Neutral Citation: [2016] IEHC 250

THE HIGH COURT

[2011 No. 1172 J.R.]

BETWEEN

S. T.

APPLICANT

AND

CONOR GALLAGHER ACTING AS THE REFUGEE APPEALS TRIBUNAL

THE MINISTER FOR JUSTICE AND LAW REFORM IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Ms. Justice Faherty delivered on the 26th day of January, 2016

1. This is a telescoped hearing in which the applicant seeks leave for judicial review and an order of *certiorari* quashing the decision of the first named respondent which affirmed the recommendation of the RAC not to declare him a refugee.

Background

2. The applicant's claim is that he is a national of Bangladesh and a Buddhist and that his date of birth is 29th June, 1992. He spent the first seventeen years of his life in a named village in Bangladesh until October 2009. He claims that his problems began on 8th May, 2008 when a dispute arose between his Buddhist community and a Muslim Madrasha (school) located on the south side of the applicant's village. The applicant's father was general secretary of the local Buddhist crematorium development committee and on 8th May, 2008 he tried to build a boundary fence on the south side of the crematorium. However, the principal of the Madrasha (AJ) and his assistant (AS) obstructed the construction process and threatened the applicant's father and members of the committee. A month later on 10th June, 2008 the crematorium committee again tried to build the boundary fence and on this occasion AJ and AS (the latter described by the applicant as a local criminal and terrorist) came to the crematorium with a group of ten to twelve armed persons all of whom the applicant claimed were fundamentalist Muslim. Upon hearing about the confrontation, the applicant and some friends went to the crematorium and found his father and other members of the committee under attack. As a result of trying to resist, he, his father and several others were injured, including one of the attackers. Because of his injuries the applicant claimed he spent some thirteen days in hospital. The incident was reported to the police who said "they would look into it" but the applicant "got no result" and no action was taken.

3. The applicant's father was elected as the general secretary of Bangladesh Buddhist Youth Counsel. The applicant himself became involved in an "anti-terrorism programme" and presented the activities of the group to various anti-terrorism organisations. The applicant was involved in forming rallies and protests. As a result there was an occasion when he and his sister were subjected to verbal abuse and while he reported this harassment to the police no action was taken and the applicant believed that this was because he was "a minority".

4. On 10th October, 2009 during a meeting of the Bangladesh youth club in the applicant's village, the police conducted a search operation and recovered weapons and ammunition. On that occasion two people were arrested by the police and the applicant was also implicated. According to the applicant, the weapons and ammunition were planted by AJ and AS, two of the instigators of the previous attack, to frame the applicant. Some two to three days after the incident in the club house, the police came to the applicant's home to arrest him. As they could not find him, they arrested his father. As a result of the said incidents, the applicant moved to Rang Amati to his aunt where he remained for seven months until he was recognised by people associated with AJ. Realising that it was no longer safe for him to remain in Rang Amati as he believed AJ and AS were looking for him, the applicant moved to Katai where he remained for two months. He became aware that there was a warrant for his arrest. He then moved to Dhaka to stay with his uncle for three months. His uncle told him that it was no longer safe and accordingly he left Bangladesh with an agent on 19th December, 2010, arriving in Ireland a day later. His uncle paid for his journey to Ireland. The applicant claims asylum on the grounds of religious persecution and claims that he cannot return to Bangladesh as AS is looking to kill him and state protection is not available to him as the police and AS are good friends and the applicant is from "a minority".

Procedural history

5. The applicant applied for asylum on 20th December 2010. His ASY1 form was completed on 22nd December, 2010 and the questionnaire was returned to ORAC on 18th January, 2011. The applicant underwent a s.11interview on 17th February, 2011.

6. In the course of his application, the applicant submitted a number of documents in support of his case. They are said to comprise:

- A letter dated 17th January, 2011 from the "Hindu, Buddhist & Christian Unity Council" attesting that the applicant's father was known to the council and was involved in various religious and social organisations in his area. Reference was made to the applicant's father being in jail and to the applicant being compelled to leave the country to save himself from the false firearms case.

- A letter from a Committee in the applicant's village certifying that the applicant was known to the president of the Committee and that his father played a significant role in the committee and that the applicant, his father and three people were implicated by AJ and AS in a false firearms case as a result of which the applicant's father was in jail and the applicant compelled to leave the country.

- A medical discharge document in respect of the applicant dated 22nd June, 2008.

- A medical discharge dated 16th June, 2008 in respect of the applicant's father.

- A letter dated 10th January, 2011 addressed to the applicant at his address in Bangladesh from a named lawyer advising

the applicant of the status of the "current case" against the applicant. Reference is made to warrants of arrest issued against the applicant on 11th October, 2009 and 5th August, 2010 and that the applicant's father was arrested in connection to the applicant's case and remained in jail not- withstanding efforts to secure his release on bail. The letter goes on to state "Your opponent party is very desperate to punish you and your father in this case. So, in this situation your life is very unsafe in Bangladesh. So, I am requesting you, please do not think to return Bangladesh in any way. Please stay abroad….."

• A letter from Rangunia College dated 10th June, 2010 certifying that the applicant was enrolled as a business studies student in 2008/2009.

• A letter dated the 6th January, 2011 from the Central Buddhist Temple of Rangunia certifying the applicant's father's status as finance secretary of the "temple operations committee". Reference was made to the applicant's father being in jail and the applicant having to go abroad to avoid arrest by the police and because of fear of the terrorist gang.

• A letter from Bangladesh Buddhist Youth Council in the applicant's village confirming the applicant's membership and that he had "initiated a program for the eradication of terrorism". Reference was made to the applicant's father being in jail and the applicant having to go abroad.

• Various court papers referring, inter alia, to the arrest and charge of the applicant's father for weapons offences and to a complaint made by JA alleging the involvement of the applicant, his father and others in the storing of weapons in the Bangladesh Buddhist Youth Council in the applicant's village and to a warrant having issued for the applicant's arrest.

• The applicant's birth and nationality certificates.

7. In his report dated 11th March, 2011, the Refugee Applications Commissioner recommended that the applicant not be granted a declaration of refugee status and, inter alia, made the following findings:

• The documents submitted by the applicant could not be verified and country of origin information showed that false documents were readily available in Bangladesh;

• No verifiable identification documentation was submitted by the applicant, but it was accepted for the purposes of the report the applicant was from Bangladesh;

• The government in Bangladesh supported religious freedom but societal abuses and discrimination based on religious beliefs can occur;

• The evidence given by the applicant as to his belief that AS was a terrorist was vague – this undermined the validity of the letters from the Bangladesh Buddhist Youth Council and the applicant's village Central Buddhist Temple Committee which had been submitted;

• The applicant's account of how he travelled to the state was not credible;

• The medical discharge sheet was not regarded as credible as it was written using non-medical terminology;

• The court papers submitted by the applicant undermined his claim as it was stated therein that the applicant's father and other defendants had confessed to possessing weapons with the intention of conducting terrorist activities;

• As the applicant was not generally credible he could not be afforded the benefit of the doubt;

• The applicant's account was not well founded.

• The applicant's Notice of Appeal, with grounds of appeal, was lodged on 13th April, 2011.

The Tribunal decision

10. The oral hearing before the Tribunal took place on 29th August, 2011 and a decision was made on 21st November, 2011.

11. The applicant was found not to have a subjective and credible fear of persecution for any Convention reason.

The salient findings in respect of the applicant were:

• The s.13 report dealt with a number of credibility points which were not fully addressed by the applicant. For example his lack of awareness of his father's sentence or whether he was convicted.

• With reference to the letter from the lawyer, it was found that as Bangladesh shares a common law tradition with this state it would be gross breach of professional ethics for a lawyer to advocate to a client that they abscond. It bordered on inconceivable that if a lawyer did express such professional opinion that it would have been reduced to writing.

• In assessing country of origin information, it was noted that none of the authors could be cross examined as to the context of such reports. Just because what the applicant stated happened to him and can be proved to have happened to his countrymen did not mean it happened to the applicant. Furthermore, the summary of country of origin information in the s.13 report was a fair and balanced one and was not undermined by the newer material which the applicant had submitted.

10. The matters set out in s. 11(B) of the Refugee Act, 1999, as amended, were then addressed.

11. With regard to s. 11(B) (a), it was found that the applicant had not submitted identity documentation nor had he provided a reasonable explanation as to why this was the case. It was noted that "other documentation has been provided but photographic ID documents was not amongst their number (in relation to the documents submitted it is not possible to come to any rational conclusion based on their veracity or otherwise)."

12. The Tribunal Member noted the applicant's evidence that the passport he travelled on was red and that he did not know if there was a visa. The passport was stamped by immigration officials but the applicant was not asked any questions. The agent had taken back the passport. After noting that it had been put to the applicant (at the hearing) that an immigration stamp was only used for non-EU countries and that an interview occurs at the immigration point to establish the reason for the visit, the Tribunal Member did not find evidence credible for the reasons outlined in para. 3.4.3 (e) of the s. 13 report and from his own assessment of the applicant's evidence.

