

**THE HIGH COURT
JUDICIAL REVIEW**

2008 77 JR

BETWEEN

B.W.

APPLICANT

AND

**THE REFUGEE APPEALS TRIBUNAL (ELIZABETH O'BRIEN),
THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM,
IRELAND AND THE ATTORNEY GENERAL**

RESPONDENTS

JUDGMENT OF MS. JUSTICE M. H. CLARK, delivered the 3rd day of February, 2010

1. This is the substantive application for judicial review of the decision of the Refugee Appeals Tribunal (RAT), dated the 11th January, 2008, confirming the decision of the Refugee Applications Commissioner to recommend that the applicant should not be declared a refugee. By order dated the 23rd June, 2009 Cooke J. granted leave to the applicant to apply for judicial review of the RAT decision on the following ground:

"The Tribunal Member failed to act in compliance with s. 16(8) of the Refugee Act 1996 and acted in breach of the applicant's right to fair procedures in basing the contested decision on information which was not disclosed to the applicant, namely:

- (1) The genuine Iranian identity card used by her as a comparator in finding that the applicant's identity card was false;
- (2) The documentation supporting the finding that the Sardasht area had been jolted by earthquakes;
- (3) The documentary or other source of the information as to the correct name of the waterfall in the vicinity of Sardasht; and
- (4) The documentary or other source of the information that the applicant's dialect or language was not peculiar to Iran but consistent with his having another origin or nationality."

2. The substantive hearing took place at the King's Inns in Court No. 1 on the 9th December, 2009. Mr. Michael Lynn B.L. appeared for the applicant and Ms. Sinéad McGrath B.L. appeared for the respondents. Although leave was granted on four grounds there really was one net issue for determination being the extent of the Tribunal Member's duty, pursuant to s. 16(8) of the Refugee Act 1996, to disclose to the applicant the nature and source of a document that she relied upon. Section 16(8), as amended by s. 11(1) of the Immigration Act 1999, provides:

"The Tribunal shall furnish the applicant concerned and his or her solicitor (if known) and the High Commissioner whenever so requested by him or her with copies of any reports, observations or representations in writing or any other document, furnished to the Tribunal by the Commissioner copies of which have not been previously furnished to the applicant or, as the case may be, the High Commissioner pursuant to section 11(6) and an indication in writing of the nature and source of any other information relating to the appeal which has come to the notice of the Tribunal in the course of an appeal under this section."

3. The document in this case was a valid Iranian identity document, being one of many previously seen by the Tribunal Member.

Background to the application

4. The applicant claims to be an Iranian Kurd from the Sardasht region of South West Iran close to the border with Iraq. He suffered the loss of an arm and some fingers of his remaining hand as a child when he says his home was hit during a bombing raid in the Iran-Iraq war in 1985 which also killed both his parents. He and his brother were then cared for by an uncle who lived in an adjacent house. The applicant first claimed to have had no formal education and said that when old enough, he worked in the family apple orchards. He acquired an ability to speak several foreign languages from listening to the radio. He later said that he had 9 years of formal education and remained at school until he was 22 years old. In 2004 he met Dr. K an intellectual who was a member of the Worker-Communist party of Iran (Hekmatist). At the end of 2004, he became a supporter of the Hekmatist party in Iran and began reading seminal communist literature in order to understand Dr. K's writings. In October, 2005 he took part in a Hekmatist demonstration. This was the first time he had ever engaged in such activity. The demonstration took place in Sardasht, five minutes by car from his village. There were approximately 50 other people involved in the demonstration and they were protesting against the government's nuclear policies. During this demonstration the applicant burned the Iranian flag and also a picture of the Iranian President. His actions were observed by state security agents who then moved in to break up the demonstration. The applicant and Dr. K escaped by walking away and hiding overnight. Shortly afterwards state security agents searched his house and burned it down.

His relations told him that the agents found books by Marx and Lenin in his home and other writings relating to the Hekmatist party. His brother and uncle were arrested and he fears that he himself will be arrested and sentenced to death if he is returned to Iran.

