

**THE HIGH COURT**

**JUDICIAL REVIEW**

**[2011 No 378 J.R.]**

**BETWEEN**

**M.O. S.H. (PAKISTAN)**

**APPLICANTS**

**AND**

**THE REFUGEE APPEALS TRIBUNAL, THE MINISTER FOR JUSTICE, EQUALITY, THE ATTORNEY GENERAL AND IRELAND**

**RESPONDENTS**

**JUDGMENT of Mr. Justice Eagar delivered on the 27th day of March, 2015**

1. This is a telescoped application for an order of *certiorari* quashing the decision of the first named Respondent to affirm the recommendation of the Refugee Applications Commissioner and an order remitting the appeal of the Applicant for determination *de novo* by a separate member of the Refugee Appeals Tribunal.

2. The Applicant was born on the 18th April 1977 in Pakistan. His family are Sunni Muslims. In his affidavit sworn on the 6th May 2011 he says that he fell in love with a girl from an Ahmadi family. This family was involved in drug dealing. His fiancée and himself planned to marry and they eloped however she was killed and he believed that it was her family who did it and he feared they would kill him also. In such circumstances he fled Pakistan in fear of his life and remained in such fear.

3. He said he arrived in Ireland on the 2nd September 2010 and applied for asylum. He completed an ASY1 form on the 20th September 2010 and completed a questionnaire on the 29th September 2010. He was interviewed on behalf of the Office of the Refugee Applications Commissioner on the 4th November 2011 and by letter from the Office of the Refugee Applications Commissioner he was informed that the Refugee Applications Commissioner was recommending that he should not be declared a refugee. A Form 1 notice of appeal was lodged by his solicitors and his appeal was heard on the 8th November 2011. The decision was given by the first named Respondent on the 30th March 2011 in which the first named Respondent affirmed the recommendation of the Refugee Applications Commissioner and these proceedings were commenced.

**Hearing before the first named Respondent**

4. The Applicant was born on the 18th April 1977 and is from Lahore, Pakistan. He is single, a Sunni Muslim from the Malik ethnic group. His questionnaire indicates that he received no formal education and he most recently worked for 5 years as a helper in an estate agency. The Applicant said that he arrived in Ireland on the 2nd September 2010 and he applied for asylum on the 17th September 2010. He said that he had no idea that he was coming to Ireland. He was asked why he left Pakistan and he said that his life was in danger. He said that there was a girl involved. He ran away with this girl and this got him into trouble as her family did not want that. The Applicant explained that the problem was caused by the fact that he was a Sunni Muslim whereas the girl and the family were of the Ahmadi belief. The Applicant was asked whether the difference in religion was the cause of his problems with the girl's family. He said that he had run away with her, that her family did not like that but they found the couple one day while he was away at work. She was at home and she was killed by them. The Applicant explained that he and the girl had run away from their home in Lahore to Karachi. He was asked why he decided to run away with the girl and he said that the couple thought that if they ran away things would resolve themselves in time.

5. The Applicant said that the girl's family did not agree to the marriage and he said it was because they belonged to a different belief. He said that his family went to talk to her family but her family would not agree to a marriage. He said they ran away because if they had stayed in Lahore both their lives would have been in danger. He said that the girl's brother threatened him and he would be killed if he stayed with the girl.

6. He said the couple were preparing to get married. His girlfriend had been in contact with one of her cousins back home but the Applicant did not know how her family found their whereabouts. He said that after about 2 ½ - 3 months in Karachi his girlfriend was killed at their home while he was work. He did not know who had killed his girlfriend but suggested it might have been her brother.

7. The Applicant never returned to that house. He knew his girlfriend had been killed because the landlord told him. The landlord was living in the same building on the ground floor.

8. The Applicant was asked whether he did anything such as report the matter to the police. He said he had already been reported to the police by the girl's family so he did not want to go to the police. Her family had falsely accused him of kidnapping the girl and this report was made when the couple ran away together.

