Neutral Citation: [2014] IEHC 498

THE HIGH COURT

JUDICIAL REVIEW

[2010 No. 1033 J.R.]

BETWEEN

Z.Y. (PAKISTAN)

APPLICANT

AND

REFUGEE APPEALS TRIBUNAL

RESPONDENT

AND

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

NOTICE PARTY

JUDGMENT of Mr. Justice Barr delivered the 2nd day of October, 2014

Background

1. The applicant is a Pakistani national and was born on 2nd February, 1964. He is a Muslim. He can speak Punjabi, Urdu and English. He got married on 4th February, 1998. He has five children.

2. The applicant has a farm, although the size of this and its location are not evident from the papers submitted. However, of more importance, is the fact that he owned and ran a shop selling music CDs and DVDs. This was in the main bazaar in Haroonabad City. In his interview, the applicant stated that he had been operating the shop for six months before he was attacked. However, in the RAT decision, it was stated that he had been operating the shop for approximately twelve months prior to the attack.

3. The applicant states that on Friday, 5th June, 2009, when he returned to his shop after praying at the Mosque, he received a threatening phone call. The caller told him that selling CDs and DVDs was an un-Islamic activity. He was told that he had fifteen days in which to cease trading. The applicant states that after this threatening phone call, he went to the police to report the incident. They told the applicant that it was probably someone playing a prank and not to take the call seriously. The applicant continued trading from his shop.

4. On 20th June, 2009, the applicant received a further telephone call, in which he was told that as he had not closed the shop he should prepare to be murdered. On the following day, four men, one of whom was armed with a pistol, came into the applicant's shop and took him at gunpoint into a van. They blindfolded the applicant and took him to some other location. The applicant states that throughout the entire night he was kicked and beaten by the men. He was bleeding due to the blows to his mouth and face. The assailants threw the applicant onto the side of the road. He lost consciousness. When he awoke he was in a hospital. He was detained in hospital for four days.

5. While the applicant was in hospital he received word that his shop had been destroyed by a bomb. The police visited the applicant in hospital. The applicant could not recall what details they took from him. He states that he was very worried about what further action the Taliban might take against him. He fled to the home of a friend in Gujarat, which was approximately 120km from the applicant's home. He remained in Gujarat from June 2009 until early February 2010.

6. The applicant made contact with his brother, who was living in Ireland. He agreed to act as a sponsor for the applicant, so that he could come to Ireland on a visitor's visa. In due course, the applicant received the requisite visa on his passport. He left Pakistan on 13th February, 2010, and flew to Turkey and from there he flew to Ireland.

7. The applicant stayed with his brother for two weeks. He then applied for asylum in the State. By the time of his s. 11 interview, he had lost his passport, which the applicant stated had fallen out of his pocket. He had not reported it lost to the gardaí as he did not speak enough English.

8. The applicant stated that he phoned his mother and learnt that some men had called to the family home looking for him. He states that these were Taliban extremists. Nobody reported this incident to the police.

9. The applicant filled out the questionnaire and attended for an interview pursuant to s. 11 of the Refugee Act 1996, as amended. The Refugee Applications Commissioner (hereinafter "RAC") made a negative recommendation on 13th April, 2010. The applicant appealed this recommendation to the Refugee Appeals Tribunal (hereinafter "RAT"). After conducting an oral hearing the RAT in a decision dated 29th June, 2010, found that the applicant should not be declared to be a refugee. The applicant challenges the decision of the RAT on a number of grounds. These are set out hereunder.

Failure to address country of origin information in relation to internal relocation

10. In its decision, the RAT determined that the applicant did not qualify for refugee status because he could safely and reasonably avail of internal relocation in Pakistan, which has a population of 167 million. The locations identified by the Tribunal were Karachi, Lahore and Islamabad. The applicant argues that in making this finding on internal relocation, the Tribunal failed to consider the claim of the applicant that the Taliban had a strong network all over Pakistan, such that internal relocation would not alleviate the threat that he feared.

