that no other members of his family were harmed in the alleged incident yet his inability to state this at his s. 11 interview raises credibility concerns and is further indicative of his evasive responses.

• A further example of the rather ludicrous twists his story took on occasion when he was taken "off script" during oral examination, as it were, can be found in the synopsis of that part of his evidence outlined at para.13 of the Part 3 (the appellant's claim) of this decision.

• When asked about how his [employment] ID Card and the taliban letters had been sent to him in Ireland, the appellant said that a friend of his maternal uncle's sent them to him. He said that his maternal uncle did not send them as he did not have time to do so. Yet, earlier, he said that this same uncle had the time to travel an hour and a half outside his village to talk to him on the phone.

• When questioned by the presenting officer, [the applicant] agreed that the taliban's only demand was for him to quit his job with [his employer], as was evident from the contents of their letters to him. It was then put to him that now that he had quit his job, he should no longer have any fear of action by the Taliban against him. The appellant denied this and said that the mere fact that he had worked for [the employer] in the past was enough for the Taliban to kill him. He was asked how he knew this and replied that it was because the letters had told him to surrender himself as well as quitting his job. It was then pointed out to him that the letters made no such demand. It was also pointed out to him that his response at Q. 21 of his questionnaire would seem to contradict this also. He then replied that it was common knowledge that the Taliban would kill him as it would any person who had worked for [the employer], even if they had taken the step of quitting their job and that he did not need to be told this explicitly by the Taliban in any letters they may have sent him. This tends to contradict his earlier assertion that when he received the first Taliban letter, he did not take it seriously and continued to work.

• The appellant's failure to apply for asylum in any of the countries he transited, especially France, is not indicative of a well-founded fear of persecution. The Commissioner found that s. 11 B (b) of the Act of 1996 applied in this instance. The appellant, on appeal, could still not provide a reasonable explanation to substantiate his claim that the State is the first safe country in which he has arrived since departing his country of origin.

• After being examined orally on appeal on the issue, the Tribunal will uphold the finding of the Commissioner that the appellant gave incredible or implausible details surrounding his travel to this State. His explanations therefore do not ring true.

• The Tribunal is not satisfied that the other credibility findings made by the Commissioner in the s. 13 report against the appellant can withstand the scrutiny of this appeal and the Tribunal would not rely on same."

It was found that "the above issues on credibility lead to the conclusion that the appellant is not credible in his evidence".

The within proceedings were instituted on 3rd August, 2012.

5. In summary, the grounds upon which relief is sought are as follows:

Ground 5(a)

It is asserted that the Tribunal accepted and/or failed to controvert the Commissioner's submission that the Taliban's threats against the applicant only required him to surrender his job. It is asserted that such reasoning is unlawful contrary to the rule of law and to the maintenance of law and order. Such an approach would validate the use of violence in civil society and is contrary to the respect for freedom of thought and expression. It is further contrary to respect for private and life and would encourage discrimination.

Ground 5(b)

The first named respondent failed and refused to consider objective evidence provided in the appeal. Submissions on behalf of the applicant which referred country of origin information were not addressed. The Tribunal in proceeding to analyse the applicant's appeal provided no analysis of the content of country of origin information.

Ground 5(c)

The Tribunal Member breached the provisions of Regulation 5(1) and Regulation 5(2) of the European Communities

(Eligibility for Protection) Regulations 2006.

Ground 5(d)

The Tribunal ignored and omitted the applicant's evidence of an armed assault whereby the Taliban fired shots at a number of vehicles in which the applicant was travelling in the course of his employment. That evidence was given to the Refugee Applications Commissioner. The first named respondent failed to make an inquiry on it and otherwise address it in his decision. Such a refusal to consider this evidence was contrary to natural justice and due process.

Ground 5(e)

The Tribunal Member failed to apply any of the legislation listed in the decision to the applicant's circumstances, which was an invalid manner of proceeding and contrary to the principle of legality and due process.

Ground 5(f)

The Tribunal Member employed a partial and subjective analysis of evidence. Evidence of employment identity and letters containing threats of violence against the applicant were dismissed without examination. Evidence in the form of a bank statement was disparaged on the basis of apparent contrary testimony given by the applicant, in respect of which the applicant was not afforded *audi alteram partem*. A subjective view was formed of the evidence of the applicant's employment with the named employer without reference to any external source. The first named respondent further failed and omitted to avail of his power under statue to request the Refugee Applications Commissioner to make further inquiries and furnish such information as might be considered necessary.

The submissions advanced on behalf of the applicant

6. On behalf of the applicant, it is submitted that the Tribunal Member rejected the bank statement which the applicant had furnished in circumstances where no inquiry was made of the applicant's employer. Accordingly, the finding is erroneous. The bank statement had been provided by the applicant following ORAC's request that he do so. Moreover, in the course of his s. 11 interview, ORAC had asked the applicant for permission to contact the employer, yet the Tribunal Member failed to follow up on this.

7. Specifically, counsel points to Q. 66 of the s. 11 interview which records that the applicant was asked "Would you object to me contacting [the employer] to verify your work history", to which the applicant replied "Yes, you can do that". This enquiry was not made. Alternatively, if such enquiry was made, any answer was withheld from the s. 13 report and the Tribunal decision. The Tribunal's failure to make such inquiry or to inquire off ORAC if such inquiry was made or to require that ORAC do so represents a failure of jurisdiction and best exemplifies the invalidity of the decision. Furthermore, in the context of the within proceedings, there was an opportunity for the State to confirm if the Tribunal or ORAC had acted on the consent which the applicant had given, which was not done. It is submitted that the Tribunal did not even seek to confirm whether the company for which the applicant said he worked existed or did what the applicant said it did in Afghanistan.

