

**THE HIGH COURT  
JUDICIAL REVIEW**

[2004 No. 229 JR]

**IN THE MATTER OF THE REFUGEE ACT 1996, IMMIGRATION ACT 1999 AND THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000**

**BETWEEN**

**MAHAN PHILIPPE KEAGNENE**

**APPLICANT**

**AND**

**THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM AND THE REFUGEE APPEALS TRIBUNAL (TRIBUNAL MEMBER JAMES NICHOLSON)**

**RESPONDENTS**

**Judgment of Mr. Justice Herbert delivered on the 31st day of January 2007**

1. In his decision the Member of the Refugee Appeals Tribunal found that this Applicant for Judicial Review, was not credible or trustworthy and, held that he could not rely upon his unsupported testimony. The Member of the Refugee Appeals Tribunal gave six reasons for this finding.
2. The Member of the Refugee Appeals Tribunal found that the Applicant was unable to name his wife's brother in Bouafle, with whom she claimed she had stayed for seven months prior to her coming to this State. The Applicant and his wife had been married for eleven years. When pressed on this topic the Member of the Refugee Appeals Tribunal found that the Applicant was evasive and for several minutes had refused to cooperate with the Tribunal. The Applicant then initially responded by stating, "We are all brothers in Africa", but later stated that he did not know this man's name.
3. At para. 35 of his Affidavit grounding this application for Judicial Review, the Applicant contends that he became upset and apprehensive by reason of the aggressive nature of the questioning and, that what he had wished to convey to the Tribunal was that even very distant relatives can be referred to as "brothers" in Africa. I find that it is a matter entirely for the Member of the Refugee Appeals Tribunal to evaluate and to give what weight (if any), he or she considers to be appropriate to the evidence given to the Tribunal. It is not a matter for this court on an application for judicial review.
4. The Applicant was represented before the Refugee Appeals Tribunal by an experienced solicitor and by Counsel with a particular speciality in this field.
5. Bias on the part of the Member of the Refugee Appeals Tribunal, in refusing to accede to an application for an adjournment of the oral hearing, was initially one of the grounds upon which this application for Judicial Review was based. However, in the course of the hearing this allegation was withdrawn and a complaint of procedural unfairness on the part of the Member of the Refugee Appeals Tribunal was substituted for it. No complaint was made to this court of inappropriate behaviour on the part of the Member of the Refugee Appeals Tribunal or the Presenting Officer towards this Applicant. The onus is on the Applicant to directly make and to prove what must amount to a very serious imputation against the fairness and impartiality of the Member of the Refugee Appeals Tribunal and the Presenting Officer and a disquieting reflection on the fairness and appropriateness of the appeal process itself. I find that no such specific complaint was formally made, put in issue before this court and duly proved. I am therefore satisfied that this was a valid and appropriate reason on which it was open to the Member of the Refugee Appeals Tribunal to base his decision.
6. Having regard to the evidence of the Applicant that he was employed as a sales representative for a construction company in the Ivory Coast, owned by his mother's brother and, prior to the coup d'état in the Ivory Coast he had travelled, on his own passport, to Senegal on company business, the Member of the Refugee Appeals Tribunal found that his inability to produce any documentation to support these claims undermined his credibility. This evidence is repeated at para. 20 of the grounding Affidavit sworn by the Applicant in support of this application for Judicial Review, but no issue is taken with the finding by the Member of the Refugee Appeals Tribunal that the Applicant could not produce a single document which would support his contention.
7. The Member of the Refugee Appeals Tribunal found particularly incredible the Applicant's explanation that he had given his passport to a Pastor, whose name he reluctantly gave as Boula and, to whom he said he had paid 2.8 million CFA to bring him to Ireland from Senegal, when on his own evidence he was a business man who was travelling outside his country of origin on his own passport. At para. 22 of the grounding Affidavit the Applicant states:-  
  

"I received assistance in arranging my passage and exit from Senegal from a Pastor with whom I had struck up an association while in Senegal who acted as agent and travel facilitator for me in return for a fee and accompanied me on my journey."
8. At para. 23 of his grounding Affidavit the Applicant states:-  
  

