

**THE HIGH COURT
JUDICIAL REVIEW**

[2010 No. 251 J.R.]

BETWEEN

F.M. (Afghanistan)

APPLICANT

AND

REFUGEE APPEALS TRIBUNAL,

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM,

THE ATTORNEY-GENERAL AND IRELAND

RESPONDENTS

AND

HUMAN RIGHTS COMMISSION

NOTICE PARTY

JUDGMENT of Ms. Justice Stewart delivered on 21st day of July, 2016.

1. This is an application for judicial review by way of *certiorari* to quash a decision of the first named respondent dated 12th January, 2010, which affirmed the recommendation of the Refugee Applications Commissioner pursuant to s. 13 (1) of the Refugee Act 1996 that the applicant should not be declared a refugee. It is moved by way of Notice of Motion and grounded upon the Statement of Grounds dated 3rd March, 2010.

2. The applicant also seeks a declaration from this Court that the procedures of asylum applications provided for in the Refugee Act 1996 (as amended) and the European Communities (Eligibility for Protection) Regulations 2006 failed to comply with the minimum standards prescribed by Council Directive 2005/85/EC of 1st December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status O.J. L326/13 13.13.2005 by depriving the applicant of an effective remedy against the first instance determinations of the applications, as required by Article 39 of the Directive.

3. A Declaration by this Court is also sought by the applicant to the argument that the applicant has not been provided with an effective remedy for the purposes of Article 13 of the European Convention on Human Rights, as transposed into domestic law by the European Convention on Human Rights Act, 2003.

Factual background

4. The applicant was born in Helmand Province, Afghanistan. He is of Hazara ethnicity and is a Shi'a Muslim. It appears that the applicant received no formal education in Afghanistan. He lived with his parents on a farm and worked the land with his family. In 1994, the Taliban occupied Helmand Province and ordered that each family living in the Province offer one person to the militia campaign. After being initially displaced, the Taliban returned to the applicant's village in 2005, where, under the threat of death, the applicant agreed to transport weapons for them.

5. It transpired that the Taliban commanders who controlled the applicant's village were Mujahideen operatives. Consequently, the Taliban forced the applicant to provide intelligence on the local commander. They held the applicant for fifteen days in order to extract such information. During the applicant's s. 11 interview, he replied to a question as to whether he was tortured during these fifteen days with the following statement:-

"They broke my arm in several places with the butt end of the rifle. The reason why I was forced to let them know was that they had already broke my arm and they threatened to cut my arm off I did not tell them about the commander."

6. The disappearance of a local Taliban commander in Helmand Province triggered enquiries about the applicant's whereabouts from another Taliban commander and his agents. These enquiries motivated the applicant to move to another location in Afghanistan, where he stayed with his aunt for a number of weeks. The applicant states that his brother-in-law was beaten in order to obtain the applicant's whereabouts and address. The applicant also states that his family's farm has been confiscated by the Taliban. He alleges that he became aware of this through a telephone conversation with his parents, who now live with his brother-in-law.

7. The applicant's claim rests upon a fear of persecution based on his political opinion. In his s. 8 interview, he expressed a fear that, if he was returned to Afghanistan, the Taliban would locate his whereabouts. The applicant did not report his fears to any of the Afghan authorities because *"If they knew about my whereabouts, they would arrest me and kill me, therefore I couldn't report my fears to anyone."*

Procedural background

8. The applicant left Afghanistan on 15th April, 2008 and arrived in Ireland on 30th June, 2008, having travelled through Iran and Turkey on his way to Ireland. He then applied for asylum in this State on that date. The applicant paid some \$12,000.00 to an agent to secure his passage from Afghanistan to Ireland. The applicant submitted an application pursuant to s. 8 of the Refugee Act, 1996 on 30th June, 2008. An 'ASY1 Form' was completed and signed by the applicant on 1st July, 2008, wherein it is detailed that the applicant has two living parents and a sister in Afghanistan.

9. The applicant completed a questionnaire on 6th July, 2008, and was interviewed by officials from ORAC pursuant to s. 11 of the 1996 Act on 4th November, 2008, 4th December, 2008 and on 29th January, 2009. At Part 3 of s. 8 interview, the applicant provides the following answer to the question as to why he left his home in Afghanistan and came to Ireland:-

"I used to be a farmer, when the Taliban came to power. All the houses in the region had been requested to give a man from each house, to join and fight with Taliban. I did not join them, because I had nobody (brothers in family). Then they asked me "If you don't want to come (fight) with us, then you should help us by transporting our weapons, using your horses and dinkies. I did not accept, so then they tortured me and I found no other choice but to cooperate with them, I worked with them for some time but once again they tortured me, they wanted to cut my hand off and they wanted me to inform them about some local commander [sic], and I had no other choice but to inform them about a local commander [sic]."

