

**THE HIGH COURT  
JUDICIAL REVIEW**

**[2012 No. 1011 J.R.]**

**BETWEEN**

**F.F.M. (CAMEROON)**

**APPLICANT**

**AND**

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

**RESPONDENTS**

**JUDGMENT of Mr. Justice Eagar delivered on the 13th day of October, 2015**

**Introduction**

1. This is a telescoped application for an order of *certiorari* in respect of the decision of the Refugee Appeals Tribunal (hereinafter referred to as "the Tribunal") to affirm the decision of the Office of the Refugee Applications Commissioner (hereinafter referred to as "the ORAC" and the "the Commissioner") that the applicant not be declared a refugee in accordance section 2 of the Refugee Act 1996 (as amended) (hereinafter referred to as "the Act of 1996").

2. The relief sought are as follows:

- a. An order of *certiorari* by way of an application for judicial review quashing the decision of the first named respondent to affirm the decision of the Commissioner and notified to the applicant not earlier than 1st December, 2012.
- b. A declaration that the Act of 1996 is incompatible with article 39 of Council Directive 2005/85/EC of 1st December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (hereinafter referred to as "the Directive of 2005").
- c. A declaration that the respondents have failed to provide the applicant with an effective remedy before a court of tribunal within the meaning of Article 39 of the Directive of 2005.
- d. If necessary, a declaration that the time limit imposed by section 5 of the Illegal Immigrants (Trafficking) Act 2000 (hereinafter referred to as "the Act of 2000") is not in compliance with the principles of equivalence or effectiveness, or, in the alternative, an order providing for an extension of time insofar as same is necessary.
- e. If necessary, an injunction prohibiting the second named respondent from further processing or determination of the applicant's claim proceeding with any proposal to make a deportation order in respect of the applicant pending the determination of the within proceedings.
- f. An order providing for the amendment of the within proceedings, as may be necessitated following sight of the applicant's complete file.

3. The grounds upon which relief are sought are as follows:

- a. The decision of the Tribunal is internally contradictory, and it remains unclear whether the applicant's appeal failed due to credibility findings, the availability of an internal relocation option or because of the absence of a Convention nexus. The applicant has not been furnished with clear reasons for the rejection of his claim, and the Minister for Justice and Equality (hereinafter referred to as "the Minister") is equally left in a situation where he can safely rely upon the Tribunal decision.
- b. The Tribunal erred in law in determining the applicant's appeal by failing to have sufficient and appropriate regard to the SPIRASI report, country reports, and explanations furnished by the applicant for perceived discrepancies in his evidence. Further, credibility findings were based on peripheral matters and/ or were based on conjecture. In any event, it is difficult to glean from the decision what aspects of the applicant's claim were considered credible or otherwise.
- c. The finding in respect of internal relocation was made without any appropriate examination of the place of proposed relocation and was made in disregard to the relevant statutory provisions and the UNHCR guidelines.
- d. The finding that there existed no nexus to the Convention was based on an erroneous view as to what constitutes membership of a particular social group. The Tribunal further erred in failing to make any reasoned assessment of the applicant's fears based on imputed political opinion.
- e. The Tribunal erred in law in failing to consider up-to-date country reports.

- f. The Tribunal erred in law in failing to consider the applicant's subjection to past persecution and risk of exposure to future persecution by reason of exposure to both criminal and police violence and/ or lack of appropriate protection.
- g. Insofar as the Tribunal may have determined the appeal substantially on the basis of adverse credibility findings, the Tribunal erred in law in foreclosing on any consideration of the likelihood of the applicant being exposed to persecution in the future.
- h. The Tribunal erred in law in taking into account matters irrelevant to its determinations and/ or failed to take into account relevant considerations.
- i. The Tribunal erred in law in equating the duty to honour visa regulations with "legal niceties".
- j. In the circumstances, the applicant has not been provided with the an effective remedy before a court or tribunal within the meaning of Article 39 of Directive of 2005, including by reason of the lack of independence of the Tribunal as seen in the failure to provide individual members of the Tribunal with reasons which can lead to the dismissal.

4. The statement of grounds was grounded in the affidavit of the applicant, "F.F.M.", sworn on 11th December, 2012. The applicant avers that he is a national of Cameroon and was born on 29th February, 1988. He states that his elder brother is a criminal who repeatedly solicited him to join his gang. As a result of his refusal to do so he suffered torture and consequentially, hospitalisation. He has lived and worked in the island of Ireland for the past few years and swears to have always abided by his visa conditions. On the last occasion that he returned to Cameroon, he was tortured and upon returning to Ireland on 26th March, 2012, he applied for asylum.