"I was asked by the Tribunal whether I had a membership card for the PDCI with me in Ireland and I explained that I did not bring my PDCI Membership card to Senegal with me as I was not expecting to need it in Senegal nor was I expecting that I would have to flee in fear of persecution and not be able to return to my country of origin."
9. I find that it was both rationally and reasonably open to the Member of the Refugee Appeals Tribunal to arrive at the conclusions which he did for these stated reasons and that the conclusions reached were not unjust, unfair or flying in the teeth of commonsense.
10. The fourth reason given by the Member of the Refugee Appeals Tribunal for his finding that the Applicant was not credible or trustworthy is as follows:-  
  

"I find that the Applicant's evidence that he was unaware of Mr. B's current situation, to undermine his credibility. Given that Mr. B. was his uncle I find it inconceivable that the Applicant would not have made enquiries from the Ivorian Association in Dublin, of which he is a member, of the whereabouts of his uncle."
11. It was submitted on behalf of the Applicant that each of these conclusions on the part of the Member of the Refugee Appeals Tribunal was reached by a route which was improper, unjust and procedurally unfair.
12. There was no suggestion that this Applicant either denied or concealed that he was a member of the Ivorian Relief Association in

Dublin. Counsel on behalf of the Applicant directed his criticism of the decision of the Member of the Refugee Appeals Tribunal to the fact that the Applicant was not asked, either by the Presenting Officer or by the Member of the Refugee Appeals Tribunal, if he had made enquiries through the Ivorian Relief Association regarding the whereabouts or current circumstances of Mr. B., "given that Mr. B., was his uncle".

13. At para. 32 of his Affidavit grounding this application for Judicial Review, the Applicant states as follows:-

"32. In the course of giving my account of events to the Tribunal, I explained that I was a leading member of the Ivorian Relief Association in Ireland (IVORA) and I produced for inspection by the Tribunal Member a membership card from which it is clear that I have a leading and prominent role in the Association as Vice-President. I was not asked directly at the hearing whether and if so to what extent this Association had made efforts to establish the whereabouts of EB. I had already referred in my account of events to the very recent newspaper article (exhibited at "PK 8" herein) confirming that his whereabouts was unknown. I beg to refer to the membership card in relation to the Ivorian Relief Association as produced and tendered to the Tribunal Member at the hearing upon which marked with the letters "PK 14" I have endorsed my name prior to the swearing hereof."

14. No replying Affidavit, taking issue with what is averred by the Applicant in this paragraph was filed by or on behalf of the Presenting Officer or the Member of the Refugee Appeals Tribunal. In these circumstances I accept the recollection of the Applicant. I also accept the submission by Counsel for the Applicant that the conclusion of the Member of the Refugee Appeals Tribunal that the Applicant had made no enquiries as to the whereabouts of his uncle from the Ivorian Relief Association in Dublin had no basis in evidence and amounted to supposition on the part of the Member of the Refugee Appeals Tribunal. But for the very strong terms employed by the Member of the Refugee Appeals Tribunal in stating this reason I would be inclined to attach little weight to this criticism of the decision-making process. The primary onus of establishing his claim lies on the Applicant and, I believe that it would have been properly open to the Member of the Refugee Appeals Tribunal to have expressed surprise that the Applicant had not given evidence of making enquiries as to the whereabouts of his uncle through the Ivorian Relief Association in Dublin, particularly having regard to the evidence before the Tribunal that Mr. B., was a person of very considerable public and political stature in the Ivory Coast. In addition, the Applicant in his grounding Affidavit does not say that he did make such enquiries from or through the Ivorian Relief Association in Dublin. However, the fact still remains that the Member of the Refugee Appeals Tribunal assumed, without evidence, that the Applicant had not made such an enquiry or enquiries. On a stand alone basis, I find this ground of complaint to be excessively technical and in the circumstances do not find it sufficiently compelling in itself to persuade the court to exercise its discretion in favour of the Applicant.

15. Senior Counsel for the Respondents interpreted the phrase, "given that Mr. B., was his uncle", in the finding of the Member of the Refugee Appeals Tribunal as being the equivalent of "assuming that". Counsel for the Applicant submitted that it meant, "accepting that". In my judgment, Senior Counsel for the Respondents is correct in her interpretation of the phrase in its context. Though the Applicant gave evidence to the Refugee Appeals Tribunal that Mr. B., was his mother's brother, the Member of the Refugee Appeals Tribunal, (who had earlier heard the Applicant's wife in the course of her own appeal also say that Mr. B., was the Applicant's uncle), found that he could not rely upon the unsupported testimony of the Applicant and, the Applicant had no identity documents or other documents to support any aspect of his claim. The court must assume that the Member of the Refugee Appeals Tribunal used the same words in the same sense in his decision unless there is some clear indication to the contrary. In the immediately preceding paragraph of his decision, the Member of the Refugee Appeals Tribunal uses the words "given that". He is there setting out his third reason for finding the Applicant not credible or trustworthy and he states as follows:-

"I find that the Applicant's inability to produce any documentation that would support his contention that [he] worked for Mr. B., to undermine his credibility, given that he was in Senegal on business on behalf of Mr. B's company."