8. The Tribunal Member concluded that the applicant's relationship with the named employer was fictional on the basis that the bank statement did not have the applicant's surname on it. The Tribunal Member recorded this issue as follows:-

> "At the outset of the hearing, the appellant presented a DHL courier envelope which he said had been sent to him by his cousin. It contained a document which, notwithstanding the absence of a surname on it, he said was a statement from his bank account and that the address on it was his."

Counsel submits that the Tribunal Member's assumption was not correct; the applicant's employment identity card showed that a person's first name may be sufficient. Furthermore, the applicant had also submitted his Afghanistan Tazkira to ORAC to which the personal date as recorded on the bank statement could have been compared. Moreover, the address on the bank statement gave the applicant's father's name which closely matched the applicant's father's name as given on the applicant's driving licence, a document which was also before the Tribunal Member.

9. It is submitted that the Tribunal Member's reasoning, that would ground a finding that the bank document is a forgery and that the applicant was not credible, is an obtuse, unfair and injudicious exercise on the part of the decision-maker.

10. Counsel contends that there may, for example, have been an element of corruption involved, with payments by the applicant to his superiors required in order to secure his employment, which information the applicant may not have wished to volunteer to persons in authority.

11. It is also submitted that the Tribunal Member's deduction also fails to acknowledge the reasonable and particular nature of the explanation given by the applicant, even if same is somewhat inaccurate or incomplete. The Tribunal Member's deduction supposes an elaborate act of deception and forgery on the part of a 23 year old poorly educated driver. Moreover, the Tribunal Member's conclusion also ignores the fact that the statement does record regular payments from the named employer to "Imal". Counsel accepts that the name thereon "Imal" is not exactly the applicant's given name but asserts that the applicant's instructions are that the bank's version is incorrect, namely a misspelling on the bank's part.

12. Counsel also submits that the account to which the bank statement relates was opened in August, 2010 and that this is consistent with when the applicant says he commenced his employment. While there is a pattern of some payments out to named individuals, as referred to in the decision, there are also withdrawals by "Imal" which, counsel submits, is referable to the applicant. It is accepted that the withdrawals to named third parties as shown on the account do not reflect the account of events as given by the applicant in evidence, namely that the individuals concerned first received the applicant's salary from the applicant's employer and then paid that salary into the applicant's account. However, insofar as the applicant's explanation to the Tribunal conflicts with the factual matrix as presented in the bank statement, it is submitted that his evidence was not so extraordinary as to merit the Tribunal adopting the approach it did. Counsel submits that the applicant's evidence to the Tribunal reflected what was happening in a general sense and argues that it may well have been the case that the applicant did not have a bank account previously, which may account for the inaccuracy in his evidence.

13. Counsel does not take issue with the Tribunal Member's assessment of the answers which the applicant gave when questioned about the bank account to which the bank statement related. However, it is submitted that the Tribunal Member was dealing with

someone of limited education; thus, the answers the applicant gave regarding the bank statement, which itself concerned a bank account which had been set up by the applicant's employer, had to be considered in the context of the applicant's relatively limited knowledge of such matters. More significantly, the Tribunal Member afforded far too much importance to the issue of the applicant's bank account.

14. Thus, the applicant's credibility hinged upon the finding made in respect of the bank statement. On the basis of his findings regarding the bank statement, the Tribunal Member purported to afford other documentation furnished by the applicant "no weight", which, counsel submits, was an irrational approach. The Tribunal Member's claim to have examined them is erroneous in such circumstances.

15. The Tribunal Member's finding that the applicant's story dramatically fell apart was thus invalid in circumstances where the Tribunal Member did not examine any of the other documentation which the applicant had furnished or examine the applicant in respect of same. While the Tribunal Member described the bank statement as "fictional" and while he refers to "mock-up documents", he in fact only addressed one document in the decision and does not otherwise elaborate on the other documents. Specifically, the Tribunal Member did not say that the identity documents or the Taliban letters did not corroborate the applicant's claim.

16. The applicant had presented his company ID card to the Tribunal. This was an essential proof provided to ORAC and the Tribunal. This was not verified by the Tribunal. He also presented his driving licence. These documents should have been weighed by the Tribunal Member.

17. It is submitted that the finding with regard to the applicant's monthly salary was erroneous as it is not known how much more money was owing to the applicant in respect of his salary. Similarly, the finding as to the applicant's state of knowledge as to whether his family was harmed in the Taliban attack was unfair. The applicant gave an explanation at the s.11 interview for his lack of knowledge in this regard and subsequently he made enquiries of his uncle about his family of which he was able to apprise the Tribunal.

18. The applicant's account of the armed attack on his home, including on his mother, while recited in the decision merited no mention by the Tribunal Member in the "analysis of the claim". Yet there is no indication in the decision that the Tribunal Member failed to accept this evidence. The applicant was not questioned on it by the Tribunal Member or by the presenting officer. It is omitted completely from the decision making. This omission may be contrasted with the central and vital importance apportioned by the Tribunal Member to the supposed defects in the bank statement. Such a failure of jurisdiction, counsel submits, is contrary to basic principles of natural justice and due process.

19. Furthermore, the finding that it was not credible that the applicant could not make telephone contact with his mother was unfair.

20. It is submitted that the Tribunal Member's rejection of the applicant's explanation as to why his uncle had not been in a position to send the applicant his work identification card and the Taliban letters was an exercise in conjecture on the decision-maker's part as he could not know the things that are done in Afghanistan. The fact that the applicant's uncle did not have time to post the applicant his identity card or the Taliban letters is not something that should be relied on as a credibility issue to defeat the applicant's asylum claim.

