

**THE HIGH COURT
JUDICIAL REVIEW**

[2008 No. 978 J.R.]

**IN THE MATTER OF THE REFUGEE ACT 1996 (AS AMENDED), AND
IN THE MATTER OF THE IMMIGRATION ACT 1999,
AND IN THE MATTER OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000, AND
IN THE MATTER OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS ACT 2003, SECTION 3(1)**

BETWEEN

B. K.

APPLICANT

AND

PATRICK HURLEY ACTING AS REFUGEE APPEALS TRIBUNAL

RESPONDENT

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM,

FIRST NOTICE PARTY

IRELAND AND ATTORNEY GENERAL

SECOND NOTICE PARTY

JUDGMENT of Mr. Justice Paul McDermott delivered the 17th day of July, 2012

1. Introduction

1.1 The applicant states that he is a Kosovan national and a member of the Gypsy/Ashkali ethnic group in Kosovo. He alleges that he left Kosovo on 10th August, 2007. Until his departure, he resided with his father, mother and two sisters in the village of Lipjan. He states that he travelled to Ireland by truck, a journey organised by a trafficker to whom his father had paid a sum of €5,000. On arrival in Ireland, he made an application for asylum. In the course of that process, he completed a questionnaire on 1st September, 2007, which dealt with a number of matters including personal details and the reason for making his application. He stated that he left his country of origin by reason of events which he outlined:-

"The reason I came to Ireland is as follows: on 24th March, 2004, during the violence in Kosovo, I was at home with my family watching TV and violence taking place in Kosovo. At 9.25 I went out to see what the situation was in the yard. At that moment, someone shot at me from a firearm and I was wounded on my right leg. I fell on the ground and I asked for help. I shouted as I was haemorrhaging a lot. My father heard me and wanted to come and help me. However, they shot at my father too and he was afraid to go outside for a few minutes. Then my father came and helped me to get in the house where my family provided me with help as much as they could. We were afraid to go to the doctor on that night as the whole family were in fear. I stayed wounded until the following morning (Thursday) 25th March when I was brought to a private doctor who operated on me. That night brought trauma upon me. I bear the consequences. I am afraid to live in the place where I wounded in the yard of my house. I suspect that it was the Albanians who shot me because they never liked us because of our religion [and] race, gypsy Ashkali."

1.2 It was also stated that his family were afraid to report the shooting incident because they feared that people would come to the house and "kill all of us". Following the shooting he did not move from the village. He states that he continued to reside with his family because he was their only son.

1.3 In the course of the interview carried out pursuant to s. 11 of the Refugee Act 1996, on 12th December, 2007, the applicant stated that he believed that his life was in danger in Kosovo because he was a member of the Gypsy/Ashkali minority. He provided further detail of the shooting incident as follows:-

"The reason I came to Ireland on 27th March, 2007, it was Wednesday, I went outside the house to see what was happening and some houses were burning and I was shot in my right leg and fell to the ground and I was screaming a lot because of the pain, my father came to help me but he was shot as well. After a while my father made his way over to me, he got up and brought me inside. My family were giving me as much help as they could but they could not bring until the next day to a doctor. It was a dangerous time and the next day, 25th, my family brought me to a private doctor and I had an operation. I am scared to go back after the shooting as it happened outside my house. I am sure it was the Albanians because they don't like us because we have a different religion, Ashkali..."

1.4 A report was duly prepared under s. 13 of the Refugee Act 1996, based on the questionnaire, the s. 11 interview and a record of health screening from the Baleskin Medical Centre, Finglas, Dublin. The application for asylum was based on the applicant's claim that he had a fear of persecution by reason of his being a member of the Gypsy/Ashkali minority group within Kosovo. The Refugee Applications Commissioner recommended that the applicant should not be declared to be a refugee. By notice of appeal dated 2nd February, 2008, the applicant appealed against this recommendation to the Refugee Appeals Tribunal ("the respondent"). The respondent convened an oral hearing in respect of this appeal for 17th June, 2008. The applicant attended to give evidence at this

hearing.