10. In the s. 8 interview, the applicant stated that *"I went to M.S. and I went to S.P.K., they followed me there as well, then I was forced to run away."* The applicant was also asked what he fears may happen upon his return to Afghanistan, to which he replies that *"My fear of returning to my country is that I will be killed by the brother of the commander I informed the Taliban about, and his brother is a powerful man in the current government. If I return to my country I will be killed by his brother."*

11. ORAC made a negative recommendation in its report, pursuant to s. 13 of the Refugee Act 1996. The Commissioner found that the applicant's claim lacked credibility, as the Hazara were actively persecuted by the Taliban in the mid-1990s, at a time when the applicant alleges the Taliban sought to recruit him. The Commissioner also doubted the applicant's claim that the British forces did not assist him when he approached them because he did not speak English. The Commissioner found this assertion to be questionable, as the applicant had failed to refer to his exchanges with the British forces in his first interview.

12. The Commissioner referred to the applicant's past injuries, along with the accompanying medical reference, finding that such a medical report did not serve as proof of past persecution in the manner detailed by the applicant. The applicant's x-ray report found irregularities with the applicant's left arm, which indicated an aggravation of an old trauma. It also found that there could be other possible causes for the applicant's injuries. The Commissioner concluded that the applicant's statements lacked coherence and his general credibility had not been established.

13. The applicant's first s. 11 interview took place on 4th November, 2008, and was conducted through the Dari language, where more detail was placed upon the applicant's history in Afghanistan prior to his arrival in Ireland. The applicant stated that he left Helmand Province and went to his aunt's address because he believed he would be safe from the Taliban there. He stayed with his aunt for two months.

14. Regarding his mode of transport from Afghanistan to Ireland, the applicant states that he travelled by car from Afghanistan to Iran, and then from Iran onto Turkey by foot and lorry. The applicant maintains that he travelled by boat from Turkey to Ireland. For these journeys, the applicant paid a sum of \$12,000.00 to a handler. The applicant did not seek asylum in Iran or Turkey because he *"would have been deported to Afghanistan. [He] was already on the run from the authorities."*

15. The applicant states that his problems began when the Taliban arrived in his local area in 1994. He maintains that:-

"[T]he Taliban came to each farm and said you must send one member of your family to the war front and if you don't send them you will have to pay a fine. This was when the Taliban were taking over the areas firstly G. and they moved onto the Helmand and they would go to each farm, if they refused they had to find someone else to go. This was at the beginning. The problem happened the second time they came."

16. When asked whether he joined the Taliban, the applicant replied:-

"I was forced to work with the Taliban. I was never a mamba. First time when they came around I put someone else forward to go to the front. Second time when they came to join forces with them because of the sake of our land I was forced to join them."

The Taliban first approached the applicant in 1994 and the applicant allegedly paid a neighbour to join the Taliban in his stead. In 2005, the Taliban sought him out again and forced him to join their militia army, having returned to the area after American forces had invaded.

17. In his s. 11 interview, the applicant outlines his circumstances between 1994 and 2005 as follows:-

"During this period of time it was quite peaceful, the situation was quite calm, the day time the Gov. forces were in control at night the Taliban were in control. During this period of time they asked me once in 1994 and the second time in 2005 they told me they would kill me if I did not join, because I am a hazareh shia they said it would be very easy for me to transport weapons for them. Because we were farmers and we had cattle and horses we would take to the market, they thought it would be easy for us to transport. Last year they attacked me and cut my arm. The farm was very near to the Taliban military base. When they requested me to give the name of one of the commanders, they are like a law unto themselves. It's a government officer and this particular officer was in command of Helmand province. And he was the commander in charge of the military base. The time when the Taliban came and took control over the area the commander fled from the area and went to live in another area. When the government of that area came back into power the commander came back. I had a lot of information on this man and the Taliban wanted this information. The commander's brother is in control over the whole of the Helmand province."