5. The applicant says another uncle made the arrangements for him to travel and he arrived in Ireland on the 15th November, 2005 by lorry. He then applied for asylum claiming to fear persecution by reason of his political opinion and his membership of a particular social group. Among other documents, he submitted a national identity card in support of his application which he said had been retrieved from his house by his aunt after the fire.

The asylum process

6. His application failed before the Refugee Applications Commissioner. In essence, it was found that the account he presented was implausible. Although questioned about the various documents and photographs which he furnished, the Commissioner took no issue with the national identity card which he had submitted.

7. The Refugee Legal Service (RLS) lodged a Notice of Appeal to the RAT on behalf of the applicant. The oral hearing took place on the 5th July, 2006 and the attendance note of the hearing kept by an agent of the RLS is before the Court. During the course of the hearing the Tribunal Member asked the applicant several questions relating to geographic features and in particular whether he could name a famous waterfall in the area of Sardasht and also about recent natural events. The note records that during the course of his evidence, the Tribunal Member asked the applicant why the ID card he had submitted was damaged and why it was tampered with. She referred to a hole made by a biro over the date. The applicant attributed this damage to the fire at his home. The Tribunal Member then said she had "*seen many documents like this – this appears to be a fake.*" During further questioning relating to how the applicant obtained the ID card the Tribunal Member asked for details as to when the card was issued and whether it was his first card or a re-issue. The applicant explained that it was a four year card and was a re-issue of his old one which was given in exchange for the current one.

8. At the end of the hearing the applicant's representative asked that the ID card be re-submitted for checking. It is recorded that the Tribunal Member said that "*the ID doesn't look genuine to me- photo does not look like applicant. Applicant could be from Iran or Turkey.*" The Tribunal Member was asked to delay in preparing her decision to allow the applicant to submit a medical report from SPIRASI.

9. The attendance note demonstrates that immediately following the hearing the authenticity of the ID card was foremost in the mind of the applicant's legal advisors. The plan as recorded appears to have been to request the Tribunal administration for authority to look at the applicant's ID card and that further submissions would be made. As previously mentioned, the ID card had been lodged with the Commissioner and has remained in the custody of the Tribunal since the appeal.

After the appeal hearing

10. By letter dated the 31st August, 2006 the RLS furnished five documents to the Tribunal Member being a SPIRASI report, on which nothing turns as the injuries outlined are not relevant to this claim, photographs of the applicant and the Official National Iranian ID of the applicant's brother which, it is claimed, was posted to the applicant from Iran in July, 2006. Thereafter, protracted correspondence was exchanged between the Tribunal and the RLS related specifically to the applicant's ID card and the duty on the Tribunal Member to conform with s. 16(8) of the Refugee Act 1996 by disclosing all documentary material that had come to her attention prior to the appeal hearing. In particular, the RLS stated in bold print:

"The appellant renews his request to have the identification document sent for objective scientific analysis and requests that the decision be deferred pending the result of the same."

11. The RLS stated that they and their client "*were taken by surprise*" at the "*clear finding by the Tribunal member that his identity card was a forgery*" and that they were prejudiced by the Tribunal Member's expressions at the oral hearing and by the interjection made by the Presenting Officer that the ID card had been examined under UV light. It was particularly stated that:

"The appellant renews his request to have copies of the documentation and information referred to by the Tribunal member at the hearing but not made available to the appellant or his legal advisors either prior to or during the course of the hearing to be forwarded to the appellant's legal advisors for consideration and for liberty for the appellant's legal advisors to make representations thereon."

12. It was stated that such documentation and information relates inter alia to identity documents of Iranian nationals. Thus, the Tribunal Member was asked to furnish an Iranian document against which the applicant's identity card had been compared and found to be fake and she was further requested to have the applicant's card examined by an expert.