9. The Applicant was pressed as to why this matter would have stopped him going to the police. He said that he was scared to report to the police as he was afraid that the matter of the false kidnapping charge would be brought against him.

10. He said they did not have much money at the time and they were using most of their money on rent and saving up the rest to get married. The Applicant was asked whether he could relocate elsewhere in Pakistan or even elsewhere in Karachi. He said "yes but they (the girl's family) have contacts everywhere". He said that if he were relocated the information would get out and his girlfriend's family would eventually track him through their contacts. He asked what he meant about his girlfriend's friend the Applicant said that his girlfriend's family were involved in illegal drugs and they had contacts throughout Pakistan.

11. In relation to his travel it was put to the Applicant that he had intended to travel on to the United Kingdom rather than Ireland. He said he had met a man at the airport in Pakistan who told him he would take the Applicant to Ireland and then onto the UK. This

man told the Applicant he would get him a work permit for the UK. It was also put to the Applicant that he had previously said he had a brother living in Saudi Arabia and he was asked why did not try to settle in Saudi Arabia. The Applicant said he did not come across anyone who said they would take him to Saudi Arabia.

12. It was put to the Applicant that it was not unusual in Pakistan for marriages to be arranged and he was asked whether his girlfriend had ever been arranged to be married. He said she had not.

13. The Applicant was asked where did he get the money to pay the agent if he has been spending all his money in Karachi on rent. He said there was a house and it had been in his mother's name but she transferred to the Applicant when she died. The house was sold and the agent was paid with the proceeds. He said the house was put on the market after his girlfriend was killed. He was in Islamabad at the time and the house was in Lahore.

14. The Applicant was asked whether his family was of the same social background and level of work as his girlfriend's family. He said *"her family are quite rich because of their work. We were poor. We only had one house and I was forced to sell it."* The Applicant was then asked where his father went to live after the house was sold. He said his father moved to live in rented accommodation where he lived alone. The Applicant was asked why he would get involved with this girl because of the issues relating to religion given that it would have been obvious to him at the outset that the relationship would have caused problems. He said *"I am human, I made a mistake"*. The Tribunal Member asked the Applicant for the day when his girlfriend had been killed. He said he did not know, maybe a Friday but he could not remember the date. It was put to him that it was not credible that he could remember the date she was murdered given that it was recent and a significant event but he could not remember the date.

15. It was also put to the Applicant that the Country of Origin Information suggested that Ahmadis in fact face persecution in Pakistan and the Applicant was asked how he could face a threat from that family anywhere in Pakistan. He said *"I had an individual problem. This is not a big political problem"*.

### **The decision of the first named Respondent**

16. The first named Respondent indicated that he had carefully considered all the papers submitted for the purpose of the appeal. He summarised the claim of the Applicant. The first issue of credibility that he found was that the Applicant had submitted his birth certificate as documentation in support of his claim. There was no passport. He stated he travelled to Ireland from Pakistan in the company of an agent but if the Applicant's account is to be believed he passed through international security (and all the intended checks and security procedures) while firstly leaving Pakistan then at arrival and departure from the United Arab Emirates and at arrival in Ireland. The first named Respondent did not accept the Applicant's explanation for not having a passport by way of identification and did not accept that he would have been able to travel from Pakistan to Ireland as he claims. He said he did not accept that it would have been possible for the Applicant to successfully negotiate security at no less three international airports. He said that he did not accept that the Applicant had given a credible account of his travel and arrival in Ireland. He said that having regard to his finding s. 11 (B) of the Refugee Act 1996 (as amended) came into play in assessing the Applicant's general credibility.

17. The second finding of credibility arose from the Applicant claiming that his girlfriend's family had filed a false criminal complaint accusing the Applicant of kidnapping her. No documents were submitted to substantiate the allegation that a false criminal complaint had been made against the Applicant and as the Applicant submitted no documentation in support of his claim his personal credibility is therefore crucial.

