

THE HIGH COURT

JUDICIAL REVIEW

2007 23 JR

BETWEEN

E. O.

APPLICANT

AND

THE REFUGEE APPEALS TRIBUNAL (OLIVE BRENNAN)

RESPONDENT

JUDGMENT OF MS. JUSTICE M. H. CLARK, delivered on the 8th day of October, 2009.

1. This is an application for leave to apply for judicial review of the decision of the Refugee Appeals Tribunal (RAT), dated the 30th November, 2006, to affirm the earlier recommendation of the Office of the Refugee Applications Commissioner (ORAC) that the applicant should not be granted a declaration of refugee status. Ms. Patricia Brazil B.L. appeared for the applicant and Ms. Sinéad McGrath B.L. appeared for the respondent. The hearing took place at the King's Inns in Court No. 1 on the 17th June, 2009.

Factual Background

2. The applicant claims that she is a national of the Republic of the Congo and was born in Brazzaville in 1979. She is a Catholic and a member of the Mbochi ethnic group. Her first language is French but she also speaks Lingala. She is single and has one son who was born in 2001 who remains in Brazzaville with his father. The applicant herself lived with her parents and seven siblings in Brazzaville where the family remains.

3. The applicant received a certificate in accounting at a technical college in 1999 and then spent one year in university. She left because she did not pass her exams. She trained in IT and received a further certificate but she could not find work in the area. From 2001 to 2002 she worked as a coffee taster and then was out of work. An old friend from church told her the Presidency of the Republic was looking for cleaning ladies. She put in her CV and eventually was called for work in October, 2003 cleaning offices in the complex that houses the Presidency. She was in charge of cleaning four offices which were used by high ranking officials in the Presidency.

4. Her problems began because she agreed to assist one of the President's advisers who worked in the building to remove files which he had selected and give to him when outside. She assisted him because he paid her and she needed the money. She was stopped on one occasion when her bag was searched and a file was found. She was arrested and detained in the complex where she was tortured and forced to reveal the man's name. On the fifth day of her detention, she was released by two men and brought through security without any problems to a white man who took her to a house where she remained for three days. He then took her by plane to Angola then Portugal and Dublin. He walked in front of her with documents and they had no problems with immigration. He then brought her to the ORAC offices where she claimed asylum. The applicant's version of the details of this story changed from her ASY 1 form to her questionnaire. When asked to clarify details at her s. 11 interview the details again changed and serious discrepancies emerged.

5. The applicant applied for asylum on the 28th March, 2006 at the offices of the Refugee Applications Commissioner. Her ASY 1 form records that she paid 1.5 million CFA to her travel facilitator, that she left her country of origin on the 23rd March, 2006 and that she arrived at Dublin airport on the 27th March, 2006. It also records that she was put in prison because she was accused of *"putting false papers on the desks"* in the Presidential building.

6. She completed a questionnaire in which she claimed to fear persecution by reason of her political opinion. On this occasion she claimed to have left her country of origin on the 26th March, 2006. When asked why she left Congo-Brazzaville she said she did so because of political and ethnic problems and that although she was of the same ethnic group as the President, *"I disapproved of what his regime was doing."* She was approached by a man who was concerned about certain acts. He instructed her to take a few strategic files dealing, for instance, with arrests and hand them to him at a prearranged meeting place. He would arrive every day with the files and would put them on one of the desks in the offices she was working in, so she could put them in her bag. She said *"This was done in exchange for an amount of money. I also accepted to do it to express my disappointment with the government. Because I was unable to express it openly for fear of being captured."* She said her actions were treated as treason by the ruling party and certain members of her family also consider her to be a traitor because they are loyal to the government and do not believe she could betray them, or they thought she accepted payment to reveal government secrets. She had no identity documents but she had *"asked to obtain documents"* being her birth certificate and Presidency Card which she would submit as soon as possible.

7. The applicant then attended for a s. 11 interview at which she submitted a birth certificate and a letter of acceptance from her employer of her job. She said she had them with her in her clothes all the time but she was so traumatised on the first day (when she arrived) that she didn't realise she had them until later. She said that when she stated in her questionnaire that she had *"asked to obtain documents"*, she meant she had asked her child's father, who is caring for their son in Brazzaville.