13. The Tribunal Member went on to note that the applicant had not corroborated by documentary evidence or otherwise the route he took to Ireland and that he gave evidence that he was unaware of the airports he passed through en route to this state. It was noted that he travelled to and stopped in at least one country without applying for asylum. It was found that such actions were generally inconsistent with the flight from a well founded fear of persecution. Noting the applicant's excuse for not seeking international protection after arriving in a safe country was that he was following a "smuggler" and with reference to Hathaway's statement that delays in seeking international protection can go to credibility, the Tribunal Member was satisfied that s. 11(B) of the Refugee Act, 1996, as amended, applied and that the applicant's itinerary was not consistent with the urgency or substance of a well founded fear of persecution. Thus, the applicant's evidence on those issues was found not to be credible.

14. The Tribunal Member then referred to s.11 (b) (d) (whether the applicant has provided a reasonable explanation to show why he or she did not claim asylum immediately upon arrival at the frontiers of the state) and noted that *"the Tribunal only had the applicant's evidence that he applied for asylum shortly after he arrived in the State, although we do know that he did not apply on landing, which would be the place which provided the first opportunity to him."*

15. The conclusion on credibility was that the applicant was "found not to have a subjective and credible fear of persecution."

16. The Tribunal Member went on to state that "even if the applicant had been found to have provided credible evidence, number of other matters would have to be addressed", namely protection by the state, internal relocation and the issue of prosecution versus persecution.

17. The finding on state protection was as follows:

> *"The presumption of capacity to protect citizens should extend to those detained by the state unless there is credible evidence to the contrary. As is clear from country of origin material, the criminal justice system in Bangladesh is in need of greater transparency, resources and a reduction in corruption, however that does not mean that the applicant would be able to be targeted by non state agents, while he was questioned/detained by the apparatus of the state."*

18. With regard to the issue of internal relocation, the Tribunal noted that during the twelve months in total that the applicant resided in Rang Amati (seven months) Katai (two months) and Dhaka (three months) he did not suffer any harm nor was he subjected to a threat to his life. Accordingly it was found that the applicant "had realistic and reasonable options which (sic) did not exercise to their full extent" insofar as internal relocation related to "non-state threats".

On the issue of persecution versus prosecution, after reference to certain Canadian case law on the issue, the Tribunal Member found, with regard to the applicant's claim, that in his case:

> *"a. The intention of the law would be of protection of life and punishment of offenders who have ammunition without lawful authority.*
>
> *b. The prosecution for the same would not be motivated by any of 5 convention grounds;*
>
> *c. The law is not persecutory nor would its application (I cannot make any findings as to how the ammunition came to be on site);*
>
> *d. On his own account, the applicant would have had access to legal representation."*

The decision-maker went on to state:

> *"I find that while the applicant claims to have a subjective fear of discrimination by the state authorities in the manner in which they may prosecute him, that it does not amount to persecution within the meaning of the Convention. As paragraph 56 of the handbook states 'Persecution must be distinguished from punishment for a common law offence. Persons fleeing from prosecution or punishment for such an offence are not normally refugees. It should be recalled that a refugee is a victim – or potential victim – of injustice, not a fugitive from justice".*

19. It was further noted that if the applicant were prosecuted and convicted of the weapons offences, which was noted would be unlikely given the applicant's testimony that he was not present, *"the punishment and poor conditions of detention which exist in Bangladesh, may be matters which another decision-maker may have regard to, when considering the issue of refoulement and the application of Article 3 rights."*

The Tribunal Member concluded:-

> *"All of the above matters arise from the details in the questionnaire, interview and were canvassed at the oral hearing and the applicant had an opportunity to clarify same. They were raised by his counsel, the presenting officer and the tribunal and a flexible approach was provided to the applicant or the legal representative to address same.*
>
> *The core issue in this appeal is whether the applicant has provided evidence worthy of credit to discharge the burden that he must overcome. I have found that the applicant does not, ever he has failed to establish, to the lowest standard of proof, that he has a well founded fear of persecution for a convention reason upon which he relies. Accordingly, the applicant has not discharged the legal burden upon him, pursuant to s.11 (3) of the Act as amended."*

The submissions advanced on behalf of the applicant

20. In the first instance, counsel submitted that the applicant's core claim, persecution on grounds of religion, did not appear to have been addressed. Thus, it is not clear whether the decision-maker accepted the applicant was a Buddhist. The Commissioner on the

other hand appeared to accept as much. A finding on the applicant's religion was core, as country of origin information support of the applicant's claim of persecution suffered by Buddhists in Bangladesh. In aid of his argument, counsel referred to the UNHCR guidelines on "religion based claims".

21. A fundamental criticism of the decision was that the Tribunal Member appears to simply copy the s.13 report and save for one example, did not set out how the applicant had failed to address "a number of credibility points" dealt with in the s.13 report. This approach was not acceptable and counsel referred to the dictum of MacEochaidh J. in *MBB v. RAT* (unreported High Court 20th June, 2013).

22. Furthermore, insofar as the Tribunal Member took account of the perceived vagueness of the applicant's awareness of the criminal proceedings against his father, the applicant had specifically addressed this issue in the Notice of Appeal in response to a similar finding by ORAC. Thus, in rejecting the applicant's core claim on this credibility issue, the Tribunal Member failed to address the applicant's explanation as proffered to ORAC and in the grounds of appeal, namely that he was not present in the town at the time his father was sentenced. Nor did the Tribunal Member take account of the fact that the applicant was not a lawyer.

23. Insofar as the Tribunal Member rejected the applicant's claim on the ground that it was inconceivable that a Bangladeshi lawyer would advise the applicant not to return to Bangladesh, this was conjecture on his part. Moreover, the applicant was in Ireland when he received the lawyer's letter. It was submitted that it was entirely appropriate for the lawyer to advise the applicant not to return to Bangladesh given that he was sought by the police and given the unfairness of the Bangladeshi legal system, which was something which was confirmed by country of origin information. Furthermore, the lawyer's letter appears to have been relied on by ORAC to find the applicant could have the benefit of legal advice and assistance in Bangladesh, yet the Tribunal Member's position would appear to be that he did not accept the genuineness of the letter.

24. Counsel submitted that the aforementioned two findings appeared to be the cornerstone or the main foundation upon which the applicant's claim was rejected, notwithstanding that the Tribunal Member had qualified in the decision that the findings were balanced against the general consistency of the applicant's story and the applicant's relative youth.

25. With regard to the s.11B findings, counsel took issue with the finding that the applicant had not submitted identity documentation. While he did not present a passport, he had submitted his birth certificate and a national certificate of identity, both of which had photographs of the applicant.

26. The finding in respect of the applicant's evidence regarding the passport was unfair. The applicant testified to having a red passport which was stamped on entry and he was unaware of whether it had a visa. Furthermore, his evidence was that he had not been asked questions by immigration officials. The Tribunal Member found his evidence in this regard not credible but did not state why this was so. It behoved him to do so.

27. The Tribunal Member erred in not accepting the applicant's explanation as to why he had not sought asylum in at least one of the safe countries he had transited on route to Ireland. At no stage had the applicant asserted that Ireland was the first safe country he arrived in. The fact that a protection applicant was obliged to stop over in another country did not mean he was not a refugee. The applicant's circumstances was that he was a young man who was following his agent. There was no direct flight rule in refugee law. Accordingly s. 11B(b) of the 1999 Act was applied incorrectly and in this regard counsel relied on the decision of O'Malley J. in *FO v. RAT and others* [2014] IEHC 123 and it is submitted that the reference in that decision to the decisions of O'Keeffe J. and MacEochaidh J. in *A.M.K (a minor)* [2012] IEHC 479 and *FT v. Refugee Appeals Tribunal* [2013] IEHC 167 respectively represent the law in this regard.

28. In A.M.K ., O'Keeffe J. said at paragraph 39 of the judgment:

"As a matter of basic principle, the failure of an asylum seeker to apply for asylum in the nearest safe country or in the first safe country to which he flees is not a bar to refugee status per se and is not necessarily inconsistent with a genuine fear of persecution. In theory, asylum seekers are entitled to choose their country of asylum. The person may, for example, wish to apply for asylum in a country where his native language is spoken, where his family or close friends have settled, or where there is a community of people from his country of origin or sharing his ethnicity or religion. The person may also wish to distance himself from incursions by authorities of his home State and he may have concerns about the true adequacy of protection Hathaway, The Law of Refugee Status, at p. 50). The assessment of an applicant's credibility may, however, include an assessment of the reasonableness of any explanation given for passing through safe third countries without applying for asylum there."

29. In *F.T.,* MacEochaidh J. referred to this passage and to the terms of s. 11B(b) in holding that the law does not require an applicant to provide an explanation why asylum was not claimed in the first safe country encountered. Rather, the section is applicable where an applicant claims that Ireland was the first safe country entered since leaving the country of origin. While it is "perfectly permissible" for the decision maker to have regard to the failure of an applicant to seek refuge in a safe country en route to Ireland, s.11B(b) should only be relied upon in connection with a credibility finding where its strict terms are met.