11. The applicant argued that the COI before the Tribunal lent support to the applicant's claim that the Taliban had a powerful

system of connections throughout Pakistan. The applicant stated that there was specific COI before the Tribunal that the Taliban were active in the locations identified by the Tribunal as safe places to which the applicant could relocate.

12. In his submissions, the applicant cited from the following news article which had been submitted to the Tribunal entitled "*Taliban expanding networks in Pakistan's military political heartland – Punjab*" published on 17th June, 2010. In this report, he was stated as follows:-

> *"The recent string of bloody terror attacks across the Punjab province have put a stamp on fears that militancy has deep rooted itself in the political and military heartland of Pakistan.*
>
> *The emergence of a new extremist network known as the Punjabi Taliban, which has strong ties with both the Taliban and Al-Qaeda, is certainly a cause of worry not only for the provincial government but also for the federal government, which is already facing the heat of militancy in the lawless tribal regions along the Afghan border."*

13. Further on in the report it was stated:-

> *"The Punjabi Taliban is believed to have joined hands with various local terrorist groups such as the Jaish-e-Mohammed (JeM), Lashkar-e-Jhangvi (LeJ) and the Sipah-e-Sahaba Pakistan (SSP), which has made matters worse.*
>
> *Even Rana Sanaullah, the provincial Law Minister, admits that at least 20 to 30 percent members of local terror groups have joined forces with the Punjabi Taliban network to wreak havoc in Punjab.*
>
> *Despite admitting that the situation is fast spiralling out of control, Sanaullah has objected to calls for a full-scale military operation in the region to quell the terror threat, saying the real threat comes from the training camps in terror hot bed North Waziristan."*

14. The applicant submits that in making its internal relocation finding, the Tribunal failed to comply with Regulation 7 of the European Communities (Eligibility for Protection) Regulations 2006 (S.I. 518/2006). In *ASO v. Refugee Appeals Tribunal* [2009] IEHC 607, Cooke J. in dealing with the internal relocation finding in that case stated at paras. 20 – 21:-

> *"20. It is questionable whether Regulation 7 places the onus of proof as to the unavailability of relocation as a solution upon an applicant in these circumstances. The regulations are structured on the basis that regulation No. 7 permits a protection decision maker to enquire into and to determine whether a person who is otherwise eligible for subsidiary protection or a refugee, is nevertheless not in actual need of protection because of the possibility of relocation in the country of origin. To make such a determination the decision maker must be satisfied that there is no risk of the particular persecution feared or of the serious harm in question occurring in the locality to which relocation is postulated.*
>
> *21. As indicated above, the key element in the reasoning of the contested decision in relation to State protection was that State protection is and would be available from Nigerian police against the threats of kidnapping by the Oodua People's Congress. However, if that reasoning is based upon an acceptance by the Tribunal member that the kidnapping recounted by the applicant did take place or may well have taken place, then a finding based on relocation would have required, if it was to comply with Regulation 7, some inquiry as to whether the OPC was active in and capable of threatening the applicant in the locality in which she was supposed to relocate on return."*

15. The applicant submitted that in order to make a valid internal relocation finding which complied with Regulation 7 in this case, the Tribunal would have been required to inquire as to whether the Taliban was active in and capable of threatening the applicant in the areas identified by the Tribunal to which the applicant was supposed to relocate. The applicant submitted that there had been a failure to comply with Regulation 7 in this case which invalidated the decision of the Tribunal.