16. Clearly in this reason, "given that" could not mean "accepting that" or this reason would be entirely self contradictory. I can find nothing to suggest that the Member of the Refugee Appeals Tribunal was using the words "given that" in two different ways a few lines apart in his decision.

17. The Presenting Officer submitted to the Member of the Refugee Appeals Tribunal that Mr. B's current situation should be known to the Applicant given that the Applicant was a member of the PDCI, (a political party in the Ivory Coast of which Mr. B., was stated by the Applicant to be an important member and a Ministerial Office holder) and, the Applicant is also a member of the Ivorian Relief Association in Dublin. The Presenting Officer submitted that it went to the credibility of the Applicant that he did not know this information. The information being referred to, by the Presenting Officer, is referred to by the Member of the Refugee Appeals Tribunal in his decision as follows:-

"In reply (to the Presenting Officer) the Applicant stated that he was in Senegal after the coup and he was worried about his family and because he was a nephew of Mr. B. If returned to the Ivory Coast he would be in trouble because he worked for Mr. B's company, was a member of the PDCI and because of his association with Mr. B. He was well known in the Ivory Coast.

The Presenting Officer asked the Applicant if Mr. B., was cleared of all charges against him, what would he have to fear? The Applicant was evasive and refused to answer the question. After much prevarication the Applicant stated that it would improve his situation ....

The (Presenting Officer) put it to the Applicant that he had new information, downloaded from the web prior to the hearing, indicating that Mr. B., had been cleared of all charges. (Counsel for the Applicant) objected to this document being submitted to the Tribunal. (Counsel for the Applicant) was given a copy of the document and was allowed seven days in which to make submissions to the Tribunal in relation to the document (the document stated that Mr. B., had been cleared of all charges in relation to embezzling money from the EU)."

18. At the hearing of this application for Judicial Review, Counsel for the Applicant, who had also represented the Applicant before the Refugee Appeals Tribunal, told the court that this document had not in fact been put to the Applicant by the Presenting Officer and was only introduced by the Presenting Officer in the course of his concluding submission. At paras. 29 to 31 inclusive of his grounding Affidavit the Applicant avers as follows:-

"29. I refer further to p. 7 of the decision of the Tribunal Member where he refers to a country of origin document introduced by the Presenting Officer which document is exhibited at "PK 16" herein. I say it is totally incorrect to state that it was ever put to me by the Presenting Officer that he had new information downloaded from the web prior to the hearing indicating that Mr. B., had been cleared of all charges, nor at any stage during the questioning of me by either my

own legal representative or the Presenting Officer was any such document ever put to me, nor was I ever given an opportunity to address its contents. I say and believe and am advised by my legal advisors that this document also was not put to my wife during the course of or at any stage during her hearing. I say the decision of the Tribunal Member contains an error in regard to this matter. I believe this error is important.

30. I say that what actually occurred is that after I had given my evidence (and following the completion of my wife's evidence, which took place before mine) our legal representative made closing submissions and the Presenting Officer then began his closing submissions. It was in the course of his closing submissions that the Presenting Officer first referred to this country of origin information document which he said he had downloaded from the web. He said that the document was in French and he could not understand it but that he believed that the gist of it was that Mr. B., had been cleared of all charges. Our legal representative objected to the introduction of this document complaining that to permit its introduction in circumstances where it had been previously withheld and not put to either me or my wife during the questioning of us at any stage was incorrect and in breach of our right to fair procedures and natural justice and our right to have disclosed to us by the Presenting Officer any documents or materials on which he intended to rely. I say that the Presenting Officer should have disclosed this document to our legal representative and to have permitted me and my wife to consider and address the contents and at a minimum the document should have been put to us during his questioning of us. I say that our legal representative also pointed out that even at this stage in closing submissions when the document had first been referred to, the Presenting Officer had no English translation of it and was not in a position to state what the contents of the document were.