30. Moreover, while the Tribunal Member referred to the critical role played by country information in assessing any forward looking risk, no such forward looking assessment appears to have been carried out, yet the information before the Tribunal pointed to the particular challenges and difficulties faced by Buddhists in the Chittagong area from whence the applicant came. While the Tribunal Member referred to some extent to country of origin information, he nevertheless erred in discounting the information, particularly in circumstances where his observations on the country information were predicated by his stating that the fact that there was country of origin information supportive of the applicant's claim did not mean that the applicant was facing persecution.

31. The Tribunal Member found the Commissioner's assessment of country of origin information to be fair and balanced. However, the latter had not assessed the information in a fair and balanced matter and in this regard, the applicant's grounds of appeals (ground 2) specifically took issue with the Commissioner's assessment and had alerted the Tribunal to specific portions of the US State Department reports on Religious Freedom in Bangladesh.

32. If the Tribunal Member was going to reject the applicant's submissions, those submissions should have been specifically referred to. In this regard, counsel referred to the decision of Finlay Geoghegan J. in *Traore v. RAT* [2004] 2 IR 607:

> *"31 … I have concluded that the tribunal member in this case was obliged to assess the applicant's story that, as an illiterate person, he was employed as a driver to secretaries of top government officials in the context of what is known of the conditions in Côte d'Ivoire. Further, by reason of the central importance of this part of the story to the assessment of the credibility of the applicant, her failure to do so renders the decision invalid."*

33. The Tribunal Member gave no weight to the persecution of Buddhists in Bangladesh or the Bangladeshi State's acquiescence in that regard, as evidenced by country of origin information. The US Department of State Religious Freedom Report (November 2010) documented attacks on Buddhists in the Chittagong area in February 2010 and that "security forces were present during the attacks and did nothing to stop the violence. The government investigated these allegations and made some staffing changes to the military command in charge of security for the area during the reporting period". The US State Department March 2010 Report stated: "Discrimination against members of religious minorities, such as Hindus, Christians, and Buddhists, existed at both governmental and societal levels, and religious minorities were disadvantaged in practice in such areas as access to government jobs, political office, and justice. The secular AL government, however, appointed some members of the minority communities to senior government and diplomatic positions. In the new cabinet, three of the 38 ministers were non-Muslims." The same report noted that three Buddhist temples and hundreds of Buddhist houses were burnt in the violence from February 19 -26 2010. It was submitted that the reference in the information to the lack of state protection was particularly relevant given that the Tribunal Member made a finding that state protection was available to the applicant. However, the finding which was made was problematic in that it did not address the applicant's actual complaint. The Tribunal Member's found that state protection would be available to the applicant vis-à-vis his fear of non-state agents because the applicant would be detained by the apparatus of the state and therefore safe from non-state agents. This was a flawed assessment. The finding that the police could protect the applicant while in custody was beside the point; the applicant's case was not that the law was persecuting him; rather it was that his complaint about the activities of named individuals had gone unheeded by the police. Country of origin information which outlined the Bangladeshi State authorities' attitude to Buddhists supported the claims made by the applicant.

34. The country information which supported the applicant's claim in this regard was required to be incorporated into the decision and in support of this counsel relied on the decision of Barr J. in *SJL v. RAT* [2014] IEHC 608:

> *"51. In the present case there was a large amount of country of origin information submitted on behalf of the applicant, both to the RAC and on appeal to the RAT. The RAT appears only to have had regard to one piece of COI on the basis that it dealt with Fugian province. This was the UK Home Office Report of April 2002 which was attached to the s. 13 report. Where COI documentation is submitted, it must be looked at and incorporated into the decision of the Tribunal, even if only reject the documents, but the reasons for so rejecting the documentation should be clearly stated. In this case, the remainder of the COI documentation was ignored by the RAT. It is necessary to refer the matter back to the RAT for further consideration of the applicant's claim in light of the all the documentation submitted. The RAT will have to reconsider in the light of all the COI submitted whether the applicant and his wife husband are refugees owing to the fact that they fear persecution by reason of their membership of a particular social group."*

35. There was no sense that country of origin information was actually incorporated into the decision and it was submitted that there was only a pro forma reference to same. It was not clear as to why the country of origin information referred to in ground 2 of the appeals submissions was not relevant and thus rejected; the Tribunal Member was obliged to state why this was so. Counsel referred to the judgment of Edwards J. in *DVTS v. Minister for Justice* [2008] 3 IR 476 where he states:

> *"44 In this particular case the applicant did provide evidence to the second respondent of the state's inability to protect. I have just rehearsed some of it. The second respondent asserts in his ruling that he had regard to all of the relevant facts. However, the country of origin information before him contained conflicting information. He gives no indication as to how, or on what basis, he resolved the conflicts in the information before him. Moreover, he gives no indication as to the basis on which he elected to prefer the apparently anecdotal accounts of certain interviewees quoted in the United States State Department report on Cameroon, 2004 and the United Kingdom fact finding mission report on Cameroon, 2004. While this court accepts that it was entirely up to the second respondent to determine the weight (if any) to be attached to any particular piece of country of origin information it was not up to the second respondent to arbitrarily prefer one piece of country of origin information over another. In the case of conflicting information, it was incumbent on the second respondent to engage in a rational analysis of the conflict and to justify its preferment of one view over another on the basis of that analysis. The difficulty in the present case is that the second respondent firstly, does not allude to the fact that the information is conflicting and secondly, does not give any indication as to why he was inclined to prefer the information contained in the United States State Department report on Cameroon, 2004 and the United Kingdom fact finding mission Report 2004 to that contained in the reports submitted by or on behalf of the applicant."*

36. Insofar as the Tribunal Member, on foot of the credibility findings identified in the decision, found the applicant "to not have a subjective and credible fear of persecution for any Convention reason", he erred in so finding without assessing the applicant's fear from an objective viewpoint.

37. With regard to the Tribunal Member's assessment of the documentation submitted by the applicant, counsel did not believe that the decision-maker took the view that there were any discrepancies in the documents; rather he appeared to say that they were not authentic. Both ORAC and the Tribunal were aware from the relevant information that documentation can be easily verified as to its authenticity or otherwise. Accordingly, the Tribunal Member did not deal adequately with the applicant's documents. In this regard, counsel relied on the dictum of Barr J. in *AO v. RAC & Ors.* [2015] IEHC 253.

38. The Tribunal Member gave the applicant no advance notice that his identity as a Bangladeshi national was in issue. Thus, the large amount of documentary evidence put before the Tribunal, on its face value, was relevant to the events upon which the applicant's credibility depended. However, most of the documents were ignored or not mentioned or not considered in the decision and in circumstances where at the hearing he had taken no issue as to their authenticity. It is not at all clear whether the Tribunal Member accepted the court documents submitted on behalf of the applicant. If he did, the documents would appear to place the applicant in conflict with third parties who were Muslims. While the question may arise as to whether the conflict was based on religious grounds or otherwise, there was no way to analyse this as there was no indication in the decision of whether the Tribunal Member accepted the documents submitted as authentic.

39. The Tribunal Member erred in law and breached the principle of natural and constitutional justice in making no mention of or any assessment of the contemporaneous medical reports which the applicant had produced.

40. While the Tribunal Member noted that the issues considered by him were canvassed at the oral hearing and that the applicant "had an opportunity to clarify same", he did not give any indication on the face of the decision of how the applicant's clarifications were weighed by him.

The submissions advanced on behalf of the respondents

41. At the outset, counsel for the respondent submitted that it was important to look at the s. 13 report and the grounds of appeal advanced by the applicant to the Tribunal.

42. Having regard to the decision of the Supreme Court in *M.A.R.A. (a minor) v. Tribunal* [2014] IESC 71, any aspect of the s. 13 report not expressly appealed by an applicant is not disturbed. In this regard, counsel cited the dictum of Charleton J.

43. Thus, having regard to the judgment in M.A.R.A. regarding the purpose of a Notice of Appeal and findings of the Commissioner which are not expressly appealed, it was submitted that the Tribunal was entitled to place reliance on the fact that certain matters were not adequately addressed by the applicant on appeal, as set out in the decision.

44. The decision commenced by reference to the applicant's claim being "based on the Grounds of Appeal contained in the Form 1 Notice of Appeal dated 13th April 2011". That, counsel submitted, was significant, in light of the decision of the Supreme Court in M.A.R.A., upon which the respondent relies.

45. Contrary to the arguments advanced by the applicant's counsel, the Tribunal Member did not simply adopt the s. 13 findings. The Tribunal Member's finding was that the applicant did not address on appeal a number of findings made by the Commissioner. While counsel accepted that at ground 5 of the Notice of Appeal, the applicant did address the Commissioner's finding regarding the vagueness of his knowledge of the criminal proceedings against his father, the applicant however did not take issue with the other credibility factors as set out in the s. 13 report, save to refer in general to the failure to give him the benefit of the doubt.

