Neutral Citation: [2015] IEHC 699

THE HIGH COURT

JUDICIAL REVIEW

[2011 No. 1076 J.R.]

BETWEEN

A. N. (AN INFANT SUING BY HER FATHER AND NEXT FRIEND A. N.)

APPLICANT

AND

REFUGEE APPEALS TRIBUNAL,

THE MINISTER FOR JUSTICE AND EQUALITY,

ATTORNEY GENERAL

AND IRELAND

RESPONDENTS

JUDGMENT of Ms. Justice Faherty delivered on the 16th day of October 2015

Extension of Time
1. A short extension of time was required for the purposes of the present proceedings. The court was satisfied to grant the extension of time.

Background
2. The Applicant is a female minor who was born in Ireland on 28th March, 2011 to Pakistani parents. An asylum application was submitted on her behalf on 27th April, 2011 by her mother who claimed that *"she fears members of her family will kill her daughter if she goes to Pakistan"*. A questionnaire was duly completed on 9th May, 2011 which made reference, inter alia, to the applicant's fear of persecution on grounds of race to the applicant being in fear for her life; that she *"may be murdered";* and that the applicant had *"all the threats and difficulties [her] parents have".*

3. The section 11 interview was conducted with the applicant's mother on 31st May, 2011 following which the s. 13 report issued on 2 August 2011. The RAC recommended that the applicant not be declared a refugee. The report stated, *inter alia,*

> *"the applicant's case is based on a stated fear of persecution in Pakistan from members of her extended family. The applicant's mother claims that her mother and her mother's two brothers were opposed to her marriage to [the applicant's father]. She claims that her mother and her mother's two brothers will harm the applicant as they do not like her husband."*

Under the *"well-founded fear"* heading, the report stated:-

> *"It is noted that both of the applicant's parents' claims for asylum have been refused by the ORAC and at appeal, therefore a similar finding is appropriate in this case. A file copy of the Section 13 reports of the aforementioned applicants are attached for reference at Appendix A& B. As no separate claim has been advanced by this applicant's mother, no separate issue had to be considered in relation to this applicant."*

4. Under the heading *"State Protection & Internal Relocation",* the Commissioner noted the contention that the *"… police would be unwilling to help the applicant as her relatives have connections to powerful and influential people in the police and the provincial assembly. However, she was unable to state who these people were."* In answer to the argument that no governmental or non-governmental organisations would be able to help the applicant, he stated: *"There appears to be no reason to suggest that these organisations would be unwilling or unable to help the applicant should she require it."* The Commissioner also found against the applicant's mother's claim that any suggestion of relocation within Pakistan would not be a solution to the perceived threats from her extended family. The report stated *"It appears unlikely that the people she fears are even aware of the applicant's existence… Given this, along with the sheer size and population of Pakistan, and the localised nature of the applicant's mother's fears, it is considered that the applicant would be able to live in Pakistan with her parents, away from her mother's relatives."*

5. In the Notice of Appeal (filed on 22nd August, 2011) the applicant claimed that a fear of persecution arose by reason of membership of a particular social group. The submissions which were made to the Tribunal were that the RAC:

- Erred in fact and in law by deciding that the Applicant did not meet the criteria set out in the Convention as defined by s. 2 of the 1996 Act, as amended.

- Erred in fact and in law in failing to apply the criteria for determining the application in a spirit of justice and understanding as recommended by the UNHCR Handbook.

- Erred in fact and law in applying the wrong burden and standard of proof and failed in its duty to properly investigate the persecution complained of.

- That the applicant's credibility was such that the Commissioner erred in not giving her the benefit of the doubt.

6. The appeal took place by way of oral hearing on 21st September, 2011. The Tribunal's decision issued on 18th October, 2011 and it

affirmed the Commissioner's recommendation not to declare the applicant a refugee.

7. In the *"Analysis of the Applicant's claim",* it was noted that at the hearing a number of decisions were handed in, including *"Shah v. Islam* [1999] 2 AC 629 and *S.A. v. the Secretary of State for the Home Department*, together with an Amnesty International Report and a Pakistani Human Rights Watch report and that the presenting officer handed in the decisions relevant to the applicant's parents together with the judgment of Clarke J. in *INM v. the Minister for Justice* [2009] IEHC 233.

8. The Tribunal Member went on to find that *"nothing in the evidence would lead me to a conclusion that the infant is entitled to protection."*

9. The analysis continued with the decision-maker invoking the decision in Shah and Islam to further support his *"view that the infant is not in need of protection."*

10. He then referred to the applicant's mother's claim who:

> *"… has been the subject of a refusal and internal relocation was considered and found to be appropriate.*
>
> *I find that the Applicant's mother has not adduced any evidence to show that the State is unwilling or unable to protect her and her Defendant [sic] daughter. In circumstances where Karachi has in excess of 25 million people living there, I find it neither plausible nor credible that she would be at any risk in Karachi. I do not find anything in the evidence on behalf of the Applicant differs from her mother's application.*
>
> *The Applicant's mother is a university educated person and is in a better position than most to internally relocate."*

11. With reference to the UNHCR Position Paper on Relocation, February 1999, the Tribunal Member considered the applicant's position as follows:-

> *"Even if the Applicant had a well-founded fear of persecution, which I do not believe she has, in this Applicant's case it would appear that internal relocation presented a viable alternative notwithstanding the Applicant's claim to be at risk in the entire state."*

12. Citing the decisions of the House of Lords in *R. v. Secretary of State for the Home Department, ex parte Sivakumaran* [1988] AC 958; *Shah v. Islam* [1999]2 AC 629; *Horvath v. Secretary of State for the Home Department* [2001] 1 AC 489; the Canadian Supreme Court decision in *Canada (Attorney General) v. Ward* [1993] 2 SCR 689 709; Hathaway & Foster's *"The Law of Refugee Status"*; the decision in *Kadenko v. Canada (Solicitor General)* [1996] 143 DLR(4th) 532 and Regulation 7 of the European Communities (Eligibility for Protection) Regualtions 2006, the Tribunal Member opined:-

> *"I am of a view that the Applicant can reasonably be expected to stay in a part of the Applicant's country where there is no well-founded fear of being persecuted or real risk of suffering serious harm. In reaching this conclusion, I have had regard to the general circumstances of [sic.] prevailing In[sic] that country and the personal circumstances of the Applicant.*
>
> *When the state in question is a democratic state, the claimant must do more than simply show that he or she went to see some members of the police force and that his or her efforts were unsuccessful. The burden of proof that rests on the claimant is, in a way, directly proportional to the level of democracy in the state in question; the more democratic the state's institutions, the more the claimant must have done to exhaust all the courses of action open to him or her."*

13. Quoting, *inter alia*, a judgment of the Federal Court of Canada (*Thirunavaukkarasu* 109 D.L.R. 4th 662)), the Tribunal Member noted that the judge in that case (Linden J.):

> *"went on to observe that while claimants should not be compelled to cross battle lines or hide out in an isolated region of their country, like a cave in the mountains, a desert or jungle, it will not be enough for them to say that they do not like the weather in a safe area, or that they have no friends or relatives there, or that they may not be able to find suitable work there.*
>
> *Where domestic remedies are realistically available in the refugee claimant's country of nationality which, if availed of, will result in effective state protection being afforded to the claimant, the refugee claimant is required, as a matter of principle, to avail him- or herself of those remedies; or in the words of Ward, to present clear and convincing confirmation of the state's inability to protect."*

The analysis continued:

> *"In this case, the Applicant's mother presented evidence that she had not made a report to the police and in those circumstances I find that the Applicant has failed to show an absence or failure of State protection which is an essential element of persecution. To restate, the refugee claimant is required as a matter of principle to avail himself of remedies available, or to present clear and convincing evidence of the State's inability to protect. This has not been done in this case, and for that reason I am unable to find that the Applicant has suffered or suffers from a well-founded fear of persecution."*

In relation to the relocation suggestion, the Tribunal Member was

> *"not satisfied that the Applicant made any efforts to consider relocating to avoid persecution which he claims to suffer. Country of Origin information indicates that there is ample protection available for the Applicant to relocate. With reference to the issue of relocation, I am required first to consider whether the asylum seeker faces a well-founded fear of persecution for a Convention reason in at least some part of her country of origin. In this particular case, because the Applicant has not shown a failure of state protection, I have concluded that the well-founded fear of persecution aspect of the definition was not complied with. However, even if I had found that there was a well-founded fear of persecution for a Convention reason, I am not satisfied that the Applicant could not have access to meaningful internal protection. The Applicant could have moved away from the area in which the difficulties were and from the place the source of the Applicant's alleged difficulties.*

The proposed site of internal protection, i.e. Karachi, does not present a distinct risk or even generalised serious harm. Karachi has a population of 12,991,000, outranking that of Delhi, Istanbul, San Paulo and Moscow. It is Pakistan's premier centre of banking, industry and trade and it is the financial and commercial capital of Pakistan. Karachi city is spread over 3,530 km squared in area. Karachi is home to some of Pakistan's important cultural institutions.

I believe that relocation would not only provide the Applicant with protection against the risk of persecution, but also access to better public services, employment and other social rights.

14. He went on to state:-

"…the reasonableness test in the relocation context must be related to the primary obligation of the country of nationality to protect the claimant. It was held that meaningful national State protection which can be genuinely accessed requires provision of basic norms of civil, political and socio economic rights. It is not a matter of a claimant's convenience or of the attractiveness of the place of relation [sic.] More must be shown. The reasonableness element must be tied back to the definition of "refugee" as set out in the Convention and to the Convention's purposes of original protection and surrogate protection for the avoidance of persecution. The relocation element is inherent in the definition; it is not distinct. The overall question is whether having regard to those purposes, it is unreasonable in a relocation case to require the claimant to avail themselves of the available protection of the country of nationality.