8. She was asked various details about how she got the cleaning job and about the building she worked in. She said she worked directly for the Presidency and had been subjected to a background check. She started work every morning at 7.30 am. She was very unsure how many floors the building had or how many offices were there. She said the man who approached her about the files worked with one of the President's advisers. She knew what files to take because every three days he described for her what kind of envelopes to look for. He would tell her what office to go in to, which shelf to look on and which envelope or file to take. When asked to explain why she has said in her questionnaire that the man put the files on the desks for her; at first she said *"This must be a mistake. He told me to take them off the shelf"* but when her questionnaire was read back to her she said *"Yes I remember now. He*

did leave the envelopes." She said he was getting the files because he was important and powerful. He did not take them himself because he was afraid and thought she would be less suspicious. She did not know how he was able to get into the offices to leave the envelopes there without looking suspicious. She said *"maybe they knew him."*

9. She said the man approached her in 2006 but she did not remember the date. Some time later she said she brought him files for five months and then that it was in November, 2005 that he first asked her to assist in removing the files. When asked in what way she was disappointed with the government, the applicant said *"Due to things like the fact that you could only get work in the government if you knew someone."* She would have liked to see in power a President who cares about young people and their employment and who brings peace. She did not support a political party, and said *"I don't know about politics at all."*

10. On the 12th July, 2006, the authorised officer's s. 13 report was furnished with a negative recommendation. Several negative credibility findings were made and it was found that her evidence was contradictory in several respects. It was also noted that the document submitted, which states that she worked for the Presidency, records that she was employed as a qualified chef, not as a cleaner.

The Appeal

11. A Form 1 Notice of Appeal was lodged by the Refugee Legal Service (RLS) on behalf of the applicant in August, 2006. The two documents furnished by the applicant to ORAC were again submitted. Two country of origin information (COI) reports were also submitted. Comprehensive grounds of appeal were appended to the Form 1. Although many of the grounds were somewhat generic, of note is that ground 1 asserted that due consideration had not been given to her evidence that when she agreed to assist the man in taking files she was *"deeply dissatisfied"* with the Government and this was a motivating factor in her decision to co-operate. At ground 6 it was further argued that her involvement in taking files was motivated, at least in part, by deep dissatisfaction with the Government.

The RAT Oral Hearing

12. An oral hearing took place on the 20th September, 2006. An attendance note of the applicant's evidence at the hearing is before the Court. It records that the applicant said she applied for a kitchen job with the Presidency but was put on a cleaning job. She was asked about the building and said there was one office downstairs and one upstairs and another on the second floor. The building was one of many in the complex and the building was *"not too big."* There was some confusion where it appears the applicant understood the questions to refer to her CV and not to the files she was taking from the office; the Tribunal Member asked counsel for the applicant not to ask leading questions.

13. Counsel asked her why she took the files from the man; she said *"He contacted me and he told me to take the files and he gave me money."* Her counsel asked *"So you took the files because he gave you money?"* and she said *"Yes because I was in need of money";* she also said *"I was not happy with the job I was doing - the money they pay is too small."* The Tribunal Member then said *"Let's move this on"* and asked her about the day she was discovered with the files. After explaining that she had been imprisoned and beaten until she confessed, she was asked where she went after she left the compound. She said she went home and packed some clothes and the money she had and then they went to the second town in Congo.

14. The applicant was cross-examined by the Presenting Officer who asked her to explain why the document from the Presidency said she worked in the kitchen; she said she had applied for a kitchen job but there was no work available so they told her to do the cleaning. She said *"Congo is a country where the organisation is not very good and they can tell you to come and work in the kitchen and then there is no work there and they put you in a different place."* She was asked why the document was stamped 7th February, 2003 if she did not start work there until October, 2003; she said *"The one who gave me that certificate I just start with them in October 2003."* When asked how she came to have the birth certificate and job acceptance documents she said *"I did have it with me in my bag when I was travelling and when I went to Justice I checked in my bag and I find documents."* She said she didn't have them with her when she was arrested; she got them when she went back to her home to pick up her clothes. She said she had said this at interview but maybe the interpreter did not translate it. When she went home her family told her what she did was wrong and if she stayed they would kill her.

15. The applicant said that when the man first asked her to take the files she refused but when he told her he would give her some money *"I'm a poor girl and I accepted."* She didn't know why he didn't take them himself. She said the 19th March was the first time her bag was searched; they did not search her bag every time she left. She was asked if she took the files for financial reasons and said *"I did do it for money as the first reason but the second reason I did it because I don't like the way the government behaves to the population."*

16. After the applicant gave evidence, submissions were made by counsel acting on her behalf. The attendance note reads:-

"BL If I could revisit the client's evidence - she gave two reasons for her actions - one was money

TM And she was unhappy with the government

BL Would you like me to further

TM No."