18. The first named Respondent summarised the US State Department Report on International Religious Freedom in Pakistan which states that the Ahmadi community is a minority one in Pakistan. He commented that the Applicant's claim is that he is the one in fear of persecution. It was reasonable to conclude that the Applicant was well aware of the fact that his girlfriend could be a troublesome factor. It was also reasonable to conclude the Applicant would have been well aware of the potential problems of becoming involved with a girl whose family were known drug dealers. In these circumstances it is not plausible that the Applicant would have persisted in courting the young woman despite her family's objections. It was wholly incredible that he could or would have prevailed upon his father to intervene on his behalf.

19. The fourth finding of credibility was that he finds that the first named Respondent found it neither credible nor plausible that the young lady having taken the drastic step of moving to the other side of Pakistan with a young man (not yet her husband) in defiance of her (drug dealing criminal) family's wishes would then have maintained contact with those in her home area much less than a fact than it would have enabled her to be traced by that family whom she had fled.

20. Even more incredible were the alleged actions of those who allegedly killed his girlfriend. The Applicant said that he was not present when she was killed but strongly suspects her family. The first the Applicant knew of the matter was when he received a telephone call from his landlord informing him. It is not plausible that the killers having tracked the Applicant to his girlfriend across 1,000km would then kill the girl thus warning the Applicant off and allowing him to escape. Had they been intent on harming the Applicant. The first named Respondent also raised some questions as to credibility: *"Is it credible that the landlord would telephone the Applicant to tell him that the young lady had been found dead in his flat? Is it credible that the police would not have taken some degree of interest in a case where a young woman, who had recently moved into accommodation with a young man and is found dead one day."* He said the answer to both questions is in the negative. He said that the first person the police would most likely consider questioning on the matter would be the Applicant himself.

21. The next item of credibility was his failure to remember the details as to when his girlfriend was murdered and that his inability to do so is a matter that the first named Respondent found against his credibility.

22. The next issue of credibility was that the couple had lived in financially strained circumstances while in Karachi. They had not yet married as they could not afford to do so. This appears inconsistent with his having enough money on his person at the time of the hearing of his girlfriend's death to pay for his travel to Islamabad.

23. The first named Respondent said the number and extent of the contradictions and inconsistencies in the Applicant's account cannot be regarded as minor and insignificant and when taken on the whole and his account is viewed in the round the Applicant did not address these inconsistencies and contradictions in a matter than they were put to him. He said that the Applicant had failed to establish his general credibility.

### **Counsel submissions on behalf of the Applicant**

24. The first credibility finding was that *"the Applicant had not provided a full and true explanation of how he travelled to and arrived in the State."* Counsel submitted that the Applicant had in fact given a comprehensive account of his travel and the Tribunal fails to state any reason for the summary rejection of his explanation.

25. The second credibility finding was that the Applicant had not "given a reasonable explanation of the absence of his original passport by means of identification". Counsel for the Applicant submitted that the Applicant had stated he had never had a passport and he travelled on a false passport given to him by an agent.

26. The third and fourth findings were that "it was not plausible that the Applicant would have persisted in courting the young lady despite her family's objections" and it was wholly incredible that he could or would have prevailed upon his father to intervene with her family on his behalf. Counsel submitted that these findings were based on conjecture on the part of the first named Respondent.

27. This fifth finding related to the fact that "it was neither credible nor plausible that the young lady would then maintain contact with those in her home area". He complained there was no reason by the Tribunal Member why it was considered neither credible nor plausible that the Applicant's fiancée would telephone her best friend in whom she trusted.

28. The sixth and seventh findings were related to the killing of his girlfriend and it was suggested that these were clearly based on conjecture.

29. The eighth finding was the Applicant should be likely to remember exactly when the murder of his fiancée took place. It was suggested that this finding was made without regard to the illiteracy of the Applicant whenever attending school.

