

THE HIGH COURT

JUDICIAL REVIEW

2006 642 JR

BETWEEN

M.G.U.

APPLICANT

AND

REFUGEE APPEALS TRIBUNAL,

THE MINISTER FOR JUSTICE EQUALITY AND LAW REFORM,

THE ATTORNEY GENERAL AND IRELAND

RESPONDENTS

AND

HUMAN RIGHTS COMMISSION

NOTICE PARTY

JUDGMENT of Ms. Justice Clark delivered on the 22nd day of January, 2009.

The applicant seeks leave to apply for an order of certiorari quashing the decision of the Refugee Appeals Tribunal made on the 17th May, 2006 and notified to the applicant on the 27th May, 2006 upholding the recommendation of the Office of the Refugee Applications Commissioner (ORAC) to refuse the applicant refugee status. As the application was found to be of no basis or of a minimal basis, his appeal was a documentary appeal based on the s. 13(1) report and all documents furnished with his ORAC application and at interview. The case was unusually lengthy involving a great volume of documents and took place over several days before the ORAC and two days before this court.

Factual Background

1. The applicant's refugee application questionnaire indicates that he claims to be from Bangladesh and he speaks Bengali. He says that he arrived in the State on the 25th September, 2003 at Dublin Airport but he did not apply for asylum as he was unaware of the asylum system. Later, when he met other Bangladeshi nationals, he was told that no Bangladeshi asylum seekers are ever successful in applications for refugee status and that if he were to try for asylum and fail, he would be returned to Bangladesh. He therefore did not apply.
2. He was arrested by Garda in Kilkenny on the 4th April, 2004, for an undisclosed offence and while in custody he obtained access to legal advice and then applied to ORAC for asylum on the 24th April, 2004.
3. He asserts that he comes from a family tradition of politics and claims that he fears persecution because of his membership of the Bangladesh Awami League which is the main opposition party in the country. He says he was the financial secretary of the Lakshimpur District Unit of the Awami Juba League, the youth wing of the party.
4. He claims that his problems arose in December, 2001 because his family is financially comfortable causing it to be targeted for a corrupt prosecution for murder as his father had refused to pay a "ransom" to Government supporters when building a multi-storey building in his town. The result of this refusal was that his father and his near relatives, including himself, were prosecuted for the murder of the brother of a Government party representative. The victim of the murder was involved in a property dispute with members of the applicant's family and a case is pending in the Civil Courts arising out of that dispute. He described the death of the murder victim as having occurred during a looting incident when three people were shot. One man died from his injuries and one of the survivors who he named as B. M., was persuaded by ruling party terrorists to make a complaint against the applicant, his father, his elder brother and his cousin who were accused of conspiracy to rob and murder. His father was arrested two days later and when he became aware of the charges against him he and his brother and cousins fled the town and he remained in hiding in Dacca since then, moving every couple of days.
5. He claimed that in January the following year he was taken by government supporters to their office where he was tortured for several hours and thrown into the street in an unconscious condition. People in the street sent him to hospital where he was treated. Following the trial, which he describes as a farce, his elderly father was sentenced to imprisonment for five years; the applicant was sentenced to fourteen years; his elder brother seven years and his two cousins five years each. The applicant claimed that before the trial he lived in many different addresses, mainly in Dacca, before he arrived in Ireland at Dublin Airport on the 25th September, 2003, having first travelled through India and Russia.
6. He claimed that he had a visa to travel to Ireland but did not know from where this visa was obtained. He had a passport which he used to enter the State but this passport was stolen or mislaid shortly after he arrived. He did not know the airline on which he travelled or the town in Russia where the plane landed. He thought the flight from Russia to Dublin took eleven or twelve hours. He described the death of the victim of the trumped up murder charges as having occurred during a looting incident when three people were shot. One man died from his injuries and one of the survivors

who he named as B. M. made a complaint against the applicant, his father, his elder brother and his cousin who were accused of conspiracy to rob and murder. His father was arrested a few days later.