2. The Shooting

2.1 The facts surrounding the shooting of the applicant on 24th March, 2004, formed an essential part of his contention that he was the subject of persecution. At the time of the hearing, the only material that might be described as medical evidence in any way relevant to this event was the medical assessment from the Baleskin Medical Centre dated 5th August, 2007, which contained only the barest information from the applicant. Though it was accepted that it referred to a scar, there was no reference to its position on the applicant's body or what might have caused the wound that give rise to it.

2.2 It was clear by this stage from the Refugee Applications Commissioner's decision that any independent evidence supportive of the applicant's account would be of importance to his appeal. The s. 13(1) report states the following in relation to the state of the medical evidence:-

"The applicant asserts that he was shot in the leg on 24th March, 2004, in front of his family house. He asserts that he was treated by his family until they were able to go to a private doctor the following morning where he was treated for a gunshot wound. The applicant has not submitted any documentation to confirm this. A medical report from the Baleskin Medical Centre states that the applicant is in good health and that he has an 'L-shape' scar on his body. There is no conclusion drawn in this report as to whether or not the scars were a result of a gunshot. As there is no documentation submitted that the applicant has a gunshot wound, the applicant's assertion that he was shot cannot be verified or refuted."

2.3 At the oral hearing on 17th June, 2008, the applicant did not submit any further medical evidence. However, he was afforded an opportunity to do so. The respondent indicated that he would allow the applicant a period of fourteen days from 17th June, 2008, to furnish a medical report if he wished to do so and that no decision would be made by him until that period had expired. Before the expiration of that period, the respondent made his decision and signed it on 28th June, 2008 (a Saturday). By that time, additional non-medical documents had been received by the respondent from the applicant's solicitors under cover of a letter dated 23rd June, 2008. The applicant did not furnish a medical report between 28th June, 2008 and the expiration of the fourteen day period. The decision of 28th June, 2008, upheld the recommendation of the Refugee Applications Commissioner that the applicant be refused refugee status.

2.4 In dealing with the applicant's description of the shooting, the respondent stated:-

"The applicant gives a description of a very serious injury resulting from the shooting with blood haemorrhaging from his leg. Yet the applicant claims to have survived this condition without receiving medical attention for 24 hours. Such an account appears implausible. He was seen by a private doctor who operated on him. The applicant had not at the date of the hearing produced medical evidence to substantiate this account. The Tribunal agreed to allow the applicant until 30th June to submit medical reports. A medical screening report from the Baleskin Medical Centre refers merely to a scar on the applicant's leg."

2.5 It is clear from this extract that though the decision was made, signed and dated 28th June, 2008, it also states that the Tribunal had agreed to allow the applicant "until 30th June" to submit medical reports notwithstanding the fact that the respondent had already determined the matter against the applicant on the basis that his account "appears implausible".

2.6 The respondent also made adverse findings against the applicant in respect of his credibility on a number of other matters.

3. The Date of the Alleged Incident

3.1 It was contended in the applicant's asylum questionnaire that the shooting took place on 24th March, 2004. In a subsequent s. 11 interview, quoted above, he initially gave the date as 27th March, 2007, but a number of lines further on in the same answer, he referred to "the next day 25th". He immediately corrected himself in the course of the same interview by saying that it was 2004 not 2007. In the same interview, the matter was pursued:-

"Q. You claimed earlier that you were shot in March, 2007 but in your questionnaire it was March, 2004, explain.

A. I said 2004, it was 24th March, 2004.

Q. I took down 27th March, 2007.

A. Sorry, but the trouble was 24th March, 2004. I cannot forget the date of the incident."

The respondent concluded in relation to this point:-

"Although the applicant did correct himself concerning the year of the disturbances, it is to be observed that he gave two contrasting dates to describe when (he was) shot. The Tribunal is of the view that such matters detract substantively, if not fatally, (from) the essence of the applicant's claim."