I find that it would be reasonable to require the Applicant to relocate to Karachi.

In reaching this conclusion, I have taken into account the best interests of the child and the International Convention on the Rights of the Child."

15. The within proceedings issued on 8th November, 2011. Extensive written and oral submissions were made on behalf of both parties.

16. In essence, the challenge to the Tribunal's decision can be distilled as follows:

i. The Tribunal Member, in deferring totally to the conclusions reached in relation to the applicant's parents' asylum applications, failed to properly address the applicant's claim for asylum;

ii. The imputed finding in respect of membership of a particular social group was irrational or alternatively wrong in law;

iii. The application of the *Ward* test to the issue of state protection was inappropriate;

iv. Insufficient regard was afforded to the country of origin information in the context of the finding on state protection; and

v. The finding with respect to internal relocation was made in breach of the UNHCR Guidelines on Internal Relocation and/or in breach of the principles set out in *K.D. (Nigeria) v. RAT* [2013] IEHC 481 and *I v. MJELR and RAT* [2014] IEHC 27;

The reliance on the applicant's parents' decisions

17. Counsel for the applicant submitted that the deference shown by the Tribunal Member in the applicant's case to the conclusions reached in respect of her parents' applications was a breach of fair procedures and in breach of Regulation 5 (1) of the 2006 Regulations and of Council Directive 2005/85/EC which required the decision in the applicant's appeal to be taken *"individually, objectively and impartially"* and to be considered in the context of precise and up-to-date country of origin information. Moreover, the Directive provided that member states must ensure *"that applications for asylum are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible."* Counsel contended that the import of the latter requirement arose in a context where both of the applicant's parents were afforded a papers-only appeal to the Tribunal, pursuant to s. 13 (6) (c) findings made in respect of each of them in their respective first instance asylum applications.

18. Counsel submitted that with regard to the applicant's case, the Tribunal Member regarded himself as bound or else influenced by her parents' decisions. However, it was unclear and uncertain to what extent he regarded himself so bound. That uncertainty was a problem in itself. Insofar as the parents' decisions were introduced in the applicant's appeal, the procedure ceased to partake of the character of a remedy for the applicant. That was an appeal which, in effect, the applicant could not win absent circumstances which differentiated her case from that of her parents. The introduction of the parents' decisions amounted to new material being furnished to the Tribunal Member. Counsel cited the decision of the Supreme Court in *AN and others v. Minister for Justice, Equality and Law Reform* [2005] IESC 44 [2008] 2 IR 48 and the decision of the court of Justice in NM v. MJELR, C-277/11, as quoted in the subsequent decision of Hogan J. in *MM v. Minister for Justice* [2013] IEHC 9.

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In *M.M.* Hogan J. reprised the approach of the Court of Justice:-

"31. The Court of Justice was, however, evidently troubled by the aspects of the procedure actually followed in this case, so much so that it went out of its way to give guidance to this Court on this very question. The judgment specifically emphasises the fact that the asylum and subsidiary protection procedures presently contained in Irish law are distinct and different. The logical corollary of this is that under our bifurcated system the subsidiary protection application must be considered distinctly and separately from the asylum application. This in turn means that the Minister must decide the subsidiary protection issue without any reliance on the prior reasoning contained in the asylum application insofar as this otherwise may be taken effectively to preclude an applicant for subsidiary protection re-opening certain issues at that stage or inasmuch as it creates any quasi-estoppel arising as against such an applicant by reason of a failure to challenge an adverse asylum application in separate judicial review proceedings, at least in the absence of an effective hearing where the applicant was given an opportunity afresh to re-visit these issues; where these matters were expressly put to the applicant by the decision-maker and where the decision-maker independently made a fresh decision on the applicant's credibility and other relevant issues."

19. Addressing the decision of Cooke J. in *Debisi v. Minister for Justice* [2012] IEHC 44, Hogan J. stated:

> *"37. If one proceeds from the premise that subsidiary protection is really just another step in the entire process of international protection, then the powerful analysis of Cooke J. contained in the passages just quoted from Debisi must be regarded as entirely compelling: see here also the comments made by Cross J. in a similar vein in HM v. Minister for Justice, Equality and Law Reform [2012] IEHC 176. It seems to me nevertheless that this reasoning must, however, be now regarded as having been superseded by the judgment of the Court of Justice in MM, precisely because that Court commenced the analysis contained in the second part of the judgment from an entirely different perspective, namely, that in a bifurcated system such as ours, subsidiary protection must be evaluated separately and distinctly from the determination on the asylum application.*
>
> *38. If that is so, then the considerations mentioned by Cooke J. – such as the need to avoid potentially inconsistent determinations or the understanding that all major credibility findings will made in the oral procedure attending the asylum claim (excepting perhaps entirely new evidence advanced during the subsidiary protection stage) – can no longer prevail."*

20. By analogy to the position that pertained in *M.M.*, counsel argued that the fact that the applicant's parents had previously been heard did not obviate the need for a proper hearing of her application. Counsel argued that it was absolutely clear that there was no separate analysis of the applicant's claim. When compared to the situation which had presented in *M.M.*, the applicant was in an even stronger position to look for a proper hearing of her case uninfluenced by her parents' decisions which had been adjudicated upon by a different Tribunal Member. The starting point should be her claim for asylum, not her parents' decisions. She was entitled to an individual hearing and not to be bound by the findings made in respect of her parents. Moreover, the applicant's parents' tribunal decisions appeared on their face to be "clearly unlawful".

21. There were serious problems with the manner in which the Tribunal Member dealt with the applicant's parents' decisions. Firstly, they were handed in by the presenting officer at the outset of the oral hearing without any backing documentation such as the respective questionnaires and s. 11 interviews. Counsel stated that it was the applicant's solicitor's practice to complain about the handing in of decisions insofar as they were being furnished without backing documentation. While it was accepted that neither of the applicant's parents challenged their respective Tribunal decisions by way of judicial review counsel argued that some unlawful decisions of the Tribunal were simply not challenged by the recipients

22. With regard to the applicant's father's decision, it was found that his delay in applying for asylum was not indicative of a well-founded fear of persecution. That, counsel submitted, was a *non sequitur*. The applicant's father had been unaware of the asylum process and had been too scared to make an application. The Tribunal in his case had resorted to conjecture in rejecting his claim of harassment and intimidation and had ignored country of origin information in relation to the police in Pakistan. Furthermore, the finding that he had to personally show that state protection would not be available to him was wrong in law. There were issues regarding a lack of natural justice and the finding made in his case with regard to internal relocation clearly breached the *K.D. (Nigeria)* principles. The same arguments as to unlawfulness applied to the decision which was reached with regard to the applicant's mother.

23. Counsel acknowledged that the Notice of Appeal which had been submitted to the Tribunal in respect of the applicant was fairly generalised. Nevertheless, it was clear from the submissions made on her behalf that it was not accepted that the applicant's credibility should have been dismissed by the Commissioner. Her credibility was put in issue by her legal representative before the Tribunal. Thus, it was not open to him, without carrying out any analysis of the applicant's claim or stating that he found the analyses in her parents' decisions persuasive, to conclude (without even looking at the reasoning in the parents' decisions) that he must reject the applicant's credibility on the basis as those decisions. The Tribunal Member did not consider the parents' decisions, unlike the approach of Cooke J. in *D.M. v. Minister for Justice* [2012] IEHC 225, a case relied on by the respondents in the present proceedings. Rather, the decision maker had adopted only the conclusions which had been arrived at in respect of her parents. Thus, a question arose as to the extent to which the Tribunal Member was obliged to look at the analyses in the applicant's parents' decisions and state whether he agreed with them or not. A further question arose as to whether the backing documentation, including the s. 11 interviews of the applicant's parents should have been furnished to the Tribunal Member deciding the applicant's case, if her parents' decisions were to be relied on. As the applicant was not a party to either of her parents' decisions, there could be no question of issue estoppel or quasi-issue estoppel. In this regard, counsel referred to the dictum of Hogan J. in *M.M. v. Minister for Justice* [2013] IEHC 9, who with reference to the dictum of MacEochaidh J. in *Barua v. Minister for Justice* [2012] IEHC 456, stated:-

> *"41. Rules of Court on third party procedure and provisions of the Civil Liability Acts 1961 (as amended) are designed to ensure that the same facts are not tried twice to avoid the possibility of different and conflicting results. The very opposite has been achieved in the Irish regime for international protection of persons claiming to be in fear of harm. Almost inevitably, the same facts will be tried twice. The applicant is told that it is a fresh application where all matters and documents will be considered. And the minister is for practical purposes prevented from reconsidering his earlier decision though he is directed to consider the second application fully."*

24. Counsel for the respondents submitted that the present case concerned an asylum application of a very young infant who was aged seven months when her application commenced. Thus, she was reliant on her mother to make that application. Her mother did so and had the benefit of legal advice when so doing. The applicant's claim for asylum was based solely on those of her parents. It was clear from the responses made by her mother at the Tribunal hearing that absolutely no additional grounds were relied on as a basis for contending that the applicant had a well-founded fear of persecution for a Convention reason. It was expressly stated in the questionnaire that the applicant's claim was based on that of her parents. This was repeated by her mother at the s. 11 interview. In the Notice of Appeal, the applicant claimed her fear of persecution arose by reason of membership of a particular social group but it did not contain any ground of appeal which was specific to the applicant. When asked at the Tribunal hearing if the applicant's fears were those of her mother, she replied *"Yes, of course".*

25. At the time of the applicant's appeal to the Tribunal, both her parents were found by ORAC and the RAT not to be refugees. Notwithstanding that, the applicant's application at first instance and on appeal was prosecuted on the basis that her claim was the same as her mother's. Her appeal was against a background where her parents did not seek to judicially review their respective decisions. Thus, the Tribunal Member's reliance on those decisions in the context of the applicant's appeal cannot be impugned. As a matter of law, her parents' decisions cannot be challenged at this time. In this regard, counsel referred to s. 5 of the Illegal Immigrants (Trafficking) Act, 2000. Insofar as a challenge to the parents' decisions had been mounted in the present proceedings, counsel submitted that the correct mode of challenge should have been by way of judicial review of those decisions which was not done, or at the very least by way of request to the Tribunal Member not to rely on them.