ORAC Interviews

7. The applicant was interviewed by ORAC on three separate occasions spread over a four month period as he required time to obtain documents from Bangladesh. His first interview was held on the 30th August, 2004 when he was assisted by a translator as he claimed to only speak Bengali. The applicant claimed that he was educated to third level and that he attended the National University at Gazipur for two years studying to become a Bachelor of Commerce. He failed his degree exam in 1996 and since then was financially supported by his father while he worked with the Awami League. At the first interview the only documents which he had were his birth certificate and a letter from the Awami League which he said were procured for him by a friend in Bangladesh. He informed the interviewer that he hoped to be in a position to furnish further documents within the next few weeks.

8. He said that he had supported himself since he arrived as he had a thousand dollars and a thousand pounds Sterling with him when he arrived. Before he came, the agent told him that he was sending him to Ireland and he came to be safe and to save his life. His uncle knew the agent who organised everything. The agent provided the passport with a name similar to his own and also supplied him with a false Royal College of Physicians card with his own photograph naming him as Dr. Gias Uddin Ahmed. With that card and the passport he said that he had no difficulty getting through Immigration.

9. The second interview was held on the 27th October, 2004. On this occasion he brought a number of documents including photographs of the building owned by his father and uncles which had been sent by a friend in Bangladesh. He also furnished photocopy original secondary school certificates, a higher secondary examination certificate and exam documents from the National University of Gazipur which were translated into English.

10. In his second interview he described the incident as a robbery occurring in December 2001 in a house in the village nearby and someone was shot at and got injured. That person was brought to hospital and died that night. The next day the victim's brother, C.H., went to the police and reported the applicant and his father, elder brother, two cousins and other people. The reason they were reported was because the applicant was "secretary" for the Awami League in that area and also because his family already had problems with the Rial family and *"perhaps because they were told by the BNP to report us to start a scandal because the family had refused to give them money before."*

12. He said his father was the only accused present for the trial and that he is presently in prison in Lakshimpur. The victim's family were in the ruling Bangladesh Nationalist Party (BNP) while the applicant was in the opposition. The applicant believed that he would not be given a fair trial because the victim's family were powerful and had connections. In describing his political activities he said that he was the accounts secretary of the Awami League of the Lakshimpur District and was responsible for accountancy and budgeting. He joined the Party when he was a student around 1993 – 1994. When he was in college he joined the Juba League part of the Awami League. After he joined the Juba League he joined the main Awami League.

13. The third and last interview was held on the 16th December, 2004 and on this occasion the applicant brought with him a University certificate and two secondary school certificates, a faxed copy of a medical report and a photocopy of a card belonging to the applicant's father as documentation to establish his identity. He said that all these documents were faxed to him by a friend who had obtained the medical report from the hospital. He also furnished three original documents in relation to a translation of the court proceedings arising from the death of H.S. These Court documents were obtained through solicitors in Bangladesh who the applicant knew because they lived in the same area, although those solicitors were not consulted when the applicant was falsely incriminated. The murder took place on the 17th December, 2001, and the applicant left soon after that. When his father refused to pay the money to the BNP, they made problems for the family thereafter. He said that he was sentenced to fourteen years in jail and that if he were to go home he would be arrested and if found by the BNP they would kill him. He needed help as Bangladesh is not safe for him and his father was still in jail.

14. When the applicant was asked for more details relating to his political involvement he described how he first became politically involved as a student around 1990. His interest was through his uncle who was an M.P. and a solicitor. He first joined the Chhatra League as a student and later joined the Juba League around 1993 and then the Awami League around 1994 although he did not finish his studies until 1996 when he took his graduation exam but failed. He did not know when the Awami League was founded but he did name the founding member and the current leader. He described the symbol of the Party as being a black boat with four stars but was not sure. When asked to describe the Party's ideology, its aim, objectives and political views, he said that it was *"about giving people jobs, education, food for everyone, health too, housing for everyone, clothes for everyone, those were the main things but there were many more things."* On this occasion he said that he was the Accounts Secretary since 1998 and before that he was in the Juba League where he was merely a member. He was always strongly involved in the Party where he enjoyed a leadership role; he did all the accounts in his area, prepared the budget and submitted these documents to the central office.