5. The applicant subsequently attended for interview pursuant to section 8 of the Act of 1996 on 18th April, 2012. He was thereafter notified by the Commissioner that his application for asylum was refused. A notice of appeal was submitted to the Tribunal, followed by submissions and a SPIRASI report. By letter dated 28th November, 2012, and received on or about 1st December, 2012, the applicant was informed that the Tribunal rejected his appeal.

#### **Applicant's claim – Decision of the Refugee Appeals Tribunal**

6. The hearing of the Tribunal took place on 19th September, 2012. The report notes that the applicant's claim is based on the grounds of appeal as contained in the form 1 notice of appeal dated 25th May, 2012. By correspondence received on 3rd October, 2012 the applicant's solicitors enclosed additional submissions and country of origin information.

7. In respect of the applicant's claim the report noted that the applicant presented as a 24 year old from western Cameroon. His father was killed following a dispute with a rival cocaine dealer. When asked why he moved the applicant responded that his father was a gendarme and his mother was told to move following his death. It is stated that he has seven siblings of which he is the fourth youngest. The applicant provided details as to his eldest half-brother, "G", aged approximately forty or forty one. The applicant was told that membership of his criminal gang was contingent on being next-of-kin and that according to tradition; the first child cannot succeed while the second male child of both parents could.

8. The applicant made reference to a "z" shaped cut he suffered when he was young. When asked whether or not his mother took action, he responded that she reported it to the gendarme, but her complaint was not processed further.

9. The applicant stated that his brother, "G" was violent to the extent that he described his house as a "battleground". When asked as to the affect G's involvement in crime had on the family the applicant stated that "sometimes we were caught in the violence. We have been in the middle of fighting and hit. It was difficult to live in the same town/city". The applicant said that members of his family were well known, and both friends and their families know that he is a member of the "M" family. According to the applicant, "this had a big psychological effect on the family".

10. The applicant attended the University of Yaoundé in 2005 for less than a year as "G" was paying his school fees and he wanted him to sell drugs. In Cameroon school fees did not have to be paid in advance. His brother wanted him to join the gendarmes and felt that there was no point in attending university, to which the applicant told him that he did not want to join the gendarmes. When quizzed as to the recruitment process for a member of the gendarmes, he stated there was an entrance examination. He was also invited to submit an application form, but he did not do so. This was despite him being told that the position was his, should he so desire.

11. When asked what he did next, after his brother cut off his college fees, the applicant stated that he moved, working as a volunteer in north western Cameroon with those suffering from HIV.

12. He stated that he was beaten by "G". When asked as to whether he had the documents for the police he responded in the negative. The applicant then ran away. He was once hit on the face with an iron. He travelled for one hour's drive and never stayed more than three weeks in the same place. He did however receive a stipend. He later attended business college until 2007 and rented a small room in a house. In 2008 he worked with computers. On his birthday in 2009, he said "in the evening I was having a party and G. turned up with his gang. We had a conversation. He told me I had to join him. He stabbed me in the stomach." The applicant then spent two weeks in hospital, leaving with scars. He went to the police and made a report. He was asked if the police did anything, he replied "they gave his address to his brother because they were connected with "G" since 1990".

13. He was asked if his brother was political and he said he was a member of the CPDM (the Cameroon Peoples' Democratic Movement), attending rallies and campaigns. They were protected by the State. He stated he ran away again to a friend's house. He made a formal complaint to the State Council but it was not accepted as the individual in the Council was aware of G. and was afraid for his own safety. The applicant's life was a nightmare owing to his fear of "G".

14. He left Cameroon in 2010 and moved to a community group in Northern Ireland, (the Corrymeela Centre in Ballycastle, Co. Antrim).

15. When asked about life in Douala which he said was like before, he was indoors the whole time, he couldn't do anything and applied for a one-year visa and worked with CASA (the Caring and Sharing Association). When he applied to extend his visa, he was informed that the law had changed and that he had to reapply in his own country.