13. Some time in October, 2006, the Tribunal Member invited counsel for the applicant to attend at the Tribunal offices to view what the Tribunal Member believed to be a genuine Iranian identity card. Notwithstanding the complaint that the Tribunal Member was in breach of her obligations to disclose information which came to her notice during the appeal hearing and the earlier request to be furnished with copies of a genuine Iranian ID card, the invitation to inspect was refused. In a letter dated the 16th October 2006 the RLS requested the Tribunal Member to consider the previous submissions and the additional documents which were said to "*adequately address the issues raised by the finding by the Tribunal Member that our client's ID card was not genuine.*"

14. Over the following twelve months, the applicant continued to submit documents to the Tribunal Member in an effort to bolster evidence of his identity including a football club identity card, a photograph of the applicant with the local football team and a photograph of him standing beside a photograph of the leader of the Hekmatist Party. None of those photographs contained any features which would identify the location of the subject.

15. More than a year after the hearing, on the 10th October, 2007, the RLS requested confirmation from the Tribunal Member as to whether she intended to accede to the request made by letter dated the 20th July, 2006 and threatened to bring mandamus proceedings. As the Court understands the previous correspondence there were two requests: (i) to have the applicant's ID submitted for forensic examination and (ii) to be furnished with copies of the document referred to by the Tribunal Member during the course of the hearing being a valid Iranian ID which the applicant's representative had declined to view.

16. On the 23rd October, 2007 the Tribunal Member replied to the RLS furnishing a report prepared by a forensic document examiner dated the 25th August, 2007 relating to the impugned identity card and the football club membership card submitted by the applicant.

The Tribunal Member invited the RLS to make submissions on the report within 14 days.

17. In response, the RLS made submissions which impugned the document examiner's expertise, credentials and findings and stated that the Tribunal Member has still not provided any evidence in support of her finding during the oral hearing that the identity document was a forgery and had been tampered with.

The examination of the applicant's identification card

18. The report dated the 25th August, 2007 first sets out the document examiner's qualifications and expertise. It then states that his task was to examine the identity card and the football membership style card to establish their authenticity. He was not asked to compare them against any other document. The examiner went through the various degrees of authenticity into which passports and identity documents can be divided, ranging from genuine though to counterfeit, forged, blank documents and fraudulently obtained documents. He noted that he was unable to compare the applicant's identity style card with a genuine specimen and that his examination and findings were based on his knowledge and experience of examining genuine and counterfeit travel identity documents. He concluded that the identity card appeared not to be a genuine document and he outlined his detailed reasons for that view. In particular, he found that the ID card had no inbuilt security features normally found in government issued identity cards. The guilloches were of poor quality and lacked definition, the printing was poor and although the card was damaged by fire, the quality of the original printing was poor. He was unable to say whether the excessive heat damage was deliberate or accidental. He made no comment on any tampering of the card with a biro or otherwise. The examiner was unable to offer any conclusion as to the football identity card submitted.

19. The Court notes that no mention was ever made either in the Tribunal Member's decision or otherwise of the purported Iranian identity card of the applicant's brother, how it had been obtained as he was reported to be in State custody in an unknown location or how it compared with the applicant's purported ID card or a "genuine" Iranian identity card. The Court notes that its appearance on the poor photocopies furnished is wholly dissimilar to that of the card submitted by the applicant. One document is similar in size to a credit card while the other is a multi-paged document akin to a large passport.

The Impugned Decision

20. On the 11th January, 2008 the applicant was notified that the Tribunal Member had issued a negative decision. That decision is challenged in these proceedings on the grounds outlined at paragraph 1 above. The decision first summarises the applicant's evidence and the submissions made at the oral hearing. The details of the questions posed and responses made in relation to the identity card are recorded. In the later part of the decision which contains the analysis of the applicant's claim, it is stated that the Tribunal Member had considerable experience in dealing with Iranian asylum seekers and she had had sight of a genuine Iranian national identity card. While the Tribunal Member accepted the applicant's contention that the document was burned she said that this did not explain why the text was blurred and the photograph was of very poor quality and she noted that a hole had been made in the card and a biro had been inserted through the plastic to obscure relevant data. She said that:

"While it is difficult to verify much of the Appellant's account, it is possible to verify one aspect, namely the validity or veracity of the photo identity card that he submitted. It was pointed out that the Tribunal Member has had considerable experience in dealing with Iranian asylum claims, furthermore the Tribunal Member has had sight of a genuine national identity card issued by the Iranian Government, the card submitted by the Appellant clearly does not comport with such cards. There are a number of clearly identifiable security features on such cards, watermarks, iridescent insignias and microtext to name a few. None of these are apparent upon inspection. While I accept the Appellant's contention that it was burned, this does not explain the fact that the photo document or card contained within the plastic coating was of very poor quality, contained text that is blurred, and appears to be a copy. Furthermore and perhaps more importantly, directly over the date section of the details relating to the Appellant a hole has been made in the plastic and biro has been inserted through that hole to obscure the relevant data. While the Appellant attempted to claim that this was as a result of it having been burned, it was pointed out to him that a biro clearly had been used. This is clear upon any cursory inspection of the document. When the Appellant was asked to address these concerns, he continued to be evasive, he tried to suggest first of all that the document had been burned; finally he stated that it was not valid and he did not answer the questions put to him. Ultimately, he stated that the document was not relevant. Quite apart from the concerns in relation to the document itself, the Appellant's evidence as to how he obtained this document is also suspect. I understand that the new national identity card, and I emphasise the word "new" is issued upon presentation of the Shenashnameh. The Appellant claims that this card was over four years old and that previous to that, he had another card, which had also been issued to him for a period of four years, this would mean that the Appellant was first issued with such a national identity card over nine years ago, within the time frame of 1996/1997. There is no evidence that these national identity cards were actually issued this far back as they are a relatively recent introduction."

21. While it is common case that the primary finding in the decision relates to the applicant's national identity, the Tribunal Member did make other findings. The photographs furnished were found to be of no probative value. Of more importance, the Tribunal Member doubted that the applicant was from Sardasht at all as he was stated to have been unable to name a famous waterfall near to Sardasht and when asked about recent natural events the previous year, failed to mention earthquakes. He also confused the writings of Marx and Lenin but the Tribunal Member accepted that this could be attributed to nervousness. The Tribunal Member ultimately found that she could not give the applicant the benefit of the doubt.

Submissions on behalf of the Applicant

22. Mr Lynn B.L., counsel for the applicant, argued that the decision should be quashed as the Tribunal Member acted in breach of s. 16(8) of the Refugee Act 1996 by failing to disclose to the applicant or his representatives the source of the genuine Iranian identity card with which she compared the applicant's identity card, as she was statutorily obliged to do. Much emphasis was placed on the source of the genuine identity card as opposed to its availability for examination and it was strenuously argued that the reliability of the source of the comparator card is crucial to the validity of the Tribunal Member's decision. It was submitted that the Tribunal Member's willingness to disclose and allow inspection of the genuine document was insufficient to comply with her statutory obligations as the source of that document had to be disclosed. The applicant rejected the notion that the Tribunal Member could simply rely on her previous experience of dealing with Iranian asylum seekers and her previous viewing of asserted genuine identification cards.

23. The validity of the decision was challenged on a number of subsidiary grounds being that the Tribunal Member failed to put her doubts as to whether the dialect the applicant spoke necessarily meant that he came from Iran and that she failed to disclose the information on which she made her findings on the applicant's lack of knowledge of geographical features or events. Again these challenges were based on the asserted failure on the part of the Tribunal Member to comply with s. 16(8) of the Act of 1996. However, it was conceded that no application was ever made for the Tribunal Member to furnish such information.

24. Reliance was placed on the judgment of Cooke J. in *M.N. v. Refugee Appeals Tribunal (David McHugh)* [2009] I.E.H.C. 301. Mr Lynn argued that the position of the applicant in this case is stronger than the position of the applicant in *M.N.* who was in fact aware of the source of the information at issue as it had been disclosed during the course of the oral appeal hearing.

25. **The issue** therefore is whether the Tribunal Member was actually in breach of her statutory obligation towards the applicant to disclose the nature and source of her knowledge about the appearance of a genuine Iranian national identity card.