ORAC recommendation

15. The applicant failed to be recognised as a person entitled to refugee status. In examining the evidence as presented by the applicant together with the collaborating documents, the Commissioner found that the applicant had not provided ORAC with any evidence that his conviction for murder in Bangladesh was unjust and found that he was therefore fleeing prosecution rather than persecution. The Commissioner relied on Para. 56 of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, which says:-

"Persecution must be distinguished from punishment for common law offence. Persons fleeing from prosecution or punishment for such an offence are not normally refugees. It should be recalled that refugees are a victim/or potential victim/ of injustice, not a fugitive from justice".

16. Adverse inferences were drawn from the fact that the applicant did not seek asylum when he arrived in this country in September, 2003 and only applied for refugee status after he was arrested in Kilkenny in April, 2004. The explanation which he provided in that respect was not deemed credible. In addition, he was found not to be credible in his lack of knowledge of the Bangladesh Awami League and that his knowledge of the fundamental elements of the policies of that

Party was very poor. The applicant failed to convince the ORAC interviewer that he was a Party member of any standing, if he was a member at all. Finally, because the decision to refuse refugee status indicated that s. 13(6) (a) of the Refugee Act 1996 applied in that the applicant showed either no basis or minimal basis for the contention that he was a refugee, his appeal proceeded by way of submissions and documents.

The Refugee Appeals Tribunal

17. The applicant lodged lengthy submissions to the Refugee Appeals Tribunal (RAT) and furnished additional country of origin information outlining violent clashes between the ruling political party (the BNP) and the Awami League. The ORAC recommendation that the applicant should not be declared a refugee was affirmed by the RAT. The Tribunal Member noted that in determining the credibility of an applicant, he was required by Section 11(B) of the Refugee Act 1996, as amended by the Immigration Act 2003, to have regard to certain factors as an aid towards the assessment of the applicant's credibility, being:-

- (a) Whether he possessed identity documents and if not whether he had provided reasonable explanation for the absence of such document
- (b) Whether the applicant had provided a reasonable explanation to substantiate his or her claim that the State is the first safe country in which he or she has arrived since departing from his or her country of origin or habitual residence,
- (c) Whether the applicant has provided a full and true explanation of how he or she travelled to and arrived in the State,
- (d) Where the application was made other than at the frontiers of the State, whether the applicant has provided a reasonable explanation to show why he or she did not claim asylum immediately on arrival at the frontiers of the State unless the application is grounded on events which have taken place since his or her arrival in the State.
- (e) where the applicant has forged, destroyed or disposed of any identity or other documents relevant to his or her application, whether he or she has a reasonable explanation for so doing;
- (f) whether the applicant has adduced manifestly false evidence in support of his or her application, or has otherwise made false representations, either orally or in writing;
- (g) whether the applicant, without reasonable cause, having withdrawn his or her application and not having been refused a declaration under section 17, has made a subsequent application under section 8;
- (h) whether the applicant, without reasonable cause, has made an application following the notification of a proposal under section 3(3)(a) of the Immigration Act 1999;
- (i) whether the applicant has complied with the requirements of section 11C [of the Refugee Act 1996];
- (j) whether the applicant has, without reasonable cause, failed to comply with the requirements of section 9(4)(a) [of the Act of 1996];
- (k) whether the applicant has, without reasonable cause, failed to comply with the requirements of section 9(4A) [of the Act of 1996];
- (l) whether the applicant has, without reasonable cause, failed to comply with the requirements of section 9(5) [of the Act of 1996];
- (m) whether, in the case of an application to which section 16 [of the Act of 1996] applies, the applicant has furnished information in relation to the application which he or she could reasonably have furnished during the investigation of the application by the Commissioner but did not so furnish.