26. In effect, the applicant now sought to challenge, in these proceedings, by indirect means, the decisions relating to her parents. Not only did she not seek to do this when the within proceedings issued, but no submission was made on her behalf to the Tribunal Member as to why the decisions made in relation to each of her parents should not be followed in her case. While it was suggested by

the applicant's counsel that her legal representative did not have a copy of her parents' decisions prior to the appeal hearing, it was clear that the decisions were sent to the applicant's parents and their legal representatives. Therefore, if they were not in the possession of the applicant's legal representatives prior to the Tribunal hearing, there was no reason why they could not have obtained them either from the applicant's parents directly or from the Refugee Legal Service. Furthermore, the applicant's mother was present and testified on her behalf. Had her legal representatives considered it necessary, they could have requested an adjournment to consider the decisions of her parents. There was no evidence before the court that the parents' decisions were not in the possession of the applicant's legal representative prior to their being submitted at the hearing, nor was there evidence of any prejudice suffered as a result thereof (if that was the case).

27. The applicant's Notice of Appeal submissions were extremely bland. No issue was taken with the fact that the Commissioner had relied on the s. 13 reports which related to the applicant's parents. Those reports were appended to the applicant's s. 13 report. Moreover, it was noted in the report that her parents' appeals had been rejected. No argument was made on appeal that the parents' decisions may be open to criticism or were infirm or that there was something different in the applicant's case. The alleged frailties in the parents' decisions were only now being referred to by the applicant's counsel.

28. Save the reference to the applicant being entitled to the benefit of the doubt, no other specific issue was raised on her behalf in the appeal submissions. Thus, the Tribunal Member's approach was set by the applicant herself as she did not take specific issue with the findings made in her s. 13 report. There was an obligation on the applicant to set out any facts or issues of law which she maintained were incorrectly decided by the Commissioner. In this regard, counsel referred to the dictum of Charleton J. in *Mara (Nigeria) (a minor) v. The Minister* [2014] IESC 71: (at para.15)

> *"Under the Act of 1996, the decision of the Refugee Applications Commissioner is entirely subject to legal and factual review by the Refugee Appeals Tribunal. The purpose of the notice of appeal is to set out the points of fact or law that are important to the applicant and in respect of which he or she disputes the earlier decision…."* .

29. Insofar as the parents' decisions were handed in to the Tribunal Member on the day of the hearing, it was open to the applicant to put whatever submissions she wished to the Tribunal regarding the approach that should be adopted regarding those decisions. No submissions were made either at the time of the Tribunal hearing or in writing thereafter. The salient issue here was that no objection was made on the applicant's behalf to her parents' decisions being handed in to the Tribunal. As authority for the proposition that the applicant's solicitors had opportunity to raise objections to the decisions, counsel referred to the dictum of Eagar J. in DA v. Minister for Justice [2015] IEHC 208:- *"it is essential that each Applicant's appeal be considered individually and it is inappropriate that the same Tribunal Member considers the child's application. Clearly, there was no objection to same raised by the solicitors on behalf of the Applicant. In those circumstances this would not be a ground to set aside the decision of the second named Respondent."*

30. Regarding whether the background information to the parents' decisions had to be put before the Tribunal Member deciding the applicant's case, counsel argued that insofar as that issue was raised in the present judicial review proceedings, that argument should have been made by the applicant's legal representative at the time the parents' decisions were being handed in. With regard to the applicant's counsel's suggestion that it was the applicant's solicitors' practice to request same, it could not be presumed that such a request was made to and rejected by the Tribunal Member, in the absence of any evidence to this effect put before this court.

31. Only one person (her mother) gave evidence on behalf of the applicant at the appeal hearing. While counsel for the applicant argued that the Tribunal Member should have had regard to the FIRS which had been submitted in the applicant's father's case, there was no evidence that those documents were part of the applicant's case.

32. In any event, the applicant's father's appeal to the Tribunal was unsuccessful.

33. There, the FIRS were considered and were found to be of no evidential value. The first FIR, which accused the applicant's father of murder, was extant during a period of five and a half months when, according to the applicant's father, he was being detained and released by the Pakistani police on a periodic basis. The Tribunal Member who decided his case found it incredible that the Applicant's father could be detained and released on a regular basis if he genuinely was a murder suspect. Equally, the Tribunal found the other two FIRS which accused him of firearm offences and burglary to be without credibility in circumstances where they were allegedly filed when the applicant's father was in Ireland. Other than a generic reference to a case for stealing having been brought against the applicant's parents, there was no evidence adduced on behalf of the applicant to say that the FIRS which featured in her father's decision were put before the Tribunal Member who decided her case. Furthermore, it was open to the applicant's father to give evidence on her behalf, but he had not done so.

34. With regard to the applicant's mother's Tribunal decision, she was found to lack credibility, *inter alia,* by not being able to give details at her own s. 11 interview of her mother's alleged police and political connections. Yet, in the Notice of Appeal filed in relation to her case, she appeared to be in a position to name a politician, alleged to be a first cousin of her mother, a claim rejected by the decision maker in her case. By the time she attended for the s. 11 interview on behalf of the applicant, she was unable to name her mother's alleged police or political connections. Furthermore, it was clear that the applicant's parents' claims were not simply rejected on the basis of a two and a half year delay in bringing their claims in view of adverse credibility findings made in respect of both parents.

35. The applicant's case depended on that of her parents, as was clear from the claims advanced on her behalf by her mother, namely the alleged threat said to emanate from her grandmother and granduncles, a claim found not credible in her parents' cases.

36. Counsel submitted that while the applicant's parents' decisions were very material to the applicant's case, the failure of her parents' claims for asylum did not decide her case. It was clear from the Tribunal Member's decision that her claim was independently assessed and that he did not merely rely on her parents' decisions. There was no question of the Tribunal Member having relied on the principle of *res judicata* or estoppel It was, counsel contended, of great significance that no submissions were made to the Tribunal as to how the applicant was a refugee, notwithstanding the adverse findings in her parents' cases.

37. Accordingly, in the absence of any argument having been advanced that the parents' decisions should not be relied on it was open to the decision maker to act on that evidence and to weigh it, as appropriate. In the absence of any decision challenging their validity, the applicant's parents' decisions must be presumed to be lawful.

38. Insofar as the applicant's counsel placed reliance on the Supreme Court decision in *AN* or on the decision of Hogan J. in *MM*, counsel submitted that those cases were entirely different to the situation which presented in the applicant's case. AN was manifestly distinguishable as in that case no decision was made in relation to the children and it was held by the Supreme Court that the decision made in respect of the mother could not be regarded as a refusal of an application in respect of the children for the

purposes of s. 3 (2) (f) of the Immigration Act, 1999. Similarly, the analogy which the Applicant's counsel sought to draw with MM was not sustainable. In the latter case, the impugned decision was in relation to subsidiary protection in circumstances where the Minister had regard to the determination of the Refugee Appeals Tribunal in relation to the application for refugee status, an approach criticised by the Court of Justice in *M.M.*. As was clear in the judgment of that court, and that of Hogan J., the tests for refugee status and subsidiary protection were different, thus adverse credibility findings in relation to the application for refugee status could not be transposed into the application for subsidiary protection without an applicant being afforded an opportunity to be heard. In the present case, the applicant was legally represented at an oral hearing and her asylum claim was expressly based on the failed cases of her parents which also concerned an application for asylum.

39. The applicant's counsel was asking the court to depart from a substantial body of case law where a Tribunal Member's reliance on parents' cases to determine a child's case, where no separate or different claim was advanced on behalf of the child, has been found to be lawful. In this regard, counsel cited, *inter alia*, : *I.N.M. v. Min. for Justice* [2009] IEHC 233; *J.O. v. Min. for Justice* [2009] IEHC 478; *K.A. v. RAT* (McDermott J. 17th April 2015; *D.M. v. Min. for Justice* [2012] IEHC 225; and A.K. v RAT [2014] IEHC 571.

40. In accordance with those authorities, the Tribunal Member did not simply rubber-stamp the applicant's parents' decisions; rather he found no evidence that the applicant was or would be persecuted. With regard to the submission made by the applicant's counsel that the Tribunal Member was obliged to look at the analyses contained in the applicant's parents' decisions, it was submitted that there was nothing in the cited authorities to suggest that that had to be done. The fact that this exercise was embarked on by Cooke J. in *D.M.v. Min. for Justice* did not mean it had to be done by the decision-maker in the present case in order to apply the applicant's parents' decisions to her case.

While *Idiakheua v. Minister for Justice* [2005] IEHC 150 was authority for the proposition that the role of the Tribunal was inquisitorial in nature, there was no onus on the Tribunal to try and make the applicant's case for her. The onus was on the applicant to establish that she was a refugee. Section 16 (16) (a) of the 1996 Act provides that the Tribunal shall affirm the Commissioner unless it is satisfied that the applicant is a refugee.

Consideration
41. What falls to be considered in the course of these judicial review proceedings in the decision in the applicant's case and not those of her parents and it is from this perspective that the court approaches the challenge to the applicant's decision.