16. Regulation 7 of the European Communities (Eligibility for Protection) Regulations, 2007 (S.I. 518/2006) provides as follows:-

> *"Internal protection*
>
> *7 (1) As part of the assessment of protection needs, a protection decision maker may determine that a protection applicant is not in need of protection if the applicant can reasonably be expected to stay in a part of his or her country of origin where there is no well founded fear of being persecuted or real risk of suffering serious harm.*
>
> *(2) In examining whether a part of the country of origin accords with paragraph (1), the protection decision-maker shall have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant."*

17. In its response, the respondent noted that the Tribunal made quite detailed findings relying in particular on the applicant's evidence that from the end of June 2009 to early February 2010, the applicant stayed with a friend in Gujarat. The applicant had admitted that he had suffered no harm from the Taliban during this period. It was submitted that the Tribunal made a lawful and valid finding that the applicant was able to move to Gujarat without suffering any harm. Based on that and based on the fact that Pakistan was, as described by the Tribunal Member "*a vast country with a population of something in the region of 167 million people*". It was found that the applicant could have moved to another location other than Gujarat or his own home area. The Tribunal Member pointed in particular to large centres of populations such as Karachi, Lahore and Islamabad.

18. The respondents noted that in the s. 11 interview, it was specifically put to the applicant that Pakistan had a population of 167 million people and that he could return to Rawalpindi, Islamabad Karachi, Lahore or Hyderabad. It was noted that the applicant's reply at interview was that the Taliban had a strong network all over the country and that the applicant would be followed and that he had no money to go to another city.

19. The respondent submitted that the Tribunal Member was not obliged to accept all the claims made by an applicant for asylum, but is obliged to assess the evidence in light of country of origin information (if relevant to the particular issue), the overall evidence of the applicant and indeed the Tribunal Member's own commonsense. In this regard, they cited the decision of Birmingham J. in *M.E. v. Refugee Appeals Tribunal* [2008] IEHC 192.

20. It was submitted that the Tribunal Member had adopted the correct approach in this regard. He took into account facts about the

country of origin information, in particular its size and extremely large population, as well as the fact that it had a number of very large centres of population. The Tribunal Member also took into account the fact that the applicant had already relocated and lived safely for several months, 120 miles from his own home. The correct legal test, that internal relocation must not be an "*unduly harsh*" option, was considered and it was specifically taken into account that the applicant had a farm as well as a shop and appeared to be relatively well off.

21. The applicant challenged these findings on the basis that there was specific country of origin information before the Tribunal indicating that the Taliban were active in the locations identified by the Tribunal. The respondent submitted that this was not the point at issue. Even if the Taliban were active in other parts of Pakistan, it does not follow that the applicant himself would be at risk. The respondent stated that the applicant's claim was based on solely on his ownership of a music shop, which he claimed had been destroyed in June 2009. The applicant did not claim to be well known, politically active or otherwise remarkable. It was submitted that there was nothing in the country of origin information to suggest that the applicant would be tracked down anywhere else in Pakistan.

22. The respondent claimed that the reliance placed by the applicant on the decision of Cooke J. in *ASO v. Refugee Appeals Tribunal* [2009] IEHC 607, was misplaced. In the present case, the Tribunal Member regarded it as significant that the applicant, according to his own evidence was not harmed between the end of June 2009 and early February 2010. That was when he was staying with a friend only 120 miles from his own home. The Tribunal Member took into account the size of Pakistan and its extremely large population. Based on the applicant's experiences, the Tribunal Member made a valid and lawful finding that the applicant, if he could live safely 120 miles from his own home for seven months could relocate to a large centre of population such as Karachi, Lahore or Islamabad.

23. The respondent submitted that in making these findings, the Tribunal Member had satisfied himself that the applicant could have moved safely to these locations. That finding was based on the particular circumstances of the applicant and the nature of his claim and was in the circumstances lawful.

24. I am of opinion that the submissions of the respondent are well founded. While the Taliban might be active in various parts of Pakistan, there was no evidence that the applicant would be subject to persecution if he were to relocate to one of the large cities in Pakistan, on the basis that he had been the owner of a CD shop which had been destroyed in June 2009. In the circumstances, the Tribunal Member was entitled to come to the conclusion that the option of internal relocation was open to the applicant.