17. After making further submissions the Tribunal Member asked counsel if he was now making the case that the applicant had a political motive for her actions. Counsel confirmed that he was. The Tribunal Member asked on what basis and she stated *"She said she was paid to take the files out and that she did not like the government."* Counsel said *"my client clearly stated that one of her reasons for her actions was her dissatisfaction with the government."* The attendance note reads *"The Tribunal Member more or less dismissed [Counsel] and turned to [the Presenting Officer] and asked for her submissions."*

Correspondence after the Hearing

18. On the 24th October, 2006, the RAT wrote to the applicant's solicitors informing them that the *European Communities (Eligibility for Protection) Regulations 2006* (S.I. No. 518 of 2006) ("the Protection Regulations") had come into force on the 10th October, 2006. The RAT invited the applicant's solicitors to make submissions within five working days of the sending of the letter in the context of the provisions of the Regulations and particularly in relation to the assessment of facts and circumstances, protection needs arising *sur place*, internal protection, acts of persecution and reasons for persecution. The letter informed the applicant's solicitors that all submissions made within five working days of the sending of the letter would be considered by the Tribunal Member

before deciding the appeal but that in the absence of receipt of a submission, the Tribunal Member would proceed to decide the appeal. Appended to the letter was an information note for applicants on the subject of the Regulations, which stated that nothing in the Regulations adds to or takes from the functions of ORAC or the RAT in determining whether a person is a refugee or affects the substance of the consideration by them of applications for refugee status.

19. By letter dated the 30th November, 2006 the applicant's solicitors wrote to the RAT acknowledging receipt of the letter of the 24th October and stating:-

"We consider it appropriate that these matters are dealt with by way of a further oral hearing, in order that the Tribunal can properly discharge its duty as a 'Protection Decision Maker' as defined in these regulations. I will confirm [to] you in due course my client's instructions regarding the above mentioned matter."

20. It would appear that this letter crossed in the post with a further letter from the RAT, dated 4th December, 2005, notifying the applicant that a negative decision had issued from the RAT on the 30th November, 2006. That letter stated that "[T]his decision was reached in accordance with the provisions of the Refugee Act 1996 and the European Communities (Eligibility for Protection) Regulations 2006 [...]"

21. On the 5th January, 2007, the applicant's solicitors received a letter of reply to their letter of the 30th November, 2006. It stated that in the absence of a response to the RAT's letter of the 24th October, 2006, the Tribunal Member completed the decision of the 30th November; that the decision was forwarded to the applicant on the 4th December and that "*The Tribunal has no further function in the matter.*"

The RAT decision

22. The Tribunal Member summarised the applicant's claim briefly and set out certain legal principles before turning to analyse the applicant's asserted fear of persecution. She stated that the applicant's core claim is that "*as a result of her stealing files from the Offices of the President in return for money she was subsequently found out, imprisoned, released and fled the country.*" She went on to make numerous negative credibility findings relating to:-

- a. The fact that the certificate of employment said she worked in the kitchen and was dated February, 2003;
- b. Her account of how she procured the birth certificate;
- c. She did not know why the man did not take the files himself;
- d. It was beyond belief that she would have access to files and could have passed them on undetected for such a period of time or that she could have been released from detention by two men who were not in uniform after five days in detention without being charged;
- e. Her account of her travel to and arrival in the State was not credible.

23. The Tribunal Member noted that she considered the applicant's testimony and the COI produced and having studied the responses and attitude of the applicant throughout, she was not satisfied that the applicant had established a well founded fear of persecution or that she had given a truthful account of the facts relating to her application. She therefore affirmed the ORAC recommendation.

Extension of Time

24. The RAT decision was notified to the applicant by letter dated the 4th December, 2006, which she appears to have received the following day. These proceedings were commenced on the 15th January, 2007, outside of the fourteen day period allowed by s. 5(2) of the Illegal Immigrants (Trafficking) Act 2000 and the applicant has applied for an extension of time. The applicant has explained that the delay was incurred by reason of the requirement to obtain an opinion from counsel and by the intervening Christmas vacation. Although no affidavit has been sworn by her solicitors supporting the explanation for the delay, the Court accepts that the delay is a short one and included the Christmas period when many offices are closed for a considerable period and the Court will therefore allow the extension of time.