The first issue to be addressed is whether the decision is vitiated by procedural unfairness by reason of the fact that the applicant's parents' decisions were furnished by the presenting officer on the day of the hearing to the Tribunal. I do not find any unfairness in this regard. Firstly, it is clear from the contents of the applicant's s. 13 report that the Commissioner was alert to the fact that the parents' claims had been rejected on appeal. This could hardly have gone unnoticed by the applicant's legal representatives and thus it had to be within their contemplation that the presenting officer might seek to submit them. It was open to them to procure at least the applicant's mother's Tribunal decision, if not from the applicant's mother herself, then from the RLS who acted for her. Furthermore, the Tribunal record does not indicate that any submissions were made either on the day of the hearing or subsequently, nor is there evidence on affidavit before this court that representations were made and ignored.

42. That being said, I turn now to the other aspect of the challenge on this ground, namely the basis on which the applicant's appeal was rejected. As a child born in this state and who had never been to Pakistan, the applicant was a stranger to the alleged events which were claimed to underpin her parents' respective claims for asylum and to the threats which it was alleged awaited the applicant in Pakistan. At the time of her appeal, she was a seven month old child in circumstance where some ten months prior to her birth, two decisions were rendered by a different member of the RAT in respect of the asylum applications brought by her parents. Both appeals were rejected on grounds of credibility and with findings that state protection and internal relocation were available to the applicant's parents. The applicant's mother's claim also included a claim for protection advanced on behalf of the applicant's sister, which was also rejected.

43. The first matter to be emphasised is that as with any protection applicant, the applicant was entitled to have her protection application assessed "individually, objectively and impartially" in accordance with Council Directive 85/2005/EC and Regulation 5(1) of the 2006 Regulations. Alongside that statutory imperative, there is ample authority for the principle that where a parent makes an application for asylum on behalf of a child which is based on the same circumstances as pertained to the claim of the parent, the Tribunal or Commissioner may have regard to the findings made in respect of the parent's claim and may apply same unless new circumstances or evidence has emerged.

It is the manner of that regard that is, to my mind, the essential question to be determined under this ground of challenge.

In *INM v. Minister for Justice* [2009] IEHC 233 Clarke J. the issue was addressed in the following terms:-

> *"30. The issue that is before this Court is essentially whether, when a parent of young dependent children seeks asylum and states on the standard form that she wishes her children to be included in the same application, the fact that the parent makes no case of a distinct and individual fear of persecution on the child/children's behalf invalidates any finding that the child/children are failed asylum seekers. The determination of this issue will affect the next issues which are whether it is appropriate for the child to bring a separate, fresh claim and whether it is appropriate to extend the time by almost four years to revoke a deportation order made in January, 2005.*
>
> *31. I am not at all convinced that there is merit in the child applicant's claim on any of the grounds claimed. Certain obligations fall on refugee applicants in the asylum process, the most important of which is to tell their story as to why they seek refugee status in a full and truthful way. When a parent seeks to include a dependent child in a claim for refugee status, then it is up to that parent to establish his/her claim first and to then establish whether the child has a separate and independent fear of persecution in its own right or whether the child's claim depends entirely on that of the parent. This is well trodden ground admirably elucidated by Peart J. in the High Court hearing in Nwole and followed in many judgments since then. His findings on the general principles applying where the parent brings an application on his/her own behalf but does not advance or bring to the attention of ORAC or the RAT any facts or circumstances relevant to that minor that are separate and distinct from the facts of circumstances relevant to the parent's application, were not considered by the Supreme Court in N (A) & Ors v Min for Justice & Commissioner of An Garda Siochana [2007] I.E.S.C. 44…. .*
>
> *32. Nothing in the decision of the Supreme Court in N.A. and others changed the principle that it is entirely appropriate that members of the same family units should make joint asylum claims as clearly, if the parent establishes a well-founded fear of persecution for a Convention reason, then the spouse and dependent children are also at risk and in*

need of protection. Protection to the family is ensured in section 18 of the Refugee Act 1996, as amended, and Council Directive 2003/86/EC of 22 September, 2003 on the right to family reunification. It will be highly unusual for a parent to fail to establish a fear of persecution and for a dependent minor child to succeed. It will be even more unusual for a toddler to succeed where his mother fails. However the unusual does happen as where for instance the young child has a father who belongs to a persecuted group but the mother does not. It follows that where facts exist which could establish a totally independent claim for a child, then it is appropriate for the parent to fill out a separate form seeking asylum for the child or for the parent to elucidate in his/her own claim the separate facts which ground the minor child's individual claim. It is a matter of choice how the assessment is conducted, whether with the parent's claim or separately from the parent's claim."

44. As can be seen, *I.N.M. v. Minister for Justice* involved a joint application for asylum by a parent and child, which was not the case with respect to the applicant here.

45. In *J.O. v. Minister for Justice and RAC* [2009] IEHC 478, which concerned a challenge to a s. 13 report on the basis that the child's application got no individual examination or consideration, Cooke J. rejected the applicant's arguments stating:-

"8. The Court does not however consider that this Section 13 report can or should be quashed for a number of reasons. First, it is not strictly true that the applicant's case has not received individual consideration or investigation by reason only of the fact that no distinct investigation into the child's personal circumstances was carried out. The child's personal circumstances were perfectly clear and straightforward. She was born on the 12th June, 2008. She has never been to Nigeria. She has never met her father's family and knows nothing of it or of their threats. Her life now and for the next few years at least is bound up with and dependent upon that of her parents and on the decisions and choices that they may make for the family. The child's only case for claiming asylum is the case made by her parents for themselves and for her sisters. Had she been born earlier she would have been included, no doubt, in the mother's claim and thus be in precisely the same position as she will be if this Section 13 report is allowed to proceed to appeal before the Tribunal and joined with the mother's pending appeal.

9. It has not been suggested that there is any other fact, circumstance or consideration peculiar to the child's claim to asylum that is not part of the mother's claim. Her prospect of being declared to be a refugee is entirely dependent upon the fate of her mother's claim. It is true that each claimant is entitled to have his or her claim to asylum subjected to individual examination and decision but that does not mean in the Court's judgment that the Commissioner is obliged to conduct some sort of pro-forma separate investigation into the potential claim of a three month old child when the claim explicitly made on the child's behalf is that of her mother and no distinct fact or consideration is put forward as to how or why the child's risk of persecution is in any way different from that of the parent. This is particularly so where the claim to a fear of persecution is not based on some external threat or on the general conditions in a country of origin to which members of some ethnic or social group are exposed but on the purely domestic, private source of potential harm, in this case, the threats of the father's family.

10. It must be borne in mind that the function and duty of the Commissioner is to examine the application, to interview the applicant, to carry out any enquires that might be appropriate to verify the claim made and then to report on this to the Minister with the recommendation as to whether the applicant has or has not established the ingredients of refugee status. In circumstances where this three month old child's claim is identical to and dependent upon the claim made by the mother, it is difficult to envisage what further investigation or enquiry might have been carried out into the child's claim, nor has any been illustrated or suggested on her behalf.

11. Finally, the Court will point out that while asylum applications fall to be examined and determined individually, objectively, and in accordance with law, the asylum process is also to be carried out expeditiously, flexibly, and reasonably. This Court is not required to suspend common sense when asked to review that process. This case is an example of a situation in which the Court ought not to permit formalistic arguments of technical illegality to distract it from the need to apply common sense so as to ensure that the process remains not only lawful but fair, flexible, and expeditious. In this case, the authorised officer had before him the mother's Section 13 report and was clearly familiar with its contents as it is both annexed to the present report and referred to in the body of the report. Given that the claim made by the mother for the child was identical to that which she made for herself and her sisters, the authorised officer was, in the Court's judgment, entitled to adopt its contents as the basis of its conclusion.

12. For that reason and also for the practical reason that this child's claim should clearly be considered at the appeal stage, jointly with that of her mother and her sisters, the Court is satisfied that there is no good reason to exercise its discretion to intervene by way of judicial review of this Section 13 report at this stage. For that reason, leave will not be allowed."

46. The decision in *J.O.* was expressly followed by McDermott J. in *K.A. v. RAT* [2015] IEHC 244. In that case, the Tribunal Member expressly acknowledged that the fact that the parents had failed in their appeals did not determine the applicant's appeal. McDermott J. noted that *"the Tribunal member was careful to ensure that the application on behalf of the child was considered on its own merits." It appears that in that case, the same Tribunal member who heard the parents' appeals heard the child's appeal. The K.A. judgment refers to the tribunal in that case noting "that the applicant's solicitor claimed that family affiliation is a relevant ground which in itself required an assessment of the parents' position."* (Para.10)

47. In *D.M. v. Minister for Justice* [2012] IEHC 225, which concerned an application to dismiss judicial review proceedings on the basis that they were bound to fail, Cooke J. stated:

"14. The central issue, however, which is raised by this application to dismiss is directed particularly at the essential characteristic of the case namely, that the claim made by these minor applicants is based exclusively upon the previously rejected asylum claims of the parents. These minors were born here and have never been to Cameroon. They have never personally suffered any past persecution. If their parents' claims to asylum have been definitively rejected as lacking all foundation because of disbelief, is there any possible basis upon which these minors could mount any state able challenge to the decisions of the RAT they seek to impugn?

15. In the judgment of the Court no such basis exists. First, it must be borne in mind that the mother's claim on behalf of the minors as made to the Tribunal was that "the man she had difficulty with in Cameroon will kill the applicants as he did not want her to have children". She may well hold that subjective view, but it cannot be said that it was unreasonable for the Tribunal member to consider it implausible and devoid of objective justification. According to her

account, she arrived here in May 2007, having been abducted and detained in May 2006, by the man in question. She will, if deported to Cameroon with her children and their father at least five years later, find herself in an entirely different situation. Quite apart from the question of the availability of protection by way of relocation, it is unrealistic to consider that the man in question is likely to be intent upon killing children of whose existence he is probably unaware and to be capable of doing so against the wishes and in the face of the protection of their father and mother and the authorities to which they have recourse.