16. He returned to Cameroon on the 18th March, 2010 and was collected by a friend from the airport. They took a detour as he stated he wanted to collect money and they drove to a location. He continued that when he got out of the car, a jeep arrived and he saw his brother. He was dragged out of the car, tied to a chair and tortured. He was stabbed, electro-shocked and mocked. His friend

was not present to see it but his brother was. He was given an ultimatum to join the gang and if he refused he would be killed. He was left there for 24 hours and only freed when his friend returned. His friend had been working for his brother since 2010 but he did not know how seriously the applicant would be injured. The applicant asked his friend if he could stay with him but he was refused as his friend "did not want to take the risk". The first-named respondent asked him why he had asked the friend after he had just betrayed the applicant, and the applicant said there was no one else to ask. He said his friend took him to a person who said he needed to get out of the country. He was asked about his documents for travel and he replied he had a passport with a false name and his photograph. The applicant wanted to go to Belgium or France but the agent said he should go to Ireland. He transited via Brussels. He first met immigration in Dublin Airport and was given back his passport. When asked what he feared if he returned he said, "If I go to Cameroon, I don't want to join the gang and avoid succession. I will be killed. "G" is under pressure to get me involved. I can't run from him or the police." He was asked if the police could help him and he replied, "No chance. There is no reason to believe they can help." He was then questioned by the presenting officer. He was asked why he had mentioned the 2006 incident in his SPIRASI Report but at interview he was asked when the next incident had been that he omitted to mention anything about 2006. He replied, "it was a physical attack. There were so many from childhood." He was again asked why there was no mention of 2006 and he replied, "I guess I didn't mention all the physical abuse. I have memory problems." It was put to him that he was not hiding between 2008 and 2010 and was close to home. He replied he was "next door". He was questioned by the presenting officer in relation to the country of origin information (COI) on corruption in Cameroon, whereby if it was the case, as was stated in the COI, that the authorities had sanctioned officers for corruption, why could he not take his complaint to superiors. He replied "I went to the police and state counsel, but he won't help. Who do I go to? He says he knows my brother, my name and he didn't feel safe."

17. It was put to him that he had internally relocated twice, once for a year and the second time for three months and had no direct contact with his brother. He replied "I was indoors. I didn't get out". It was further put to him that he was not indoors the whole time, to which he said that he said he was working with the HIV group, moving around in accordance with his work. It was put to him given the size of Cameroon and its population of 20 million that it was possible to relocate; he replied "How can you run away from the police/gendarmes? They were everywhere. "G" had access to the database. As soon as my name appeared he will get me." The First-named respondent put it to him that the police were not looking for him but the applicant stated that the police can access the database.

18. When questioned about the name on his passport and he said "I don't remember the name. I knew the name at the time." It was a Muslim/Arabic name on a British passport." Submissions were then made by the applicant's solicitor. This Court is satisfied with the detail of the hearing before the first-named respondent. This is the appropriate way in which to present the evidence of a hearing before Tribunal.

#### **Analysis of the applicant's claim**

19. The first-named respondent begins his analysis of the applicant's claim by discussing the concept of well-founded fear and quotes para. 38 of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the status of Refugees,

"38. To the element of fear – a state of mind and a subjective condition – is added the qualification "well-founded". This implies that it is not only the frame of mind of the person concerned that determines his refugee status, but that this frame of mind must be supported by an objective situation. The term "well-founded fear" therefore contains a subjective and an objective element, and in determining whether well-founded fear exists, both elements must be taken into consideration."

20. He then quoted from Clarke J. in the case of *Imafu v. The Minister for Justice, Equality and Law Reform & Ors.* [2005] IEHC 416 in which judgment was delivered on the 27th May 2005. Clarke J., in his decision states as follows:

"While there is not, as yet, a definitive ruling of this court (let alone the Supreme Court) as to the extent to which it is appropriate for this court to review the reasoning of a Tribunal such as the RAT with particular regard to its findings in relation to the credibility of an applicant, there are a number of decisions of this court at the leave stage from which it may be gleaned that the following propositions have been considered by the court to be at least arguable to a sufficient extent to justify a finding of substantial grounds"

Counsel cited *A.M.T. v. The Refugee Appeals Tribunal & Anor* [2004] 2 I.R. 607 in which Finlay-Geoghegan J. stated:

"(i) The assessment by the RAT of the credibility of an appellant and his or her story forms part of the decision making power conferred by the Refugee Act, 1996 and therefore, in accordance with the principles set out in *East Donegal Cooperative Limited v. The Attorney General* [1970] I.R. 317, such assessment must also be carried out in accordance with the principles of constitutional justice."