4. The nature and circumstances of the shooting

4.1 The applicant claimed that the shooting in 2004 was ethnically motivated. He claims to have been shot and that the person or persons who shot him also shot at his father when he emerged for assistance. His claim for asylum was substantially based on that specific incident. The respondent carried out an analysis of the applicant's claim.

4.2 The country of origin information submitted in the form of a United Nations High Commission for Refugees (UNHCR) report, confirmed that inter-ethnic rioting broke out in Kosovo on 17th March, 2004. It was stated that protests began at Lipjan on 17th March, as large crowds of ethnic Albanians began to gather and tried to enter the Serb village of Suvi Do but were stopped by authorities. They then turned their attention to the Serb neighbourhoods of Lipjan. The UNHCR report stressed the historic animosity between the Serb community and the Albanian community in Kosovo and detailed attacks by Albanian mobs against Serb homes in Kosovo and the Lipjan area. The report set out details of attacks on Ashkalis in the immediate aftermath of the NATO bombing of Serbia and the return of ethnic Albanians to Kosovo. It spoke of violence, intimidation and forcible expulsion of Roma and Ashkali but not for the period covered by the applicant's account. It noted, however, that the applicant made no claim that he had been the subject of violence or intimidation. There was no reference in the materials available to the respondent concerning disturbances occurring in Lipjan on 24th March, 2004. The applicant's case is that the disturbances started in Lipjan on 17th March, and continued

to 24th March, 2004. The Tribunal concluded that the applicant's account was not supported by country of origin information.

4.3 The Tribunal also had regard to what he described as the historic and geographical inconsistencies and inaccuracies in the detail provided by the applicant in the course of interview as set out in the s. 13 report when his replies were measured against exact country of origin information. In the s. 13 report it is noted that the applicant had failed to provide accurate details of the rioting that had occurred on 17th and 18th March, 2004. He failed to give a valid reason for his lack of knowledge of details of those events. He claimed to be a member of the Ashkali minority but it was noted in the report that when asked a number of questions about basic facts concerning the Ashkali minority, his answers exhibited a dearth of knowledge.

4.4 Though the applicant had lived in Lipjan as a boy and claimed to have suffered schoolyard taunts and occasional beatings from other schoolchildren, usually Albanian Kosovars, he remained at the local school from 1990 to 1998. He lived in the family home with his parents and sisters until his departure in 2007. There was no specific complaint of any further incidents of violence, harassment or intimidation in the years following the shooting.

4.5 The applicant claimed to have a very serious injury resulting from the shooting which resulted in blood haemorrhaging from his leg. He claimed to have survived in this condition without receiving medical attention for 24 hours. The respondent deemed this account to be implausible. However, in the original questionnaire, the applicant stated that the shooting occurred shortly after 9.15pm on the evening of 24th March, 2004 and that he was treated on the following morning when he was brought to a private doctor to remove the bullet. It would appear that in finding that the applicant had delayed some 24 hours, that the respondent was in error.

4.6 The respondent commented on the applicant's claimed motivation for the shooting in the following terms:-

"The incident as described does not indicate that the shooting was deliberate or that the applicant was a random victim in the inter-ethnic disturbances that took place in March, 2004. The applicant did not see an assailant nor was he confronted by an assailant. The applicant's description of the incident in his interview...suggests a random shooting... The claim is predicated on a single incident which appears to have been random or haphazard."

4.7 The applicant complains that the respondent failed to consider the applicant's evidence in its entirety in that he had claimed that the assailant(s) had shot at his father also. He also complained that the respondent failed to consider his claim adequately in the context of the country of origin information available.

5. Judicial Review

5.1 By order of Hogan J. made the 9th October, 2011, leave was granted to the applicant to make application for an order of *certiorari* (together with other ancillary reliefs) to quash the decision of the respondent rejecting the applicant's appeal against the recommendation of the Refugee Applications Commissioner under s. 13 of the 1996 Act on four grounds.