46. Furthermore, the finding regarding the lawyer's letter was not conjecture, as the legal system in Bangladesh is similar to the Irish legal system. Consequently, the Tribunal Member had a basis for his finding and, moreover, this issue was specifically raised with the applicant at the oral hearing and the applicant's response was noted by the decision-maker. While the decision- maker is not entitled to speculate, he or she is entitled to draw appropriate inferences. Furthermore, the weight which the Tribunal Member attributed to the lawyer's letter was entirely a matter for him as long as the approach adopted was rational and lawful.

47. The s. 13 report reviewed country of origin information in relation to the treatment of Buddhists in Bangladesh. It noted Islam as the state religion and noted that the Bangladesh Constitution provided freedom of religion and that there were religious minorities at all levels of government including two Buddhist cabinet members. It properly noted that notwithstanding those improvements, societal attacks on religious and ethnic minorities continued to be a problem, as evidenced by the US State Department report.

48. In similar vein, the Tribunal Member considered all of the country of origin information before him and in this regard made his own finding that the Commissioner had made a clear and balanced assessment of the country of origin information. Thus, while the Tribunal Member agreed with the Commissioner, it was not a case of simply doing so; such agreement came after the Tribunal Member made his own assessment. Thus, the decision maker did not fall into the type of error referred to in *MBB v. RAT.*

49. It was submitted the applicant's counsel's reliance on SJL and DVTS was misplaced. Contrary to the situation in STL, the present case was not one where the Tribunal Member dealt with one piece of country of origin information only, nor did he refer to one piece of information over the other, unlike the situation in DVTS. Nor was the dictum of Finlay Geoghegan J. in Troare relevant in the instant case.

50. The Tribunal Member assessed the applicant's claim with regard to s. 11 (B) of the 1996 Act, as he was required to do. Counsel cited *N.A.U. v. RAT* [2010] IEHC 149 in this regard. Reliance was placed on this case as authority for the proposition that even if other findings of the Tribunal are found to be invalid, the decision may in some instances still be sustained by reference to findings made under s. 11 (B), when the decision as a whole is looked at.

51. The Tribunal Member properly found that the applicant had not provided photographic identification documents. With regard to the documents which were submitted, as with the Commissioner, the Tribunal Member found "it was not possible to come to a rational conclusion on their veracity or otherwise", a finding which was open to the Tribunal Member to make. While the s. 13 report found that the applicant had not submitted evidence of his nationality, the applicant was nevertheless found to be a national of Bangladesh and that finding was not altered in the Tribunal decision.

52. With regard to the s. 11(B)(a) finding, the applicant's evidence that he travelled on a "red" (EU) passport and that it was stamped on his arrival in Ireland. The Tribunal Member analysed this evidence and found it was not credible for the reasons stated.

53. As far as the s. 11 (B) (b) finding was concerned, it was submitted that insofar as the applicant relied on his lack of English for his failure to identify the two unknown countries he passed through, it was the case that in his replies to his questionnaire he stated that he spoke a little English. Furthermore, no issue had been raised by him with the Tribunal by reason of the fact that he had been provided with the questionnaire in English. Additionally, the Tribunal Member satisfied himself as to the applicant's capacity to understand the interpreter. There was no suggestion of any difficulty on the part of the applicant in this regard and no such claim is made in the affidavit grounding these proceedings. Nor did he take issue in his Notice of Appeal or at oral hearing with any perceived deficiency in the interpretation or translation services afforded him, yet before this Court (ground 1 of the statement of grounds), the applicant seeks to challenge the failure of the Tribunal Member to make findings with regard to the fact that the applicant provided with a questionnaire in English. There was no merit in this contention.

54. With regard to s. 11 (B) (c) finding, while counsel agreed that there is no obligation on a protection applicant to seek asylum in the first country he or she arrives in, it was nevertheless submitted that the finding made by the Tribunal Member pertained to the failure of the applicant to apply for asylum in any other country.

55. It was submitted that when the s. 13 report, the Notice of Appeal and the Tribunal decision are taken together, it is clear that the applicant did not put many of the s. 13 Report credibility findings in issue on appeal as required by the Supreme Court decision in M.A.R.A.

56. The documents submitted by the applicant were considered by the Commissioner and a finding was made that ORAC was unable to verify their authenticity. While the applicant's counsel submitted that it was easy to verify the documents, there was no evidence put before the Tribunal in this regard. Where documents, in particular identity documents, do not include a passport, GNIB (who are in a position to verify passports) do not have the ability to verify letters, court documents or birth or nationality certificates. These documents are in effect paper and have no security features. Counsel noted that the birth certificate and national certificate relied on by the applicant as evidence of his identity had his photograph stapled thereon. The Commissioner correctly found that the documents could not be verified. In any event, it cannot be the case that ORAC or the Tribunal would be obliged to contact the country of origin with regard to the said documents in light of the applicant's claim of persecution, as that would be tantamount to advising the country of origin of the applicant's asylum application. There was an obligation of confidentiality on the Tribunal as set out in s. 19 (1) of the Refugee Act, 1996, as amended. Moreover, the applicant's grounds of appeal did not specify that the documents he submitted could be authenticated and the Tribunal Member was not asked to make contact with the Bangladeshi

authorities. The only submission made was that the applicant should get the benefit of the doubt because he had produced documentation. Nor did the applicant take issue with the country of origin information which attached to the s. 13 report which stated, inter alia, when referring to the easy availability in Bangladesh of false documents, that arrest warrants would not be available to the public.

57. Counsel for the respondent relied on the dictum of Clark J. in *M.G.U. v RAT* [2009] IEHC 36 in support of the argument that the issue of the documents was properly addressed in the decision.

58. Furthermore, the applicant was on notice from the contents of the s. 13 report that ORAC was of the view that the documents could not be authenticated. Thus, if they could be authenticated, the applicant could have done it, if it is asserted that it could be done. Furthermore, the applicant did not expressly take issue in his appeal submissions with the finding made by the Commissioner.

59. While counsel for the respondent does not accept that there is an obligation on the Tribunal to investigate the authenticity of documents, as set out in AO, the factual situation, in any event, that presented in *AO* was distinguishable from the present case as in *AO* the document in question did not emanate from state authorities, unlike the bulk of the documents presented by the applicant.

60. It was accepted that the medical discharge sheet furnished by the applicant to ORAC, and which was before the Tribunal, was not specifically referred to in the decision. However, counsel submitted that nothing turned on this. The s. 13 report found the authenticity of the medical discharge sheet dubious. The applicant did not take issue with this finding on appeal to the Tribunal. Furthermore, the extent to which the weight attributed to a medical report is required to be set out by a decision maker depends on the quality of the evidence and, in this regard, counsel cited the decision of Clarke J. in *RMK v. RAT* [2010] IEHC 367:

> *"22. There is a long line of authority on the general subject of the weight to be accorded to medical reports in asylum cases. While it is always a matter for the decision maker to assess the probative value of the contents of such reports, it is incumbent on the decision maker to provide reasons for rejecting the contents. A report which is general in terms has obviously little weight requires no great explanation for its rejection. However while medical reports are rarely capable of providing clear corroboration of a claim, it is well recognised that there are occasions when examining physicians report on objective findings and use phrases which attach a higher probative value to those findings. Such reports are capable in an objective way of supporting the claim. Obviously, in such cases the need for reasons to be given for rejecting the probative value of the report must be more fully addressed."*

61. Nothing in the medical discharge sheet submitted by the applicant equated to the Istanbul Protocol and there was no hierarchy in the document submitted for the Tribunal Member to weigh. There was no material which could be said to be indicative of torture and, moreover, the nature of the injuries described in the medical discharge sheet could have arisen from any cause.

There is no obligation for a decision-maker to refer to every aspect of the evidence or to identify all documents within the written decision and in this regard counsel relied on *Banzuzi v. RAT* [2007] IEHC 2 and the dictum of Berminham J. in TG v. RAT [2007] IEHC 377:

> *"Notwithstanding some surprise at the language with its reference to "none of the documentation" and "not a single document," I am not persuaded that the tribunal member overlooked the State Department document. I am of that view not only because of the clear statement in the decision that the country of origin information was considered but also because of the circumstances by which the report came to be submitted to the tribunal. The Canadian Memo was heavily relied on by the ORAC, and this document was being produced in the appeal stage for the specific purpose of providing an alternative perspective to the Canadian view. In these circumstances it is very hard to believe that the document could have been overlooked. However, that is not the end of the matter. I have already indicated my complete agreement with the comments of Mr Justice Feeney and Ms Justice Dunne, that there is no obligation to refer to every item of evidence or every document. However, that is not to say there cannot be evidence or documents which do demand specific mention.*
>
> *I am of the view that unusually there are factors present such that fair procedures require specific reference to the document from the State Department and an indication of the analysis which would lead to it being discarded. As I have already stated on more than one occasion, the document was submitted to the tribunal as a specific response to the Canadian document. If the tribunal member was proposing to allow the Canadian Memo to direct his decision, as it had the decision at first instance, fair procedures required that there should be some indication why the US State Department document was not seen as relevant. It need hardly be said that there were in fact a number of factors present which would have fully justified the tribunal member viewing the Canadian Memo as the more reliable, including the fact that it was specifically created for use in an immigration context whereas the US document is more of an all-purpose document. Furthermore, the views of a party leader, such a Mr Bob, that his members have not been subjected to arrest, might be thought to be particularly compelling."*

62. In the instant case, the Tribunal Member stated that he had regard to all matters submitted by the applicant including country of origin information. The applicant has not established in evidence that this was not the case, as required by the dictum of Hardiman J. in *GK v. Minister for Justice* [2002] 2 IR 418. Unlike the position which pertained in *TG v RAT,* there was no specific argument put before the Tribunal Member to show that the Commissioner had erred in saying that the documents submitted by the applicant could not be authenticated.