21. The Tribunal Member's reliance on the answers given by the applicant when questioned by the presenting officer on the contents of the Taliban letters and the underlying premise of such questioning, namely that the letters required only that the applicant cease his employment, was an entirely unlawful way for the Tribunal Member to proceed. Both ORAC's and the Tribunal's reliance on the fact that the applicant did not flee after receiving the first Taliban letter under-estimated the seriousness of someone having to flee their country and seek asylum. It is submitted that ORAC itself recognised that the applicant could be at risk and that such letters as the applicant received were in fact used in Afghanistan. In the s. 13 report the Commissioner stated "[t]he central core of the applicant's claim is that he worked as a driver for [a named company]. It is well documented that individuals assisting or assumed to be assisting coalition forces in Afghanistan can be at risk." The s. 13 report quoted both the UNHCR and the UK Home Office Report for 2010 in this regard.

22. Thus, the Tribunal Member erred in not reviewing any of the country of origin information which was before him. This failure or omission occurs despite the Tribunal Member himself citing the 2006 Regulations in the decision under the heading "Assessment of facts and circumstances". Furthermore, no regard was had to the notorious activities of the Taliban and to the extent and nature of the terror they have inflicted on the Afghan population. Moreover, the Tribunal Member seems to imply that the letters did not in fact threaten to kill the applicant. However, the letters referred to the applicant receiving "a rigorous punishment". It is submitted that from that one can deduce that the applicant's life was in danger.

23. It is submitted that failure to have regard to country of origin information which was supportive of the applicant should persuade the court that the decision is invalid.

24. With regard to the travel finding, it is submitted that the applicant gave an explanation for not claiming asylum in the countries he transited. His mode of travel was by lorry and he was at the time in the hands of an agent. Contrary to the respondents' counsel's assertion in written submissions that the applicant gave wholly inconsistent testimony about the countries he transited before arriving in the State, the applicant's claim was not rejected because he was found to be inconsistent.

It is submitted that too much emphasis was placed on the applicant's mode of travel to this State, contrary to the approach advocated by Eagar J. in *F.U. v. Minister for Justice* [2015] IEHC 78.

25. Insofar as the Tribunal Member opined that he was not relying on "other credibility" findings made by the Commissioner, it is not clear what it is the Tribunal Member is conveying by this statement. Thus, how is the court to know what it is the Tribunal Member was not relying upon?

26. Counsel submits that in assessing the applicant's claim, the Tribunal Member failed to adopt the approach advocated in *S.C. v. Minister for Justice* (Kelly J., High Court, 26th July 2000) by asking could the story have happened and could the applicant be in fear of persecution given what was known about the country of origin. It is submitted that insofar as the Tribunal Member relied on *Kikumbi v. RAT* [2007] IEHC 11, such reliance was misplaced. The applicant's account of events was a cogent recollection of events, the facts of which are not contradicted or challenged by either ORAC or the first named respondent, other than in the most peripheral respects. It is submitted that no error of substance in the applicant's account of events was identified by the Tribunal Member. Furthermore, the decision-maker had a "yard stick" by which to determine whether the applicant's account was credible, namely the country of origin information which was before him and the evidence the applicant had submitted in relation to his identity and work

history.

27. Insofar as the decision-maker referred to the *dictum* of Cooke J. in *F. v. RAT* [2011] IEHC 390 as apposite to reject the applicant's claim as a fraudulent one, it is submitted that no fair reading of the evidence could support such a conclusion. Most essentially, such a conclusion was not open to a decision-maker who failed or omitted to examine evidence.

28. In support of his arguments, counsel for the applicant places reliance on *A.M.T. v. RAT* [2004] IEHC 219, and *I.R. v. Minister for Justice* [2009] IEHC 353.

The respondents' submissions

29. On behalf of the respondents it is submitted that this is a decision which is based solely on the rejection of the applicant's credibility. The rejection comes after the Tribunal Member analyses the applicant's evidence in great detail. There was ample information before the decision-maker to support his findings that the applicant completely lacked credibility. The Tribunal Member decided that the applicant's core claim was not made out on the basis, effectively, that the evidence which the applicant gave to support his core claim was not credible. This was not a claim wherein the applicant asserted that he was being persecuted by reason of ethnic group or by reason of religious or political affiliation. His case rested on his asserted employment situation in Afghanistan, namely his claim to work as a driver for a named company in Afghanistan as a result of which he claimed to have been threatened by the Taliban. These threats came via three letters. The issue here is whether the Tribunal Member made lawful credibility findings. That is the issue to be determined by the court which is not exercising an appellate function.

30. The applicant had the benefit of a full oral hearing both before ORAC and the Tribunal. In accordance with relevant legal principles, the Tribunal Member properly exercised his functions such that there is no error of law or material error of fact in the decision.

31. The fundamental issue is that the applicant was not believed. His own documents were found not to be supportive of his core claim. More specifically, it was not believed that the applicant was employed by the employer he named. The Tribunal Member did not base this finding on any gut feeling. He went through the evidence in forensic detail, especially the bank statement furnished by the applicant to see whether it supported his claim.

32. Both the Commissioner and the Tribunal invoked s. 11B (b) of the 1996 Act as they were entitled to do. In this regard, the respondents rely on the decision of Hedigan J. in *O.U. v. RAT* [2008] IEHC 10 where he states:

> *"… The RAT had ample grounds for doubting the truth of the applicant's account, in particular of his journey. On the basis of what I have read in the papers in this case I have little doubt the applicant has not given a truthful account of his journey."*

In the present case, the applicant provided no documentary evidence of his travel.