16. The fear expressed for the minors by the father on the other hand was that on repatriation they would all be arrested because of his past activities. The father, however, has a daughter whom he left behind in Cameroon and no suggestion has been made that she has been arrested or otherwise subjected to any harm on account of her father's activities. Thus, the case made for the minors by the father is also implausible and lacks objective justification.

17. Secondly, it was expressly conceded by each parent that the claim made for the minors was based entirely upon the claims they had made for themselves. Those claims have been definitively rejected in each case for lack of credibility and in the case of the mother by the same Tribunal member as decided the appeals of the minors. In other words, the basic facts and events upon which the parents' claims for asylum were based, have been found incredible and have been rejected on the basis that those facts and events are considered never to have happened as the parents described.

18. Accordingly, the Court is satisfied that the appeal decision of the Tribunal has been lawfully arrived at and is eminently sound in substance. On that basis no purpose is served by allowing this judicial review proceeding to continue any further when it is bound to fail. The respondents' motion must therefore be granted."

48. The above quoted case law is indicative of the principles to which this court will have regard in considering the Tribunal Member's reliance on the applicant's parents' decisions and the extent of that reliance and whether in all the circumstances the applicant's claim was properly assessed. While I do not accept that the decisions of the Court of Justice or Hogan J. respectively in the *M.M.* cases are on all fours with the present case, I have had general regard to the underlying principles in those decisions.

49. The applicant's mother's evidence, both before the Commissioner and the Tribunal, was that the fear she had for the applicant was the same as that which she claimed on her own behalf, a fear which the decision-maker in the mother's appeal rejected, inter alia, on credibility grounds.

50. The decision records the mother's evidence as follows:-

"The mother of the infant said that her mother wanted her to marry her cousin and he was a person of bad character and she did not want to marry him. All these steps were taken to secure property. The Applicant's mother said that, when they came to Ireland, they heard that a case had been brought against them for stealing. The Applicant's mother was asked what she was afraid of. She replied, 'If [the applicant] went to Pakistan, that they would kill us.'

She was asked why they would kill [the applicant] and replied, 'it is dangerous for us so it is dangerous for the child'. She said it is very difficult for a woman in Pakistan. When I asked what it was like for her in Pakistan, she said she always needed permission from her parents to go anywhere. Her parents would decide when she could go and if they said no then she wouldn't be able to go…..

The Applicant's mother was asked, what would she be afraid of for [the Applicant] as a woman in Pakistan. She replied that 'it would be very dangerous for her because she wouldn't grow up there because her grandmother would kill her'…….

The Presenting Officer asked were the fears for [the Applicant] based on her fears". She said 'Yes, of course'.

The Presenting Officer asked, 'Your daughter's application rests on believing that you have fears'. She replied 'yes'.

51. The Tribunal Member found:-

"[t]he Applicant's mother in this case said in response to questions from the Presenting Officer that there was no difference between the infant Applicant's application and that of herself and her husband. In those circumstances, nothing different has been put before the Tribunal and I can find no basis for finding that the infant would be in fear of persecution if she returned, The parent has failed to establish a fear of persecution and nothing in the evidence would lead me to a conclusion that the infant is entitled to protection. The infant was born on the 28th March 2011. There was nothing in the facts which established a totally independent claim for the child."

52. I am not satisfied that the rejection of the applicant's claim was properly arrived at, in the absence of any specific reference to the factors which influenced the Tribunal Member in coming to his decision. In the appeal submissions, it was asserted that *"the [applicant's] credibility is such that there is an entitlement to the benefit of the doubt."* (PG. 80) To comply with the applicant's entitlements under the Directive, the decision-maker was obliged to set out what factors led to a rejection of this assertion, whether by reference to the substantive factors in the parents' decisions or otherwise. While counsel for the respondents has argued that the Tribunal Member found *"no basis"* and *"nothing in the evidence"* and *"nothing in the facts"* to conclude that the applicant was in need of protection, I find that the rationale for the decision-maker's conclusion is not evident on the face of the record, either by way of an analysis of the claim as presented on her behalf or by some reference to the rationale for the findings made with regard to her mother's claim and as to why it was considered sufficient to adopt those findings to reject the applicant's claimed fear. Furthermore, the claim advanced on appeal on behalf of the applicant was that she feared persecution on the grounds of membership of a particular group. While I accept the respondents' argument that other than that bare assertion the appeal submissions are entirely devoid of detail on this issue, the alleged factual matrix set out in her parents' claims coupled with the Convention ground advanced on behalf of the applicant and her submission on appeal that her credibility should be accepted required due consideration. The extent of that consideration was a matter for the decision maker but whatever its extent, it should have been set out in the decision. Such an approach was required in order to accord with Article 8 of Council Directive 2005/85/EC. Furthermore, it would accord with the approach adopted by Hogan J. in *M.M. v. Min. for Justice* [2011] IEHC 456 as to when it was acceptable for one decision-maker to rely on the reasoning of another decision-maker. It may have required the decision-maker to delve into the parents' decisions and pronounce a view thereon, if their decisions were to be the comparator against which the applicant's case was to be rejected on the basis *"that nothing different had been put before the Tribunal."*

53. While counsel for the respondents argued that the fact that Cooke J. embarked on such an exercise in *J.O.* did not mean that the

Tribunal Member had to do so here, in my view, if it was seen fit to conduct that exercise at judicial review level, it seems all the more imperative that a protection decision-maker would embark on such an exercise, once reliance was being placed on the parents' decisions to reject a minor child's appeal. I regard, as a significant factor, the fact that the Tribunal Member here was at a considerable remove from the parents' claims as he was not the decision-maker who decided their appeals. For all of the foregoing reasons, I find that the Tribunal Member erred in failing to rationalise his finding that there was*" no basis"* that the applicant would be in fear of persecution if she returned to Pakistan.

54. In coming to my conclusion on this issue, I have also noted that one of the factors which led to Cooke J.'s rejection of the challenge in *J.O.v. Min. for Justice and RAC* was that the authorised officer whose decision was under challenge:-

> *"had before him the mother's Section 13 report and was clearly familiar with its contents as it is both annexed to the present report and referred to in the body of the report. Given that the claim made by the mother for the child was identical to that which she made for herself and her sisters, the authorised officer was, in the Court's judgment, entitled to adopt its contents as the basis of its conclusion." (at para. 11, emphasis added)*

55. In *D.M.*, Cooke J., in rejecting the challenge to the Tribunal decision rendered in the case of minor children, took into consideration that the mother's claim was rejected on the basis of lack of credibility by the same decision-maker as decided the appeal of the minors, which was not the case here.

In *A.K. v. RAT* [2014] IEHC 571 Barr J. rejected a complaint that the Tribunal had not properly considered the case of the minor applicant in circumstances where the Tribunal had relied on the findings in the parents' cases, although the Tribunal also referred to additional assertions that the applicant's father made during the interview in the child's case. Barr J. stated:

> *"28. It was submitted that where the applicant's father had expressly confirmed that the applicant's claim was based solely on the same reasons for which the applicant's parents had claimed asylum, it was entirely appropriate that the Tribunal should follow its earlier decisions in relation to the parents' cases.*
>
> *29. I agree with the submission made on behalf of the respondents. Where an application is put forward on behalf of a minor and it is stated to be based on the same circumstances as were put forward by the parents, it is logical that the decision maker will have regard to the decisions put forward on behalf of the applicant's parents. This approach is in accordance with the dictum of Cooke J. in J.O. v. Minister for Justice, Equality and Law Reform (supra).*
>
> *30. However, in this case, the Tribunal did not only have regard to the evidence and decisions in the parents' cases but also had regard to the further issues, namely the issue of delay in making an application and the issue of the father's brother being a member of the police force such that State protection would not be available. The Tribunal had regard to the additional factors which were unique to the infant's case. The Tribunal considered those issues and reached conclusions on them. In the circumstances, I am satisfied that the Tribunal looked at the individual circumstances of the applicant." (emphasis added)*

A distinguishing factor in *A.K.* from the present case is Barr J.'s finding that the Tribunal had regard to the evidence and decisions in the parents' cases.

The question of Particular Social Group/Convention nexus
56. In the course of the decision the Tribunal Member stated:

> *"In Shah v. Islam, it was found that, where evidence has clearly established that women in Pakistan are treated as inferior to men and subordinate to their husbands and that by international standards, they are subject to serious and quite unacceptable discrimination on account of their sex. But, persecution is not merely an aggravated form of discrimination even if women (or married women) constitute a real or social group. It is not accurate to say that those women in Pakistan who are persecuted, are persecuted because they are members of it. They are persecuted because they are thought to have transgressed social norms, not simply because they are women. There is no evidence that men, who transgress the different social norms which apply to them, are treated more favourably. I believe that to be an accurate statement and it further supports my view that the infant is not in need of protection."*

57. Counsel for the applicant argued that the Tribunal Members imputed finding in relation to membership of a particular social group was irrational or alternatively wrong in law. In this regard, he referred to the decision of Barr J. in *Chen v. RAT* (1st October, 2014). Counsel argued that the Tribunal Member's reference to *Shah v. Islam* appeared to be potentially important to his overall analysis, as could be inferred from the words *"it further supports my view that the infant is not in need of protection."* Counsel argued that the decision-maker misinterpreted the ratio of the House of Lords in Shah v. Islam and appeared to quote from the dissenting judgment of Millet J. in that case. Counsel argued that it was clear, from Shah v. Islam, that women may constitute a particular social group for the purposes of the Convention:

> *"…that (per Lord Steyn, Lord Hoffman and Lord Hope of Craighead) because in Pakistan women were discriminated against as a group in matters of fundamental human rights, and the state gave them no protection because they were perceived as not being entitled to the same human rights as men, women in Pakistan constituted a 'particular social group' for the purposes of Article 1A(2);"*

Counsel argued that if the Tribunal Member read Shah v. Islam correctly, he might have found the applicant to be in need of protection.