63. It was also submitted that notwithstanding the decision in *Chidambaram v. Canada* [2003] FCT 66, it need not be presumed that any document submitted by an applicant and claimed to have been issued by their own state must be presumed to be valid. The ratio in Chidambaram is that where a document is issued by another state it is presumed not to be a forgery.

64. Even if such a presumption could be said to exist in the present case, the country of origin information which was before ORAC and the Tribunal, which referred to the easy availability of false documentation available in Bangladesh, was capable of neutralising that presumption.

The applicant's reply to the respondents' submissions.
65. Counsel asserted that the respondent's counsel's premise, namely that any finding made by the Commissioner not specifically addressed in the Notice of Appeal would come as a surprise to the Tribunal Member in the instant case, in circumstances where he purported to find that state protection and internal relocation options were available to the applicant, where the Commissioner had found to the contrary and which was not appealed by the applicant.

66. In any event, even on the respondents' counsel's own argument, in reliance on *M.A.R.A.,* the applicant was entitled to have ground 5 of his appeal dealt with (where he specifically addressed the Commissioner's finding regarding the vagueness of his knowledge of the criminal proceedings against his father), yet the applicant's explanation on appeal was not dealt with by the Tribunal Member.

67. Moreover pursuant to s. 16 (3), s. 16 (16) of the Refugee Act 1996, as amended, and Regulation 5.1 (b) of the 2006 Regulations, the Tribunal is required to consider, inter alia, all documents submitted by the applicant. Therefore, there was no requirement on the applicant to request the Tribunal Member to do so in the appeal and the absence of a specific request to do so in the appeal grounds did not diminish the Tribunal's obligation in this regard. Furthermore, counsel submitted that ground 1 of the Notice of Appeal was sufficient to put the s. 13 Report in issue for the purposes of the de novo hearing which the Tribunal was required to carry out. However he did not carry out such a hearing, rather there was an unacceptable attempt to piggy-back on the s. 13 Report. Thus, the court cannot be satisfied in all the circumstances that a lawful decision was arrived at. If one or other of the Tribunal Member's findings are found to be invalid, then the decision must be quashed and in this regard counsel relies on the dictum of Herbert J. in *Keagnene v. Minister for Justice Equality and Law Reform* [2007] IEHC 17 and that of Barr J. in *CCA v Min. for Justice* [2014] IEHC 569

Considerations
68. The assessment of the applicant's credibility commenced with the finding that (with regard to the applicant's personal story) the applicant had not addressed a number of adverse credibility points in the s. 13 report. One example is given by the Tribunal Member, namely the applicant's lack of awareness of his father's sentence or whether his father had been convicted. It is clear from the s. 13 report that a number of other general credibility findings were made by the Commissioner (in addition to s. 11 (B) findings), yet on its face the Tribunal decision does make clear which of these factors were not fully addressed on appeal. Counsel for the applicant submits that this is not acceptable and cites *M.B.B. v. RAT* (High Court unreported, Mac Eochaidh J. 20th June, 2013).

69. In the present case, the frailty which appears on the face of the decision is that the applicant (and the court) are none the wiser as to which of the specific findings as made by the Commissioner (other than the example cited by the Tribunal Member) were considered by the decision-maker as relevant to the applicant's credibility. The question is whether this omission is detrimental to the decision overall. I will return to this argument later in this judgment.

70. Counsel for the respondent submits that consequent on the decision of the Supreme Court in *M.A.R.A.* regarding the purpose of a Notice of Appeal, there was an onus on the applicant to specifically take issue with the credibility factors set out in the s. 13 report and she submits that the applicant failed to do this in his Notice of Appeal, save with regard to one discrete issue, and that otherwise the applicant simply took issue with the Commissioner's credibility findings under the generic argument that the Commissioner failed to give him the benefit of the doubt. That was not sufficient, counsel submitted, in light of the decision in M.A.R.A.

71. In *M.A.R.A.,* Charleton J. stated:

> *"..the function of the Refugee Appeals Tribunal is to examine afresh such aspects of the decision of the Refugee Applications Commissioner as are appealed. Initiation of an appeal, under subsection 3, is by a notice in writing. This must specify the grounds of appeal.*
>
> *……*
>
> *13. The duty of the tribunal on appeal, under subsection 16A, is either to affirm the recommendation that refugee status should be refused or the tribunal may make a positive recommendation where it is "satisfied, having considered the matters referred to in subsection (16), that the applicant is a refugee." Hence, on appeal, there is a complete opportunity to present on behalf of the applicant in aid of this enquiry as to refugee status any new facts or arguments; to reargue the points appealed; to call new evidence for or against the status of the applicant; and to plead the case afresh and in full. The result of the appeal may be the affirmation of the Refugee Applications Commissioner in whole or in part or it may be that for a particular reason argued on appeal the applicant will be found to have established sufficient for a recommendation that the Minister grant him or her refugee status.*
>
> *14. It is clear from all of this that the form of appeal explicitly set out in the Act of 1996 is not merely a review as to whether any error had been previously made: rather, it is a full and thorough enquiry into the relevant documents and observations as previously furnished to the Refugee Applications Commissioner and the hearing of oral evidence and the reception of documentary evidence and submissions in respect of every point on which an appeal has been lodged. It is also apparent that the duty of the Refugee Appeals Tribunal is to make such rulings or finding of fact as are appropriate.*
>
> *……..*
>
> *Under the Act of 1996, the decision of the Refugee Applications Commissioner is entirely subject to legal and factual review by the Refugee Appeals Tribunal. The purpose of the notice of appeal is to set out the points of fact or law that are important to the applicant and in respect of which he or she disputes the earlier decision. The appeal overturns the record of what has been decided; save and in so far as on appeal it is affirmed. It is only to the extent of that affirmation, if any, on appeal, that the earlier decision stands. In its nature, that appeal is to be regarded as an equivalent change in the record as where a person appeals a criminal conviction in the District Court to the Circuit Court. There, a convicted person may be acquitted on a rehearing or may have their conviction before the District Court affirmed by the Circuit Court. Of course, if a person seeking refugee status on appeal is found not to be a refugee, then the matter is disposed of. If that happens, there has been a hearing at first instance that did not accept that a recommendation be made to the Minister that an applicant should have refugee status and on appeal this will have been affirmed by the tribunal under subsection 16A. In so far as it may be thought necessary by the Refugee Appeals Tribunal, in some cases, to resolve appeals as to the essential point only, or to conclude that a particular issue decides the appeal, while leaving unresolved some other question raised in the notice of appeal, this does not result in any disadvantage to an applicant. Some relevant findings of fact or of law may not be disputed on the appeal. Such findings remain undisturbed notwithstanding the appeal as, under the legislation, there must be a particularisation as to what grounds of the decision of the Refugee Applications Commissioner are disputed. Once the notice of appeal initiates a dispute as to any finding of the Refugee Applications Commissioner, by that appeal such finding is neutralised unless it is affirmed by the Refugee Appeals Tribunal.*
>
> *…….*

Where the Refugee Appeals Tribunal does not consider it necessary to resolve the appeal on any such ground, but decides the appeal either positively in favour of the applicant or negatively against him or her on another ground, so much of the earlier decision as is appealed against is rendered merely historical. There is therefore no remaining or "hovering" disadvantage once an appeal is taken.

16. In essence, an appeal within this process is an active rehearing…"

72. In summary, the grounds of appeal furnished to the Tribunal were:

• ORAC erred in fact and in law in failing to grant refugee status to the applicant; (Ground 1)

• ORAC erred in considering and assessing country of origin information. Reference was made to the US Department of State Report on Religious Freedom dated 17th November, 2010, which attached to the s.13 report, and which referred, inter alia, to Islam as the state religion in Bangladesh and that while the Bangladeshi Constitution provided for the right to profess, practice or propagate religion, "attacks on religious and ethnic minorities continued to be a problem during the reporting period since religious minorities are often at the bottom social hierarchy and, therefore, have the least political recourse". The following extract from the report was also cited: "There were reports of societal abuses and discrimination based on religious affiliation, belief or practice during the reporting period, although figures suggest such incidents declined significantly in comparison to the previous reporting period. Hindu, Christian and Buddhist minorities experienced discrimination and sometimes violence from the Muslim minority. Harassment of Ahmadies continued." (Ground 2) Further extracts from the aforesaid and other country information were attached to the Notice of Appeal.