18. The applicant explained that, in 1994, his Hazara (shia) religion was not an issue for the Taliban, who are Sunni Muslim, and, as the applicant explained, in 1994, the Taliban:-

"...had just come into Helmand Province and because they did not want to create a bad atmosphere and they wanted to behave in a good manner with the people they did not insist on taking people to work with them, and as I was alone I was allowed to put someone in my place..."

"That is right they did hate us, but I decided in order to save myself and land in order to continue to live with my parents I would have to work with the taliban."

19. The applicant gave the Taliban the name of the commander and they *"came to his house and they arrested him. I contacted the*

taliban to let them know what time he was in the house. I don't know if they killed him as he has not been found since." The applicant possessed information about this person because he was a neighbour of the applicant's and lived in the same village.

20. When asked at his s. 11 interview why he did not talk to either American or British forces, who were present in the area at this time, to seek protection from the Taliban, the applicant replied that "[D]uring the day time the forces were in charge and I could not speak English to talk to any of them, and they were not present at night time." The applicant describes clearly how the foreign troops would relinquish control of the area to the Taliban during the night, stating:-

"In the evening they would all congregate to the mosque the foreign troops. English were in L.G. were there, and the Germans were some place else. Over the past few days the taliban have attacked English forces in the helman province."

21. When the interviewer remarked that it was somewhat odd that the Taliban left the applicant alone from 1994 to 2005, the applicant replied that:-

"During this period of time I managed to get rid of them by sending someone in my place and the second time I was forced to work with them and during this period of time the gov were changing the taliban in power. First of all it was the taliban that came into power and now its Kharzaee and he was relocated for four years."

22. In 2005, when the Taliban came back to demand that the applicant join their ranks, the applicant states that:-

"It was in the evening someone knocked on the door, when they opened the door four men with weapons were there, they took him to a room in the mountains. Inside the room was the only young man with one more young man, there were several older men, all the young men had fled when the taliban came. The older men were released the other young man was sent to the war front, I was forced to work with them, I was then released."

23. The applicant states that he was kept in this room for fifteen days and tortured. The applicant maintains that they "broke my arm in several places with the butt end of the rifle. The reason why I was forced to let them know was that they had already broken my arm and they threatened to cut my right arm off I did not tell them about the commander."

24. The applicant also stated that he did not relocate internally, to Kabul for example, because the commander at issue was a member of the government. He was "not able to live in safety in P.K. and it was further away from Kabul, and still I was not safe there."

25. The commander did eventually find out that the applicant had informed the Taliban about that commander through the commander's brother. This occurred when the taliban broke the applicant's arm and the applicant went to one of the commander's family members to set his arm in plaster. This person plastered the applicant's arm and he was suspicious that the taliban had broken the applicant's arm. The applicant stated that the "commander's brother knew I was transporting arms for the taliban but he did not say this to me. He asked me what I was transporting, and I said it was rice and oil."

26. The applicant brought an appeal to the first named respondent on 27th March, 2009 by 'Form 1' Notice of Appeal. A subsequent oral hearing was conducted before the Tribunal on 8th October, 2009, which refused the appeal. It is against that decision that these judicial review proceedings are sought.

27. In the affidavit of the Chief State's Solicitor's Office, sworn on 29th October, 2015, it is averred that the applicant was granted leave to remain in the State on 13th June, 2014 for a period of four years. The affidavit also avers to the fact that, for the purposes of his application for leave to remain within the State, the applicant submitted to the second named respondent a passport. The CSSO wrote to the applicant's solicitors on 16th October, 2015 alluding to the fact that the applicant's supplemental affidavit failed to refer to the applicant's leave to remain in the State and the fact that he had obtained a passport.

28. The applicant's solicitors replied to the CSSO on 28th October, 2015, maintaining that the applicant had been granted leave to remain in the State on the basis of his parentage to an Irish citizen child and would maintain his claim for asylum in order to reunify the family unit.

The impugned decision

29. The Tribunal member begins the analysis of the applicant's claim with the following broad outline:-

"I am not satisfied as to credibility of the applicant in this case. The applicant presents with numerous credibility difficulties arising from his responses to question at his interview and before the Tribunal."

The Tribunal member goes on to outline five points of concern which, according to the Tribunal member, compromise the applicant's credibility.