The respondents' Submissions

26. Ms McGrath B.L., counsel for the respondents, also relied on *M.N.* and argued that the Tribunal Member fully complied with fair procedures in relation to the identity card and that any assessment of whether there was technical non-compliance with s. 16(8) of the Act of 1996 must be undertaken after an assessment of whether fair procedures have been applied. If no unfairness is found, then a technical breach of s. 16(8) should not necessarily merit the grant of certiorari. She reminded the Court that no challenge or objection was taken during the oral hearing to the fully recorded comments made by the Tribunal Member to the authenticity of the identity card. No request for an adjournment was sought by the applicant's legal representatives to deal with the doubts expressed by the Tribunal Member as to the validity of the identity card. The Tribunal Member had been requested not to make her determination on the appeal until the awaited SPIRASI report was available. No issue was raised at that time on comments on her experience of seeing "genuine" identity documents nor was any issue made on non compliance with s. 16(8) at that time.

27. When subsequently the RLS wrote to the Tribunal, they sought disclosure of the actual comparator identity card but made no mention of wishing to know the source of that card. The applicant's counsel was offered an opportunity to see the comparator card and declined to do so. The offer to view the card was made in accordance with fair procedures and ought to have been accepted. The Tribunal Member was at all times completely forthright about the source of her knowledge and extensive experience in dealing with Iranian applicants. Both the RLS and the RAT are specialised bodies in the area of refugee matters and must be presumed to have some experience of the issue and appearance of Iranian identity cards.

28. The respondent argued that the Tribunal Member's finding on the condition of the card and the tampering which she described as "obvious" has been ignored by the applicant who relies instead on the fact that no such tampering was mentioned by the document examiner. The Tribunal Member had made her own findings on the impugned ID card and she did not rely on the report of the forensic document examiner which was obtained at the applicant's insistence.

29. The respondent's final argument was that the applicant is seeking a slavish application of s. 16(8) of the Refugee Act 1996 in circumstances where there was no substantive breach of fair procedures. Reliance was placed on the decisions of Peart J. in *Okeke v. The Minister for Justice, Equality and Law Reform & Ors* [2006] I.E.H.C. 46 and Hedigan J. in *O.S. v. Refugee Appeals Tribunal (Elizabeth O'Brien)* [2008] I.E.H.C. 342. *O.S.* concerned a request for disclosure of conference notes on Iranian identity cards relied on by the Tribunal Member. Hedigan J. rejected that argument, finding:

"There is, in my view, no basis for the contention that because a Tribunal Member draws on knowledge acquired at a conference, the applicant has a right to see materials relating to that conference. There can be no objection to a decision-maker relying on knowledge acquired in the course of their experience and training. This must particularly be so in circumstances where the applicant was thereafter afforded an opportunity to make written submissions on the subject. It would be irrational if decision-makers were precluded from relying on objective information with which they gain familiarity through their work."

30. In this case, the Tribunal Member's decision essentially rested on her finding as to the identity card. While her findings and comments on geographical issues were peripheral to the main findings on the card, they were on credibility issues where the Tribunal Member does not have to disclose the source of her findings on those matters. Ms McGrath relied on a decision of Clark J. in *Yusuf (I.A.Y.) v. Refugee Appeals Tribunal* [2009] I.E.H.C. 127 (18th March, 2009) where it was found that:-

"While the Tribunal Member seems to have drawn on his own experience of other cases as a member of the Refugee Appeals Tribunal to find that the €900 alleged to have been paid by the applicant to the agent for his journey was an unusually low sum, it is not a finding which could be impugned for that reason alone as some degree of deference must be accorded to the Tribunal Member on these matters. I am guided by the decision of Peart J. in *Okeke v. The Minister for Justice, Equality and Law Reform* [2006] I.E.H.C. 46. The RAT is an expert body charged by the legislature to hear appeals in this particular area and it has acquired a great deal of experience and knowledge built up over the years relating to travel arrangements made by applicants from various countries. A measure of appreciation must be afforded to the Tribunal Member's knowledge on the subject of travel, particularly as the account given by the applicant of his travel to and arrival in the State bears a strong resemblance to other accounts which have come before this Court. For these reasons, as Peart J. found in *Okeke*, I am satisfied that it cannot be substantially argued that this was a conclusion which could not be properly arrived at by the Tribunal Member."