The Issue of State Protection

25. In relation to the issue of State protection, the Tribunal Member looked at the COI and came to the conclusion that attempts were being made by the Pakistani police to provide protection for citizens of that country. The RAT noted that while the conflict between police and extremist groups was ongoing and while there were numerous acts of violence against innocent members of society, the State appeared to be making a reasonable attempt at protecting its citizens.

26. The applicant submitted that there was other COI before the Tribunal which pointed in the other direction. He referred to a report by the Crisis Group Report "*reforming Pakistan's police*" dated 14th July, 2008. This report included evidence that the police had links to jihadi and sectarian groups. At p. 15 of the report it was stated as follows:-

> *"Police officers concede that elements within their ranks have links with jihadi and sectarian groups. 'When the state itself has consciously promoted extremism and sectarianism for almost three decades, it's not surprising that these tendencies have managed to establish roots inside the police force, just like they have within the military', said a police official."*

27. The applicant submitted that while the RAT was entitled to select the relevant COI, it could not ignore the significant COI which tended to support the applicant's arguments that State protection would not be reasonably forthcoming, without affording a reasoned opinion as to why that body of information was not being accepted.

28. The applicant submitted that the respondent failed to resolve a conflict in the COI and failed to give adequate and cogent reasons for preferring certain COI over conflicting COI. They submitted that on this account, the decision should be quashed.

29. The applicant referred to the case of *L.O.J. v. Refugee Appeals Tribunal* [2011] IEHC 493, where Hogan J. stated as follows:-

> *"While the Tribunal member was, of course, entitled in principle to select the relevant country of origin information, he could not ignore such significant country of origin information which tended to support the applicant's arguments without affording a reasoned opinion as to why that body of information was not being accepted."*

30. In response, the respondent submitted that the RAT considered the availability of protection from the police in Pakistan and looked at the activities of the army. As regard to the police, the applicant's own evidence was critical to the reasoning of the Tribunal. The applicant had stated in evidence that he had gone to the police after the first threatening phone call on 5th June, 2009, but that the threat was not taken seriously by the police. The Tribunal Member noted that the applicant did not make a formal complaint at that time.

31. The applicant gave evidence that after the assault on 21st June, 2009, and the subsequent bombing of his shop, the police approached the applicant in hospital. In these circumstances, it was submitted that the Tribunal was right in interpreting the applicant's evidence that the police sought the applicant out after the more serious attack. If that was so, the Tribunal Member was within his jurisdiction in finding that there was a functioning police force in Pakistan and that the applicant could avail of protection from the police.

32. The respondent points out that the applicant seeks to impugn the finding of the Tribunal that State protection was available, by referring to an extract from the International Crisis Group Report "*Reforming Pakistan's Police*" of 14th July, 2008. In fact, the applicant had cited a number of paragraphs from this report which painted a picture of a police force struggling to deal with the threat from terrorist organisations and from the Taliban in particular. The following extracts were referred to by the applicant:-

> *"After decades of misuse and neglect, Pakistan's police force is incapable of combating crime, upholding the law or protecting citizens and the state against militant violence. With an elected government taking over power after more than eight years of military rule, the importance of reforming this dysfunctional force has assumed new importance. Elected representatives will be held accountable if citizens continue to see the police, the public face of government, as brutal and corrupt…*

While Musharraf relied on the police to counter political opposition, his government deprived the force of adequate resources – administrative, technical and fiscal. After almost a decade of neglect, it is not surprising

that the police have proved incapable of maintaining internal security. Considered a soft target by extremists of every hue, scores of poorly equipped personnel have been killed in terror attacks, deeply demoralising the force…

It is hardly surprising that this under-staffed, ill equipped, deeply politicised, and pervasively corrupt force has failed to counter the growing extremist menace that is undermining the stability of the Pakistani state, claiming hundreds of lives in terror attacks. 2007 could well be called the 'year of the suicide bomber', whose attacks targeted the police and the military as well as politicians…

Yet, police connivance or inaction is not the primary factor behind the rise of terrorist violence. In Punjab, for instance, the police maintain updated lists of sectarian activists with criminal records, but intelligence agencies only take action after a terror attack has occurred.