The applicant's explanations under these headings were found not credible and his reason for not claiming asylum when he arrived in the country was found not to be a reasonable explanation.

18. The Tribunal Member also considered all the documents which were furnished, including the school certificates, identity cards, birth certificate, correspondence from the Bangladesh Awami League, the personal identity card from the Royal College of Physicians and the Court trial documentation, the medical report from Dr. Sharif in Bangladesh dated 5th January 2002, country of origin information and the notice of appeal. She passed over these documents without further comment. Her decision recites the applicable law relating to what is a refugee, the burden and standard of proof, the assessment of credibility and the meaning of persecution and how a well founded fear of persecution is established. She then went through the background information provided by the applicant, including his very deep involvement with the Awami League and the fact that his uncle was an M.P. and a martyr and that his father had been a freedom fighter. The Tribunal Member then assessed the evidence.

19. In that assessment, the Tribunal Member found that at interview the applicant's knowledge of fundamental elements of the policies of the Awami League was very poor and very vague. She found that considering the applicant's political involvement and his education, it was expected that he would have a more in depth knowledge of that Party. His vagueness and inconsistencies when recounting details of the Party's political aims served to undermine the credibility of the applicant's claim to have been involved in the Party. It also was pointed out that correspondence which was presented as being from the President of the Lakshimpur branch of the Awami League and who the applicant said was his local leader stated that the author knew the applicant personally and that the applicant joined the Awami Juba League in 1998 and was treasurer. This contradicts the applicant's own evidence that he joined the Juba League in 1993 and the main Awami League around 1994. The Tribunal Member further found that *"one would expect that such correspondence from the President of a local organisation would be correct in relation to this important detail. This contradiction cast doubt on the authenticity of the document."*

20. The fact that the applicant did not apply for asylum when he arrived was found not credible considering his education and political involvement. The Tribunal Member further found that the applicant did not provide a reasonable explanation. In furtherance of the negative credibility findings the decision states that as the applicant was from a wealthy family, he would have been able to afford legal advice for the trial of the alleged crime. She found that there was no evidence that the applicant's conviction was unjust and expressed the view that it is likely that the applicant is fleeing prosecution rather than persecution. The application was not credible or well founded.

The Applicant's Submissions

21. The applicant seeks to **Judicially Review** this decision on a number of grounds. Mr. James O'Mahoney S.C., counsel for the applicant, conducted a minute analysis of various aspects of the three interviews conducted by ORAC in an effort to establish errors in the detail of the s. 13(1) report and in the RAT decision, which he outlined to the court. These errors may be summarised as follows:-

- a. Breach of fair procedures;
- b. Flawed treatment of country of origin information;
- c. Failure to consider medical evidence;
- d. Errors of fact; and
- e. Failure to take account of past maltreatment.

(a) Fair Procedures

22. The essence of the applicant's criticism of the RAT findings was that the applicant should have been alerted to the fact that the authenticity of the Awami League letter was in doubt. He relies on the decision of Clarke J. in *Moyosola v. The Refugee Applications Commissioner & Others* [2005] I.E.H.C. 218, and on the dictum from *Idiakheua v. The Minister for Justice, Equality and Law Reform* [2005] I.E.H.C. 150:

"If a matter is likely to be important to the determination of the RAT, then that matter must be fairly put to the applicant so that the applicant will have an opportunity to answer it. If that means the matter being put by the Tribunal itself, then an obligation so to do rests upon the Tribunal. Even if, subsequent to a hearing, while the Tribunal member is considering his or her determination on an issue which was not raised, or raised to any significant extent, that the hearing appears to the Tribunal member to be of significant importance to the determination of the Tribunal, then there remains an obligation on the part of the Tribunal to bring that matter to the attention of the applicant so as to afford the applicant an opportunity to deal with it. This remains the case whether the issue is one concerning facts given in evidence by the applicant, questions concerning country of origin, information of which might be addressed either by the applicant or by the applicant's advisors or, indeed, legal issues which might be likely only to be addressed by the applicant's advisors".