31. I refer further to pp. 5 and 7 of the decision of the Tribunal Member. I say that it is incorrect to state that our legal representative was granted a request for a translated copy of the document submitted by the Presenting Officer. Our legal representative objected strongly to the introduction of the document in the circumstances and was insistent that the document should have been disclosed prior to or at the commencement of the hearing and myself and my wife should have been given, during the course of questioning, an opportunity to consult with our legal advisor regarding same, as well as to address in oral evidence the contents of same. It was the Tribunal Member who overruled our legal representatives objection and directed that the document could be admitted and relied upon and of his own motion directed that a translation of the document be furnished within seven days to our legal representatives."

19. In case one might wonder at the contents of these paragraphs, at para. 49, the ultimate paragraph of the same grounding Affidavit, the Applicant explains that he has little command of the English language, so that the contents of the Affidavit, which manifestly owes a great deal to his legal advisors, had been read and translated for him into French, his first language and, he verified and confirmed the contents.

20. No replying Affidavit, denying or contesting in any way the contents of these paragraphs was filed by or on behalf of the Presenting Officer or the Member of the Refugee Appeals Tribunal. In such circumstances the court must accept that the facts deposed to in the grounding Affidavit, as distinct from comments and arguments, are correct. In my judgment, this is a very important: one might even be justified in describing it as a pivotal document in the appeal. The Presenting Officer offered it and, the Member of the Refugee Appeals Tribunal admitted it into evidence, as establishing that Mr. B., had been cleared of all charges of fraud and embezzlement of EU funds. On foot of this document and, the Applicant's apparent total lack of knowledge of what it purported to state about the current situation of Mr. B., the Member of the Refugee Appeals Tribunal went on to conclude that the Applicant's credibility had been undermined. In addition, at reason 6, given for his decision that the Applicant was not credible or trustworthy, the Member of the Refugee Appeals Tribunal found it extraordinary that Counsel for the Applicant would object to the production of a document stating that the Applicant's uncle had been cleared of all charges in the Ivory Coast, that was of assistance to the Applicant and the Tribunal.

21. In my judgment, Counsel for the Applicant very correctly and justifiably objected to the introduction of this document produced by the Presenting Officer in his closing submissions. If this document had been available to the Presenting Officer, (even if not in an English language translation), during his questioning of the Applicant and, from the questions put to the Applicant by the Presenting Officer and the lack of a replying Affidavit I must conclude that it was available and, if he wished to rely upon it or to interrogate the Applicant by reference to its contents, it ought to have been put to the Applicant and, he and his legal advisors ought to have been given a sufficient opportunity to consider this document, to enquire into the accuracy of its contents, to formulate a response to its contents and to deal with the matter in the course of the evidence. I find that fair procedures were not observed by affording time to the Applicant and his legal advisors to make written submissions to the Member of the Refugee Appeals Tribunal in relation to this document as a sort of post-script after the conclusion of the oral evidence and submissions by the parties. If the Member of the Refugee Appeals Tribunal decided to admit this document, then, having regard to its obvious significance and materiality, he ought to have adjourned the oral hearing before himself to enable the Applicant and his legal advisors to deal properly with this document.

22. I find that there was no breach, as alleged, of the provisions of s. 16(8) of the Refugee Act, 1996 (as amended). This section provides that:-

"The (Tribunal) shall furnish the Applicant concerned and his Solicitor with any other document, furnished to the Tribunal by the Commissioner, copies of which have not been previously furnished to the applicant ... and an indication in writing of the nature and source of any other information relating to the (Appeal) which has come to the notice of the Tribunal in the course of an appeal."

23. I am satisfied that this document was not put to the Applicant and the finding to that effect in the decision of the Member of the Refugee Appeals Tribunal is entirely erroneous. There was no evidence before this court at the hearing of this application for Judicial Review that this document had been furnished by the Refugee Applications Commissioner to the Refugee Appeals Tribunal or that it had come to the notice of the Refugee Appeals Tribunal other than by its being introduced by the Presenting Officer in his closing submissions to the Member of the Refugee Appeals Tribunal.

24. I find that the Member of the Refugee Appeals Tribunal unfortunately misdirected himself on the facts in concluding that this very important document had been put by the Presenting Officer to the Applicant. This in my judgment, amounts to a failure to observe fair procedures because the Member of the Refugee Appeals Tribunal may not arrive at a decision based upon errors of fact. I find further that the Member of the Refugee Appeals Tribunal also misdirected himself in law in holding as the sixth reason given in his decision for concluding that the Applicant was not credible or trustworthy, that it was extraordinary that Counsel for the Applicant would object to the production of this document.