Police officers stress that they 'lay their lives on the line every day in the fight against terrorism, more so than the army', even though they are 'nowhere near as numerous, well-equipped and resource-rich'."

33. The Tribunal Member looked at all the COI on State protection, he came to the following conclusion:-

"I have quoted from the foregoing extracts to give an indicated (sic) as to the attempts that are being made by the security forces to provide protection for their citizens within Pakistan. While the conflict is ongoing and there are numerous acts of violence against innocent members of society, the State appears to be making a reasonable attempt at protecting its citizens.

For the foregoing reason, I feel that I am entitled to invoke para. 100 of the UNHCR Handbook which states as follows:-

> *'100. The term unwilling refers to refugees who refuse to accept the protection of the Government of the country of their nationality. It is qualified by the phrase 'owing to such fear'. Where a person is willing to avail himself of the protection of his home country, such willingness would normally be incompatible with a claim that he is outside that country 'owing to well-founded fear of persecution'. Whenever the protection of the country of nationality is available, and there is no ground based on well-founded fear for refusing it, the person concerned is not in need of international protection and is not a refugee.*

Lord Hope in the English case of Horvath [2001] MN AR 205 stated as follows when dealing with the question of protection and the standard of protection that should be provided for the citizens of any given jurisdiction:-

> *'No State can guarantee the safety of its citizens. And to say that the protection must be affected suggests that it must succeed in preventing attacks, which is something that cannot be achieved. Equally, to say that the protection must be sufficient, begs the question, sufficient for what? In my judgment there must be a force in the country in question a criminal law which makes the violent attacks by persecutors punishable by sentences commensurate to the gravity of the crimes. The victims as a class must not be exempt from the protection of the law. There must be a reasonable willingness by the law enforcement agencies that is to say the police and courts to detect, prosecute and punish offenders'."*

34. The Tribunal had evidence before it which allowed it to come to the conclusion that while the situation in Pakistan was far from perfect, the COI showed that the police did take action against extremists. In these circumstances, the Tribunal Member was acting within jurisdiction when he found that State protection would be available to the applicant.

Findings of absence of continuing threat to the applicant

35. The RAT found that following the destruction of the applicant's shop in June 2009, the Taliban would be unlikely to have any interest in attacking or persecuting the applicant if he were returned to Pakistan. The Tribunal made the following finding in this regard:-

"This man claims that the source of his difficulties in Pakistan related to a CD shop that he was operating in his home area of Haroonabad District of the Bahawalangar. However, according to his own evidence the shop in question has now been destroyed and is closed. Therefore, it would appear as if the Taliban would not have any reason to target this man in Pakistan should he return there if, in fact, he was targeted by them in the first place. I have already dealt with that aspect of the appeal earlier on in this decision."

36. The applicant claims that in reaching that conclusion, the Tribunal's finding was based on pure speculation or conjecture as to what the Taliban would do in the circumstances. The applicant submits that it is not permissible for the RAT to base his findings on speculation or conjecture. The applicant relies on the decision of Edwards J. , in *S.O. (suing my his next friend M.O.) v. Minister for Justice, Equality and Law Reform & Ors* [2010] IEHC 151, where the learned trial judge made the following general comments and then dealt with the issue of findings based on speculation and conjecture:-

"Clearly, the decision of Tribunal member on this aspect of the matter was one that was open to her on the evidence. This Court is concerned only with reviewing the process and is not concerned to act as a Court of Appeal or to substitute its own view, if different, for that of the Tribunal member. Once it is clear that a Tribunal member has acted within jurisdiction, that there was evidence capable of supporting his/her decision, and that natural justice and fair procedures have been observed, his/her decision is unassailable."