30. The ninth finding was that there was an inconsistency between not getting married because they could not afford to and his having enough money to go to Islamabad and subsequently to travel to Ireland.

31. The tenth finding was that when the girlfriend's family found out that he was in Islamabad and that it is not credible that the Applicant could have been located in Islamabad. In his s. 8 interview they found out that he was in Islamabad probably because he told his landlord in Karachi.

32. The eleventh finding was that the description he gave of being beaten is inconsistent with the Applicant's fear that he would be killed and that it is implausible the girl's relatives would not take full advantage of finding the Applicant in Islamabad as the Applicant claims. Counsel argued that the clear implication of the Tribunal is that taking full advantage would have resulted in the killing of the Applicant.

33. The twelfth finding was mainly the context of internal relocation and State protection.

34. Counsel cited *C.C.A v. Minister for Justice Equality and Law Reform* [2014] IEHC 569 (a judgment of Barr J. on the 25th November 2014). Barr J. discussed the consequences where some but not all of the credibility findings made by the judge were struck down. In particular Barr J. referred to a case of *Keagnene v. Minister for Justice Equality and Law Reform* [2007] IEHC 17 where a number of credibility findings were struck down and the effect that this had on the overall position was considered by Herbert J.:-

*"As the Court cannot be aware of what weight the Member of the Refugee Appeals Tribunal attached to each of the six reasons given by him for finding that the Applicant was not credible or trustworthy and his unsupported testimony was unreliable, the Court must conclude that as reasons four, five, and six cannot be permitted to stand as reached by the application of unfair procedures, the entire decision must of necessity be therefore set aside."*

Herbert J. also quoted a decision of Peart J. *Da Silveira v. The Refugee Appeals Tribunal* [2004] IEHC 436:-

*"Ones experience of life hones the instincts, and there comes a point where we can feel that the truth can, if it exists, be smelt. But reliance on what one firmly believes is a correct instinct or gut feeling that the truth is not being told is an insufficient tool for use by an administrative body such as the Refugee Appeals Tribunal. Conclusions must be based on correct findings and fact."*

### **Counsel submissions on behalf of the Respondents**

35. Counsel on behalf of the Respondents referred to the Country of Origin Information and the thrust of what was contained in the Country of Origin Information was that the Ahmadi community faced governmental and societal discrimination and legal bars to the practice of its religious beliefs. She referred in particular to documentation which indicates that Ahmadis are discriminated against and that there the particular abuses of religious freedom was rampant. She quoted a report which indicated that police reportedly tortured and mistreated those in custody and at times engaged in the extra judicial killings. It was usually impossible to ascertain whether to adherence to particular religious beliefs was a factor which religious minorities were victims. However both Christian and Ahmadiyya communities claim their members were more than likely to be abused. She said that the Tribunal decision was clearly based on an understanding of the Country of Origin Information.

36. She also indicated that the Tribunal findings on the core element of the Applicant's claim were clearly identified and provided the context for the first named Respondent's findings. She also submitted that the remaining credibility issues are not peripheral particularly with regard to travel and the first named Respondent was obliged to have regard pursuant to s. 11B of the Refugee Act 1996 (as amended).

37. Counsel for the Respondent also submitted that a decision on credibility must be read as a whole and the court should be wary of attempts to deconstruct an overall conclusion by subjecting the individual parts to isolated examination and she referred to *I.R. v. Minister for Justice Equality and Law Reform* [2009] IEHC 353 in relation to the rules set out by Cooke J. in that case.

38. In relation to the issue of State protection and internal relocation counsel on behalf of the Respondent indicated that there was a body of case law which had been applied in many cases holding that there is no need for a decision maker to engage in pointless examination of matters such as internal relocation or State protection where the Applicant has been found to be lacking in subjective credibility and not have a well-founded fear of persecution.