25. As the fifth stated reason for finding that the Applicant was not credible or trustworthy, the Member of the Refugee Appeals Tribunal found that the evidence given by the Applicant of his departure and travel arrangements to Ireland lacked credibility. The

Member of the Refugee Appeals Tribunal stated that he did not accept the evidence of the Applicant that he travelled without a passport or travel documentation and was able to enter this country in the manner he stated. The Member of the Refugee Appeals Tribunal recorded that he was aware that every passenger arriving in Ireland from France is required to produce a valid passport to Immigration Control. He stated that he did not accept the Applicant's evidence that he was not asked for his passport at Dublin Airport.

26. In the section of his decision entitled, "Evidence of Mahan Philippe Keagnene", the Member of the Refugee Appeals Tribunal states as follows:-

"The Applicant stated that he gave his passport to the Pastor who brought him to Ireland. The Applicant was reluctant to name the Pastor but eventually stated that his name was, "Boula". He paid him 2.8 million CFAs.

In reply to the Tribunal, the Applicant stated that he travelled by plane from Senegal to Paris on Air Africa, and from Paris to Dublin. He did not know the name of the airport in Paris, where he stayed all day before departing for Dublin. He did not pay any attention to the flight he travelled on from France to Ireland. He carried no documentation with him. He stated that on his arrival at Dublin Airport he was not asked for any documentation and was allowed to enter the country."

27. At paras. 41, 39, 42 and 44, of his grounding affidavit the Applicant makes the following averments:-

"41. I say the Tribunal Member also appears to have misunderstood or misconstrued my account of events in relation to my exit from Senegal to Holland, (crossed out Ireland substituted in writing). The Pastor who acted as agent and arranged my journey for a fee and accompanied me on my trip dealt with all aspects of the travel arrangements. The Tribunal Member has failed to have regard for the role played by the agent in facilitating my passage and negotiating same. I did not carry documents or travel papers personally, this was a matter for the agent and I say that the manner in which the Tribunal Member has characterised this aspect of my account of events is in error. I say that there is no basis or reason for the Tribunal Member to draw negative conclusions regarding the surrendering of my passport to the agent and in the context of my quest to obtain entry to this State to seek asylum. The arrangements as between myself and the agent were certainly not unusual. I am not aware of any information before the Tribunal Member regarding immigration controls in Paris and none was disclosed to me or my legal advisors. I was not aware how the agent dealt with any immigration officials on my behalf and was not therefore in a position to advise the Tribunal Member in this regard.

39. I say that in the course of the hearing the Tribunal Member referred to guidelines regarding immigration control and when queried on this point by our legal representative and the basis for his knowledge in this regard, he undertook to disclose details of these guidelines to our legal advisor. He stated he had recently attended a meeting with immigration officials where these guidelines were outlined.

42. By letters of 9th and 12th December received from the Tribunal (Teresa Maher, Asylum Unit) to our Solicitor we were notified of a response to enquiries made by the Tribunal of ORAC pursuant to enquiries under s. 16(6) of the Refugee Act 1996. Enclosed with the letter of 9th December was copy of a letter sent by the Tribunal to Mr. Tom O'Leary of the Presenting Officer's unit of ORAC regarding myself and my wife's appeal wherein the Tribunal requested ORAC to make further enquiries and provide further information with regard to guidelines for immigration officers at Dublin Airport and immigration officers at UK airports and with regard to information on whether Air Africa flies directly from Senegal to London or any other UK airport. Enclosed also with the letter of December 9th was a response from ORAC to that enquiry from Tom O'Leary of the Presenting Unit of 19th November 2003, along with a letter from Mr. Leslie Herman of the UK Home Office concerning the enquiry about flights from Senegal to UK. The letter of 19th November 2003, states that Mr. O'Leary had downloaded 110 pages of guidelines from immigration officers at UK airports, which were attached to the letter. I say no UK guidelines were ever furnished to us, or our legal advisor Mr. Niall Sheerin, at any stage during the appeal or prior to completion of the appeal process and our legal advisors have never seen any such guidelines. The information regarding flights from Senegal to the UK confirmed that there were no such direct flights and therefore is of no relevance to my situation.