THE APPLICANTS' SUBMISSIONS

25. The applicant's main complaints relate to the failure of the Tribunal Member to stay her decision until further submissions were received on the new Protection Regulations and in this regard that the Tribunal Member:-

- a. Acted *ultra vires* and / or in breach of EU law by failing to assess the appeal by reference to the Protection Regulations;
- b. Acted in breach of fair procedures by failing to reconvene an oral hearing to allow submissions to be made on the application of those Regulations.

26. Two subsidiary arguments were also made, namely that the Tribunal Member:

- c. Acted in breach of fair procedures by failing to acknowledge the applicant's dual (financial / political) motivation for her acts; and
- d. Acted in breach of fair procedures in the conduct of the oral hearing.

(a) The Protection Regulations

27. Counsel for the applicant's principal complaint is there is no evidence on the face of the RAT decision to suggest that the Tribunal Member had any regard to the Protection Regulations which she argued is a mandatory requirement. She pointed out that the RAT decision contains no reference to the Regulations and argued that the decision is therefore *ultra vires* and / or in breach of EU law. Alternatively there is an error on the face of the record for failing to show jurisdiction. She submitted that it was insufficient for reference to be made to the Protection Regulations in the letter notifying the applicant of the decision and there was no affidavit evidence from the respondent that the Tribunal Member did, in fact, take account of the Regulations. 28. Counsel for the respondent urged the Court to bear in mind that the Tribunal Member made extensive findings as to the various inconsistencies in the applicant's account. She argued that there is no authority for the proposition that the absence of an express reference to the Regulations

indicates that they were not considered or applied. She relied on the decision of the Supreme Court in *G.K. v. The Minister for Justice, Equality and Law Reform* [2002] 2 I.R. 418, where Hardiman J. held that a person claiming that a decision-maker had not taken a certain matter into account needed to produce some evidence, either direct or inferential, of that proposition. Reliance was also placed on the decisions of Feeney J. in *Banzuzi v. The Refugee Appeals Tribunal* [2007] I.E.H.C. 2 and Dunne J. in *A.W.S. v. The Refugee Appeals Tribunal* [2007] I.E.H.C. 276.

29. Counsel for the respondent further argued that the letter dated the 4th December, 2006 notifying the applicant of the RAT decision can be construed as evidence that the Protection Regulations were taken into account. She argued that this contention is bolstered by the letter of the 24th October, 2006 which indicated to the applicant's solicitors that the Regulations would be taken into account when the appeal was being considered. Counsel argued that these two letters, taken together, indicate that the Tribunal Member was conscious of her obligations under the Regulations.

(b) Failure to reconvene the oral hearing

30. Counsel for the applicant argued that the Tribunal's failure to reconvene an oral hearing, for however brief a period, to allow the applicant to address the application of the Regulations was unlawful and in breach of natural and constitutional justice. She submitted that the letter inviting submissions on the Protection Regulations is evidence of the Tribunal's acknowledgment of the applicant's entitlement to make submissions on those Regulations. It was accepted that the applicant did not respond during the time allowed nor was an extension of time sought but counsel submitted that the five working days allowed was wholly unreasonable in the light of the very limited resources of the RLS.

31. Counsel for the respondent argued that five days was an adequate length of time to allow in circumstances where the Regulations make no difference to the manner in which asylum applications are assessed in Ireland. She submitted that the letter from the RLS of the 30th November, 2009 was not a request for a further oral hearing but was instead conditional on instructions being sought on the issue. She argued that an oral hearing is not necessary in all circumstances and she relied on *Z v. The Minister for Justice, Equality and Law Reform* [2002] I.E.S.C. 14, where McGuinness J. held that "there is no authority to establish that an oral hearing on appeal is necessary in all cases."

(c) Assessment of motivation

32. As a subsidiary argument it was submitted that the Tribunal Member acted in breach of fair procedures by ignoring the applicant's evidence that she had a dual motivation for removing files from the offices being financial and political reasons. Counsel accepted that the applicant was paid for taking the files but she submitted that this does not mean the applicant had no political motivation for her acts or that her acts could not be construed as having a political aspect. She pointed out that all stages of the asylum application the applicant expressed dissatisfaction with the ruling government. Counsel submitted that it appears from the note of the oral hearing that the Tribunal Member accepted the applicant's evidence in this regard. She argued that because the applicant's dual motivation was raised in the grounds of appeal, the Tribunal Member knew that this was a live issue.