21. The first-named respondent also quoted from the decision of *Da Silveria v. Refugee Appeals Tribunal & Ors.* (Unreported, High Court, 9th July 2004) in which Peart J. stated:

"While the assessment of credibility is a difficult and unenviable task it is not permissible to place reliance "on what one firmly believes is a correct instinct or gut feeling that the truth is not being told". Such a process is an insufficient tool for use by an administrative body such as the Refugee Appeals Tribunal. Conclusions must be based on correct findings of fact."

22. He then recites the summary of the evidence given by the applicant. He noted that there was clearly a conflict in the evidence in relation to what he said in relation to the 2006 incident. The SPIRASI report does not mention the 2005 incident. The applicant stated "When I get emotional I don't remember. I leave out details. Maybe I left out that." The first-named respondent states, "There is clearly a conflict in the evidence given at different stages of the asylum process to different people. The applicant gives reasons for the discrepancies. They are not particularly convincing. However, on the other side of the coin is the SPIRASI report which outlines a number of scars and evidence of other injuries. I take this fully into account when assessing the credibility of the applicant and in addressing one of the key issues of "if he did not get the injuries from his half-brother, whom did he receive them from?" The first-named respondent then dealt with the issue of internal relocation and the evidence given in response to the claim of the applicant. The first-named respondent said he was not convinced by these replies.

23. The first-named respondent said he had considered all of the country of origin information submitted. He notes accordingly that in assessing same none of the authors can be cross-examined as to their contents. He continues with the more general point that simply because that which an applicant has claimed happened to him has indeed happened to some of his fellow countrymen does not of itself show that he was one of the individuals to whom it happened, or that he would face such a risk into the future. These

factors should be borne in mind with all country of origin materials submitted. He then noted that the applicant had wanted to go to Belgium or France but the agent said that he should go to Ireland. The first-named respondent said that one of the indicia of flight which one would normally associate with a refugee seeking asylum is that the refugee would seek refuge in the first available safe country. He then states that these actions are generally inconsistent with a flight from a well-founded fear of persecution. He said that his excuse for not seeking international protection after arriving in a safe country is not credible as it was based on the fact that he was merely following an agent. The Tribunal continues that he was satisfied that section 11 (B) of the Act of 1996 applies in this regard in that his itinerary is inconsistent with the urgency or substance of a well-founded fear for the reasons outlined above.

24. The applicant did not apply for asylum at Dublin Airport. Furthermore the applicant had previously been in Ireland. He further states that it was an objective fact that after the applicant claims to have been assaulted by his half-brother, he returned to his country of nationality. This undermines his claim as to having a well-founded fear in his country of origin.

25. The first-named respondent then states that the cumulative effect of the foregoing findings relating to the applicant's credibility materially and detrimentally effects the veracity of what the applicant purports. There are aspects of his claim which leaves the first-named respondent with doubts such that he cannot afford the applicant the benefit of the doubt in assessing his evidence from an objective view point. He states that in making this assessment he has considered Regulation 5.3 of the European Communities (Eligibility for Protection) Regulations 2006 (hereinafter referred to as the "Regulations of 2006").

26. The first-named respondent then said that "however taking all the matters into account (in particular the SPIRASI report which outlines a high degree of consistency of the injuries and his history) and applying the burden and standard of proof outlined above and in the light of all the foregoing and after due consideration the principle of the benefit of doubt they did find for the purpose of this recommendation that:

- a. The applicant has a subjective fear of his half-brother
- b. His half-brother is a criminal
- c. The applicant has claimed that he had been unable to receive the protection of state officials because of his familial connection with his half-brother, whom they also fear (as opposed to merely because he is a member of the "M" family *per se*.)
- d. A case that he fears any other person by reason of his familial connections has not been grounded on evidence worthy of credit.
- e. The first-named respondent then stated that while there was no requirement in refugee law of past experience of persecution, it is a relevant factor. The absence of past persecution does not act against an applicant for an application for asylum nor is the fact of past persecution conclusive. This is particularly so when regard is had to the possibility of avoiding any risk by relocating within his country of origin (which he has done on a number of occasions).

27. The first-named respondent continues, "even if I am wrong about my assessment of what the applicant says, it could be true that moving to another area to escape his persecutors would be an option rather than seeking international protection." He then poses the question as to whether, having regard to the objective country of origin information, is there a reasonable likelihood that the applicant's fear will be realised if returned to his country of nationality now? The first-named respondent states that the applicant claims to have a subjective fear of his half-brother and he bears the scars to show physical injuries which he alleges were caused by his him (or his associates). In my view the applicant does have a fear of his half-brother and that fear could be well-founded if he were to return to his home in Cameroon or otherwise make himself known to his brother. The following evidence was relevant to this part of his claim.