• ORAC applied the incorrect burden of proof to the applicant in circumstances where he produced documentation supporting and corroborating the evidence he gave to ORAC. Reference was made to the certificates from the Bangladesh Buddist Youth Council and their content and it was submitted that the ORAC decision did not appear to contradict the content of the certificate. (Ground 3)

• ORAC failed to have regard for the circumstances in which the applicant left Bangladesh and his age, both of which were known to the s.11 interviewer. (Ground 4)

• ORAC erred in rejecting as not credible the applicant's evidence in respect of the sentence imposed by the Bangladesh court on his father. It was submitted that the applicant gave an explanation for not knowing the sentence which appeared to have been rejected without explanation or justification by the Commissioner. The applicant had stated in his interview that he was not present in the town at the time his father was sentenced. (Ground 5)

• ORAC erred in law in failing to give due weight to the warrant that issued on 11th October, 2009 in respect of the applicant. (Ground 6)

73. Thus, it can be seen that the applicant specifically took issue with the Commissioner's assessment of country of origin information; with an alleged failure to have regard to the applicant's age; with the Commissioner's failure to address the explanation proffered by the applicant for not knowing the sentence imposed on his father; and with the alleged failure by the Commissioner to give due weight to the warrant said to have issued against the applicant.

74. It seems to me that those grounds meet the particularisation requirement set out in *M.A.R.A.*

75. The one example cited by the Tribunal Member as evidence of the applicant's failure to address the Commissioner's credibility findings i.e. his lack of awareness of his father's sentence was, as a matter of fact, the specific subject addressed in Ground 5 of the Notice of Appeal. As the decision records, the applicant was questioned at the oral hearing on the issue of his father's arrest and detention both by the Presenting Officer and by the Tribunal Member. However, the explanation tendered by the applicant in the Notice of Appeal as to his lack of awareness, namely that he was not present in the town at the time his father was sentenced, was not specifically alluded to in the decision. It seems to me that since the Tribunal Member considered the applicant's lack of awareness of relevance to his credibility, his explanation for his lack of knowledge was required to be weighed by the decision-maker and to be seen to have been weighed. However, this weighing exercise is not evident on the face of the decision. Of itself however, this would not serve to vitiate the decision, if it is otherwise sustainable as the Tribunal Member's assessment of credibility (which is solely his preserve) must be viewed in the round.

76. Counsel for the applicant also took issue with how the Tribunal Member dealt with the letter said to have emanated from a lawyer in Bangladesh. It seems to be the case that the authenticity of this letter was rejected on the grounds that it was inconceivable that a lawyer with a common law tradition would have advised the applicant in the terms set out in the letter. It is contended on behalf of the applicant, that the Tribunal Member's finding was both an error of fact and conjecture on his part. I am not persuaded by this argument. I agree with counsel for the respondent that the Tribunal Member's approach was rational and reasonable and thus entirely within jurisdiction.

77. A number of findings were made under s. 11 (B) of the Refugee Act, 1996 as amended. These are mandatory considerations. However, it is not necessarily the case that adverse findings under s. 11(B) would be sufficient to reject a protection applicant's claim for refugee status if his claim were otherwise credible. How s.11 (B) factors should be addressed is aptly set out by Cooke J. in *N.A.U. v RAT:-*

"12. It is to be noted that in each of the Contested Decisions the Tribunal member invoked explicitly two of the statutory considerations which are required to be taken into account when assessing credibility by virtue of ss.(b) & (c) of s. 11B of the 1996 Act. He found expressly that the applicants had failed to provide a full and true explanation of how they travelled to and arrived in the State (ss.(c) and a reasonable explanation to substantiate their claim that the State was the first safe country in which they had arrived since departing from Pakistan (ss.(b). These were considerations which the Tribunal member was obliged to take into account under s. 11B and there is no doubt that he was justified in doing so in the circumstances of the applicant's claim.

……..

13. Section 11 B of the 1996 Act does not prescribe any specific consequence where a finding is made as to lack of credibility by reference to one or more of the matters required to be taken into consideration. It does not stipulate that the claim must be rejected as unfounded for that reason alone. Clearly, there may always be other aspects of a claim

which lend credibility to the account given notwithstanding the fact that one or more of the statutory considerations is applicable. Nevertheless where one or more of the statutory credibility considerations is found to apply and discrepancies or implausibilities are also identified in the facts and events given in the personal history relied upon as the basis for the claim, the Tribunal member is clearly entitled and may even be obliged, to find that the claim is unfounded for lack of credibility. The corollary, however, is that if the findings in relation to personal history and events are shown to be vitiated by material errors of fact or misunderstandings of the evidence, the applicability of the statutory considerations may not be sufficient to sustain the decision when taken as a whole."

78. The Tribunal Member did not find it credible that the applicant arrived in Ireland on a red passport which was stamped at the point of entry. It is asserted by the applicant's counsel that no reason was given for rejecting the applicant's account. I do not find that to be the case. The Tribunal Member clearly stated that he found the account not credible in light of the fact that a stamp used only for non-EU passports. The decision demonstrates that this issue was canvassed with the applicant at the oral hearing and he was given an opportunity to respond. Accordingly, the finding cannot be faulted on procedural grounds and, to my mind, it satisfies the requirement of reasonableness and rationality and it is not for this court to substitute its view for that of the decision maker whose function it is to assess the applicant's evidence. Absent procedural irregularity or irrationality, it is not for this court to interfere with the decision-maker's assessment.

79. The Tribunal Member also found that the applicant did not possess identity documents and that he had not submitted a reasonable explanation as to why this was the case. The applicant's evidence was that the agent had taken back the passport upon which he travelled. Counsel for the applicant challenged the finding on the basis that the applicant had in fact submitted documentary evidence of his identity and counsel pointed to a birth certificate and a nationality certificate which had been furnished in the course of the asylum process and which had the applicant's photograph thereon. The Tribunal Member acknowledged that "other documentation has been provided but a photographic I.D. document was not amongst their number (in relation to the documents submitted it is not possible to come to any rational conclusion based on their veracity or otherwise)." In view of this I am thus satisfied that although not individually referenced in the decision, the Tribunal Member's consideration included the birth certificate and nationality certificate. As such, weight was afforded to the documents, namely that they could not be authenticated. It seems to me that the finding made by the Tribunal Member was open to him to make. It was also argued on behalf of the applicant that the finding on the absence of identity documentation put the applicant's identity as a Bangladeshi National in issue. I am not persuaded that that is the case. The Tribunal Member does not appear to question the applicant's nationality, rather he queries as to why documentary evidence of his identity was not available. This is a matter to which the Tribunal Member is mandated to have regard by virtue of s. 11 (B) (a) of the 1996 Act.

80. I will return in due course to the more general arguments advanced by the applicant's counsel in relation to the Tribunal Member's treatment of the documents furnished by the applicant.

81. Pursuant to s. 11 (B) (c), the Tribunal Member observed that the applicant had not corroborated by documentary evidence or otherwise the route he took to get to this state. The decision maker observed that the applicant referred to having passed through two unknown countries but had not ascertained which countries they were. The fact that the applicant was unable to name the countries he transited was weighed in the assessment of the applicant's credibility. I am satisfied that the finding that the Tribunal Member made in this regard was open to him to make and I am satisfied that it was a rational and reasonable finding in that it was noted that on the applicant's account the ticket he had was issued from Bangladesh and that the signs in the airport were in English, that the applicant had a little English and the Tribunal Member observed that the applicant's "lack of curiosity is set against the fact that he claims it was his first time outside of Bangladesh". This finding was within jurisdiction, in my view.

82. The applicant's failure to seek international protection "after arriving in a safe country" was considered by the Tribunal Member as adverse to the applicant's credibility notwithstanding the applicant's claim that he was "following the smuggler". This finding was made pursuant to s. 11 (B) (b) of the 1996 Act. I accept the applicant's counsel's argument that the Tribunal Member erred in making this finding. The applicant made no claim that Ireland was the first safe country he arrived in and therefore s. 11 (B) (b) should not have been brought to bear on the applicant's claim when the strict terms of that provision were not met. This is well-established in the jurisprudence of the High Court. F.T. v. RAT [2013] IEHC 169 refers and indeed this court has made similar observations in previous decisions.

83. With regard to s. 11 (B) (d), the Tribunal Member also noted that he only had the applicant's evidence that he applied for asylum shortly after arriving in the state, although it is unclear to the court the extent to which this observation was a factor in the rejection of the applicant's credibility. From the language used by the decision maker, it appears to have been considered in the round.

84. The basic thrust of the applicant's counsel's arguments as to the manner in which country of origin information was dealt with in the decision is that the Tribunal Member gave no weight to the persecution of Buddhists in Bangladesh or to the Bangladeshi state's acquiescence in such persecution.

85. At p. 19 of the decision, the Tribunal Member stated he considered all of the country of origin information submitted, including that submitted at the hearing.