Thus, a failure of state protection was sufficient to establish persecution and overcame the causation/nexus hurdle. Moreover, it was also the case that a family may constitute a particular social group, as made clear by the House of Lords decision in *Fornah v. Home Department* [2007] 1 A.C. 412, as quoted by Stewart J. in *AVB v. RAT* [2015] IEHC 13.

58. On behalf of the respondents, counsel acknowledged the ratio in *Shah v. Islam* and accepted that in *Fornah*, the House of Lords held that there was no requirement that a person who claimed a fear of persecution based on membership of the family of a particular person had to establish that the primary family member was at risk of persecution on a Convention ground. However, counsel contended that in the instant case, the Tribunal Member did not make an adverse finding that the applicant was not entitled to refugee status by reason of not being a member of a particular social group. The Tribunal Member did not make an invalid finding or indeed any finding on this issue.

59. As noted, in *Shah v. Islam* and *Fornah* respectively, women or members of a family may constitute a particular social group for Convention purposes. The definition of persecution was a threat of serious harm and a failure of state protection and persecution must be for a Convention reason. However, where there is no persecution, there could not be persecution for a Convention reason. The only relevant Convention ground for the purposes of the present case was membership of a particular social group, as relied on by the applicant in her Notice of Appeal. The conclusion reached by the Tribunal Member was that a causal connection between membership of a particular social group and the alleged persecution was not established.

60. With regard to the applicant's counsels contention that the onus was on the Tribunal Member to identify a Convention reason, counsel submitted that that issue had to be considered in the context of the evidence which had been given on behalf of the applicant. In the present case, the court should not be required to suspend commonsense. The applicant's parents applied for asylum and their claims were rejected and the applicant's claim was based on that of her parents. In the context of the applicant's fear of persecution which was said to emanate from her grandmother and granduncles, the Tribunal Member considered the question of a nexus to the Convention and found against the applicant. The applicant did not assert that state protection was not available to her because she was a girl or a child, the only reason it was claimed that state protection was not available was because of her grandmother's alleged connections. That would not constitute membership of a particular social group. In any event, even if her circumstances constituted membership of a particular social group, if she could not show that persecution arose because of her membership a particular social group, she was required to show that the alleged lack of state protection was for a Convention reason. However, it was not the applicant's case that the police would not protect her by reason of her membership of a particular social group, rather her claim was that her grandmother would have told them not to do so. In any event, counsel submitted that it was not necessary for the court to determine the issue of a particular social group as the Tribunal Member did not make an adverse finding that she was not a member of a particular social group. Counsel submitted that insofar as the decision-maker had referenced *Shah and Islam*, it had to be taken in the context of the applicant not having established a Convention nexus.

Consideration
61. Having regard to the submissions furnished on behalf of the parties as to what was sought to be conveyed by the foregoing statement, I make the following observations. Firstly, I am satisfied that the Tribunal Member did not make any finding as to whether the applicant's circumstances constituted a particular social group. However, counsel for the respondents also argued that the statement constitutes a finding that the applicant did not establish a Convention nexus. In all the circumstances, absent clarity in the decision that the applicant's fear of persecution by reason of membership of a particular social group was rejected on the basis of a Convention nexus not being established, I find that, whatever was intended to be conveyed in the above quoted statement, it is not sufficient for this court to find that the applicant's claim was lawfully rejected on the basis that there was no causal link to the Convention. Thus, of itself, the statement cannot sustain the decision.

State Protection
62. With regard to the state protection finding, counsel for the applicant argued that although previously approved of by the Irish courts, there was no justification for an administrative body like the Refugee Appeals Tribunal to apply the presumption that a state can protect its citizens or require "clear and convincing" evidence to rebut that presumption. In this regard, counsel referred to the discussion on the topic in Hathaway and Foster (2nd Ed.):

> "The notion that an applicant has the burden of dislodging a presumption and that the persuasive hurdle is one based on the balance of probabilities is impossible to reconcile with intentionally low threshold of the well-founded fear test, which has been uniformly interpreted in a way that rejects any duty to show that the risk of being persecuted is more likely than not. The well- founded fear test applies to both elements of the bifurcated 'being persecuted' inquiry, and hence to the question whether the State is unable or unwilling to protect.
>
> Aside from the imposition of an inappropriately high standard of proof, there is a deeper question at stake concerning the appropriateness of applying such a presumption in this context. Indeed, in our view, the 'presumption of protection' doctrine raises three key concerns."

63. Counsel referred to the first concern raised by Hathaway and Foster, namely that the presumption "frequently operates so as to elide the distinct concepts of willingness and ability to protect". Secondly, the "presumption of protection" meant that an applicant for refugee status had the "difficult task of rebutting a presumption" that his or her State " 'is able to provide adequate protection', and that in order to do so the onus is on her to "'adduce relevant, reliable and convincing evidence which satisfies the trier of fact on a balance of probabilities that the State protection is inadequate'. Yet it is sometimes difficult to comprehend what evidence would be considered sufficiently 'relevant, reliable and convincing' to rebut the presumption given the propensity of decision-makers simply to reiterate the presumption even in the face of documentary evidence which arguably establishes a real risk of the feared harm in the applicant's home country." The third concern was that there was "simply no basis in principle for imposing legal or evidentiary presumptions without a solid empirical foundation into the refugee status determination inquiry". Thus, according to Hathaway and Foster there was "no principled basis on which to ground a presumption in relation to the question whether the home state is unable or unwilling to protect. Rather, the question whether the state is unable or unwilling to provide protection is a question of fact and must, like all questions of fact, be investigated in line with the shared duty of fact finding".

64. Counsel urged that the proper approach was that of the Federal Court of Australia in *A. v. Minister for Immigration and Multicultural Affairs* [1999] 53 ALD 545:-

> *"The fact finding and evaluation to be undertaken by decision-makers in relation to applications for protection visas and by the Refugee Review Tribunal on review on their decisions is administrative in character. In consequence it is not appropriate for those decision-makers to draw too closely upon the rules of evidence applied in civil proceedings…It is equally inappropriate for the Tribunal to apply curial devices such as presumptions of law or fact. In Canada (Attorney General) v. Ward [1993] 103 DLR 1 at 23, it was said, in relation to an application for Convention protection that: 'Nations should be presumed capable of protecting their citizens.' But such a presumption, that is a presumption without a basic fact, is a rule of law relating to the existence of a burden of proof and such a rule has no part to play in administrative proceedings which are inquisitorial in their nature. Accordingly, Nicholson J's conclusion the trial judge's conclusion that 'there is no foundation in authority or principle which would lead this Court to accept the [Minister's] submission for the existence of a presumption in terms of Ward' is plainly correct."*

65. It was submitted that the Tribunal Member failed, in particular, to apply the approach set out in *Idiakheua v. Min. for Justice* [2005] IEHC 150 by failing to have any regard to the FIRS and newspaper reports which had been submitted by the applicant's father in his case and which, counsel submitted, should have been factored into the assessment of the plausibility of effective state protection being available to the applicant. Moreover, the decision-maker failed to have regard to what the applicant's mother had stated in the course of the applicant's s. 11 interview in relation to interactions with the police.

66. On behalf of the respondents, counsel contended that the principle that an applicant must provide clear and convincing evidence of a lack of state protection was established in *Canada (A.G.) v. Ward* [1993] 103 DLR 1 and had been consistently applied by the High Court in this jurisdiction, for at least ten years. Counsel cited *M.O. v. RAT* [2015] IEHC 55, a decision of Noonan J. and *E.P. (Moldova) v. RAT* [2015] IEHC 131, where Barr J. also applied the presumption of State protection absent "clear and convincing" evidence and considered a number of authorities, including *GOB v. Minister for Justice* [2008] IEHC 229, *EFM & Ors v. RAT* [2008] IEHC 363 and D.K. v. RAT [2006] 3 I.R. 368 in which the Ward test was first applied. There was no basis for this court to depart from the body of jurisprudence which adopted the Ward test where none of those judgments was in conflict.

The respondents submitted that the only complaint made in the present proceedings was that the Tribunal Member's reliance on the *Ward* test was inappropriate, yet the applicant's counsel had not put forward any argument as to why the Irish courts' endorsement of the Ward test was wrong, other than to quote an academic opinion. Moreover, the *Ward* test was applied in respect of the applicant's parents' decisions and they had not challenged its application. Nor did the applicant argue in her Notice of Appeal submissions that the *Ward* test should not apply.

67. In the course of the appeal hearing of the applicant's case, her mother did not argue that Pakistan did not have a police force or that it acted in a particular way, the only claim made was that the applicant's grandmother had police and political contacts. At the s. 11 interview, the applicant's mother gave the addresses of her mother and uncles which were located in Punjab province in east Pakistan whereas Karachi is situated in Singh province in the south of Pakistan. The totality of the fears expressed on behalf of the applicant was in relation to three people with whom the applicant's mother had not had contact for a number of years and in respect of whom the applicant's mother was unable to say (at the s. 11 interview) whether they even knew of the applicant's existence and in circumstances where it was unclear whether the people who allegedly opposed a threat to the applicant were still alive.