The Court's Assessment

31. The Court finds no merit in the subsidiary arguments which have been the subject of judicial findings and comment in many cases. It is well established that a Tribunal Member is entitled to probe an appellant's knowledge on generally known physical or historical features of the applicant's claimed home country. There would be no point in such probing if the questions and answers were furnished in advance. As was held by Birmingham J. in *C.A. (Anochie) v. The Refugee Appeals Tribunal* [2008] I.E.H.C. 261, "The effectiveness of an interview would be set at nought if an examiner was required to furnish the candidate with the correct answers in advance."

32. The posing of questions on known facts is a quite different issue to the obligation to disclose the nature and source of objective country of origin information (COI) which contradicts the applicant's narrative of the events or conditions in his country which caused him to flee and to seek asylum. If a Tribunal Member wishes to rely on previously unavailable COI which appears to dispute a core element of the applicant's narrative and goes to the credibility of that narrative, both fair procedures and s. 16(8) of the Refugee Act 1996 require the Tribunal Member to put that COI to the applicant for comment and explanation.

33. The Tribunal Member in this case found that the applicant did not correctly name the famous waterfall close to Sardasht. While the Tribunal Member did not expand upon her finding by giving the correct name of the waterfall, the applicant knew that his answers were deemed incorrect. He seeks to impugn the finding on the basis that he had not been furnished with the source of the information on the correct name of the waterfall. Similarly, although it was found that he did not mention anything about earthquakes when asked, he does not challenge the factual validity, rationality or reasonableness of that finding. His challenge as understood by the Court is that he was not furnished specifically with the source of the Tribunal Member's information of earthquake activity in the Sardasht area. The Court finds no merit in this argument and is reminded that s. 16 (8) was not intended to oblige a Tribunal Member

to disclose basic or acquired general knowledge but rather to disclose the nature and source of material documents relevant to the appeal.

34. Common sense indicates that a competent Tribunal Member will have conducted some map and background research on the applicant's country of origin to enhance his / her own understanding of the case. For the most part, this enquiry will already have been conducted by the officer conducting the interview on behalf of the Commissioner and the materials relied upon by that officer at that stage will have been referred to and are usually appended to the s. 13 report. It is not unusual for a Tribunal Member to conduct additional research in order to test the appellant's knowledge of local conditions. That same common sense and life experience informs that a native of a particular town or area which was the scene of devastating earthquakes or flooding would be aware of that event in the same way that a native would know the names of the rivers which run through his particular town and the names of major market places or railway stations or airports.

35. Members of the Refugee Appeals Tribunal also acquire a great deal of information and knowledge from the cases they deal with especially if the country is or said to be the place of origin of many asylum applicants. It is common knowledge that people of Kurdish ethnicity occupy several adjacent countries including Iraq, Iran, Armenia and Turkey. It would be surprising if a member of the RAT was unaware of that fact. It follows that speaking Kurdish and claiming Kurdish ethnicity would not in itself necessarily be an indicator of Iranian nationality. A Kurdish speaker could, as the Tribunal Member said, be Turkish or Iraqi. Section 16 (8) was not intended to oblige a Tribunal Member to disclose the source of such basic or acquired common knowledge.

36. The claim that the Tribunal Member was in breach of her obligations under s.16 (8) in relation to the Iranian identity card is a more complex claim. As a preliminary point it seems to this Court that much of what was said and decided in her determination of the applicant's appeal has been lost in the concentration by the applicant on the authenticity of his purported ID card and the arguments relating to the source of the Tribunal Member's knowledge of what a genuine Iranian identity document looks like.