33. Counsel for the applicant argued that in the alternative, even if the applicant's acts were not politically motivated and were in fact solely motivated by the financial gain involved, they could be construed as political acts and a political opinion could be imputed to the applicant in those circumstances. While she did not know what was in the files, she suspected that the man wanted them for strategic reasons.

34. Counsel for the respondent argued that it is the duty of the Tribunal Member to analyse the applicant's evidence and to make conclusions on that evidence. There is no authority for the contention that the Tribunal Member must set out expressly each and every argument which is rejected or every fact the significance of which he is discounting. She relied on the decision of Birmingham J. in *M.E. (Ekuhorohan) v. Refugee Appeals Tribunal & Ors* (Unreported, High Court, Birmingham J., 27th June, 2008) and *Muanza v. Minister for Justice, Equality and Law Reform* (Unreported, High Court, Birmingham J., 8th February, 2008) and Feeney J. in *Banzuzi v. Refugee Appeals Tribunal* [2007] I.E.H.C. 2. Counsel submitted that it was both reasonable and rational for the Tribunal Member to assess the evidence and to come to the conclusion that the applicant's evidence was that she took the files for financial reasons. She argued that the applicant's evidence on her political motivations was vague and non-specific at all stages and the applicant expressed no knowledge of or interest in politics.

(d) Conduct of the oral hearing

35. Counsel for the applicants argued that the Tribunal Member acted in breach of fair procedures by refusing to allow the applicant to answer questions on matters relevant to her claim. She argued that the Tribunal Member in effect shut the applicant off from giving evidence as to her dissatisfaction with the government. In her grounding affidavit the applicant says she was dissatisfied with the way the Tribunal Member conducted the hearing.

36. Counsel for the respondent argued that the attendance note of the oral hearing does not support the applicant's complaint in this regard; there is no evidence that the applicant was shut off from giving evidence. The note indicates that there was some discussion between the Tribunal Member and counsel acting for the applicant at the oral hearing; the Tribunal Member accepted that the applicant said she was dissatisfied with the government but was not satisfied that further questioning as to the applicant's motivation was relevant.

THE COURT'S ASSESSMENT

37. This being an application to which s. 5(2) of the *Illegal Immigrants (Trafficking) Act 2000* applies, the applicant must establish substantial grounds for the contention that the decision ought to be quashed. As is now well established, this means that grounds must be shown that are reasonable, arguable and weighty, as opposed to trivial or tenuous.

38. It is beyond doubt that the Protection Regulations had come into force on the date on which the Tribunal Member was determining the applicant's appeal and that the Tribunal Member was obliged to determine the appeal in accordance with the Regulations. While a Tribunal Member had to consider the Regulations there is no authority supporting the assertion that such Tribunal Member must expressly refer to the fact that the appeal was determined in accordance with the Protection Regulations nor is there any authority for the contention that the Tribunal was stripped of its jurisdiction because the Protection Regulations were not mentioned in the decision.

39. When the Protection Regulations came into operation they gave effect in Irish law to *Council Directive 2004/83/EC* - they did not change existing procedures but expressed minimum standards to be applied across the E.U. in the assessment of whether an applicant was a refugee or in need of subsidiary protection. As was noted by Feeney J. in *N.H. and T.D. (Hila and Djolo) v. The Minister for Justice, Equality and Law Reform* [2007] I.E.H.C. 277, that Directive is a codification of existing State practices drawing on human rights instruments and elements of Member States' national systems.

40. The procedures before ORAC or the RAT were unaffected by the introduction of the Regulations. Clearly the Refugee Appeals Tribunal secretariat was aware that the Regulations had come into effect and the Tribunal Member's decision was delayed to allow for any further submissions on those new Regulations. The letter of the 24th October, 2006 is evidence of that fact and an awareness that there was an obligation to abide by them. It is not clear what purpose was to be served by the letter or what in fact the applicant could have said pursuant to the Regulations to change or bolster her evidence. It can only be inferred that when the new Regulations came into effect, a period of hyper vigilance followed while all parties were developing an understanding of their purpose and effect. Certainly in the short period following their introduction there was a significant number of challenges until the fact that procedures remained unchanged was appreciated and that nothing changed in Ireland in relation to the method of assessment of an application for refugee status.

41. While the applicant was invited to make any submissions she wished relating to the Regulations the reality is that five weeks later no such submissions had been made and it was stated that the applicant's advisers felt that an oral hearing was appropriate and that in due course they would confirm their client's instructions on that step. This response indicates no feeling of urgency and no belief that a decision on the appeal was the appropriate next step. It is not clear how the beliefs arose that the introduction of new Regulations would negate the process in being and entitle the applicant to a new oral hearing, but such beliefs are not validly based in law. I do not believe that any inference can be drawn that because the Tribunal Member did not make express reference to the Regulations in her decision, she failed to have any regard to and comply with them. In the circumstances I am not satisfied that a substantial ground has been made out in this regard.