### **Discussion - Travel**

39. The first finding of the first named Respondent was the issue of credibility in relation to travelling to Ireland in the company of an agent. He held if the Applicant's account is to be believed he passed through international security (and all the checks and security procedures) and he did not accept the Applicant's explanation for not having a passport by way of identification and did not accept that he would have been able to travel from Pakistan to Ireland as he claims. Counsel on his behalf pointed to s. 11B of the Refugee Act 1996 (as amended).

40. Section 11B is headed "Credibility" and it lists out thirteen instances that the Commissioner or the Tribunal in assessing the credibility of an Applicant for the purpose of the investigation of his or her application or the determination of appeal should have regard. Section 11B was inserted by the Immigration Act 2003, s. 7 (f) and states as follows:-

*11B.—The Commissioner or the Tribunal, as the case may be, in assessing the credibility of an Applicant for the purposes of the investigation of his or her application or the determination of an appeal in respect of his or her application, shall have regard to the following:*

*(a) whether the Applicant possesses identity documents, and, if not, whether he or she has provided a reasonable explanation for the absence of such documents;*

*(b) whether the Applicant has 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 arriving 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;*

*(j) whether the Applicant has, without reasonable cause, failed to comply with the requirements of section 9(4)(a);*

*(k) whether the Applicant has, without reasonable cause, failed to comply with the requirements of section 9(4A);*

*(l) whether the Applicant has, without reasonable cause, failed to comply with the requirements of section 9(5);*

*(m) whether, in the case of an application to which section 16 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."*

41. It appears to me that whilst the first named Respondent is obliged to consider s. 11B, the reality is that s. 11B is not really relied on save in an odd case. While s. 11B is the law and is part of the refugee determination procedure nevertheless it appears that the other sections in relation to safe third country are not adhered to by either the Refugee Appeals Tribunal or the Refugee Applications Commissioner.

42. It appears to me that s. 11B is rarely quoted by the Refugee Applications Commissioner or members of the Refugee Appeals Tribunal and I believe this is as a result of the European Union Provisions. Many of the issues which are dealt with in s. 11B which requires the Refugee Applications Commissioner and the Refugee Appeals Tribunal to consider by law, are to a certain extent overtaken by the European Communities (Eligibility for Protection) Regulations 2006 which give effect to the European Council Directive 2004/83/EC of the 29th April 2004 on minimum standards for the qualification established of third country nationals or stateless persons and the Procedures Directive, European Council Directive 2005/85/EC.

43. The reality is that the Applicant is making an application for refugee status. The Applicant is in the country and raising an issue as a primary finding of a lack of credibility on this ground appears to me to be an unreasonable approach to the issue of the assessment of a person's credibility. It is in my view a peripheral issue but while an issue of a lack of credibility may be found I don't think much weight should be attached to it.

44. In Hathaway and Foster and "The Law of Refugee Status" (Second edition, 2014), Hathaway and Foster say:-

*"A more subtle strategy to avoid the engagement of responsibility that follows from an arrival in a place under a State party's jurisdiction is to challenge the entitlement to protection of refugees who arrive unlawfully. The risks that follow from such a challenge are real, since most developed countries impose a visa requirement enforced by carrier sanctions on the citizens of refugee producing States and do not grant visas for the purposes of making of a claim of convention refugee status. The use of false travel documents (alternatively lying about one's true intention in order to secure a technically valid travel document) is thus nearly always a practical necessity (my emphasis) to assess protection."*

45. The authors continue quoting from *Suripal v. Canada (The Minister of Employment and Immigration)* 1985, and MacGuigan J. in that case said:-

*"It does not stand to the Applicants' credit that after entering Canada as visitors, they illegally obtained Canadian social insurance cards, worked illegally for approximately a year before they were found and arrested and then claim refugee status. Nevertheless, since the law allows them to apply as refugees even in such circumstances, we must conclude that it does not intend that their refugee claims should be determined on the basis of these extraneous considerations."*

46. Further the authors in dealing with the issue of "choice of the country of asylum":-

*"Arriving in a State party does not in practice guarantee the refugees right to have her claim processed and protection*

tools met in that country.”