86. The country of origin information before him comprised a US State Department report on Religious Freedom in Bangladesh dated 17th November 2010, a UK Border Agency report dated 20th August 2010, extracts from other country material, including a March 2010 US State Department report on Religious Freedom a Human Rights (furnished by the applicant with the Notice of Appeal), a Human Rights Watch (HRW) document and a document from the Rapid Action Battalion. The November 2010 US State Department report and the August 2010 UK Border Agency report comprised the country of origin information which attached to the s. 13 report. The HRW report and the Rapid Action Battalion report, as referred to in the decision, were not before this court and were not referred to in the course of the within proceedings. These documents appear to have been submitted in the course of the Tribunal hearing.

87. Counsel for the applicant challenges the Tribunal Member's assessment of the country of origin information on the basis that he effectively only adopted the Commissioner's findings on such information without further consideration.

88. The US State Department report of November 2010, upon which both the Commissioner and the applicant relied, clearly documented that attacks took place on the Buddhist Community in the Chittagong area of Bangladesh (from whence the applicant came).

89. The s. 13 report stated:

"I have reviewed country of origin information in relation to the treatment of Buddhists in Bangladesh. While Islam is

established as the state religion, the Bangladesh Constitution provides for the right to profess, practice, or propagate all religions. The government appears to support religious freedom, for example, the Ministry of Religious Affairs administered funds for religious and cultural activities to the Buddhist Welfare Trust. The Trust used funds to repair monasteries, organise training programmes for Buddhist monks and celebrate the Buddhist festival "Purmina". There was no public criticism of how the money was apportioned or distributed. In addition, the government observed most major religious festivals and holy days of Muslims, Hindus, Buddhists and Christians as national holidays. A new government appointed more religious minorities at all levels of government. In the new cabinet, four of forty-four Ministers were non-Muslim. [The Prime Minister] appointed two Buddhist Ministers. Nevertheless, while improvements have been made and the government praised for their work, societal attacks on religious and ethnic minorities continued to be a problem (although the true motives in these attacks were often unclear)."

90. In this regard the Commissioner referenced the November 2010 US State Department report.

In the course of the credibility assessment, the Tribunal Member stated:

> *"The summary of country of origin material in paragraph 3.3.1 is a fair and balanced one and is not undermined by the newer material (the HRW document refers to the Ahmadi Community but is illustrative of difficulties in Bangladesh, the document of the Rapid Action Battalion has no direct bearing on this case)."*

91. The decision-maker also referred to the country of origin information in the context of a consideration of state protection for the applicant from his neighbours, noting that "the criminal justice system in Bangladesh is in need of greater transparency, resources and a reduction of corruption…" He went on state:- "however that does not mean that the applicant would be able to be targeted by non-state agents, while he was questioned/detained by the apparatus of the state" In the context of considering whether the applicant's claim was persecution or prosecution, he observed that "it would be an understatement to state that Bangladesh's police and judicial system have their difficulties".

92. While the Tribunal Member was cognisant of the fact that country of origin information documented that all was not well in the Bangladeshi police and justice system, I am persuaded by the argument advanced by counsel for the applicant that a more comprehensive analysis of country of origin information was required in the context of the finding that state protection was available for the applicant. It seems to me that the Tribunal Member confined his assessment of whether state protection was available to a scenario where the applicant would be safe from the actions of non-state parties when being questioned or detained by the police. That assessment of itself satisfies the test of rationality and cannot be faulted. However, there is no real analysis of the applicant's complaint that the police failed to act following that attack on him and his father. The applicant's evidence is recorded in the decision but the Tribunal Member appears to confine his analysis on this issue by noting that the applicant's availing of police protection related to an incident where the applicant and his sister had been called names, an incident which the applicant claimed also occurred but which, having regard to the applicant's account of events and contrary to the Tribunal Member's statement, did not constitute the sole occasion on which the applicant claims to have been subjected to attack from non-state agents in respect of which it was claimed the police did nothing. While it was entirely for the Tribunal Member to accept or not the applicant's account of the attacks on him, without having made a finding on the first attack testified to by the applicant, the Tribunal Member, in deciding whether there was effective state protection available to the applicant, should not have restricted his finding on the issue to the scenario where the applicant would be within the confines of the state apparatus; he should have factored into his assessment the more general consideration of whether there was effective access to justice for the applicant so as to protect him from non-state threats. I note that the November 2010 report states, inter alia, "Government officials, including police, nonetheless were often ineffective in upholding law and order, and sometimes they were slow to assist religious minority victims of harassment and violence".

93. The country of origin information, to my mind, had sufficiently nuanced material on the question of effective state protection to warrant a more considered approach by the Tribunal Member. This is particularly so in circumstances where the country of origin information was not considered by the Commissioner in the context of state protection, as no such finding was made by the Commissioner. Thus, I am satisfied that the decision-maker fell into error in the manner set out in S.J.L. The complaint on the treatment of country of origin information is made out.

94. Furthermore, on the issue of the assessment of country of origin information generally, I note the Tribunal Member's reference to the lack of opportunity to cross examine the authors of the country of origin reports. I agree with counsel for the applicant that this observation by the decision-maker sits somewhat uneasily in the decision in circumstances where country of origin information such as that set out in US State Department and UK Home Office reports is regularly referred to not just by protection applicants but by ORAC. However, the Tribunal Member's observation is not something that would render the decision invalid.

95. A major part of the challenge made by the applicant to the decision is the treatment of the documentation which the applicant furnished in aid of his claim. The relevant documents are listed elsewhere in this judgment. It is argued by counsel for the applicant that most of the documents were ignored or not considered in the decision. It is also argued that in his Notice of Appeal the applicant had specifically highlighted that he had supporting corroborative evidence of the matters he complained of and that at ground 3 he made specific reference to letters/certificates from the Bangladesh Buddhist Youth Council and had submitted to the Tribunal that the Commissioner's report did not appear to contradict the content of the certificate from the Bangladesh Buddhist Youth Council.

96. On behalf of the respondent, it is argued that the applicant did not put the Commissioner's findings on the documents in issue in his appeal. The Commissioner stated:

> *"In relation to the submitted documents listed in para. 1. ORAC is unable to verify the authenticity of these papers. Furthermore, it should be noted that country of origin information reports indicate that forged and fraudulently obtained documents are readily available in Bangladesh."*

97. In this regard the Commissioner referred to the UK Home Office Report of August 2010 on Bangladesh where, under the title "Forged and Fraudulently Obtained Official Documents", the following is stated:

> *"Many false documents exist; it is relatively easy to verify these documents, but verification takes a long time when it is done outside the capital... the content of genuine documents is often questionable. The rampant corruption in various levels of the government weakens the integrity and the credibility of officially issued documents*
>
> *……..*
>
> *Forged and fraudulently obtained documents are readily available in Bangladesh and are frequently submitted in support*

of entry clearance applications. Such documents include forged passports, birth, death and marriage certificates, bank statements (local and British), business plus employment related documents and educational certificates

……

Asylum applicants from all (Bangladeshi political) parties submit voluminous documentation in support of their claims, including in particular outstanding warrants for their arrest if they return to Bangladesh and other alleged court and police documents. Arrest warrants are not generally available to the public, and all such documents should be scrutinised carefully. Many 'documented' claims of outstanding arrest warrants have proved to be fraudulent. As of December 1997, the embassy had examined several hundred documents submitted by asylum applicants; none proved to be genuine."

98. It is the case that in the Notice of Appeal the applicant places reliance on two of the documents, in particular the document said to be a certificate from the Bangladesh Buddhist Youth Council and a warrant said to have issued against the applicant on 11th October, 2009. Insofar as those documents are addressed by the Tribunal Member, it is in the context of his general finding that the documents submitted could not be authenticated. As they were adverted to in the decision, it cannot be said that the documents were ignored or not considered. The issue is whether they received due consideration.

99. As already set out, only the lawyer's letter is specifically identified in the decision and it seems that the basic premise of the Tribunal Member's finding is that its veracity could not be accepted by reason of its content. I have already expressed the view that this finding was made within jurisdiction.

100. To the extent that the documents were mentioned in the decision, it is thus clear that the Tribunal Member was aware of the documents albeit the individual documents were not identified or specifically addressed in the decision, save the reference to the lawyer's letter. While it was acknowledged by the applicant's counsel that the country of origin information states that there are a lot of forged or false documents coming out of Bangladesh, he contended that that did not necessarily mean that the applicant's documents were forged. In any event, counsel argued that the country of origin information available to the Tribunal also stated that documents could be easily verified; albeit that it can take a long time to do so. In this regard, counsel relied upon the dictum of Barr J. in *A.O. v. RAC & Ors.* [2015] IEHC 253:-

"30. In the circumstances, I am satisfied that the Tribunal did not carry out sufficient investigation of the letter and ID card. The discrepancies identified in the letter certainly raised serious questions in relation to its authenticity. It was up to the Tribunal to take active steps to ascertain the authenticity of the documents. As already noted, the Tribunal could have tried to make contact with the Federation to see if the documents were genuine. They could have sent copies of the documents to the Federation and asked them to verify whether the documents were genuine. In the circumstances, it is appropriate to quash the decision of the RAT dated 28th September, 2009, on this ground."

101. Additionally, counsel cited the Canadian decision in *Chidambaram v. the Minister of Citizenship and Immigration* [2003] FCT 66 [CANL 11] in support of the submission that identity documents issued by a foreign government are presumed valid unless evidence is produced to prove otherwise.