33. Counsel submits that the Tribunal Member complied with the principles as set out by Cooke J. in *I.R. v. Minister for Justice* [2009] IEHC 353 in giving an extensive and rationalised assessment of the applicant's credibility. It is further contended that the reasons given by the Tribunal Member accord with the test set by MacEochaidh J. in *R.O. v. Minister for Justice* [2012] IEHC 573:

> *"30. In view of the foregoing, I approach the review of the adequacy of reasons in this case by asking the following questions:*
>
> *(i) Were reasons given or discernible for the credibility findings?*
>
> *(ii) If so, were the reasons intelligible in the sense that the reader/addressee could understand why the finding was made?*
>
> *(iii) Were the reasons specific, cogent and substantial?*
>
> *(iv) Were they based on correct facts?*
>
> *(v) Were they rational?"*

34. In particular, the applicant's claim was based on a particular set of facts, namely his employment with the named employer in Afghanistan. Thus, this accords with principle (iii) of *RO*. The decision-maker's rationale was based on testimony and documents furnished by the applicant himself, thus satisfying principle (v) of *RO*.

35. The core of the applicant's claim was that he was liable to attack and threat from the Taliban because of his work. Thus, if the very basis upon which the applicant grounded his fear, namely his association with a named employer, is not believed the applicant then cannot have a fear of persecution.

36. The bank statement furnished by the applicant would suggest that his employment commenced in or about August 2010, yet the company identity card which he submitted is said to have issued in February 2011, some five to six months after the first transaction on the bank account statement. Furthermore, the name on the bank statement does not equate with that of the applicant and the document merely refers to "Imal".

37. It is submitted that the decision-maker analysed the bank statement in great detail. The applicant's answer when questioned on transactions evident on the document and which suggested payments out to named third parties was to effect that those third parties were the initial recipients of the applicant's salary from his employer and that the third parties then paid over the salary to the applicant. As a matter of fact, the information on the bank statement totally contradicted the applicant's answer.

38. As it was concluded that the employment history contended for by the applicant was "fictional", the Tribunal Member was then satisfied that the said documents connecting the applicant to the US company were generic mock-ups and were not genuine. It is submitted that the Tribunal Member was fully entitled to come to this conclusion. This was a conflict of fact that the decision-maker was fully entitled to resolve in the manner in which he did, having had the benefit of the applicant's answers at interview as well as the answers given by him at the oral hearing of his appeal. The Tribunal Member was fully entitled to determine the probative value of any documentation provided by the applicant in the context of assessing credibility. The probative value to be attached to evidence is a matter exclusively for the decision-maker and within his jurisdiction. In this regard counsel relies on the dictum of Birmingham J. in

M.E. v. RAT [2008] IEHC 192.

39. In aid of the submission that once the Tribunal Member found fundamental credibility issues regarding the applicant's testimony there was no obligation to consider the matter further, counsel urges the court to adopt the approach of Peart J. in *Imafu v. Minister for Justice* [2005] IEHC 416 where at p. 11 he states:

> *"In my view, the decision in Horvath, and of David Pannick QC 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 to the effect that women are trafficked abroad from Nigeria and that if they return they may be prosecuted for an offence. Such information, especially given the finding in respect of which leave was refused as to credibility, could not add anything of real relevance with a capacity to influence the assessment of overall credibility in the present case. That is not to detract for one moment from the force to be given to Horvath principles generally."*

40. Counsel also relies on the dictum of Humphreys J. in R.A. v. RAT [2015] IEHC 686:

> *"(ii) One of the conditions for the existence of a subjective fear is that the asylum seeker is generally credible. If the applicant's credibility cannot be accepted, it cannot be the case that they can be held to have a subjective fear, still less an objective one."*

41. Insofar as counsel for the applicant takes issue with the Tribunal Member for not directing ORAC to conduct inquiries, it is the position that the Tribunal Member was conducting a *de novo* appeal and was thus free to arrive at his own conclusions and was not bound by any representations or entreaties made by the Commissioner. For this submission counsel relies on *N.E. v. RAT* [2015] IEHC 8. Furthermore, the applicant was on notice of the credibility findings made against him by the Commissioner, yet he failed to produce evidence or documentation that actually backed his claim. Insofar as he did produce documents, these were not ignored by the Tribunal Member, as asserted by the applicant's counsel; rather they were taken into account and found not to be supportive of his claim.

42. Given the myriad credibility findings, it is submitted that even if the decision-maker was found to have erred in a particular respect (which is not conceded), same should not undermine the validity of the decision overall. In this regard, counsel cites *Imafu v. Minister for Justice* [2005] IEHC 416, and *R.A. v. RAT* [2015] IEHC 584.

The applicant's response to the respondent's submissions

43. It is contended that the respondents' submissions amount in effect to a rewriting of the decision. None of the submissions reflect the findings which were actually made by the Tribunal Member. In particular, it was never said that the applicant was not plausible in saying that he risked persecution from the Taliban. The applicant was found not credible only in relation to his personal story. Moreover, it is incorrect for the respondent to state that the Tribunal Member relied on the applicant's documents in order to reject his claim; the decision maker had recourse to only one document – the bank statement. The failure to have recourse to the other documentary evidence was to the detriment of the applicant. The decision-maker did not say that the other documents were not corroborative of the applicant's claim, it was merely stated that these documents merited "no weight".

44. Furthermore, insofar as counsel for the respondent asserts in written submissions that the findings were supported by country of origin information, the Tribunal Member in fact did not refer to any country of origin information.

45. It is submitted that the respondents cannot credibly contend that the onus was on the applicant to place cogent, plausible and credible testimony before the decision-maker, or that he failed to do so, in circumstances where in response to a request by ORAC the applicant did in fact produce such evidence.