47. Further Hathaway and Foster states:-

*"Despite the widespread belief that a refugee should seek protection in whatever safe country she first reaches, failure to claim protection in one's region of origin or in the first safe country of arrival is not grounds for refusing to recognise refugee status. There are often good reasons why a refugee might travel beyond the first State she reaches, including outside her own region."*

48. In *R. v. Uxbridge Magistrates Court* (ex parte Adimi) (2001) Q.B. 666 Newman J of the English High Court suggested that the decision of a refugee to seek protection behind her region of origin should be welcomed as the logical consequence of opportunities for international movement that did not exist at the time of Refugee Convention drafting. He said:-

*"Another current reality and advance...is the development of a readily accessible and worldwide network of air travel. As a result there is a choice of refuge beyond the first safe territory by land or sea..Thus there exists a rational basis for exercising choice where to seek asylum. I am unable to accept that to recognise it is to legitimise forum shopping".*

49. Hathaway and Foster also states:-

*"Despite the widespread belief that a refugee should seek protection whatever safe country she first reaches, failure to claim protection in one's region of origin or in the first safe country of arrival is not grounds for refusing to recognise refugee status (my emphasis)."*

### General discussion

50. The decision of Cooke J. in *I.R.* sets out the role of the judicial review refugee judge in determining whether or not a decision of the Refugee Appeals Tribunal should be sustained or set aside. Cooke J stated:-

*"1. In most forms of adversarial dispute the assessment of the credibility of oral testimony is one of the most difficult challenges faced by the decision-maker. The difficulty is particularly acute in asylum cases because, almost by definition, a genuine refugee will be someone who has fled home in circumstances of stress, urgency and even terror and will have arrived in a place which is wholly strange to them, whose language they do not speak and whose culture may be incomprehensible."*

51. He continued:-

*"2. In such circumstances the decision-makers at first instance have the unenviable task of deciding if an Applicant can be believed by recourse to little more than an appraisal of the account given, the way in which it was given and the reaction of the Applicant to sceptical questions, to the highlighting of possible discrepancies or to contradictory evidence from other sources. Recourse will also be had in appropriate cases to what is called "Country of Origin Information" but in most cases this will be of use only in ascertaining whether the social, political and other conditions in the country of origin are such that the events recounted or the mistreatment claimed to have been suffered, may or may not have taken place."*

52. He further continued: -

*"3. It is because in such cases the judgment of the primary decision-maker must frequently depend on the personal appraisal of an Applicant, that it is not the function of the High Court in judicial review to reassess credibility and to substitute its own view for that of the decision-maker. Its role is merely confined when a finding of lack of credibility is attacked, to ensuring that the process by which that conclusion has been reached is legally sound and not vitiated by any material error of law."*

53. Cooke J. considered the case law with regard to principles which he said emerges from the case law and set out 10 points as guides for the role of the judicial review judge.

### The challenge to the findings of the Tribunal on credibility

54. There is a useful quotation in the decision of MacEochaidh J. in *R.O. (an infant suing by her mother and next friend A.O.) v. The Minister for Justice Equality and Law Reform and Margaret Levey* (sitting as the Refugee Appeals Tribunal) [2012] IEHC 573. MacEochaidh J. said as follows:-

*"In view of the foregoing, I approach the review of the adequacy of reasons in this case by asking the following questions:*

*(i) Were reasons given or discernible for the credibility findings?*

*(ii) If so, were the reasons intelligible in the sense that the reader/addressee could understand why the finding was made?*

*(iii) Were the reasons specific, cogent and substantial?*

*(iv) Were they based on correct facts?*

*(v) Were they rational?"*

55. The first credibility finding was in relation to the issue of travel and as I have stated above in my view this finding is a peripheral finding and does not carry particular weight.