- a. It was put to him that given the size and population (20 million) of Cameroon, that it was possible to relocate and he replied, "How can you run away from the police/gendarmes? They are everywhere. G. had access to the database. As soon as my name appeared he will get me."
- b. Country of origin information on corruption in Cameroon was put to him whereby it was stated that the authorities had to sanction the officers for corruption. When asked why he could not take his complaint to superiors, he replied "I went to the police and the state council. If they won't help, who do I go to?"
- c. It was put to him that he had internally relocated twice; once for a year and the second time for three months and had no direct contact with his brother. He replied "I was indoors and didn't go out." It was further put to him that he was not indoors the whole time he said and that he was working with the HIV group moving around. It was put to him that it was difficult to accept that he returned to Cameroon in 2006 and 2009 rather than seek asylum. He replied, "I think Cameroon is my country. I love it. I want it down on my visa." The second-named respondent then said "Accordingly there was evidence to state that the applicant could avoid serious harm if he was to take steps to internally relocate in Cameroon".

28. The first-named respondent then stated that based on the findings of the lack of credibility outlined involved, together with the findings in his favour and analysis of internal relocation, he did not find that the applicant had a well-founded fear of persecution which could not be avoided by internally relocating within Cameroon.

29. He continues that, even if he were wrong about his assessment of what the applicant says could be true, and moving to another area to escape persecution would be a viable option rather than seeking international protection., there would still be the matter of the nexus to a Convention reason. He analysed case law which had been put to him and identified the issue which faced the applicant. He stated "the applicant in this case was the target of persecution due to his refusal to join a gang and not because of any group characteristic or association. He then considered the legal submissions and he concluded that the applicant's difficulty, bearing in mind the burden of proof, is that he had not put forward credible evidence which would satisfy the Tribunal that he would be a victim of persecution for any Convention reason if returned to Cameroon. In those circumstances he affirmed the recommendation of the Refugee Appeals Commissioner made in accordance with section 13 of the Act of 1996.

#### **Submissions by counsel on behalf of the applicant**

30. Mr. Michael Conlon SC with Mr. Garry O'Halloran B.L. appeared on behalf of the applicant and described the analysis of the applicant's claim as "voluminous" and noted that the Tribunal commenced by making a series of rambling credibility findings, followed by a finding in respect of internal relocation and ending with a rambling discourse on a Convention nexus. He says, notwithstanding

the lengthy discourse on credibility, the reader is left in the dark as to whether the applicant's narrative has been accepted or not. He says that in this regard the Tribunal's reason was inadequate and he referred to *B.O.B. v. The Refugee Appeals Tribunal & Ors* [2013] IEHC 187 which in turn refers to *Meadows v The Minister for Justice, Equality and Law Reform* [2010] IESC 3. He criticised the first-named respondent's treatment of the SPIRASI report as deeply unsatisfactory in circumstances where the report was exceptionally equivocal on the treatment of the country reports and the detailed grounds of appeal submission were perfunctory, contrary to fair procedures and in breach of Regulation 5 (1) (a) and (b) of the Regulations of 2006. He referred to *I.R. v. the Minister for Justice* [2009] IEHC 353.

31. Counsel for the applicant submitted that the finding in respect of internal relocation was also made without any reasonable regard to the country reports, the grounds of appeal and submissions the SPIRASI Report and the evidence of the applicant. He said further the finding fell far short of the requisite legal principle set out in *K.D. (Nigeria) v. The Refugee Appeals Tribunal* [2013] IEHC 481 and *E.I and M.I.(minors) v. The Minister for Justice, Equality and Law Reform and The Refugee Appeals Tribunal* [2014] IEHC 27 on the basis that no assessment of the reasonableness of an identified location in the light of the applicant's particular health and life circumstances was made. This was in addition to no assessment of the practicality in the light of the gangland, political and police contacts of "G" being made.

32. Counsel further criticised a failure to make any proper determination in respect of the existence of a Convention ground. Clearly membership of a particular family can satisfy the membership of a particular social group ground. The Tribunal had failed to ask the basic question of whether the applicant may be a member of a social group because of his particular and unique family circumstances and referred to *Lord Hope in Fornah v. Secretary of State for the Home Department* [2006] UKHL 46. Counsel further noted that the three sets of findings relating to credibility, internal relocation and Convention nexus were, in effect, mutually exclusive thereby rendering the decisions so lacking in clarity as to be irrational and unreasonable.