37. The applicant's account of why he was fleeing persecution had several component parts being (i) he was a Kurd from a village on the border area of Iran / Iraq; (ii) he spoke several languages including Turkish and Greek which he learned from the radio; (iii) he was uninvolved with politics until a year or so before he left Iran when he became a supporter of the banned and persecuted Hekmatist Communist Party of Iran through his relationship with an activist; (iv) on his first ever demonstration in a town where he might be known, he burned an Iranian flag and a picture of the Iranian president; (v) when the security police moved to attack the demonstrators and break up the demonstration, he merely walked away and escaped their attentions for that night; (vi) one of their supporters took photographs of him burning the flag and picture; (vii) the camera was seized and his identity was then available to the security police who burned his house down; (viii) his brother was arrested and is still held; (ix) he was told that literature by Marx and Lenin and a book of poems were removed from the house by the security police but not his ID card; and (x) his girlfriend or his aunt was able to retrieve his damaged ID card from the house and send it, together with other photographs, to him in Ireland.

38. At an early stage of the oral appeal hearing, when it was clearly the applicant's role and obligation to establish his credibility which had been found by the Commissioner to be lacking, the Tribunal Member voiced her views on the appearance of the ID card. It had, she said, been obviously tampered with by the use of a biro. After several questions on this issue were left unresolved, the applicant claimed that the document was not relevant and that it was not important. The importance of the card was pointed out by the Presenting Officer who said it was highly relevant to his identity as he could be from Iraq or Turkey.

39. There can be no doubt that the Tribunal Member clearly expressed her preliminary views on the appearance of the purported ID card and allowed the applicant an opportunity to respond to her views. She thus acted in a manner which was perfectly fair. Her view that the card did not look like a genuine card and the view that a genuine card would help in establishing nationality were not dependent on any additional document or information which had come to her attention during the course of the appeal. Rather, her preliminary view was based on the physical appearance of the card. As previously noted, the applicant said, when pressed on the authenticity of the particular card, that the card was not important. This was clearly not a view shared by his legal representatives as is clear from the events which followed after the conclusion of the appeal hearing.

40. It cannot be ignored that the Tribunal Member went further in making her misgivings clear as at a later stage in the oral hearing she returned to the question of the identity card and posed a series of questions relating to the age and date of issue of the card which became the subject of findings in the analysis section of her decision. At the submissions stage of the hearing, when the applicant's counsel said that the ID card should be verified, the Tribunal Member again voiced her views on the identity document. She specifically said that she had viewed a number of such identity documents and having viewed valid documents for the purpose of comparison, it was clear that the document in question had not only been tampered with and appeared to be a very poor copy but was clearly not comparable with the documents that are issued by the Iranian government. Thus the source of her opinion was clear: A. the actual appearance of the document which had biro marks and was a poor copy; B. her previous experience of viewing Iranian ID documents; and C. the fact that the applicant's card did not compare with other cards which she had seen. It could not be said that she concealed from or failed to disclose the nature and source of her previous experience of Iranian identity cards to the applicant. The Court is satisfied that fair procedures were applied during the appeal hearing and that the applicant had the opportunity to respond to matters of concern and could have asked for an adjournment if he felt unprepared to deal with the Tribunal Member's concerns.

41. In the post hearing period the applicant was permitted to make further submissions relating to the card. In particular, he insisted that the card be forensically examined. The Tribunal Member did not seek to influence the expert in his objective assessment of the purported Iranian ID card by furnishing him with what she, as an experienced Tribunal Member, accepted to be the genuine article.

42. The Tribunal Member had also been asked also asked to furnish to the applicant the genuine document with which she had compared the applicant's ID card. It seems to the Court that an opinion on the appearance of a card does not necessarily imply or rely on the actual possession of a genuine card but may in practical terms derive from experience of viewing several cards over the course of years of sitting as a Tribunal Member. The Tribunal Member found that the applicant's card did not to resemble genuine cards seen in the past but her difficulties with the document did not end there. She considered that a cursory examination of the card revealed that in addition to being burned, the card had also been tampered with and was of poor quality. Thus the primary and essential basis of the Tribunal Member's finding was that the card produced by the applicant, based on its appearance and obvious physical condition, was not a genuine ID card.