30. The first issue of credibility relates to the 'first recruitment attempt' in 1994. The first-named respondent doubts the applicant's recollections concerning this time on foot of "country of origin information (submitted by the Commissioner) which indicates that during that time, the Taliban engaged in the wholesale slaughter of large numbers of Hazara whom they regarded as infidels. The documentation provided does not support the contention of the applicant to the effect that in the mid 1990s at the time when the Taliban took power in Afghanistan, Hazara were recruited or actively operated within the Taliban." The Tribunal member then states that "the applicant's assertion that they [the Taliban] were going around various places in a majority Hazara area and recruiting young Hazara to work with them in the context of what we know about relations between Hazara and the Taliban at that time does not make sense."

31. The second credibility issue centres around the Taliban commander 'letting the applicant escape'. This incident allegedly occurred whilst the applicant was transporting oil and rice for the Taliban and was considered by the Tribunal member to be as "equally implausible" as the first issue of credibility. This is so because:-

"This is at a time where the Taliban was being actively pursued by the government and when, on the applicant's own evidence, the Taliban were seeking information about the commander or his brother in order that they might be abducted ... I do not understand or find plausible the applicant's suggestion that he was simply told not to continue transporting food or work for the Taliban anymore and allowed to go on his way."

32. The third issue of credibility relates to the applicant's assertion that British forces would not want information about the Taliban

at the time that he approached them. The Tribunal member found it "...incredible that UK Forces (who are involved in an ongoing and active campaign against the Taliban) would not want to find out more information from a person such as the applicant who had information about the operations of the Taliban at that time." The Tribunal member also found it incredible that British armed forces in Afghanistan would not be operating with the aid of an interpreter as it would "render it impossible for them to operate on any level in Afghanistan and deprive them of the ability not just to make contact with those who may be able to assist them, but also to obtain basic supplies and information, or to interact on any level with the Afghan police, army or the local people."

33. The fourth issue of credibility raised by the Tribunal member centres around inconsistencies with the identity document allegedly procured by the applicant. The applicant stated at interview that he is single and a farmer. However, he is described in the document provided as married and a labourer. The Tribunal member states:-

"This undermines either the claim made by the applicant as to his personal circumstances or alternatively casts doubt upon the validity or authenticity of the documents supplied by him. In either circumstance, the document weighs heavily against accepting the applicant's story."

34. The fifth credibility issue focused on the applicant's assertion that he would be followed if he re-located. This assertion, according to the Tribunal, was not substantiated by any "subjective documentation" and seemed to be based upon intimations that the applicant's family had told authorities where the applicant had relocated. The Tribunal concluded this point as follows:-

"Nonetheless, if the applicant had not told his family members where he was going, it is clear that they would not have been able to provide this information to the authorities. Even so, [the Tribunal has] not been pointed to any document that indicates that a person who moves to another part of Afghanistan [would be in danger]".

The applicant's submissions

35. In their submissions, counsel for the applicant, Mr. de Blacam, S.C. and Mr. O' Halloran, B.L., focused on the Tribunal's five main findings in relation to the applicant's credibility. The applicant highlights the identical findings of the Tribunal and the Commissioner, with one difference: before the Commissioner, the country of origin information (COI) failed to show that the Taliban would seek to recruit a Hazara, whereas the Tribunal found that the applicant's evidence had been contradicted by the COI reports.

36. The applicant submits that the Tribunal member failed to identify any report that contradicts his evidence and failed to properly assess a newspaper article he submitted that details how Hazara are forced to assist the Taliban. The applicant conceded that the Tribunal may disregard evidence when assessing an applicant's claim. However, the Tribunal is not entitled to ignore relevant information without giving an explanation.

37. It is submitted that the second and third findings are based in conjecture and made without due regard to the detailed evidence given during the applicant's s. 11 interview. Thus, they cannot operate as a basis for refusing the application.

38. The applicant contends that the fourth finding was made without first discharging the burden of proof placed upon the person who is alleging that an applicant lacks sufficient authenticity. The applicant relies upon the decision of *A.O. v. R.A.T.* [2015] IEHC 253. He submits that it is clear that the Tribunal has preferential regard for COI reports. The applicant also accepts that the Tribunal is entitled to prefer one item of evidence over another. However, it cannot reject or ignore clearly material evidence without explaining why it has done so.

39. The applicant contends that the fifth Tribunal finding in relation to internal relocation is fundamentally flawed, as the fear of persecution extends across the whole of Afghanistan and not just one province. The applicant further submits that the Tribunal's decision in relation to internal relocation is made without due regard to the totality of the evidence and the UNHCR guidelines on internal relocation. It is also submitted that this findings is not in accordance with the requisite legal principles.