44. The letter of 12th December 2003, from the Tribunal to Mr. Sheerin enclosed a further response from ORAC to the Tribunal's enquiry pursuant to s. 16(6) Refugee Act 1996. The documents enclosed comprise the letter of 12th December 2003, from Mr. O'Leary of the Presenting Office Unit of ORAC to Teresa Maher of the Tribunal which confirmed contrary to the statement of the Tribunal Member at our hearing that there were no written guidelines operated by immigration officers at Dublin Airport. Also enclosed was what appears to be a copy of an email from Claire Dowling in ORAC Support Unit to Mr. O'Leary which again confirms that no written guidelines exist for Immigration Control at Dublin Airport as well as a note from a Mr. Mick Quinn of the second named Respondent of 4th January 2002 to ORAC Presenting H.E.O's. I beg or refer to said letter of 12th December 2003 with enclosures as above described upon which pinned together and marked with the letters "PK 17" I have endorsed my name prior to the swearing hereof."

28. No replying Affidavit denying or taking issue with these averments or any of them was filed by or on behalf of the Respondents or either of them or by the Presenting Officer. As I have already indicated the Member of the Refugee Appeals Tribunal in his decision records that the Applicant stated in evidence that he had given his passport to the Pastor who brought him to Ireland. The Member of the Refugee Appeals Tribunal records that the Applicant told the Tribunal that he carried no documents with him and on arrival at Dublin Airport he was not asked for any documents and was allowed to enter the country. At para. 41 of his grounding Affidavit the Applicant alleges that the Member of the Refugee Appeals Tribunal failed to have regard for the role played by the Pastor in acting as agent and facilitator for the Applicant. He avers that he did not carry documents or travel papers personally: that this was a matter for the agent. He further avers that he was not aware how the agent dealt with any immigration officials on his behalf.

29. I find the Applicant's evidence consistent and, in the absence of a replying Affidavit I must conclude that the Member of the Refugee Appeals Tribunal as alleged, misunderstood or misconstrued the evidence of the Applicant as to how he obtained entry to this State. I find that the Member of the Refugee Appeals Tribunal misdirected himself in fact in holding that the Applicant claimed to have travelled here without a passport or travel documentation and, to have been permitted to enter the State without being asked for his passport. In these circumstances, the conclusions of the Member of the Refugee Appeals Tribunal at reason five of his decision are based upon a mistake of fact and, were therefore arrived at by the application of unfair procedures.

30. As the Applicant did not claim to have been permitted to enter this State without his passport being shown, - I am satisfied that his evidence was that he gave his passport to the Pastor who came here with him and dealt with the Immigration Officials here, - it seems to me that the issues of what enquiries were made by the Tribunal regarding written immigration procedure guidelines observed at Dublin Airport on 11th April 2000; of whether correct enquiries were ever made with regard to these alleged guidelines, (London to

Dublin instead of Paris to Dublin and January 2002 instead of April 2000), of whether the Member of the Refugee Appeals Tribunal had attended a meeting with Immigration Officials where these guidelines were outlined or of whether the Member of the Refugee Appeals Tribunal could take notice without proof of the terms of such guidelines, (if in fact they existed), by reference to the decision of this court (Clarke J.) in *Imoh v. The Refugee Appeals Tribunal and Others* (High Court, Unreported, 24th June 2005), are of no relevance to this decision. I am satisfied that the findings by the Member of the Refugee Appeals Tribunal at reason five of his decision are material and significant particularly by reference to the fact that the Legislature considered it sufficiently important to provide at s. 11(B)(c) of the Refugee Act 1996, as inserted by s. 7(f) of the Immigration Act, 2003, that in assessing the credibility of an Applicant for the purpose of determining an appeal, the Refugee Appeals Tribunal shall (the emphasis is mine) have regard to whether the Applicant has provide a full and true explanation of how he or she travelled to and arrived in the State.

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

32. It was submitted by Counsel for the Applicant that none of the negative findings against the Applicant made by the Member of the Refugee Appeals Tribunal were material to the key elements in the account of events related by the Applicant upon which his claimed subjective fear of persecution was based, (events recalled at paras. 21, 22, 23 and 28 of the Affidavit grounding this application for Judicial Review). Counsel for the Applicant submitted that the Member of the Refugee Appeals Tribunal was obliged to have regard to the country of origin information furnished by the Applicant, to the summonses issued against the Applicant by the economic police in the Ivory Coast and, to the order freezing his bank account and to consider whether, there was an objective basis for the Applicant's fear of persecution.