22. The applicant argued that the applicant should have been alerted to the possibility that his answers about his involvement with the Awami League were unsatisfactory as this was core information which if not properly addressed would lead to a finding of non-credibility.

(b) Treatment of Country of Origin Information

23. The applicant also sought to impugn the legality of the decision making process because the RAT had ignored country of origin information tendered in relation to violent conflict between the two main political parties in Bangladesh. He submitted that the Tribunal Member failed to consider the applicant's evidence of his involvement with the Awami League in the context of an October 2002 report of the UK Home Office indicating widespread feuding between BNP and the Awami League, the two main political parties. That report indicates that at least one hundred and forty people were killed before a general election in October, 2001. This information, he argues, was not considered by the Tribunal Member in making her decision on credibility.

(c) Failure to Consider Medical Evidence

24. The legality of the decision-making process is also impugned on the basis that the Tribunal Member failed to consider a medical report compiled by Dr. Shariff that was submitted by the applicant in support of his appeal. The applicant argued that there is no explanation as to why the contents of that medical report were discounted in spite of the fact that they corroborate and substantiate his applicant's claim that he was beaten by people because of his political activities. While the RAT decision refers to the fact that the applicant claims that in January, 2002, he was beaten by the BNP and afterwards attended a public hospital for treatment, it makes no reference to the medical report furnished or its content. Senior Counsel argued that it was simply not enough to say that the Tribunal Member had regard to the medical report without giving reasons for why it was discounted, and he relied on *Khazadi v. The Minister for Justice, Equality and Law Reform & Ors* (Unreported, High Court, Gilligan J., 19th April, 2007) where Gilligan J. at page 9 says:-

"I take the view that as regard to the contents of Para 36 of the decision where the member refers to the fact that the decision has been reached in the light of records and reports that were submitted, it is not sufficient on the vital issue as to the applicant's credibility and the vital issue of the totality of the medical evidence that was before him for the member simply to say without rationalising the basis of the decision that the decision was made in the light of certain reports which in effect are unidentified."

(d) Errors of Fact

25. He further argued for the unlawfulness of the decision because of factual errors in relation to which ORAC interview generated information on which the RAT decision relies, and he submitted that that these were material mistakes. In this regard, he cited the finding that the applicant fled Bangladesh before the trial when in fact he merely left his home town.

(e) Failure to take account of past maltreatment

26. The applicant further argued that where evidence of past maltreatment exists, it is unquestionably an excellent

indicator of the fate that may await an applicant on return to their country of origin unless there has been a major change of circumstances within that country that makes prospects of persecution unlikely, and he argued that past experience under a particular regime should be considered probative of future risk.

The Respondents' Submissions

26. **In reply** Ms. Stack B.L., counsel for the respondents, refuted the validity of all the points made. Of particular note are the following submissions.

(a) Fair Procedures

27. Ms Stack pointed out that the decision of Clarke J. in *Moyosola v. The Refugee Applications Commissioner & Others* [2005] I.E.H.C. 218 is quite narrow in its application and where reliance was placed by ORAC on country of origin information on Nigeria which was not put to the applicants before the decision was arrived at. These documents were relied upon by the decision-maker but the applicants never had an opportunity to consider or respond to their contents.