5.2 In summary, leave was granted on the basis that the respondent made his decision on 28th June, 2008, before the expiration of the time allowed by him for the furnishing of a medical report in violation of the applicant's right to fair procedures (Ground 1). Secondly, leave was granted on the basis that the respondent made material errors of fact and did not take certain evidence into account, which ought to have been, in reaching his conclusions in respect of the credibility of the applicant's claim and these were of such a nature as to be unreasonable and fundamentally flawed (Grounds 2, 3 and 4).

6. Ground 1 – the Medical Report

6.1 The applicant contends that the respondent acted in breach of fair procedures in that, on 17th June, 2008, the respondent granted to the applicant a period of two weeks from that date to furnish a medical report in relation to the wound allegedly sustained by the applicant as a result of the shooting that occurred on 24th March, 2004. It is clear from the questionnaire, the s.11 interview, the Refugee Applications Commissioner's decision and the respondent's decision that the applicant's credibility in his description of that event was essential to his application to be declared a refugee. Any medical evidence to support his contention that he had suffered a serious wound to his right leg as a result of that attack was extremely important to the determination of his credibility on that issue. Therefore, in order to afford the applicant the fullest opportunity to present such medical evidence as he wished to adduce, the respondent quite properly as a matter of fair procedures allowed him a further fourteen days following the oral hearing to do so.

6.2 I am satisfied that this was a determination by the respondent as to what was required to ensure that the applicant's right to fair procedures was observed in respect of the determination of the issues before him concerning whether the applicant had been shot as claimed by him.

6.3 It is admitted that the respondent's decision was signed and dated 28th June, 2008 (a Saturday), prior to the expiration of the fourteen days allowed. There is no evidence before the court as to why this decision was taken within the period of fourteen days. A curious feature of the respondent's decision is that notwithstanding the fact that it is made on 28th June, 2008, it refers to the fact that no further medical report had been received from the respondent between the 17th and 28th June and then refers to the fact that the respondent had allowed the applicant until the 30th June, 2008 (the following Monday) to submit medical reports. In fact the fourteen days period did not expire until 1st July, 2008. Even if a medical report had been received within the subsequent three days, the decision had already been made, signed and dated. In the body of the decision, the respondent noted that the applicant had not, at the date of the hearing (17th June, 2008) produced medical evidence to substantiate his description of the very serious injury he had received in the shooting. Whilst it is clear that the applicant was given an opportunity to submit medical reports, the respondent made his decision in advance of the expiration of his own deadline in that regard.

6.4 I am satisfied that the respondent in making his decision of 28th June, 2008, prior to the expiration of his own deadline was in serious error. He failed to observe the fundamental fair procedures which he himself thought appropriate for the hearing and determination of the case. It is of concern to the court that the decision was finalised by the respondent in the knowledge that the time had not expired. This is clear from the text of the decision. Though no further medical report was furnished by the respondent within the period allowed, such a report would no longer have been relevant to the decision making process because the decision had already been made. The court regards this as a very serious breach of fair procedures. The court in exercising its jurisdiction must have regard to its overall supervisory role in relation to quasi judicial tribunals. It is significant in this case that no explanation is offered in the evidence furnished to the court as to why this happened.

6.5 It is obvious that the determination of issues raised in appeals to the Refugee Appeals Tribunal have potentially serious consequences for the rights and lives of applicants for asylum. It is essential for the credibility, integrity and independence of the Refugee Appeals Tribunal that its own procedures and rulings are observed and applied by the Tribunal in the course of its work. It is of particular importance that the impression is not given in any particular case that there has been a determination of an applicant's

claim unless and until the applicant has been afforded an opportunity to make his case in accordance with the Tribunal's own procedures. Unfortunately, that did not happen in this case. I am satisfied, therefore, that the respondent in making his decision on 28th June, 2008, acted in breach of fair procedures.