42. I should add that when a state of affairs is asserted, it is incumbent on the applicant to show prejudice as a result and I accept the arguments made by Ms. McGrath when she relied on the decision of Hardiman J. in *G.K. v. The Minister for Justice, Equality and Law Reform* [2002] 2 I.R. 418.

43. The applicant suggested that the contents of Regulation 10(1) (e) of the Protection Regulations have a direct and substantial impact on the assessment of her appeal. That Regulation states that the concept of a political opinion shall include "*the holding of an opinion, thought or belief on a matter related to the potential actions of persecution and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the protection applicant*". I am not satisfied that Regulation 10(1) (e) introduces any change in the definition of a "political opinion" as understood prior to the coming into effect of the Regulations. Paragraphs 80 to 86 of the UNHCR Handbook on Criteria and Procedures for Determining Refugee Status which predate the Regulations and were referred to by the Supreme Court in *V.Z. v The Minister for Justice, Equality and Law Reform* [2002] 2 I.R. 135, show that there is no difference in substance between the concept of political opinion there or in that set out in Regulation 10(1) (e).

44. The applicant's solicitors were given an opportunity by the Refugee Appeals Tribunal to make submissions on various aspects of the Protection Regulations in the context of the applicant's appeal. The Tribunal imposed five working days for these submissions. As previously noted there is no reason why a fresh oral hearing was warranted so no ground was made out on the challenge relating to the failure to reconvene an oral hearing. Any relevant submissions could have perfectly adequately have been made in writing.

45. The next challenge was based on the failure of the Tribunal Member to consider the applicant's political opinion as the reason why she cooperated with the government employee in taking the files to him outside the Presidential complex. Any perusal of the applicant's questionnaire, interview and oral appeal indicates that her expressions of dissatisfaction with her government were minor, oblique and ill developed compared to her evidence in relation to the payment and why she acceded to the request to assist in removing the files. Her major motive on each occasion when she was asked was that she was offered money and paid on each delivery, that she was badly paid and that she needed the money. As she said "*I did do it for money as the first reason but the second reason I did it because I don't like the way the government behaves to the population.*" On other occasions in her questionnaire or at her interview she had said that she "*I disapproved of what his regime was doing.*" and "*I also accepted to do it to express my disappointment with the government. Because I was unable to express it openly for fear of being captured.*" When asked what things the President was doing which caused her disappointment she said "*Due to things like the fact that you could only get work in the government if you knew someone.*"

46. The assessment of the applicant's evidence and the weight attached to that evidence is a matter for the Tribunal Member who had the advantage of being able to observe the applicant give her evidence and assess her manner, tone and overall demeanour. Further the Tribunal Member is entitled to view each piece of evidence in context and with all the other evidence. While the applicant's secondary political reason for her actions was noted, the Tribunal Member clearly was unimpressed with this aspect of the applicant's evidence and accorded it no weight. This is something she was entitled to do especially as her ultimate finding and assessment was that the applicant had not established a well founded fear of persecution and that she had not given a truthful account of the facts relating to her application. The Tribunal Member had previously outlined the very many inconsistencies in the applicant's evidence and the various negative credibility findings which were not impugned in these proceedings. The finding as to the second motive for the applicant's alleged actions was not a stand alone finding which founded the negative overall findings. The rejection of the motive was one of many reasons given as to why the appeal failed. This ground is tenuous and not a ground on which I am prepared to grant leave.

47. The final challenge is to some extent associated with the assessment of the evidence relating to the applicant's alleged political motive for taking the government files. The RLS attendance note indicates a certain amount of exasperation when the applicant and her counsel seemed to be at cross purposes and when the Tribunal Member felt the questioning was excessively leading. However there is nothing to confirm that when the questioning became more relevantly focused, the applicant was unable to express herself fully. The applicant's evidence was without doubt significantly different on several important aspects at different times. The inconsistencies are a fact and the story of the applicant's alleged release, her explanations for having the documents with her, and her travel arrangements were all found not credible. All of the Tribunal Member's findings are supported by the evidence.

Conclusion

48. In the light of the foregoing, substantial grounds have not been shown and accordingly, I must refuse leave.