28. Ms Stack also pointed out that what was being dealt with here was the decision of the Tribunal and not the s. 13 report. The Tribunal Member is obliged as a matter of law to consider everything in each of the interviews together with the s. 13 report and any other documents admitted by the applicant. The Commissioner found that the applicant did not appear to have the knowledge commensurate with someone who was an active local leader involved in setting budgets in a political party. The applicant was aware of this. Clarke J. in *Idiakheua v. The Minister for Justice, Equality and Law Reform* [2005] I.E.H.C. 150 held that issues which were raised in the s. 13 report do not need to be specifically put in the course of an appeal by an applicant. If the RAT had to notify the applicant that authenticity would be an issue in relation to a letter which he had himself submitted following legal advice, it would impose an unreal standard as the very fact of tendering a document puts it in issue for assessment before the RAT. Ms. Stack further pointed out that there was no mention in the impugned letter of the fact that the applicant had left Bangladesh because of any conviction or sentence of fourteen years. The Tribunal Member merely found that the contents of the letter contradicted the applicant's own evidence that he joined the Juba League around 1993 and joined the main Awami League around 1994. The applicant knew when he was putting in this document that its contents would be measured against his own evidence especially as the burden was on him in an appeal to prove what he asserted. He was also fully aware that his membership of the Awami League was in doubt from the ORAC report.

(b) Treatment of Country of Origin Information

29. Ms. Stack further argued that it is not the law that the Tribunal is obliged in every case to make a finding on every aspect of evidence put before it. The Tribunal is obliged to look at country of origin information only when the applicant's personal credibility has been established upon some level. If the applicant is found to be somebody whose credibility is not entirely lacking then all kinds of benefits of doubt come into play but first of all personal credibility must be established. The facts here are that he came from Bangladesh and was in this country for a minimum of seven months before he applied for asylum. He only applied for asylum when he had some difficulties with the Gardai in Kilkenny. He never produced any evidence of how he came here and that the Tribunal is obliged to have regard to s. 11B of the Refugee Act 1996, as amended. The applicant's entire claim is that he is a prominent member of the Awami League and that this attracted the attention of the ruling party, which resulted in his being convicted on trumped up charges of murder and being sentenced to fourteen years and a fine. If the applicant was found not to be a member of the Awami League then his entire application falls away. He was asked very fundamental questions about his Party which he couldn't answer. His evidence in relation to when he was in the various parts of the Party was contradictory and inconsistent.

30. Ms Stack relied upon a dictum of Herbert J. in *Kikumbi & Anor v. The Office of the Refugee Applications Commissioner & Anor* [2007] I.E.H.C. 11, where he said:-

"Once properly submitted, the weight if any which should be given to any evidence is exclusively a matter for the decider of fact. This generally involves evaluating an account of events in his or her country of origin given by the applicant for asylum. The probative value to be given to information or material properly received and considered by the decider of fact may sometimes be ascertained by reference to the cogency of the account itself in the absence of inherent contradictions and errors of substance in that account. Sometimes it is possible also to compare various elements of account with extrinsic material which the decider of fact can accept or which is admitted to be reliable, namely country of origin information from sources of proven and accepted accuracy and reliability such as United Nations reports. Sometimes however, there is no yardstick by which to determine whether particular account or part of an account is credible or not other than by the application, common sense and life experience on the part of the decider of fact and context of whatever reliable country of information is probable before him or her".

31. In the same decision, Herbert J. went on to say:-

*"The obligation to give reasons as explained by the Supreme Court in **P. v. The Minister for Justice** does not in my judgment require the decider of fact to give reasons why he or she is supplying such common sense and life experience where that particular account or aspects of such account are found not to be credible".*

32. Ms. Stack submitted that in this case, the only way of testing whether or not the applicant was in the Awami League was to ask him searching questions. If the applicant was found not to be a member of the Awami League then everything else after that was irrelevant in relation to country of origin information and the fact that members of the Awami League may be persecuted is not relevant; likewise, his conviction in Bangladesh has nothing to do with his application for asylum. The Tribunal Member was satisfied that there was no political motivation in the charges brought.

(c) Consideration of Medical Evidence

33. Ms. Stack submitted that in the same way that the country of origin information was irrelevant in the light of the Tribunal Member's findings that the applicant was not a member of the Awami League, likewise the fact that the applicant may have suffered medical difficulties or even beatings was not relevant either.