40. Furthermore, the applicant argues that the Tribunal failed to consider potential exposure to future persecution on foot of his particular circumstances, including his Hazara ethnicity and religious beliefs.

The respondents' submissions

41. Counsel for the first-named respondent, Ms. Cogan, B.L., submits that the applicant's second ground is excessively vague. According to the first-named respondent, that ground constitutes a broad complaint that the Tribunal failed to perform its assessment of the facts. The first-named respondent argues that the applicant does not then go on to specify which breach of law that the first named respondent is alleged to have made.

42. The respondents dispute the applicant's third ground on the basis that the first-named respondent drew inferences that were wholly supported by relevant COI documentation. Specifically, it is submitted that the first-named respondent's findings on Taliban-Hazara relations in the mid-1990s are supported by said documentation.

43. The applicant's fourth ground is, according to the respondents, unsubstantiated. The applicant argues under this ground that the Tribunal was 'selective' in how it referred to COI information submitted by the applicant. The respondents highlight that this claim is not particularised and that it is unclear what significant material was allegedly overlooked. In this respect, the respondents submit that, when the decision is read as a whole, it is incorrect to maintain that the Tribunal failed to have regard to relevant information submitted by the applicant.

44. The fifth ground put forward by the applicant centres upon the Tribunal's failure to consider post-hearing submissions on internal relocation. The respondents submit that due regard was paid to the applicant's contention that internal relocation was not an option and to the COI information pertaining to internal relocation.

45. The applicant's sixth ground alleges that the Tribunal erred in failing to examine or make findings on a core element of the applicant's claim. The respondent maintains that the allegation is not borne out in the evidence. The respondents argue that the seventh ground, which alleges that the Tribunal erred in making findings in respect of the availability of State protection, does not advance any accusation that the Tribunal's decision was in fact illegal.

46. The first-named respondent asserts that the applicant's eighth ground, which alleges a failure to properly apply the "fear of persecution" test, fails to specify how this actually occurred. The first-named respondent contends that the applicant's affidavit also does not specify where and how this alleged failure occurred. The respondents also deny that the applicant's eighth ground can be grounded on the evidence, in that the Tribunal's decision was not *ultra vires*, nor was it unsustainable by reason of a mistake in the

applicable law. In this regard, it is denied that the Tribunal misapplied s. 2 of the Refugee Act 1996, exceeded its jurisdiction or by failed to "properly construe the meaning of 'fear of persecution'".

47. The first-named respondent contends that the applicant's ninth ground, which argues that relevant matters were not considered and that irrelevant matters were considered by the Tribunal, fails to specify which relevant matters were not considered and which irrelevant matters were entertained by the Tribunal.

48. The respondents deny that ground ten of the applicant's Statement of Grounds has any basis, as the Tribunal member did not err in law or fail to speculate on the likelihood of the applicant's exposure to persecutory risk on *refoulement* to Afghanistan.

49. The first-named respondent went on to address the arguments made against of the credibility findings that were adverse to the applicant's claim. The first named respondent states that the second credibility finding cannot reasonably be said to be conjecture as it is based upon the applicant's own evidence, and arises from a balanced assessment of that evidence. The first-named respondent states that a "bald assertion" is made by the applicant in relation to the third credibility finding, which refers to the applicant's interactions with British armed forces.

50. The first-named respondent contends that the applicant's criticism of the fourth credibility finding, which addresses the identity document, was made without discharging the burden of proof. The first-named respondent also relies upon the decision in *M.E. v. Refugee Appeals Tribunal* [2008] IEHC 192, where Birmingham J. held that the weight of the evidence is a matter for the decision-maker.

51. The respondents assert that the applicant's complaint that the Tribunal failed to "*consider explanations and submissions by the Applicant at various stages of the refugee applications procedure and during the appeal*" is not substantiated. The respondents note that Tribunal is not expected to refer to every submission, explanation or argument made when compiling its decision on a particular application. The respondents further argue that "[N]one of the documents submitted dealing with the applicant's injuries provide an objective opinion on their cause, an issue also remarked upon by the Commissioner."