43. The Tribunal Member was faced with two requests: an opportunity to view a "genuine" card and a request to have the applicant's own ID document examined for authenticity. She complied with both requests. The applicant's counsel inexplicably refused to view the genuine document. Later, the document inspector found that the applicant's identity card appeared not to be genuine and lacked the usual features of genuine national security cards. The applicant has, however, ignored those two events and asserts that the offer to inspect and examine the genuine card are simply not good enough as the Tribunal Member did not disclose the source of the

ID document proffered for inspection.

44. The Court believes that the applicant goes too far as the issue of the source of the document was not raised until after the negative decision issued and judicial review proceedings were commenced. At all times prior to the issue of proceedings, the requests made were for the disclosure of the actual comparator card and not the source of that card. There was no practical way that the Tribunal Member could have produced an actual refugee applicant's identity card before or during the hearing. She made it clear that she had seen genuine Iranian ID cards previously and that this card did not conform in appearance to such documents. The Tribunal Member did not say that she had a card in her possession.

45. The applicant had every opportunity to provide an explanation for the discrepancy between the appearance of the card he had submitted and genuine cards viewed by the Tribunal Member. For instance he could have explained that Kurds have different cards or that his was an old card or he could have proffered some other reason. There is nothing to suggest that the Tribunal Member was not open to any explanation as to why this card, which did not share the features of previously viewed Iranian documents, was nevertheless a genuine card. The applicant was given that opportunity but his only explanation was that the card had been burned and that in any event it was not important.

46. It may be appropriate in future cases where a conflict arises on the genuineness of identification cards for ORAC and the RAT to obtain objective reports on the appearance of such identity documents. Specimen documents sometimes appear in COI reports from the U.K. Home Office, the U.S. Department of State, the Canadian IRB or human rights defenders such as Amnesty International. For the most part, citizens of Iran are issued with identity cards in their home country and if travelling with such identity documents can be assumed to provide them to the immigration authorities when first seeking asylum. Those cards should be examined for key features and those key features stored for reference purposes and use during subsequent procedures before the Commissioner and the Tribunal and potentially the Minister for Justice, Equality and Law Reform as the need arises.

47. In this case, the information as to the appearance of such documents was stored in the Tribunal Member's mental body of experience and therefore not amenable to disclosure. The Court does not accept that the Tribunal Member could have gone further than stating that the source of her knowledge on the appearance of an Iranian identity document derived from her previous considerable experience. Indeed, the Court wonders what, in the circumstances of this particular case, the applicant could have done if the source of the Tribunal Member's knowledge, i.e. the fact that a number of previous applicants claiming to be Iranian had produced similar type identification, had been disclosed to him at or before the hearing. It is also axiomatic that information as to the appearance of genuine Iranian identity documents which is available to the Tribunal must logically also be available to the Refugee Legal Service.

48. The Court finds that this case falls within the principles identified by Cooke J. in M.N. (discussed at paragraphs 24 and 26 above) such that any procedural flaw in failing to furnish the applicant with an indication in writing that the Tribunal Member had seen previous Iranian identity documents during her tenure as a Tribunal Member which would cause her to doubt the validity of the card submitted was of a technical nature remedied by the application of fair procedures. The Tribunal Member's knowledge and doubts were candidly disclosed during the hearing. The principles of constitutional justice were applied in that the applicant was given every opportunity to dispute the Tribunal Member's experience as the source of the information. The decision was delayed to permit the applicant to submit a SPIRASI report and the Tribunal Member thereafter delayed even further to allow for the applicant's requests on the documents to be met. Finally, the decision on the identity card cannot be seen in isolation from the facts of the case and, in particular, the conclusions drawn by the Commissioner and the Tribunal Member as to the applicant's credibility which, it seems to the Court, were rational and reasonable and fully supported by the evidence before the Tribunal Member.

49. The Court is satisfied that, following extensive argument of the issues on which leave was granted, the Tribunal Member's decision refusing the appeal was not so flawed by the Tribunal Member's failure to comply with s. 16(8) of the Refugee Act 1996 as to require that the decision be quashed.

50. The reliefs sought by the applicant are refused.