37. The learned judge had the following to say in relation to not basing a decision on credibility, speculation or conjecture:-

"The law is quite clear that the Tribunal member should not base credibility decisions on speculation or conjecture. In Zhuchkova v Minister for Justice, Equality and Law Reform [2004] IEHC 404 Clarke J., relying upon the judgment of Peart J in the Da Silveiria v Refugee Appeals Tribunal (Unreported, High Court, Peart J., 9th July, 2004) observed that:

> *'…. there is a wider principle, being the one identified by Peart J., when he says that the decision cannot be based*

simply upon a gut feeling or a view based on experience or instinct that the truth has not been told. A finding of lack of credibility, it is at least arguable, must therefore be based on a rational analysis which explains why, in the view of the deciding officer, the truth has not been told.'

In the absence of extrinsic evidence tending to show that the claimed fear was not well founded when considered objectively, the tribunal member should not have speculated or engaged in conjecture in the way that she did, but rather should have proceeded to consider the applicant's subjective credibility.".

38. The applicant submits that the finding of the Tribunal in this regard runs counter to the COI which had been submitted by the applicant. In particular, they had submitted a report researched and compiled by the Refugee Documentation Centre of Ireland dated 30th October, 2009, entitled "*Information on whether owners of Music and/or DVD and/or video shops have been attacked or threatened by the Taliban or other extremist groups*". This report referred to a large number of attacks not only on the owners of these shops, but also on musicians. It told of an attack on a traditional female dancer, called Shabana, who was murdered and her body left hanging from an electric pole with the ground littered with CDs, money and pictures from her albums.

39. The applicant submitted that contrary to the Tribunal Member's personal view of how the Taliban would be likely to act, there was no country of origin information before the Tribunal to suggest that once a shop had been destroyed by the Taliban that organisation would be prepared to forget about the owner who had defied them.

40. The respondent submitted that the applicant's entire claim was linked to his ownership of the music shop. They submitted that the Tribunal was entitled to draw the inference that once the music shop had been destroyed, the applicant was no longer at risk of attack from the Taliban if he was returned to Pakistan.

41. The respondent submitted that the applicant's entire story was linked to his past activity as a part time business-man running a music shop. They submitted that it was not conjecture to infer from the primary facts tendered by way of the applicant's own evidence, that the only reason why the applicant was ever allegedly targeted was no longer a live issue and that therefore the applicant would not be at risk on return to Pakistan.

42. The respondents relied on the decision of Birmingham J. in *M.E. v. Refugee Appeals Tribunal & Ors* [2008] IEHC 192, where it was stated as follows in relation to speculation and conjecture:-

"The Tribunal Member has been criticised as engaging in speculation or conjecture in relation to the risk of persecution facing the applicant if returned to Sierra Leone. There is no doubt that a Tribunal Member should not base an adverse credibility finding on speculation or conjecture. As noted by Peart J. in Da Silveira v The Refugee Appeals Tribunal [2004] IEHC 436:-

'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.'

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. The country of origin information which was before the Tribunal indicated that there were attacks against the owners of music shops. However, there was no evidence that these people would be attacked by the Taliban once the shop had been destroyed or otherwise ceased trading. In these circumstances, the Tribunal Member was acting within his jurisdiction in drawing the inference that the applicant was unlikely to be persecuted if he was returned to Pakistan, particularly if he were to relocate to one of the larger cities in Pakistan. I think that this was a reasonable inference to draw from the facts as proved before the Tribunal.

Credibility

44. The applicant claims that in the absence of a clear credibility finding against him, the court should approach the matter on the basis that the applicant's story was accepted as one which might be true. Insofar as the applicant's credibility may have been rejected, the applicant contends that such credibility finding was based on two factors:-

(i) lack of corroboration; and

(ii) the reason expressed by the applicant for not having applied for asylum in Turkey.

45. The applicant submitted that to the extent that his claim was disbelieved due to lack of documentary evidence of him having owned a CD shop and having received medical treatment in Pakistan, the Tribunal had imposed an unlawful corroboration requirement in assessing the applicant's evidence. The applicant submits that corroboration is not essential to establish an applicant's credibility.