Decision

52. The decision of Cooke J. in *I.R. v Minister for Justice, Equality and Law Reform* [2009] IEHC 353 dealt with the issue of credibility assessment in an asylum application and has been approved by the Superior Courts on many occasions. At para. 11, Cooke J. outlined the principles to be implemented in cases of this nature. These principles are well settled law and are regularly applied in our Courts:-

"1) The determination as to whether a claim to a well founded fear of persecution is credible falls to be made under the Refugee Act 1996 by the administrative decision-maker and not by the Court. The High Court on judicial review must not succumb to the temptation or fall into the trap of substituting its own view for that of the primary decision-makers.

2) On judicial review, the function and jurisdiction of the High Court is confined to ensuring that the process by which the determination is made is legally sound and is not vitiated by any material error of law, infringement of any applicable statutory provision or of any principle of natural or constitutional justice.

3) There are two facets to the issue of credibility, one subjective and the other objective. An applicant must first show that he or she has a genuine fear of persecution for a Convention reason. The second element involves assessing whether that subjective fear is objectively justified or reasonable and thus well founded.

4) The assessment of credibility must be made by reference to the full picture that emerges from the available evidence and information taken as a whole, when rationally analysed and fairly weighed. It must not be based on a perceived, correct instinct or gut feeling as to whether the truth is or is not being told.

5) A finding of lack of credibility must be based on correct facts, untainted by conjecture or speculation and the reasons drawn from such facts must be cogent and bear a legitimate connection to the adverse finding.

6) The reasons must relate to the substantive basis of the claim made and not to minor matters or to facts which are merely incidental in the account given.

7) A mistake as to one or even more facts will not necessarily vitiate a conclusion as to lack of credibility provided the conclusion is tenably sustained by other correct facts. Nevertheless, an adverse finding based on a single fact will not necessarily justify a denial of credibility generally to the claim.

8) When subjected to judicial review, a decision on credibility must be read as a whole and the Court should be wary of attempts to deconstruct an overall conclusion by subjecting its individual parts to isolated examination in disregard of the cumulative impression made upon the decision-maker especially where the conclusion takes particular account of the demeanour and reaction of an applicant when testifying in person.

9) Where an adverse finding involves discounting or rejecting documentary evidence or information relied upon in support of a claim and which is prima facie relevant to a fact or event pertinent to a material aspect of the credibility issue, the reasons for that rejection should be stated.

10) Nevertheless, there is no general obligation in all cases to refer in a decision on credibility to every item of evidence and to every argument advanced, provided the reasons stated enable the applicant as addressee, and the Court in exercise of its judicial review function, to understand the substantive basis for the conclusion on credibility and the process of analysis or evaluation by which it has been reached."

53. MacEochaidh J.'s decision in *R.O. (an infant) v. Minister for Justice and Equality* [2012] IEHC 573 is also of assistance. It dealt with, *inter alia*, the assessment of credibility and the adequacy of reasons afforded for an adverse finding of credibility. MacEochaidh J. states at para. 18:-

"While many 'reasons' cases deal with the absence of reasons, a subcategory of cases in this area deals with the cogency of reasons. I adopt as a reliable shortcut the pithy summary of this law in "Administrative Law in Ireland" (Hogan & Morgan) (4th Ed.) at para. 14-141, p. 684 where the learned authors say:-

".. .in terms of the actual results, there have been very few cases in which a reason, however peremptory, has been

held not to suffice."

The authors, at para. 14-148 say:-

"While, as can be seen, the general judicial consensus has been to set a rather low standard for the cogency of reasons, this approach has been challenged by some judges and commentators."

54. In *Memishi v. Refugee Appeals Tribunal* [2003] IEHC 65, Peart J. stated:-

"The principles which emerge from these decisions are that a Tribunal is not entitled to make adverse credibility findings against an applicant without cogent reasons bearing a nexus to the decision, that the reasons for any such adverse finding on credibility must be substantial and not relating only to minor matters, that the fact that some important detail is not included in the application form completed by the applicant when he/she first arrives is not of itself sufficient to form the basis of an adverse credibility finding, and finally, that the fact that the authority finds the applicant's story inherently implausible or unbelievable is not sufficient. Mere conjecture on the part of the authority is insufficient, and that corroboration is not essential to establish an applicant's credibility. As general principles, I agree."

55. In *N.M. (Togo) v. Refugee Appeals Tribunal* [2013] IEHC 436, Clark J. stated at para. 23:-

"A reviewing Court is always cautious regarding any interference with credibility findings made by decision-makers who have had the advantage of personally hearing and observing an applicant."