7. Grounds 2, 3 and 4 – Material Errors of Fact

7.1 I have already set out most of the facts relied upon in the decision of the respondent in upholding the recommendation of the Refugee Appeals Commissioner. The respondent in assessing the facts set out in the materials before him and the evidence heard on the 17th June, 2008, came to the conclusion that the applicant lacked credibility in a number of respects. He found the applicant's account of the alleged shooting on the 24th March, 2004, to be implausible. The applicant complains that the respondent acted unreasonably, made material errors of fact and failed to take adequate account of other facts to the extent that his decision was fundamentally flawed. These complaints are more particularly set out in Grounds 2, 3 and 4 of this application. However, the applicant in argument before the court concentrated on three main matters.

7.2 Firstly, the applicant in his description of the shooting contained in the s.11 interview had given the date of its occurrence as the 27th of March, 2007. This was at variance with the date previously given of 24th March, 2004. In the same interview the applicant had corrected himself immediately and the court is satisfied that the reliance placed upon this error by the respondent as undermining the credibility of the applicant's account of the occurrence of the shooting was unwarranted.

7.3 Secondly, the respondent found as implausible what he regarded as the applicant's account that he had not sought or received medical treatment for a severe wound to his leg for a period of 24 hours, in circumstances where the wound was said to have been haemorrhaging blood. On a reading of the papers it is clear that the respondent was in error in relation to the 24 hour period insofar as the applicant states the shooting occurred at approximately 9.30pm in the evening, and that he was able to obtain medical assistance with the aid of his family the following morning in a local clinic. This finding is given further importance by the respondent in that it is assessed in the context of the failure of the applicant to produce a further medical report within the further time allowed him as discussed in relation to the applicant's first ground.

7.4 Thirdly, the applicant complains about the finding by the respondent that the shooting incident as described did not indicate that it was deliberate or that the applicant was a random victim in the inter-ethnic disturbances that took place in March, 2004. The respondent concluded that the applicant's description suggested "a random shooting". The applicant complains that this finding did not take account of his account that his father was shot at when trying to come to his aid. It is, therefore, submitted by the applicant that this finding was unreasonable.

7.5 It must be noted that there was other material available to the respondent which he thought important. The country of origin information available to the respondent contained a UNHCR report confirming that there had been inter-ethnic rioting at Lipjan on 17th and 18th March, 2004. There was no record of any eruption of violence on 24th March, 2004. The applicant made no complaint of any further act of violence, intimidation or harassment between the 24th March, 2004, and the time he left Kosovo in August, 2007. The respondent noted that the applicant had produced no documentation which corroborated his account or might identify him. There was no allegation of any other attack upon or provocation offered to his family. The respondent also had regard to the inability of the applicant to give an account of the origins of the Ashkali ethnic group and some contemporary facts concerning that group. This was regarded as further undermining the credibility of the applicant and tending to detract from his claim.

7.6 In this regard the court is mindful of its role in an application for judicial review. This is not a court of appeal. The court's role is confined in a case such as this where a finding of lack of credibility is attacked to ensuring that the proper legal procedures have been followed by the decision-maker in arriving at that conclusion. It is clear from the determination of the respondent that he had regard to the various factors set out at s. 11(B) of the Refugee Act 1996, and those requirements set out at Regulation 5 of the European Communities (Eligibility for Protection) Regulations 2006, which provide for further matters to be taken into account and guidance as to how certain issues are to be approached.

7.7 A person who seeks a declaration that he is a refugee must establish that he is outside his country of nationality by reason of "a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion..." and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country. Section 11A(3) of the Act states that where an applicant appeals against a recommendation of the Commissioner under s. 13, it shall be for him or her to show that he or she is a refugee.

7.8 In *I.R. v. Minister for Justice, Equality and Law Reform and Refugee Appeals Tribunal* [2009] IEHC 353, Cooke J. summarised some of the guidelines which emerge from the case law relating to the process of the assessment of credibility in applications for asylum. Cooke J. emphasised that in the course of a judicial review of such decisions the function and jurisdiction of the High Court was confined to ensuring that the process by which the determination was made was legally sound and not vitiated by any material error of law, the infringement of any applicable statutory provision or of any principle of natural or constitutional justice. Firstly, the decision-maker had to determine whether the applicant demonstrated a genuine fear of persecution for a convention reason – a subjective fear. Secondly, the decision-maker had to assess whether that subjective fear was objectively justified or reasonable and thus well founded. He continued at paragraph 11:-

"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 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."