46. Contrary to the respondents' counsel's submissions, the approach of the Tribunal Member did not accord with the test set out in *R.O*. There were no reasons given for the rejection of the applicant's subjective evidence or the objective evidence he provided. Such reasons as were given were not intelligible. In this regard, how is the court to discern if the applicant's company identification card was corroborative of his claim giving that same was disregarded by the Tribunal Member. While it is accepted that the Tribunal Member gave one reason for the rejection of the bank statement, the question is whether that reason was cogent and substantial. Furthermore, the Tribunal Member cannot be said to satisfy the requirement as to rationality as he did not take all of the applicant's documents into account.

47. Contrary to the respondents' reliance on *O.U. v. RAT*, the applicant, unlike the position that pertained in that case, was not vague or silent about his mode of travel. He outlined the nature of his travel arrangements. Nor did he use false documents or dispose of them, as was the case in *O.U.*

48. While the respondents rely on the dictum of Birmingham J. in *M.E.*, that case does not give a decision maker a licence to ignore primary evidence.

49. It is further submitted that the applicant's circumstances are not akin to those which presented in *Imafu*. In the present case there was objective evidence to corroborate the applicant's account of events.

Considerations

50. In the context of the present case, it is apposite to refer to *I.R. v. Minister for Justice* [2009] IEHC 353, where Cooke J set out the following principles against which an assessment of credibility should be measured on judicial review.

> *"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."

51. As a preliminary matter, I wish to address the applicant's submissions as to alleged unfair procedures at the oral hearing. Counsel for the applicant argued that if the Tribunal Member considered the bank statement such damming evidence and a fatal inconsistency in the applicant's account he was required to put this to the applicant prior to rendering a decision thereon. Counsel emphasised that the applicant was a poorly educated person who was given no opportunity to address these matters at the hearing.

52. I do not accept counsel's argument on this particular point. It is clear from the decision that the applicant was examined on the document in question and on the transactions evident on the bank account to which the applicant provided answers and indeed explanations for the transactions. Moreover, the applicant was represented by both a solicitor and a barrister at the Tribunal hearing. It was open to them to intervene in the course of the hearing if it was felt that further elucidation was necessary. In all of those circumstances, the Tribunal Member was entitled to consider the evidence which the applicant tendered and form an opinion upon that evidence without further recourse to the applicant.

53. Counsel also queried whether the Tribunal Member decided at all whether the bank account or indeed the bank where the account was kept existed. I find no merit to this submission. The applicant himself was relying on the bank statement as evidence of an account he had with a bank and as evidence of his employment relationship with the named employer. There was no obligation on the decision-maker to establish whether the bank existed. Moreover, the fact that the Tribunal Member failed to make an inquiry of ORAC as to whether or not it had ascertained from the applicant's claimed employer whether the applicant was employed by that company was not a necessary enquiry for the decision-maker to engage on. The Tribunal was lawfully entitled to proceed to examine the document which the applicant claimed was corroborative of the employment relationship, namely an extract from his bank account into which he said his salary was paid. The applicant's counsel also argued that it is for the court to determine whether the applicant's admittedly inaccurate answers regarding certain payments out of the account to third parties go to the core of his claim. However, this is not a matter for the court to determine, rather the court's function is to ascertain whether the Tribunal Member's conclusion that it did go to the core of his claim was a rational and reasonable one.

54. The core issue in the applicant's claim is that the persecution he suffered at the hands of the Taliban was a result of his employment with a named employer involved in conflict-related work in Afghanistan. Essentially, the Tribunal Member's rejection of the applicant's claim is based on the finding that the applicant did not work for the entity in question. Primarily, in rejecting the applicant's account of his personal history, the decision-maker had regard to a bank statement furnished by the applicant as evidence of his bank account into which the applicant said his salary had been paid by his employer. In addition to providing what he said was banking evidence of his connection to the named employer, the applicant furnished the Tribunal with what was said to be his work ID card, his driving licence and a national ID card, in addition to the letters said to have been sent by the Taliban. I should say that neither the national identity card nor the Taliban letters were before the court.

55. Turning firstly to the document said to be an extract from the applicant's bank account. It is entitled "Statement of Accounts" held in the name "Imal" and bears an account number. As noted by the decision-maker, the bank statement records deposits from the entity named by the applicant as his employer and which represents monthly salary lodgements to a named individual "Imal" from September 2010 to May 2011 as part of the total entries (lodgements and withdrawals) recorded on the extract between 1st January, 2010 and 15th April, 2012. As well as salary lodgements to "Imal" there is evidence of withdrawals by "Imal", which the applicant asserts were made by him as the holder of the account.

56. The s. 6 analysis records that the applicant was questioned at oral hearing about certain transactions on the account involving named third parties, who are referred to in this judgment as MT, B and MR. The decision-maker records that "there were … significant withdrawals" to these third parties. The applicant was also questioned about a withdrawal to AQ.

57. The recorded answer given by the applicant with regard to the withdrawal attributed to MT (which answer is not disputed by the applicant) was that MT was "an employee of [the named company/employer] in the same finance department" who was responsible for paying the appellant's salary and that the reason his name appeared on the appellant's account was due to the way [the employer] structured salary payments to its employees, such as the appellant, which consisted of paying the appellant's salary not directly to his own account but instead firstly into the account of MT in the finance department who would then transfer the salary out of his account into the appellant's account."

58. By any standard of logic, the withdrawal by MT as recorded on the account bore no relationship to the explanation proffered by the applicant for the transaction and, accordingly, the decision-maker was rationally and reasonably entitled to take account of this.

59. The decision then records that the applicant was questioned about another individual, AQ, and that the applicant's reply was that AQ was the "'zone manager of [the employer]' and the reason his name appeared on the appellant's account was for the same reason as [MT's] name appeared." I would make the same observation as previously with regard to the applicant's explanation for this transaction.