33. Senior Counsel for the Respondents did not argue that this Applicant was fleeing prosecution and not persecution. Once the Applicant is found not to be credible or trustworthy, then it must follow that his or her story of events in his or her country of origin, upon which his or her alleged fear of persecution for a reason specified in s. 2 of the Refugee Act 1996, (as amended), is based, ceases to be credible. In my judgment the Member of the Refugee Appeals Tribunal is not thereafter obliged to set about considering whether this story might accord with the country of origin information before the Tribunal and any other documents submitted by the Applicant to the Tribunal.

34. Having adverted to his finding that the Applicant lacked credibility and did not meet the subjective element of the well-founded fear test, the Member of the Refugee Appeals Tribunal then held as follows:-

"Therefore I am not obligated to consider the documented facts submitted on behalf of the Applicants in relation to the issue of objective fear".

35. I am quite unable to accept the submission made by Counsel for the Applicant that this must be construed as indicating that the Member of the Refugee Appeals Tribunal did not have regard to those documents in considering the issue of subjective fear. Neither can it properly be construed as indicating that the Member of the Refugee Appeals Tribunal wrongfully divided the submitted documents into two categories and only had regard to those documents which he considered related to the issue of subjective fear. In his decision the Member of the Refugee Appeals Tribunal records that Counsel for the Applicant referred to country of origin information attached to Form 1. He records that Counsel for the Applicant in particularly referred to the two Freedom House Reports and to the Human Rights Watch Report in relation to the Ivory Coast. Later in his decision he records that he had taken into consideration the further submissions made by the Applicant's Solicitors dated 8th January 2004. These were written submissions and were opened to this Court at the hearing of this application for Judicial Review.

36. Having regard to the forgoing, to the obligation imposed by statute on the Member of the Refugee Appeals Tribunal to have regard to all the documents furnished to the Tribunal, to the ruling of the Supreme Court in the *Baby "O"* Case [2002] 2 I.R. 169 per Keane C.J. at 180, that all the evidence is relevant to both enquiries – subjective and objective and, to the absence of any clear indication on the face of his decision that the Member of the Refugee Appeals Tribunal did not consider any or, only considered a selected portion of the documents before the Tribunal in concluding that the Applicant did not meet the subjective element of the well-founded fear test, I am not satisfied that the Applicant has discharged the onus of demonstrating that the Member of the Refugee Appeals Tribunal did not have regard to all the country of origin information and other documents before the Tribunal in reaching his conclusions. I find that it was sufficient for the Member of the Refugee Appeals Tribunal to state his reasons for concluding that the Applicant was not credible or trustworthy as he did and, he was not obliged to give a discursive judgment analysing and weighing the entire of the evidence.

37. At paras. 8, 9, 10 and 11 of his Affidavit grounding this application for Judicial Review, the Applicant sets out his version of the problems which arose before the Member of the Refugee Appeals Tribunal with regard to his Solicitor's application for an adjournment of the oral hearing on 13th October 2003, due to the medically certified indisposition of Counsel retained to appear on behalf of the Applicant. This matter is also dealt with by the Member of the Refugee Appeals Tribunal in the section of his decision entitled "Preliminary". Despite the refusal of the Member of the Refugee Appeals Tribunal to adjourn the hearing, (other than from approximately 10.00 am to 3.00 pm to enable another Counsel to be briefed and to have a consultation with the Applicant and his wife), in the events which occurred, the Tribunal was unable for unconnected reasons to proceed with the appeal until 5.30 pm and the matter was then stood over to 16th October 2003, when the hearing proceeded under protest (because of complaints by the Applicants legal advisors in relation to unanswered correspondence with the Tribunal). In these circumstances, I consider that the issue of whether or not the refusal of the Member of the Refugee Appeals Tribunal to grant the adjournment sought amounted to procedural unfairness, (the claim of bias having been abandoned during the course of the hearing of this application for Judicial Review), has become moot.

38. The Court will therefore make an order directing that the decision of the second named Respondent be delivered up for the purpose of being quashed and, an order directing that the Applicant's appeal against the decision of the Refugee Applications Commissioner be remitted to the Refugee Appeals Tribunal for the purpose of being reheard by a Member of the Refugee Appeals Tribunal other than the second named Respondent.

39. This application should be seen as a clear endorsement of the wisdom of having an instantaneous note and recording taken of, at the very least, any oral evidence given before the Member of the Refugee Appeals Tribunal.