68. The onus was on the applicant to show an absence of state protection, that was consistent with the test in *Horvath v. Secretary of State for the Home Department* [2001] 1 A.C. 489, as to the definition for a refugee. While the applicant's counsel referred to *Idiakheua*, the dictum of Clarke J. in that case did not deal with a burden of proof, the ratio in *Idiakheua* was concerned only with state protection being available on reasonable or practical terms. Thus, *Idiakheua* was not inconsistent with the authorities relied on by the respondents, or indeed the test applied by the Tribunal Member.

69. In the present case, the applicant had not said that there was no practical reality to police protection other than her grandmother had contacts. Furthermore, her testimony to the Tribunal was that she had not sought police protection, which the Tribunal Member was entitled to rely on in assessing whether she had presented clear and convincing evidence that state protection was not available to her.

70. In all the circumstances, the Tribunal Member lawfully applied the *Ward* test and found that the applicant had not rebutted the presumption that state protection was available. Thus, regardless of any other argument advanced on her behalf, the finding that state protection was available to her was detrimental to her claim. In this regard, counsel referred to the dictum of Ryan J. in P.O. v. Minister for Justice [2010] IEHC 513, at para. 8 he stated:-

> *"I turn finally to the question of credibility. Here I do rather agree with the respondents' submission to the effect that the applicant's counsel has engaged in a point by point deconstruction for the purpose of parsing and picking apart the findings. It is of course the case that the Tribunal fundamentally based its conclusion on state protection and secondly on freedom to relocate internally. The credibility findings are part of the analysis, but I do not think that they are really the essential part. Regardless of whether the applicant had been deemed credible or not, the fact that she has failed on the other two grounds or on either of the other two grounds is fatal to her case."*

Consideration

71. By way of preliminary submission, counsel for the applicant urged this court to depart from a long line of jurisprudence on the question of the burden of proof with regard to the issue of state protection. However, I find no persuasive argument to be made out to impel this court to depart from the established jurisprudence on the issue, particularly in circumstances where the law in this jurisdiction is not in conflict. The weight of judicial authority is against the applicant's counsel's argument. Consequently, as to the requisite burden, the approach this court adopts is that set out in by Noonan J. in *M.O. v. RAT* [2015] IEHC 55 who quoted extensively from the decision of Birmingham J. in *A.B.O. & Ors v. Minister for Justice* [2008] IEHC 191, which had applied the Ward test. Noonan J. stated:

> *"19. In A.B.O. and Ors v. The Minister for Justice, Equality and Law Reform and Anor [2008] IEHC 191, the applicant, a Nigerian national, made an application for subsidiary protection which was refused by the respondent on the ground, inter alia, that state protection was available to her in Nigeria. Birmingham J. dealt with the issue as follows:*
>
> *'29. I turn now to the first ground on which the applicants challenge the Minister's decision on subsidiary protection, namely the Minister's conclusion that the applicants can avail of State protection in Nigeria. At the outset, I would note that the onus lies on the applicants to provide clear and convincing proof of a state's inability to protect its citizens. This was established by the Supreme Court of Canada in the seminal case of Canada (A.G.) v Ward [1993] 2 SCR 689 . LaForest J., giving the judgment of the Court, observed as follows:*
>
> *'Absent some evidence, the claim should fail, as nations should be presumed capable of protecting their citizens. Security of nationals is, after all, the essence of sovereignty. Absent a situation of complete breakdown of state apparatus […] it should be assumed that the state is capable of protecting a claimant.'*
>
> *30. This approach was found by Herbert J. to be 'both persuasive and compatible with the jurisprudence of this State' in D.K. (Kvaratskhelia) v Refugee Appeals Tribunal & Anor [2006] 3 I.R. 368 , at p.373. The Ward approach was also adopted by Feeney J. in Llanaj v The Refugee Appeals Tribunal & Ors [2007] IEHC 53 and O.A.A. v The Minister for Justice & Anor [2007] IEHC 169 . In Llanaj, Feeney J. remarked as follows:-*
>
> *'That does not mean that there is not an obligation on the respondents to assist in relation to inquiring into the case, but that does not and cannot remove the onus on the Applicant or remove the obligation of establishing by 'clear and convincing proof the absence of State protection.'*
>
> *31. The approach set out in Ward and interpreted in the above judgments is an approach which I propose to follow."*

72. As to how the efficacy of state protection is to be assessed, in *Idiakheua v. Minister for Justice* [2005] IEHC 150 Clarke J.

stated:-

> *"It is at least arguable that reference to an isolated example of state protection is insufficient to justify a finding of adequate state action in just the same way that the establishment of an isolated incident where state protection failed maybe insufficient to establish its inadequacy. It would appear that the true test is as to whether the country concerned provides reasonable protection in practical terms …. While the existence of a law outlawing the activity which amounts to persecution is a factor the true question is as to whether that law coupled with its enforcement affords 'reasonable protection in practical terms'"*

The record of the applicant's mother's evidence states:

> *"The Applicant's mother was asked would [the Applicant] be able to get help from the police and she replied that the police are involved with her mother and would not listen to them.*
>
> *The Applicant's mother was asked, if she went to Karachi, would she not be able to get help from the police? She said all the politicians are involved with her grandmother, 'We've tried everything but it was of no use.' She said she had never told anything to anyone in Pakistan and as a consequence, she did not think of these issues."*

73. In the course of the s. 6 analysis, the Tribunal Member considered the applicant's mother's evidence in the following terms: *"In this case, the Applicant's mother presented evidence that she had not made a report to the police and in those circumstances I find that the Applicant has failed to show an absence or failure of State protection which is an essential element of persecution."*

While counsel for the applicant argued that the decision-maker failed to have regard to what the applicant's mother had stated in the course of the applicant's s. 11 interview, namely *"Before, when we had problems, we contacted the police but they did not do anything, and every day they locked up [the applicant's father] and then let him go in the evening time. They did nothing"*, the recorded evidence from her at the appeal hearing was that she had not told anything to anyone. This record was not challenged in these proceedings as factually incorrect or on the basis that the Tribunal Member was in error when he concluded from her evidence that there was no report to the police. Thus, her testimony that she did not make a report to the police was a factor which the Tribunal Member was entitled to weigh in assessing whether the burden on the applicant to rebut the presumption that state protection was available had been discharged. Counsel for the applicant argued that the Tribunal Member failed to assess whether state protection was available to the applicant "in practical terms". In criticising the decision-maker's reliance on the applicant's mother's failure to make a police report, he referred to the approach advocated by Hathaway and Foster (2nd Ed.). There, the authors opine that "it is, however, vital that an individual assessment be made as to whether there is a real chance that this "infrastructure of protection" will not, in fact, accord protection to the applicant whose claim is at issue. They go on to state:-

"In the situation where a state is willing to protect the applicant, the question is nonetheless whether it is able to deliver a level of protection that will obviate the real chance of serious harm. This is a factual determination undertaken on the basis of all relevant and available evidence, including the experience and testimony of the applicant."

74. I note the approach advocated by Hathaway and Foster, which is akin to the test in *Idiakheua*. However, I also note that the authors acknowledge that "the testimony of the applicant regarding his or her personal experience in seeking or obtaining state protection is clearly relevant to assessing the efficacy of available State protection." In the present case, the applicant's mother's evidence could not be an indicator of the efficacy of police protection as her evidence was that no complaint was made. I turn now to the country of origin information which was submitted on the applicant's behalf to the Tribunal Member, and the parties' submissions to this court in relation thereto. Two reports were submitted on behalf of the applicant. The 2011 Amnesty International report on Pakistan under the heading *"Treatment of Minorities and Women"* referred, inter alia, to the police being *"reluctant to register and investigate" "[g]ender based violence, including rape, forced marriages, 'honour killings', acid attacks and other forms of domestic violence."* The Human Rights Watch report (dated January 2011) documented, inter alia, that "[v]iolence and mistreatment of women and girls, including rape, domestic violence, and forced marriage, remain serious problems." Counsel for the applicant argued that the decision-maker did not have sufficient regard to this information and thus failed to arrive at a decision compliant with Regulation 5(1) (a) and (b) of the 2006 Regulations which require an assessment of *"all relevant facts as they relate to the country of origin.."* and *"documentation presented by the protection applicant".* On behalf of the respondents, it was argued that there was a long line of authority that here was no obligation on a decision-maker to refer to every piece of evidence or to identify all documents within its written decision. In this regard counsel cited *Banzuzi v. Minister* [2007] IEHC 3.

75. Furthermore, in *DK v. Minister* [2006] 3IR 368, Herbert J. stated: *"It is the function of the first named respondent and, not of this court in a judicial review application, to determine the weight , if any, to be attached to this country of origin information and other evidence offered by and on behalf of the applicant in this case."*

76. In the first instance, I am satisfied, having regard to the stated reasons for the fear expressed on behalf of the applicant, that the Amnesty Report, in particular, was not so remote in the context of its subject matter that it did not merit specific consideration in the decision. The claimed threat of harm in issue in the present case was said to emanate from a domestic source. Furthermore, the tenor of the applicant's mother's evidence was that she feared that the applicant would be killed by her grandmother and granduncles, on the basis that the applicant's mother had married against their wishes. The nature of the fear advanced on behalf of the applicant thus fell broadly into the category of offence in respect of which the Amnesty report documented there was institutional reluctance to investigate. Other than noting their receipt, there was no consideration of the country reports in the s. 6 analysis. In my view, in the course of ascertaining whether the applicant had discharged the burden on her to rebut the presumption that a state can protect its citizens, the decision-maker was required to have regard to the objective evidence proffered on behalf of the applicant that the police in Pakistan were reluctant to register and investigate the type of violence documented in the Amnesty report, in the context of assessing the effectiveness of state protection in Pakistan for the applicant, particularly in light of nature of the fear expressed for the applicant. Had he done so, it was of course for the Tribunal Member to weigh that information against the fact that the applicant's mother had not made a report to the police and come to a conclusion whether or not the applicant had rebutted by clear and convincing evidence the burden that that state protection was available to her. However, that weighing exercise is not apparent on the face of the record. Thus, as the country of origin information had at least the potential to inform the Tribunal Member's thinking on whether the burden of proof had been discharged and the effectiveness of state protection, and had the potential to negate the fact that applicant's mother's did not make a report to the police, the failure to have regard to the country of origin information, or, if it was considered and disregarded, to state why it was rejected, affects the decision made with regard to state protection to a sufficiently material degree. In arriving at this conclusion, I have noted the dictum of Herbert J. in *D.K.v. RAT* [2006] 3 IR that a failure to seek protection of itself may not be sufficient to defeat the application for refugee status. I have also had regard to the respondents' counsel's argument that the sole basis upon which the applicant's mother submitted that state protection would not be available was that her mother and uncles knew unnamed people within the police and unnamed

politicians and for that reason state protection would not be available to the applicant. However, I find that this factor has to be subordinate to the requirement for state protection to be available in practical terms, as per the dictum of Clarke J. in *Idiakheua*.