(d) Errors of Fact

34. Ms. Stack argued that there were no material errors of fact in the RAT decision and while possibly there was some

confusion over which particular interview generated certain evidence, there was no mistake made in relation to what was actually said at the interviews. She submitted that adverse findings were made on the basis of what the applicant indisputably said, as this is recorded in the interviews. She conceded that there was an error in the RAT decision where it was stated that the applicant had fled Bangladesh before he was tried, whereas the applicant said that in fact he was in hiding in Bangladesh during this period. She submitted, however, that the material finding is not whether he left the country or left the vicinity but rather that he was a fugitive from the trial: the key negative finding is that this was a case of prosecution and not persecution and no reliance was placed on whether the applicant was in the country or not at the time of the trial. She argued that whether he was there or not was irrelevant to the finding which was that the applicant had not presented any evidence to the Tribunal Member to establish anything unfair about the trial.

Decision

35. The very considerable time spent in assessing this case at first instance convinces me that every opportunity was afforded to the applicant to make his case that he was a victim of persecution and therefore a refugee. He was in the country for seven months before he applied for asylum. He was, on his own evidence, in touch with members of the Bangladeshi community, including at least one asylum seeker. When he did seek asylum, he was afforded legal advice and an interpreter and he used the services of his solicitors in Bangladesh to obtain documents which he furnished to the ORAC. He was interviewed on three separate occasions over a period of four months and was freshly legally represented when, following the negative s. 13(1) report, extensive submissions were made on his behalf. At this stage, he was fully aware that his application was deemed to have no basis or only a minimal basis for claiming asylum. In particular, he was made aware that his membership and /or involvement of the Awami League was found not credible in the first instance and that it was believed that he was fleeing prosecution rather than persecution. It is thus in this context that I examine the arguments for judicial review of the RAT decision.

36. The first argument is whether the Tribunal Member was obliged to warn the applicant that his appeal might fail on a particular point and to allow the applicant to call further evidence. I am doubtful whether this argument can legitimately be made in a paper based appeal as in this case where Section 13(6) of the Refugee Act 1996 applied. Although deriving from the same document based appeal process the facts of this case are quite different from those of *Idiakheua v. The Minister for Justice, Equality and Law Reform* [2005] I.E.H.C. 150 or *Moyosola v. The Refugee Applications Commissioner & Others* [2005] I.E.H.C. 218 where reliance was placed by the Commissioner on documents which were not presented by the applicants. In this case, the Tribunal Member's negative assessment was founded on an examination of the applicant's **own** documents, the unusual circumstances of his late application for asylum, and a lack of credibility assessment of his travel arrangements. In confirming the Commissioner's recommendation, the Tribunal Member made a number of key findings open to her on a rational analysis of the documents filed by the applicant, the notes of three interviews and the s. 13 report (all of which she was obliged to consider) and not from any source undisclosed to the applicant.

37. I would not have thought that at this stage and after so many cases have been determined, that it is was unnecessary to reiterate that s. 13 of the Refugee Act 1996 as amended by the Immigration Act 2003 specifically states that an appeal from a decision of the Refugee Application Commissioner "will be determined without an oral hearing and the Tribunal can either affirm the recommendation of the Commissioner or set aside the recommendation of the Commissioner and recommend that the applicant should be declared a refugee." It is not appropriate therefore to impute an interpretation to the decisions of my learned colleague Clarke J. in *Ikiakheua and Moyosola* relevant to very specific cases of undisclosed documents, which would have the effect of ignoring the wording of s. 13 of the Refugee Act 1996, as amended. The interpretation imputed to those decisions from quoting an extract does not accurately reflect either decision and has no application to this case. In my view, as the Tribunal Member did not rely on any new or undisclosed document to arrive at her conclusions, there was nothing either unfair or procedurally improper in assessing the appeal on the basis of the documents before her furnished from the Commissioner's papers or the appeal submissions. There is no provision under the appeal process for the Tribunal Member to engage in correspondence with the applicant or his legal advisers.