60. The s. 6 analysis also records that the applicant explained that the individual B, in respect of whom a transaction is recorded on the bank statement, "was his then current supervisor ….(who had at that stage (7/12/2010) replaced his previous supervisor) who was also responsible for using his own account to transfer the appellant's salary from [the company/employer] into the appellant's account."

61. With reference to the three transactions and the applicant's explanation therefor, the Tribunal Member states as follows: "quite apart from the inherent implausibility of such a scenario, the relevant entries in the appellant's account indicate that deposits were not received from these persons as salary, as contended for by the appellant, but that withdrawals were made from the appellant's account to these persons."

62. From a perusal of the bank document, I note that unlike MT and AQ, who were recipients of withdrawals made from the account, the transaction referable to B shows the account being credited by a lodgement attributed to B.

63. As far as this court can ascertain, the attribution to the B transaction as one of the withdrawals which was made on the account appears to be a mistake on the part of the Tribunal Member. I should say at this juncture that this particular issue was not addressed in the applicant's affidavit. Nor was it addressed in the grounding affidavit sworn by the applicant's solicitor, or in the course of the within proceedings; rather it is an observation which the court makes. I find however that this factual error, of itself, is not sufficient to undermine the Tribunal Member's central premise, since the transactions on the bank document which are actually described as salary payments are accredited to the named employer and thus do not themselves, on the face of the document, support the applicant's evidence as given at the hearing that his salary was paid to him by his employer through the bank accounts of the above-named third parties. In other words, the transactions which are actually marked salary payments are attributed to the employer itself and are not attributed as coming into the "Imal" account through the account of a particular individual be that MT, AQ or B. In the s.6 analysis, the decision-maker duly noted that the transactions described as salary payments are attributed to a named entity.

64. The question is whether the Tribunal Member's factual finding following upon a consideration of the bank statement and the applicant's evidence in relation thereto was sufficient to conclude that the applicant's relationship with his claimed employer was "fictional".

65. Before addressing this, I wish to address counsel for the applicant's written submissions which suggested that the Tribunal Member found the applicant's explanation for the transactions in question, namely that they were to supervisors to whom the applicant was required to make payments, not to be credible. The Tribunal Member did not in fact reach such a conclusion. Furthermore, nowhere in the Tribunal's record of the applicant's evidence is it recorded that the applicant said he was required to make payments to these third parties and it is not asserted on affidavit that the Tribunal Member has not properly recorded the applicant's evidence. Oral submissions were made to the court on behalf of the applicant that the decision-maker should have factored in the possibility that the payments to named third parties, as feature on the bank statement, might have come about as a result of corruption; counsel's thesis being that the applicant might have been required to make such payments to keep his employment. There is no hint in the decision of the applicant having tendered such evidence. Nor is there evidence before this court that the applicant furnished such evidence at the hearing which was not recorded or taken into account by the decision-maker.

66. In my view, the decision-maker was not obliged to construct a hypothesis to explain the applicant's evidence. In assessing the probative value of the bank statement, he was entitled to consider whether the transactions on the document accorded with the explanation given by the applicant for the existence of such transactions. Additionally, he was entitled to consider the ramifications of the applicant's explanations.

67. Submissions were made that the Tribunal Member did not take account of the applicant's age or very limited education and background. However, the record does not establish that the applicant evinced a lack of understanding of the bank account or how it operated. What the record shows is that the applicant tendered an explanation for the existence of certain transactions which was contradicted by the transactions themselves.

68. Had the decision-maker considered the "inherent implausibility" of the applicant's explanation of how his claimed employer structured salary payments in circumstances where there were in fact transactions on the face of the bank statement capable of supporting the applicant's account, the court may well have found such an approach unreasonable or even irrational. However, the transactions on the bank statements with reference to MT and AQ directly contradicted the applicant's explanations for the existence of such transactions, not least because they were payments out of the account and in circumstances where the salary payments that are actually recorded on the account contain no attribution to such persons. As I have already said, the B transaction constitutes a payment into the account but this cannot gainsay the fact that there is no attribution to this payment as a salary payment, and in circumstances where as a matter of fact the actual salary payments that are described as such on the document are not recorded as attributable to B.

69. The decision-maker's treatment of the other documents which were furnished by the applicant in aid of his claim comprise part of the within challenge. Submissions were made by counsel for the applicant on this issue. It is submitted that there was unfair treatment of these documents. One of the arguments put forward by counsel is that the decision-maker at the outset of the analysis states that the applicant "presented several documents" and "when questioned on them", "his story dramatically fell apart", yet the decision deals only with the bank statement "as an example" of how the applicant's story "fell apart" and simply concludes thereafter to afford "no weight" to the applicant's identity documents including his work ID card, driving licence, national identity card or to the Taliban letters. It is submitted that this was an unfair approach.