In all the circumstances, I am satisfied that the challenge on this ground has been made out.

77. While complaint was also made that the Tribunal Member did not have regard to the FIRS, which it was claimed had issued in respect of the applicant's father, it was not explained to the court why these documents, if considered relevant to the effectiveness of state protection for the applicant, were not put before the Tribunal in the course of the applicant's appeal. Thus, the court is not satisfied that there is merit in that particular argument.

Internal Relocation
78. Counsel for the applicant argued that in making the finding that the applicant could relocate internally within Pakistan, the Tribunal Member paid no regard to what the applicant's mother had stated at the s. 11 interview. In particular, in response to the suggestion that she could relocate to Karachi, this was rejected on the basis that her mother and uncles could locate the applicant anywhere in Pakistan as *"they have a lot of relatives"* and also on the basis that Karachi would not be an option, as her husband *"had [his] business in Pirmahar".* The approach of the Tribunal Member did not conform to the thirteen principles set out in K.D. (Nigeria) v. RAT [2013] IEHC 481, in particular principle 13. Moreover, the UNHCR position paper, referred to in the decision, had been superseded by the 2003 guidelines which were specifically referred to by Clarke J. in *K.D. (Nigeria).* It was submitted that the Tribunal Member's reasoning with regard to internal relocation was not adequate. Furthermore, the Tribunal Member conflated the issues of internal relocation and state protection in circumstances where the burden on proof in relation to internal relocation was a shared burden, as provided for in the 2003 UNHCR Guidelines and as endorsed by Clarke J. in *K.D. (Nigeria).*

79. On behalf of the respondents, it was submitted that the principles in K.D. (Nigeria) were to be applied only when a person is found to be at risk for a Convention reason. In this regard, counsel referred to Clarke J. in *K.D. (Nigeria)* at para.28:-

> *"(3) A large number of decisions refer to the relocation option notwithstanding a finding that there is no well-founded fear of persecution on credibility grounds. In such cases, what the decision maker really means is, 'if what you say is true, which is not accepted, you have given no credible explanation for coming to Ireland instead of moving elsewhere away from the claimed danger' . These 'even if' findings are not internal relocation alternative findings requiring adherence to Regulation 7 but are part of a general examination of whether an applicant has a well-founded fear of persecution."*

80. In any event, the Tribunal Member had, in fact, conformed to the *K.D. (Nigeria)* principles, as was clear from the factors he took into consideration. Principle 6 was not required to be engaged as the only evidence that was adduced by the applicant was that she was in fear of three individuals. Insofar as principle 7 (persecution from a private source) was concerned, the applicant has not established a well founded fear of persecution or an absence of state protection.

81. The decision maker found that given its size and population, Karachi could provide protection against the threat of persecution and he had regard to the fact that it could provide access to better public services, employment and social rights. He also had regard to the applicant's mother's education. Furthermore, he noted the level of democratisation in Pakistan. Thus, the analysis of the applicant's circumstances was not invalid, by reference to the judgments in K.D. (Nigeria) and to that of Mac Eochaidh J. in *I. v. Minister for Justice* [2014] IEHC 27. Finally, counsel submitted that it was immaterial that the issue of state protection and internal relocation were conflated in the decision. These issues were interrelated insofar as there was a requirement in both instances to consider the issue of risk.

Consideration
82. By way of preliminary observation, I do not accept the respondents' counsel's contention that as the internal relocation finding was an "even if" finding, the decision-maker was not obliged to apply the principles set out in *K.D. Nigeria v RAT* [2013] IEHC 481. As he embarked upon an internal relocation assessment, the Tribunal Member properly invoked Regulation 7 of the 2006 regulations. In the words of Mac Eochaidh J. in *I. v Minister for Justice* [2014] IEHC 27, what was then required was a "full blooded" inquiry, in accordance with the principles set out in *K.D. (Nigeria).*

83. It is thus in the context of whether there was adherence to the principles set out in *K.D. Nigeria* that the internal relocation finding will be assessed.

84. The Tribunal Member made a finding that "it would be reasonable to require the applicant to relocate to Karachi"

85. Reference was made to reg. 7 (1) and (2) of the 2006 Regulations. Regulation 7 (2) requires a decision maker, in examining whether a part of the country of origin accords with paragraph 1, to have regard to *"the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant."*

86. The s. 11 interview records that the applicant's mother resisted the suggestion of a move to Karachi on the basis that her mother and uncles would look for her there as *"they have a lot of relatives".* In the course of the same interview, it was put to the applicant's mother that if she went to Karachi, she could get help from the police and the reply was that *"all the politicians are involved with the applicant's grandmother".*

87. The Tribunal decision records that Karachi as a place of relocation was canvassed with the applicant's mother at the hearing, as follows: *"Asked why [the Applicant] would not be able to move to another part of Pakistan, like Karachi, she said 'We don't have anything there. No house, no property and the conditions are very bad in Pakistan. Anyone can shoot you.'"*

88. The Tribunal Member referenced Karachi as a city with a population of some 13 million people and found it *"neither plausible nor credible that [the applicant] would be at any risk in Karachi."* He stated that *"Karachi, does not present a distinct risk of even generalised serious harm."* He found that *"country of origin information indicates that there is ample protection available for the applicant to relocate"* The country of origin to which the decision-maker had regard is not specifically referenced in the decision although I note that it was put to the applicant's mother in the course of the s. 11 interview that *"a number of government organisations such as the national commission for child welfare and development (NCCWD) operate in Pakistan, as well as NGO's including the Child Care Foundation, and Save the Children."* This was information which was annexed to the s. 13 report.

89. Principle 7 of *K.D. (Nigeria)*, requires the protection decision-maker to make *"an objective, common sense appraisal of the reality of whether the risk faced by the applicant could be avoided moving elsewhere, having regard to the applicant's own evidence."*

90. In the s.6 analysis it was considered, inter alia, that *"that the Applicant can reasonably be expected to stay in a part of the Applicant's country where there is no well-founded fear of being persecuted or real risk of suffering serious harm."*

91. I am satisfied as far as the assessment of risk was concerned, that it was not unreasonable for the Tribunal Member to conclude that, given the size and population of Karachi, the applicant could avoid the claimed risk of harm by moving there. In other words, by such a move, the applicant would be removed from the locus of the claimed fear. The weighing exercise as between the factors that influenced the Tribunal Member (the size and population of Karachi) and the applicant's mother's claimed fears in relation to Karachi was for the decision-maker and, accordingly, absent irrationality in the conclusion arrived at, it is not for this court to interfere with a risk assessment that met the required *"objective, common sense appraisal".*

92. Furthermore, it was within the parameters of rationality and reasonableness for the decision-maker to find that Karachi would provide the applicant with access to *"better public services, employment and social rights."*

93. I turn now to the consideration of the applicant's personal circumstances. Counsel for the applicant submitted, in the context of the reasonableness of the internal relocation finding, to the failure to specifically refer to the applicant's mother's rejection of Karachi as a relocation option on the basis that her husband *"had business in Pirmahar".* I find merit in this particular argument. It is apparent that the Tribunal Member had regard to the applicant's mother's circumstances, as he must, given that the applicant was a very young child. However, the overarching requirement under the 2006 Regulations requires a decision-maker to have regard to *the protection applicant's* personal circumstances. Her circumstances were that her family unit comprised both her parents. Yet, there is no mention of the applicant's father or his circumstances in the context of the relocation option, whether by reference to the father's Tribunal decision or otherwise. It seems to me that once the Tribunal Member considered it relevant that *"internal relocation was considered and found to be appropriate"* in the applicant's mother's case and that she *"was in a better position than most to internally relocate"* , in view of the shared burden of proof in relation to the internal relocation he was obliged to embark on a similar inquiry in relation to the applicant's father ability to relocate. The reasonableness of the applicant relocating to Karachi with her mother could not be conclusive absent a consideration of the applicant's mother's evidence as to the father's circumstances. The weight to be given to that evidence was of course a matter for the decision-maker but it was required to be weighed in the round, in order to adhere to the "shared burden of proof" criterion in *K.D. (Nigeria)* which involves, *inter alia*, having regard to *"the applicant's own evidence".* (Principle 10) In all the circumstances, I find that there was not the *"commensurately careful"* inquiry referred to by Clark J. in *K.D. (Nigeria).* I find that this ground of challenge has been made out.

Summary

94. For the reasons set out above, I am satisfied therefore to grant leave in this case. This being a telescoped hearing, I will grant an order of certiorari quashing the decision and make an order remitting the matter to the first named respondent for a de novo hearing before a different Tribunal Member.