56. The second finding of credibility arose from the Applicant claiming that his girlfriend's family had filed a false criminal complaint accusing the Applicant of kidnapping her. No documents were submitted to substantiate the allegation that a false criminal complaint had been made against the Applicant and as the Applicant submitted no documentation of support of his claim his personal credibility is therefore crucial. In this case reasons were given for the credibility finding. The reasons were intelligible, specific, cogent and

substantial. They appear to be based on correct facts. The only issue was whether or not it would have been possible to obtain such documentation and in my view that appears to be an unreasonable finding.

57. The next finding was in relation to the Applicant to prevail upon his father to intervene on his behalf in circumstances that the girlfriend was a member of the Ahmadi community which is largely despised in Pakistan by the Sunni and Shia adherents. In my view the reasons were given, the reasons were intelligible, they were specific, cogent and substantial. They appear to be based on correct facts and having regard to the Country of Origin Information and the general difficulties of the Ahmadi community they were rational.

58. The fourth finding of credibility was that the first named Respondent found it neither credible nor plausible that the young lady having taken the drastic step of moving to the other side of Pakistan with the young man (not yet her husband) in defiance of her (drug dealing criminal) family's wishes would have maintained contact with those in her home area was less than a fact that would have enabled her to be traced by that family whom she fled. The reasons were given for this finding, the reasons were intelligible, they were specific, cogent and substantial. They were based on facts but again they fail the test of rationality. It is absolutely understandable that the young lady would have wanted to maintain some contact in circumstances in which she found herself. Again I find this an irrational finding on the issue of credibility.

59. The fifth issue of credibility related to the actions of those who allegedly killed his girlfriend. The first the Applicant knew of the matter was when he received a telephone call from the landlord informing him. It is not plausible that the killers have tracked the Applicant to his girlfriend across 1,000km who then kill the girl thus warning the Applicant off and allowing him to escape. The reasons were given. The reasons were intelligible, they were specific, cogent and substantial. However they assumed that the target was the Applicant, that the person they intended to kill was the Applicant but it may well have been his girlfriend and this amounts to speculation on behalf of the first named Respondent. The issue of credibility in these circumstances in my view fails.

60. The next item of credibility was his failure to remember the details when his girlfriend was murdered and his inability to do so was a matter that the first named Respondent found against his credibility. The reasons given were clear, intelligible, specific and substantial. They were based on correct facts and they were right.

61. The issue of credibility that arose in relation to the financial circumstances of the couple while in Karachi gave rise to an issue of lack of credibility after his girlfriend's death that the Applicant had enough money to pay for his travel to Islamabad and to leave the country quite soon. The Applicant indicated that he had obtained his money from a house which was in his mother's name which he transferred to the Applicant when she died. The house was sold and agent was paid with the proceeds. The finding of the lack of credibility on the part of the first named Respondent were as follows. Reasons were given, the reasons were intelligible, they were specific, they were based on correct facts and they were rational. The first named Respondent said the number and extent of the contradictions and inconsistencies in the Applicant's account could not be regarded as minor and insignificant and when taken on the whole the Applicant did not address these inconsistencies and contradictions that they were put to him. He said the Applicant had failed to establish his general credibility.

## **Conclusion**

62. I am satisfied that a number of the findings on credibility at issue in these proceedings were arrived at without a rational basis for same. As the impugned findings were part of a wider set of credibility findings which had an accumulative effect in this decision it is not possible say whether they were major or minor credibility findings. In the circumstances it is necessary to quash the entire decision and I follow the principles set out by Herbert J. in *Keagnene v. Minister for Justice Equality and Law Reform* [2007] IEHC 17 and the more recent decision of Barr J. in *C.C.A v. Minister for Justice Equality and Law Reform* [2014] IEHC 569. For the reasons stated above I will grant an order of *certiorari* quashing the decision of the second named Respondent on the 30th March 2011 and direct that the Applicant's appeal against the decision of the Refugee Applications Commissioner should be remitted back to a different member of the Refugee Appeals Tribunal for determination by a different Tribunal Member.