70. The applicant's core claim was that he was under threat from the Taliban because of his employment with a named employer operating in Afghanistan. His claim for protection hinged on an association with an entity which he asserts drew the wrath of the Taliban. It seems to me that on the basis of the banking evidence tendered by the applicant and the fact that explanations given by him for certain transactions was undermined by the very nature of the transactions themselves, it was open to the Tribunal Member to conclude that the claimed relationship between the applicant and the entity said to be his employer did not exist. On judicial review, it is not a question of the court arriving at a different conclusion to that of the decision-maker. Rather it is a question of whether the conclusion arrived at was a fair and rational one. The Tribunal Member's finding based on the banking evidence that the applicant's employment relationship with the employer in question was "fictional" was within jurisdiction and rationally capable of being arrived at on the basis of the banking evidence alone and the applicant's evidence in relation thereto. On that basis, I find that the

Tribunal Member could reasonably ascribe no weight to the other documents, which I am satisfied were considered. In *M.E. v. RAT* [2008] IEHC 192 , Birmingham J. states:

> *"[T]he assessment of whether a particular piece of evidence is of probative value, or the extent to which it is of probative value, is quintessentially a matter for the Tribunal member. In this instance, there were a number of factors present which could have led the Tribunal member to the conclusion that she reached …"*

In the particular circumstances of this case, where the existence of the employment relationship on which the applicant relied as the basis for his fear of persecution by the Taliban was capable of being determined by reference to the bank statement and the applicant's evidence in relation thereto, there was no requirement for the Tribunal Member to be discursive as to the reasons why he attributed no weight to the other documents. (Principle 10 of *IR* as quoted above refers).

69. The Tribunal Member went on to address a number of other matters which were said "to undermine the general credibility" of the applicant.

70. As to the discrepancy between what the applicant said was his monthly salary (US$700.00 per month) and the amounts appearing on the bank document, while the Tribunal Member's conclusion that the documentary evidence did not accord with the applicant's evidence of monthly salary would not of itself be sufficient to undermine the applicant had he been found otherwise credible in relation to his claimed connection the bank account, bearing in mind the earlier finding with regard to the applicant's employment it was something to which the decision-maker was entitled to have regard to, in the round.

71. The Tribunal Member made an adverse credibility finding with regard to the applicant's knowledge of whether his family members had been harmed in the Taliban attack alleged to have taken place on the applicant's home. He found the applicant's inability to state in the s. 11 interview whether his family members had been harmed raised credibility concerns and was "further indicative of his evasive responses". Counsel for the applicant submits that this finding was unfair and points to what the applicant said in the course of the s. 11 interview. At the s. 11 interview the applicant was questioned as follows: "Was anyone else in your family harmed by the Taliban in the attack?" to which he responded "[t]hey broke the main gate of our house and I left at that time so I don't know."

It seems to the court to be unfair to have labelled the applicant's response "evasive" given that he gave a straightforward reply at the s. 11 interview. However, any inherent unfairness in this finding would not of itself vitiate an otherwise lawful decision.

The decision refers the reader to "a further example of the rather ludicrous twists [the applicant's] story took …when he was taken of script… during oral examination" by reference to paragraph 13 of summary of the applicant's claim. It states:

> "[The applicant] said that his maternal uncle is self-employed and imports cars and lives in the same village as the appellant. He said that his mother and siblings continued to live in the same house they always did and that no trouble has been visited upon them. He has been told this by his maternal uncle with whom he is [sic] regular telephone contact. When asked if he has been talking to his mother, the appellant that he had not. When asked why not, given that his maternal uncle lives in the same village as her, he said that it was because telephone coverage is poor in the village and that his uncle has to travel an hour and a half outside his village to be able to use his phone and would not bring his mother with him on those journeys to talk to the appellant."

To my mind, this finding was unfair in the absence of any elaboration as to why this weighed with the decision-maker against the applicant.

72. I find however that there is no unreasonableness or irrationality in the finding that the applicant's explanation for why his uncle had not sent him his documents undermined his general credibility, given the applicant's own account of the extent to which his uncle continued to maintain contact with him. While, of itself, this particular finding would not be considered capable of undermining the applicant's claim, again it was something to which regard could be had in the round.

73. The next reason given for rejecting the applicant's credibility concerned the contents of the letters said by the applicant to have been received by him from the Taliban.

74. In the course of the oral hearing, the presenting officer put it to the applicant that all the Taliban demanded off him was that he would quit his job and that now that he had quit his job he should no longer have any fear of the Taliban. The applicant had replied that he feared being killed by that group and that the letters sent to him demanded that he "surrender himself". When it was pointed out to him that the letters contained no such demand for his surrender and that the applicant's reply contradicted responses he gave in his questionnaire, the applicant contended that it was common knowledge that the Taliban would kill people who worked for foreign organisations. The Tribunal Member found that "this tends to contradict his earlier assertion that when he received his first Taliban letter, he did not take it seriously and continued to work." Although the Taliban letters are not before the court, it is not alleged on affidavit that the Tribunal Member misrepresented the contents of the letters.

75. In the pleadings, and in submissions to this court, the applicant challenged the entitlement of either ORAC or the Tribunal Member to put it to him that ceasing his employment would solve his problems. Counsel submits that the premise put to the applicant "offends basic principles of the rule of law and would validate the use of terrorist intimidation and violence". He submits that the Tribunal Member, as the superior appellate forum, was under an obligation to condemn such reasoning and that the Tribunal Member should not have, as he proceeded to do, rely on it as a factor to undermine the applicant's credibility. It is argued that the assertion made to the applicant in the course of the hearing was an unethical proposition for the Tribunal Member to make. I find no merit in the basic thrust of counsel's submission. The decision-maker was entitled to probe the claims made by the applicant. In so doing, the decision-maker was in no way condoning or validating the violence. In the present case, the probing was related to the contents of documents (the Taliban letters) submitted by the applicant and thus fell entirely within the decision-maker's remit.

76. In my view, the contradiction in the applicant's responses would not rationally entitle a decision-maker to conclude that it undermined his general credibility, as an individual might reasonably believe that simply doing what was asked of him by the Taliban may not be sufficient to dispel a fear of being harmed by that group. However, the fact remains that this particular finding arose in the context of the decision-maker having already concluded that the claimed employment history which was at the heart of the applicant's claim to fear the Taliban was not in fact the case.