#### **Submissions by counsel on behalf of the respondent**

33. Ms. Kilda Mooney B.L. on behalf of the respondents reviewed the factual background. She then submitted that the decision of the Tribunal was a lengthy, detailed and well-considered decision and it was clear that the member took careful consideration of the facts in reaching their determination. In relation to credibility, she submitted the Tribunal found there was a clear conflict in the evidence given by the applicant at different stages of the asylum process and that the applicant's explanation for these discrepancies was unconvincing. Further, when one reads the decision as a whole, it is clear that the first-named respondent had significant doubts concerning the applicant's credibility as a whole. The Tribunal accepted certain aspects of the applicant's claim however it did not accept that the applicant is a refugee for several reasons. Doubts as to credibility, internal relocation and there being no Convention nexus. It is also clear from the face of the decision that the first-named respondent viewed all the documents including country of origin information and assessed the applicant's claim in the light of this.

#### **Discussions and Decision**

34. The decision in this case sets out in full the evidence of the hearing before the first-named respondent and this is welcome by this Court as it is now apprised of all of the materials in this case, and in particular that which was stated by the applicant before the first-named respondent.

35. Criticism is made by the applicant of what is described as a series of "rambling credibility findings". The applicant complains that it is not clear whether the applicant's argument has been accepted or not. It is clear from the report of the first-named respondent that he accepts that, having applied the burden and standard of proof, and after due consideration of the principle of the benefit of the doubt, he finds:

- a. The applicant has a subjective fear of his half-brother
- b. His half-brother is a criminal
- c. The applicant has claimed that he has been unable to receive protection of state officials because he is his brother's brother whom they also fear.

36. He also finds that he had serious doubts as he found some evidence of the applicant hard to understand and in particular that in relation to the friend who betrayed him. There was also a conflict in the evidence given at different stages of the asylum process by the applicant. While the applicant gives reasons for the discrepancies, the first-named respondent said they are not particularly convincing but he balances that against the SPIRASI report which outlines a number of scars and other injuries. The method of discussing all of the evidence seems to this Court to be an excellent way of balancing the credibility issues with those which are accepted by the first-named respondent. It is clear to this Court that it is clear from the report of the first-named respondent that he accepts certain contentions by the applicant and rejects others.

37. Criticism is also made of the finding in respect of internal relocation which the applicant says was made without any reasonable regard to the country reports, the grounds of appeal and the submissions, the SPIRASI report and the evidence of the applicant and fell short of the requisite legal principles set out in *K.D. (Nigeria)* in that no assessment of the reasonableness of the identified location in the light of the applicant's particular health and life circumstances was made. No assessment of the practicality in light of the gangland, political and police contacts of his half-brother were made. However this Court is of the view that consideration of the internal relocation option was considered in sufficient detail and in this regard the first-named respondent outlined the questioning which took place in relation to his decision on internal location. The first-named respondent was not convinced by the applicant's replies and this Court is satisfied with the first-named respondent's decision with regard to internal relocation.

38. Criticism was made of the decision of the first-named respondent by the applicant in suggesting there was a failure to make any proper determination in respect of the existence of a Convention ground. Certainly membership of a particular family could satisfy the membership of a particular social group "ground" but the presenting officer's submission which was adopted by the first-named respondent that the applicant in this case was the target of persecution due to his refusal to join a gang and not because of any group characteristic or association and the first-named respondent stated that it was difficult to get past this argument which had the benefit of clarity and also reliance on the applicant's own words. His evidence at the hearing was to the effect that. He was given an ultimatum to join the gang and if he refused he would be killed.

39. The first-named respondent paid tribute to the legal submissions which were presented in relation to this by counsel on behalf of the applicant. The first-named respondent states that the half-brother of the applicant, a criminal with political connections remains a criminal and the fact of his political connections may make a criminal have greater impunity, may be relevant when assessing the risk from that source but of itself does not bring the persecution under a Convention ground.

40. This Court is satisfied that the findings relating to credibility, internal relocation and Convention nexus are set out clearly and this is a case in which this Court accepts the decision of the first-named respondent as being a lawful decision.

41. As this is a telescoped hearing this Court refuses leave and refuses the application for certiorari.

*Counsel for the Applicant: Michael Conlon S.C., Garry O'Halloran B.L., instructed by  
Messrs. Trayers & Co solicitors*

*Counsel for the Respondent: Dermot Manning B.L. instructed by the Chief State Solicitor*