46. The applicant relies on a decision in *Deogratias Mbayo Sango v. Minister for Justice, Equality and Law Reform & Ors* [2005] IEHC 396, where Peart J. stated as follows:-

"Since this is an application for leave, and since I propose granting leave, I see no need to review all these cases in detail. But I take from them, as submitted by Mr Cristle, certain principles, one being that it is incumbent on the Tribunal Member to refer to available country of origin information where this is possible and where such country of origin information may be relevant to the assessment of credibility, and further that it is not sufficient to make what has been described as a bald statement that the applicant lacks credibility. Further, the fact that the Tribunal Member does not find certain minor matters, or matters not central to the core issues, to be credible, is insufficient to found an adverse finding of credibility generally in order to refuse a declaration. In Memishi I put it this way:

'In relation to credibility, Mr Christle referred to the Diaz decision and that in Cordon-Garcia, to which I have referred and quoted relevant passages. 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.'"

47. In relation to the second ground for rejecting the applicant's credibility, the Tribunal expressed a view that the applicant's reason for not seeking asylum in Turkey, that he had a plane ticket to Ireland and he wanted to apply in Ireland, was not satisfactory. The Tribunal expressed an entitlement "*to invoke*" s. 11B(b) of the Refugee Act 1996 (as amended), in assessing the applicant's appeal. The applicant submitted that s. 11B(b) was inapplicable as the applicant had not made a claim that Ireland was the "*first safe country*" in which he had arrived since leaving Pakistan. The applicant submitted that the Tribunal erred in law in making this finding.

48. The applicant referred to the decision of Mac Eochaidh J. in *F.T. v. Refugee Appeals Tribunal & Anor* [2013] IEHC 16, where the issue was dealt with as follows:-

"I accept that the applicant did not claim that the State was the first safe country he entered and indeed freely admitted that France would have been a preferable destination given he speaks fluent French. In this connection I note what O'Keeffe J. said in A.M.K (A Minor) [Afghanistan] v. Refugee Appeals Tribunal [2012] IEHC 479:

'39. As a matter of basic principle, the failure of an asylum seeker to apply for asylum in the nearest safe country or in the first safe country to which he flees is not a bar to refugee status per se and is not necessarily inconsistent with a genuine fear of persecution. In theory, asylum seekers are entitled to choose their country of asylum. The person may, for example, wish to apply for asylum in a country where his native language is spoken, where his family or close friends have settled, or where there is a community of people from his country of origin or sharing his ethnicity or religion. The person may also wish to distance himself from incursions by authorities of his home state and he may have concerns about the true adequacy of protection (see Hathaway, The Law of Refugee Status, at p. 50). The assessment of an applicant's credibility may, however, include an assessment of the reasonableness of any explanation given for passing through safe third countries without applying for asylum there.'

The terms of s. 11B(b) of the Refugee Act 1996, are worth bearing in mind. The section requires that a decision maker 'shall', when assessing the credibility of an applicant for international protection, have regard to: '…whether the applicant has provided a reasonable explanation to substantiate his or her claim that the State is the first safe country in which he or she has arrived since departing from his or her country of origin or habitual residence.'

It seems to me that it was not open to the Tribunal Member to state that he did not accept the explanations given by the applicant for his failure to claim asylum in France 'per the terms of s. 11B of the Refugee Act 1996' where no 'first safe country claim' had been made by the applicant. (I understood the reference to section 11B to mean s. 11B(b) and this was not disputed at the hearing.) There is a suggestion in the statement made by the Tribunal Member that the law requires an applicant for asylum to provide an explanation why asylum was not claimed in the first safe country encountered by the person in flight. There is no such rule of law. The provisions of s. 11B(b) of the Act are applicable where a claim is made by an applicant that Ireland was the first safe country encountered after he or she departed his or her country of origin. No such claim was made by the applicant in this case. It is, of course, perfectly permissible for a decision maker on an application for international protection to have regard to the failure of an applicant to seek refuge in a safe country encountered en route to Ireland. However, given the mandatory terms in which s. 11B of the Act is expressed ('The Commissioner or the Tribunal … shall have regard to the following …') it seems to me that the provision should only be cited in the connection with a credibility finding where its strict terms are met. In these circumstances I find that the Tribunal Member erred in making the above finding in respect of the credibility of the applicant."