77. With regard to the finding on the applicant's travel to the State, the s. 6 analysis records that the applicant on appeal claimed that Ireland was "the first safe country in which he has arrived since departing his country of origin." This is not contradicted by the applicant on affidavit. Under Statute, the decision-maker is entitled to have regard to this in assessing credibility as one of a number

of factors. (S.11(B)(b) of the Refugee Act, 1996 refers). The question is whether the Tribunal Member reasonably discounted the applicant's explanation for why Ireland was the first safe country and his account of his travel to this State. The Tribunal decision does not record in detail the evidence given by the applicant in respect of his travel. On the issue of the State as the "first safe country" , the s.13 report records the applicant as stating that he was "in the hand/control of an agent". The Tribunal Member, after the applicant was "examined orally on appeal", upheld the Commissioner's finding that he gave "implausible details surrounding his travel to this State" and found that the applicant's explanations did not "ring true". The s. 13 report records the applicant as stating that "he just got off a ship at a port and encountered no immigration personnel" and the Commissioner concluded that it did not seem credible that the applicant could pass through immigration at the Irish port in the manner in which he described.

To my mind, it is conceivable given the mode of travel which the applicant says he utilised, that he did not encounter immigration officials. Even if this were not the case, I concur with the approach adopted by Eager J. in *F.U. v. Minister for Justice* [2015] IEHC 78:

> *"18. The first named Respondent also dealt with the issue of travel to Ireland which in my view where agents are involved is a peripheral point. Where agents are involved it is absolutely credible that a person who would not seek to make an asylum claim in the first country that they land in where the agent is encouraging them to continue with the travelling. This may appear to an educated European to be somewhat difficult to understand but an uneducated person who does not speak a European language and has little education in reading and writing it is totally understandable.*
>
> *19. In "The Law of Refugee Status" by James Hathaway and Michelle Foster (Second Edition, 2014) the authors deal with "Credibility implications of mode of departure, travel or arrival":-*
>
> > *"Perhaps because assessing the credibility of testimonial evidence is so inherently difficult, it is sometimes suggested that credibility can be determined by a reference to the circumstances of an Applicant's departure from her home country, the route taken to arrive in the asylum state and the mode of arrival to seek protection. While evidence on each of these issues may have some relevance, mush jurisprudence suggests an exaggerated reliance on the evidence of this kind to assess credibility."(My emphasis)*
>
> *20. The authors further note:-*
>
> > *"Evidence of this kind is not, however, determinative but should be rather weighed together with other facts to discern the true extent of the risk faced by the refugee complainant."*

The treatment of country of origin information
It is argued on behalf of the applicant that the Tribunal Member did not have regard to country of origin information which was before him which was supportive of the applicant's claim. In particular, counsel submits that no regard was had to reports from the UNHCR and the UK Home Office which state that individuals assisting coalition forces in Afghanistan can be at risk, and that the Taliban uses "night letters" such as those received by the applicant to communicate such threats. It is submitted that the decision-maker's failure to take account of this material was in breach of Regulation 5(1) and (2) of the European Communities (Eligibility for Protection) Regulations 2006.

78. The Tribunal Member addressed the obligation to consult country of origin information in the following terms:

> "Notwithstanding the principle enunciated in [*F v. Refugee AppealTribunal*] (Unreported High Court, Peart J., 2nd May, 2008) that
>
> "once such a fundamental lack of credibility is found, the Tribunal is not obliged to refer to country of origin information to see if the story can be believed" the Tribunal has considered all of the various country of origin reports and information."

79. The decision-maker then quotes Cooke J. in *F v. Refugee Appeals Tribunal* [2011] IEHC 390, as follows:

> *"Thus the Tribunal member was faced with the crucial question which frequently arises: is this an applicant who has fled from the country of origin for the reasons and in the circumstances claimed, or, is this an applicant who, while coming from that country of origin has endeavoured to create an asylum-friendly scenario which is superficially compatible with conditions known to exist in the country of origin?*

80. In the overall context of this case, I am not persuaded by the argument canvassed by counsel for the applicant that there was a possible benefit to be derived from analysing in depth whether the applicant's story fitted into a factual context in his country of origin. While it would have been preferable for the Tribunal Member, once he stated that he considered the country of origin information, to have set out the basis upon which that information was not found by him to assist the applicant, it remains the case that this court has upheld a core credibility finding that went to the heart of the applicant's claim, namely that his claimed employment with a named employer, said by him to have given rise to his fear of persecution, was not the "objective reality". Thus, in this particular case, the absence of any analysis in the decision as to why the country of origin information did not assist the applicant does not offend against the 2006 Regulations or indeed principle 9 of *IR*.

Summary
81. In summary therefore, the court holds that the Tribunal Member was reasonably and lawfully entitled to find that the applicant's evidence in respect of the bank document to which he claimed to be, as the Tribunal Member put it, "intrinsically linked" was not the case and that it was not the "objective reality" that the applicant was employed by his claimed employer.

82. While it is not possible to discern the weight which the decision-maker attached to those of the general credibility findings with which the court has found fault, none is so intrinsically linked to the applicant's core claim as to persuade the court that the decision should be vitiated. In *R.A. v. RAT* [2015] IEHC 584, Eager J. puts it thus:

> *"43. Given the minute scrutiny of the reasons for credibility, I should add that though in this case each of the findings were upheld, this approach should not be understood as requiring each such finding to be held by the High Court in order to sustain the legality of a decision. A decision-maker could err in one or more findings as to credibility and the High Court might, notwithstanding such error, conclude that overall, the decision on credibility is lawful. It is, in that most*

used, hopefully not overused phrase, "a question of fact and degree in each case"."

83. For the reasons set out in this judgment, the relief sought in the notice of motion is denied.