56. In *M.E. v R.A.T.* [2008] IEHC 192, Birmingham J. stated at para. 27:-

"In my view, the assessment of whether a particular piece of evidence is of probative value, or the extent to which it is of probative value, is quintessentially a matter for the Tribunal Member."

57. The manner in which Tribunal members regard the COI provided for their consideration is also addressed in *M.E.* at para. 39:-

"[I]n a situation where, as here, there is a significant volume of Country of Origin information, it is possible by selective quotations to find support for almost any proposition."

A reasonable, non-exhaustive treatment of the COI materials is required in accordance with the judgment of Birmingham J.'s assessment in *M.E.*, with which this Court agrees.

58. The judgment of Peart J. in *Da Silveira v. Refugee Appeals Tribunal* [2004] IEHC 436 provides guidance regarding the alleged use of conjecture in this present matter by the Tribunal member. Peart J. states:-

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

59. This requirement must be viewed in light of Birmingham J.'s comments in *M.E.* at para. 42:

"On the other hand, a Tribunal Member is not expected to accept without challenge or question every account given to him or her. Rather, he or she is expected to weigh, assess, analyse and draw inferences."

43. ...I am forced to conclude that in complaining that the decision was based on conjecture, what the applicant is really saying is that the Tribunal Member should not have reached the view that she did. While the Tribunal Member may have arrived at conclusions that are unwelcome to the applicant, this is not a court of appeal."

60. The applicant has challenged the adverse credibility findings on a number of grounds. With regard to the failure to consider the newspaper article submitted and the failure to specify a source for the first adverse finding on credibility, the Court dismisses both of these arguments. In the impugned decision, the Tribunal member specifically states that the applicant's version of events is "contradicted by country of origin information (submitted by the commissioner)". The Tribunal has clearly indicated which piece of evidence it prefers in making its findings. As outlined in Cooke J.'s tenth principle, the Tribunal member is not required to catalogue every piece of evidence solely for the purpose of discounting it. The reasoning for the decision on this issue is clear.

61. This first finding is not peripheral, as the applicant alleges, because it goes toward establishing the applicant's background and the history of persecution that allegedly occurred while the applicant lived in Afghanistan. This does not equate to the peripheral concerns that arose in the case of *S.J.L. v. R.A.T.* [2014] IEHC 608.

62. The Court is satisfied that the second and third findings come within the meaning of inference, assessment and analysis of the questions and challenges put before the Tribunal, as referred to by Birmingham J. in *M.E.* These conclusions, and the reasoning that gave rise to them, are all satisfactorily outlined in the impugned decision and are insufficient to ground the reliefs sought.

63. With regard to the fourth credibility finding, the applicant relies on Barr J.'s decision in *A.O.* It is worth noting that the personal circumstances of that applicant and the applicant currently before the Court are quite different. In *A.O.*, the applicant was a minor whose traumatic experiences had given rise to a fragile mental state and the impugned decision was quashed, *inter alia*, because the decision-maker failed to account for this. This is not the case in these proceedings. Regardless, the fourth credibility finding is less grounded in the possibly fraudulent nature of the document submitted and more based in the fact that it directly contradicts the narrative submitted by the applicant about his background. No explanation was proffered by the applicant to explain this discrepancy. On that basis, the fourth finding on credibility is not of such a standard as to attract the reliefs sought.

64. The Court views the fifth finding in a similar manner to that of the second and third findings. In his written submissions, the applicant referred to Faherty J.'s decision in *A.N. v. R.A.T.* [2015] IEHC 699, which refers to Clark J.'s principles for internal relocation, as outlined in *K.D. (Nigeria) v. R.A.T.* [2013] IEHC 481. An analysis of the documents submitted to this Court discloses no breach of these principles. The Tribunal's analysis of relocation to Kabul considers a number of factors, including the distance from Helmand Province, the socio-political make-up of Kabul City and the applicant's capability to relocate. This is sufficient to satisfy the principles outlined in *K.D.*

65. In this case, the Court has come to a similar conclusion as that in *M.E.* The applicant, in bringing these proceedings, complains of the manner in which the Tribunal member used the COI information and assessed his credibility because, and perhaps understandably, the applicant would wish there to have been a different outcome to the appeal. That is a long way from establishing that Tribunal member acted unlawfully or erred in some way in the approach adopted when reaching the impugned decision. This Court is not an appellate court and, as is often stated, must be careful not to seek to substitute its view for that of the Tribunal member.

66. For the reasons outlined above, I would refuse the reliefs sought.