38. The next argument was the failure of the Tribunal Member to give reasons for not accepting the contents of the "medical report" from Dr. Sharif which, if accepted, could have confirmed the applicant's assertion that he was beaten and tortured by members of the ruling party, or of the reports from the UK Home Office. A careful evaluation of the decision process with its assessment of the evidence indicates that the RAT decision was based on many different pieces of evidence presented and did not centre on the contents of the "medical report" furnished or on country of origin reports which confirmed violent clashes between the two major political parties. The RAT decision centred on four points: (i) the vagueness of the applicant's responses relating to the basic policies of the Awami League, (ii) the contents of the letter from the President of the Lakshimpur branch of the Awami League, which were found to be inconsistent with the applicant's oral testimony leading the Tribunal Member to reject its authenticity, (iii) the applicant's failure to claim asylum in the more than seven months he was in the country and (iv) that there was no evidence that the applicant's conviction was unjust. If, as Ms. Stack BL argued, there was doubt as to whether he was an involved member of the Awami League, then the fact that he alleged that he was tortured for being a supporter is irrelevant.

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. There can be no argument about such a situation and even more so in the situations which applied in *Idiakheua* and *Moyosola* where country of origin reports not put to the applicants by the fact finder were relied upon. That is a far cry from what was argued here. Nor can it be argued that every aspect of the applicant's case which is rejected by the fact finder or every document whose contents are not relied upon should be raised for further discussion; it is only undisclosed information in the hands of the fact finder which is key to a negative decision which should be disclosed and an opportunity given to comment. In this specific case, the applicant was fully versed with the reasons for the negative recommendation and nothing was kept from him. It was his own bundle of documents which formed the basis of the negative assessment not

just on credibility but that he was fleeing prosecution.

40. It is my practice to examine in detail any documents raised as part of the judicial review process in case an irrational interpretation has been made and thus I have viewed the documents furnished. The only comment I make is that there is a patent oddness in "original copies" of school certificates and birth certificates being in English when they emanate from Bangladesh. In addition, the applicant was Bengali speaking and required a translator and interpreter. I examined the "medical certificate" upon which so much reliance was placed by the applicant in this leave application. It was asserted that this medical report was obtained by the applicant's friend from the treating hospital in Bangladesh and was faxed to him. The report is dated 5/01/2002 and signed by Dr. Md. J.S., Medical Officer of Sadar Hospital in Lakshimpur. No explanation was given for why a doctor treating a Bengali speaking patient in Bangladesh should write a medical report in English in a format familiar in Ireland and referring to the applicant as being twenty on the first page and twenty five on the second page. According to his birth certificate he was twenty four at the time of the alleged attack. No explanation was given for the discrepancy between the evidence associated with the date of this attack and alleged torture in January, 2002 and the applicant's repeated evidence that he had fled his home area two to three days after the killing which occurred on 17th December, 2001, when he heard that he had been accused of the murder and robbery. Other translated documents describes that English was one of the subjects studied at University level by the applicant. Another oddity in this case is that there is no consistency in the spelling of the applicant's surname in the documents; sometimes it is Mohammad and sometimes Mohammed. I reserve my comments on the authenticity or otherwise of any of the documents as that is not my function.

41. The applicant's explanation for why he did not apply for asylum earlier is a matter which the Tribunal is obliged to consider under s. 11B of the Refugee Act 1996. The applicant was aware of the finding which had been made against him by ORAC but in his appeal submissions to the RAT he merely re-stated his reasons without expanding on them. In the RAT decision his explanation was repeated and the reasons for finding it not credible were stated: considering the applicant's education and political involvement, one would expect that he would have sought some assistance in Ireland as soon as was practicable and he has not provided a reasonable explanation. The fact that the Immigration Act 2003 provides a statutory methodology for assessing credibility seems to have been more or less ignored in the applicant's arguments. It is clear that several aspects of this template for assessing credibility operated and were found lacking. There was ample evidence to support the primary findings that the applicant was not a refugee. For these reasons I do not accept that the applicant has made out an arguable case for substantial grounds for impugning the RAT decision and I refuse the application for leave.