102. I accept the submission advanced on behalf of the respondents that the applicant did not take issue with the Commissioner's finding that the documents could not be authenticated and that forged and fraudulently obtained documents were easily available in Bangladesh. It was open to the applicant to do so. While equally it could be said that that Tribunal Member was aware from the UK report that "it is relatively easy to verify these documents", it seems to me that that case should have been made on appeal to the Tribunal, particularly where the applicant was put on notice, via the documents attached to the s.13 report, of information which he could have used to argue on appeal that the Tribunal Member should endeavour to have the documents authenticated in light of the Commissioner's finding. Accordingly, I find that the Tribunal Member's failure to take account of country of origin material which suggests that documents are easily verifiable is negated by the applicant's own failure to make any case on appeal to refute the Commissioner's finding that they could not be authenticated. In these circumstances, I am not persuaded by the applicant's counsel's reliance on *AO v. RAC & Ors*.

103. Counsel for the applicant also challenged the Tribunal Member's failure to consider a medical report which the applicant had submitted. This comprised part of the documents furnished to the Commissioner. On its face, the document can best be described not as a medical report in the true sense but as a medical discharge sheet, as indeed it was described in the s. 13 report. The Commissioner found credibility concerns finding it unusual that the report did not use "medical terminology". No issue was taken with this finding on appeal. It is the case that the discharge sheet was not alluded to by the Tribunal Member save that it can be surmised that the decision-maker's included the medical discharge sheet when he referred to it being possible to come to any rational conclusion on the veracity of documents submitted by the applicant. For the reason already outlined by the court, the failure to refer specifically to the document is not sufficient to vitiate the decision. In any event, I agree with the respondents' counsel's submission that the quality of the content of the document is such that the failure of the Tribunal Member to attribute the weight, if any, afforded to it does not offend against the legal requirement on the decision-maker to take account of documents furnished by a protection applicant.

104. In the course of these proceedings, counsel for the respondent referred the court to the decision of Clarke J. in *M.G.U. v. RAT* [2009] IEHC 36 and she relied on this case in support of her contention that the Tribunal Member's treatment of the documents submitted by the applicant was appropriate in all the circumstances.

105. Clarke J. stated:-

"39. Experience of asylum cases shows that many documents of dubious origin and authenticity are presented before the ORAC and RAT and indeed to other fact finders in the asylum and immigration process whose decisions are available to the court. These fact finders cannot be expected to consider and investigate each document individually but can only superficially seek to find indicia of reliability on a first level basis. Thereafter, the documents are considered at face value in the context of the whole story of the reason for flight recounted by the asylum seeker balanced with any relevant country of origin information available, the impression made by the applicant and the s.11B factors on an experience and common sense basis. Experience shows that the doubtful documents are simply not mentioned. It rarely happens that an application is rejected on the basis of one document or one singular aspect of that applicant's account. If, nevertheless, the rejection of an application hinges on one particular aspect of the evidence and that aspect was not fully canvassed at the interview, then of course it would be unfair on the part of the fact finder/investigator not to highlight that aspect to the applicant so that he/she might have an opportunity to properly or further address the issue."

106. I accept the general principles set out in M.G.U. and it cannot be said here that the applicant's credibility was simply rejected on the basis that his documents could not be authenticated.

107. However, it is the case that his credibility was rejected by the Tribunal Member's reliance, inter alia, on the Commissioner's credibility findings without the rationale for the adoption of such findings being highlighted in the decision, save the omnibus statement that the applicant had not "fully addressed" those findings.

108. One of the principal arguments made on behalf of the applicant in these proceedings is that the Tribunal Member, while noting that the s. 13 report dealt with a number of credibility findings which were not addressed by the applicant, failed to specify such findings, save for the one example regarding his father's alleged detention.

109. In *M.B.B. v RAT* (Unreported High Court 20th June 2013) MacEochaidh J. states:

> *"A further complaint that is addressed by the applicant in respect of these decisions is that, in large parts, the decision of the Tribunal Member appears to be a verbatim copy of the s.13 report carried out on behalf of the Office of the Refugee Applications Commissioner. I do say, as I said in a previous decision, that it is a cause of concern that such a degree of repetition and copying of the decision of ORAC is apparent, although in this case, it seems to me there is sufficient independent language and analysis inserted in the two decisions in question to lead me to conclude that the Tribunal Member did independently consider this matter but did not simply adopt all of the findings made by ORAC and reproduce them. There is independence of thought evident in the Tribunal Member's decision and findings that are additional to those made by ORAC. That persuades me that this ground of complaint is unfounded."*

110. In the present case, I am satisfied that the approach adopted by the Tribunal Member, namely his adoption of the Commissioner's findings, without further elaboration, is sufficiently demonstrative of an absence of independence of thought as to vitiate the finding made with regard to the applicant's credibility.

111. It seems to me also that the fact that each of the Commissioner's individual findings may not have been addressed in the Notice of Appeal cannot be dispositive of this issue because once the Tribunal Member asserted (as he effectively did) that he was adopting the Commissioner's findings, he should have itemised the s. 13 "credibility points" he was relying on in like manner as he identified the issue of the applicant's father's criminal proceedings as an issue of credibility. This is required not just because the applicant as the addressee of the decision is entitled to know in clear terms what aspects of his story led to the rejection of his credibility, but because the identification of such issues necessarily constitutes part of the de novo consideration which the Tribunal Member is obliged to conduct as set out in the Refugee Act, 1996, as amended and indeed as referred to in *M.A.R.A.*

112. Part of counsel for the applicant's argument to this court, with reference to the Commissioner's findings, was that the Commissioner, although having stated that the documents submitted by the applicant could not be verified, appears to have relied on the court papers the applicant submitted to find that his assertion that firearms were planted in the youth club was undermined by the indication in the court papers that the arrested defendants (including the applicant's father) had confessed to possessing illegal firearms with the intention of committing terrorist offences. This was one of the factors which led to the Commissioner's finding that there was "a significant credibility deficit". These findings, as the s. 13 report demonstrates, included reference by the Commissioner, when rejecting a particular aspect of the applicant's story, to the content of what is said by the applicant to be court documents referring to, inter alia, the circumstances of his father's arrest and detention.

113. Obviously, this court is not concerned with the s. 13 report per se, as the Commissioner's findings are not the subject of these judicial review proceedings.

114. However, as I have found, the Tribunal Member's statement that the applicant had not fully addressed a number of credibility points in the s.13 report indicates, essentially, that all or some of the Commissioner's findings, over and above the one example cited by the Tribunal Member, were considered by him to be relevant to the rejection of the applicant's credibility.

115. Thus, while on the one hand the Tribunal Member observed that it was not possible to come to any rational conclusion on the veracity of the documents submitted by the applicant, (a conclusion which was open to him to make for the reasons set out in this judgment), the Tribunal Member simultaneously appears to rely on credibility findings in the s. 13 report one of which is founded upon a consideration of the content of court documents sent in by the applicant. In my view, if the Tribunal Member has effectively rejected the court documents and indeed other documents as of no probative value because they cannot be authenticated, it is neither fair nor rational that he would implicitly adopt findings made by the Commissioner (one of which had relied on the content of court documents to reject the applicant's credibility) as part of the Tribunal Member's own credibility assessment without firstly specifying the findings being relied on and then stating his reasons why he was satisfied to rely on such findings.

116. For the foregoing reasons, the applicant's challenge to the credibility assessment is made out.

117. For the reasons set out in this judgment and because it appears from the decision that the applicant's credibility was assessed on a cumulative basis, the court is not satisfied that the credibility findings should stand. In arriving at this decision, I was not persuaded that in this case the s. 11(B) findings (most of which are upheld) were sufficient to render the credibility assessment lawful when the decision is read as a whole. Neither can the decision be sustained by having regard to the "even if" findings made on state protection and internal relocation as those finding are in my view impugned by reason of the failure to give due consideration to relevant country of origin information which raised questions about the effectiveness of the Bangladeshi state's capacity to protect its citizens. While this is a matter for the decision-maker and not this court, such an assessment is required to be carried in conjunction with available relevant country of origin information. However, the weighing exercise in this regard is not evident on the face of the decision as it is not clear that the decision-maker properly considered the country information when addressing the applicant's assertion that his complaints to the police went unheeded, save for the narrow consideration that the applicant would be safe from non-state agents while being questioned by police or within the physical confines of state custody. Similarly, the court does not believe that the decision can be sustained by reference to the "even if" finding that the applicant's claim amounted to fear of prosecution and not fear of persecution in circumstances where the decision is less than clear as to whether it was accepted by the Tribunal Member that subject to the applicant being credible, the claimed threats from non-state agents by reason of the applicant's religion would amount to persecution, over and above any question of the applicant's fear of prosecution for alleged offences not satisfying the definition of a refugee.

Summary

118. Leave is granted. This being a telescoped hearing, the court will quash the decision of the first named respondent and remit the matter to the Refugee Appeals Tribunal for a de novo hearing before a different Tribunal Member.