49. The respondent noted that the applicant's written submissions proceeded on the basis that the applicant's credibility was not rejected. They submit that such an interpretation of the Tribunal's decision is untenable. The Tribunal made an explicit finding at p. 15 of the decision that while the standard of proof was not very high, the applicant still bore a burden of proof which he had not discharged. The respondent noted that the Tribunal was critical of the fact that the applicant could not obtain any documentation to corroborate the fact that he claimed to have operated a CD shop for approximately twelve months. The applicant failed to provide any sales invoices or any similar documents.

50. The respondent submitted that the case law relied upon by the applicant, had been overtaken by the European Communities (Eligibility for Protection) Regulations 2006. Regulation 5(3) provides as follows:-

"(3) Where aspects of the protection applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation when the following conditions are met—

(a) the applicant has made a genuine effort to substantiate his or her application;

(b) all relevant elements at the applicant's disposal have been submitted and a satisfactory explanation regarding any lack of other relevant elements has been given;

(c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;

(d) the applicant has applied for protection at the earliest possible time, (except where an applicant demonstrates good reason for not having done so); and

(e) the general credibility of the applicant has been established."

51. The respondent submitted that the Tribunal was clear that by far the more important issue was the fact that the alleged injuries suffered by the applicant in late June 2009 formed the central aspect of his appeal. Nevertheless, despite promising to try to get records from the hospital during his s. 11 interview on 26th March, 2010, the applicant had not furnished any medical evidence to the Tribunal since that date. The respondent submitted that this was an entirely reasonable requirement and one which the Tribunal was entitled to make. As stated by the Tribunal, the applicant's failure to provide any corroboration of his claim was a significant item of credibility which went to the core of his claim. In the circumstances, it was submitted that it was quite clear that the Tribunal Member did not accept the credibility of the claim.

52. In the circumstances, I am of opinion that it was reasonable for the Tribunal to have regard to the fact that the applicant had not supplied any documentation relating to his music shop, which on his account had been in operation for some twelve months prior to the bombing. Nor has he supplied any documentation in relation to his stay of four days in hospital after the serious assault in June 2009. This had been raised with the applicant at the time of his s. 11 interview and he had said then that he would try to get the documentation from the hospital.

53. In relation to the s. 11B finding, the respondent states that no ground addressed the alleged unlawfulness relating to the s. 11B finding and therefore that issue was not before the court. The respondent states that even if there were such unlawfulness (which they denied) it was submitted that it would be insufficient to invalidate the decision.

54. I am satisfied that the applicant's submission in relation to the s. 11B finding are well made. However, the error in this regard made by the Tribunal was not sufficient to invalidate the decision when read as a whole. Particularly given the findings already given herein in relation to the availability of internal relocation and State protection. It was noted that in *A.A. (Pakistan) v. Refugee Appeals Tribunal & Ors* (Unreported, Mac Eochaidh J., 18th September, 2013), the learned judge held that findings on credibility and State protection were in watertight compartments so that if the credibility findings were struck down, the finding on State protection stood and therefore the applicant's case failed. The judge stated as follows at para 21 of the judgment:-

> *"21. In this case, in my view, the proper approach when looking at a decision grounded on a multiplicity of reasons is to ask whether the reasons are in watertight compartments or whether they are dependent on one another, in the sense that they are cumulative or linked. I have come to the view that the different reasons in this case are in watertight compartments and are not related to each other or dependent on each other such that an error in one will not condemn the other."*

55. For the reasons set out herein, I am satisfied that the decision of the RAT dated 29th June, 2010, is soundly based in terms of its findings on internal relocation and state protection. I refuse the applicant's application for *certiorari* of that decision.