7.9 I am satisfied that having reviewed the questionnaire, the s. 11 statement, and the respondent's conclusions in relation to the inconsistencies in the applicant's account in respect of the date of the alleged shooting, that a disproportionate emphasis and importance has been ascribed to that error by the respondent. The applicant in the s. 11 statement described the shooting as having occurred on the 27th March, 2007, and within the s. 11 statement this was quickly corrected. His initial account given in the questionnaire is that the shooting was on the 24th March, 2004. It is the type of error that frequently occurs in the course of proceedings or interviews and for which a procedure readily exists for correction. Indeed, that procedure was availed of in this case. However, the respondent stated that it was one of the matters that detracted "substantively, if not fatally from the essence of the applicant's claim". I am satisfied that this affords undue weight to the error made by the applicant and could not be regarded reasonably as being the type of matter that should detract "substantively, if not fatally" from the applicant's claim having regard to the immediacy of the correction.

7.10 The applicant also complains that the respondent considered this account of the shooting to be implausible because he did not seek medical attention for a period of 24 hours despite the fact that he was haemorrhaging from the wound sustained. In fact the period between the alleged shooting and medical intervention was considerably less. The applicant remained without medical attention between approximately 9.30pm on the 24th March, 2004, until the morning of the 25th. The respondent considered that to have survived such a wound in the absence of medical attention for 24 hours was implausible. This conclusion was incorrect: the period before treatment was considerably less than 24 hours. However, that might not be regarded necessarily as detracting from the respondent's conclusion that it was still a considerable period to remain without treatment whilst suffering a very heavy loss of blood.

7.11 The applicant also complains that the determination by the respondent that the shooting was random, did not take adequate account of the fact that his father was also shot at. He further complains that country of origin information in relation to persecution and the ethnic hostilities in the area of Lipjan in March, 2004 at other times was not adequately considered by the respondent.

7.12 I am satisfied that the court must make its assessment of the decision-maker's findings on the basis of the principles quoted from the judgment of Cooke J., above. The decision of the respondent must be viewed as a whole. There is a danger that in isolating one or two facts in the respondent's decision one might be led to ignore other important findings. For example, the respondent thought the applicant was lacking in credibility in relation to his knowledge of the history and nature of the Gypsy/Ashkali minority group. He had little detailed knowledge of the outbreak of ethnic violence in Lipjan, his home village, on the 17th and 18th March, 2004. He had no documentation to support his identity. He had remained living in Lipjan with his family from the date of the alleged shooting until his arrival in Ireland in August, 2007. He made no complaint of any episode of violence, harassment or intimidation in the period following the shooting up to the date of his departure. The country of origin information suggested that the Gypsy/Ashkali minority was not in need of international protection in an assessment made by the UNHCR in June, 2006.

7.13 I am not satisfied that the challenge to the determinations of fact made by the respondent has established that the respondent acted unreasonably and/or irrationally in drawing inferences from all of the material and evidence that was before him. This included the oral testimony of the applicant. The respondent was in a position to assess his credibility by virtue of his demeanour and his responses to questioning. The respondent set out in detail various matters which he concluded detracted from the applicant's credibility. The reasons given by the respondent for his conclusion related to matters which were of substantial importance to the applicant's claim and which were the subject of investigation, particularly through the country of origin information available to him. I accept that he erred in drawing an unwarranted inference from the inconsistency in the applicant's evidence concerning the date of the alleged shooting. However, I do not consider that that error, of itself, vitiates the conclusion of the respondent as to lack of credibility in respect of the other matters considered.

7.14 In respect of Grounds 2, 3 and 4, I am not satisfied that the applicant has succeeded in demonstrating that the respondent acted unreasonably or irrationally or so considered or failed to consider the materials and/or evidence in this case in such a way as to render his conclusion so fundamentally flawed as to warrant an order of *certiorari* on those grounds.

8. Discretion

8.1 I am satisfied that the respondent acted in breach of fair procedures by making his decision in this case on the 28th June, 2008, before the expiration of the period that he had allowed for the furnishing of medical reports by the applicant and which he had indicated he would consider before reaching his decision. A question arises as to whether, notwithstanding that serious breach of fair procedures, I should exercise my discretion and refuse to grant an order of *certiorari* or any other relief to the applicant.

8.2 Counsel on behalf of the respondent accepts that the decision was made prior to the expiration of the time set for the delivery of any medical reports to be submitted on behalf of the applicant. However, he also submitted that no prejudice accrued to the applicant as a result of this premature decision. It is submitted that the applicant did not within the period of fourteen days and, in particular, in the period between the 28th June and 1st July, 2008, submit any medical report to the respondent for his consideration. No application was made within that period for an extension of time within which to deliver a medical report. Therefore, it is submitted that since no medical evidence would in fact have been submitted within the balance of the extended period of fourteen days, there was no prejudice to the applicant. It was also submitted that the applicant had been notified of the decision on or about the 17th July, 2008, and that no effort had been made up to that date to submit a medical report or seek an extension of time to do so.

8.3 It is clear that no further medical evidence was furnished to the Tribunal in the remaining period of the fourteen days available or at any time following the 28th June, 2008. This is dealt with in the affidavit of the applicant in the following way:-

"I say that following the conclusion of my oral appeal, I contacted the refugee legal service in relation to getting a medical report. I say, believe and am advised that the refugee legal service sought authorisation for the funding of a medical report. I say, believe and am advised that because of my limited command of English, I was unaware of the necessity of making a financial contribution to the said medical report. I say that once this was explained to me, I immediately contacted my doctor for an appointment. I say, believe and am advised that in fact while I was awaiting an appointment with my doctor that the respondent had already determined my oral appeal."

8.4 The applicant received notice of the respondent's negative decision on or about the 17th or 18th July, 2008. Though there is no evidence that any attempt was made to contact the respondent or to seek an extension of time in relation to submitting the medical report referred to by the applicant, it is difficult, at this remove, to understand how the applicant could have had any confidence that any further material would have been considered. The premise upon which such material might have been furnished had been completely undermined by the respondent. The decision had already been made. It is clear that the submission of any further material after the 28th June, 2008 would have been futile.

8.5 The substance of the respondent's decision is to the effect that the applicant's account of the shooting on the 24th March, 2004, was not credible. Though the court is not satisfied to grant an order of *certiorari* on the basis of Grounds 2, 3 and 4 as set out

above, which essentially relate to the assessment of facts concerning the credibility of the applicant, the court has a duty to ensure that the process by which the decision was reached was fundamentally fair. I am concerned that the respondent felt at liberty to reach a decision in respect of the issue of credibility prior to the expiration of the period that he himself had allowed for the furnishing of a medical report or reports which, had they been forthcoming, might have been crucial to the determination of that issue. No explanation for this occurrence has been furnished to the court in the affidavits filed on behalf of the respondent. I am particularly concerned that the respondent made his decision on the 28th June, 2008, in the knowledge expressed in his decision that time still remained for the furnishing of medical reports. Indeed, it is difficult to see what purpose could be served by the furnishing of medical reports after the 28th June, 2008, as the decision had already been made. The pre-determination of the appeal in advance of the time set by the respondent was the antithesis of fair procedures.

8.6 I am satisfied that it would not serve the integrity and credibility of the asylum process if this decision were allowed to stand.

8.7 The court will, therefore, grant the order of *certiorari* sought to quash the decision of the 28th May, 2008, and remit the matter back to the Refugee Appeals Tribunal to be re-heard by a differently constituted Tribunal.