

**THE HIGH COURT  
JUDICIAL REVIEW**

**[2012 No. 227 J.R.]**

**BETWEEN**

**G.A.N. (CAMEROON)**

**APPLICANT**

**AND**

**BEN GARVEY (ACTING AS THE REFUGEE APPEALS TRIBUNAL), THE MINISTER FOR JUSTICE AND LAW REFORM, IRELAND AND  
THE ATTORNEY GENERAL**

**RESPONDENTS**

**JUDGMENT of Mr. Justice Eagar delivered on the 13th day of October, 2015**

1. The Applicant arrived in this State on the 25th May, 2011 and applied for asylum at that time. The relief sought by the Applicant is an order of *certiorari* by way of an application for judicial review quashing the decision of the first-named Respondent to affirm the decision of the Refugee Applications Commissioner (hereinafter referred to as "the Commissioner"). Further contained in the notice of motion are a number of declarations which are sought but which fall within the relief sought by way of *certiorari*.

2. The grounds upon which reliefs were sought were:

- i. The first-named Respondent erred in fact and in law in failing to make any findings in his decision in relation to the Applicant's nationality and identity, given that the Commissioner had accepted that s.3 (1) of his s.13 (1) report that the Applicant was a national of Cameroon, was allied to the fact that the Applicant had produced his birth certificate and national identity card.
- ii. The first-named Respondent erred in law and breached natural and constitutional justice requirements in failing to make any assessment of the Applicant's membership card in relation to his association and connection with the SCNC, more particularly given his statement at the bottom of the second paragraph, p.14 of the decision that, "to the extent, therefore, the Applicant claims that being associated with the SCNC can make a person vulnerable, COI (country of origin information) supports this contention."
- iii. The first-named Respondent erred in law and breached natural and constitutional justice requirements in making credibility findings in relation to the Applicant's demeanour and the way in which he gave his evidence to him, in respect of his evidence being "contrived, implausible and not reliable"
- iv. The first-named Respondent made a material error of fact in stating at p. 14 of his decision that "the Applicant gave no evidence that he was of interest to the authorities or that he was warned by them between his alleged arrest in 2008 and February 2011" when his evidence, to the Commissioner, was recorded at question 62 and 64, p. 8 of his interview notes of the 22nd June 2011 was to the effect that before the 10th of February 2011 he had "had meetings with the Honourable Chief Isaac Enow Oben, the Chairman of the Cameroon Ideology Party (CIP). He was the brain father. He wanted to get people to take an active part in the activities of the SCNC to use the internet, door-to-door, with plans to call the people to matter protests. I went with pamphlets, tracts and leaflets".
- v. The first-named Respondent erred in law and breached natural and constitutional justice requirements in making a credibility issue in relation to the warrant to arrest that had been issued against the Applicant. It mentioned that he had failed to appear pursuant to a summons in such a manner that had not been put to the Applicant at the hearing. He had furthermore not been given an opportunity to respond. More particularly the matter had not been previously raised with the Applicant by the Commissioner.
- vi. The first-named Respondent erred in law and breached natural and constitutional justice requirements in failing to put to the Applicant the conflict in his evidence in relation to working with Chuantu Law Chambers until February 2011, and also in failing to clarify with the Applicant that they would still continue to work with Chuantu Law, away from the Chambers, between October 2010 and February 2011, more particularly as the affidavit of Joseph Tabi Tanchi of Chuantu Law Chambers stated, he was in a hideout when the arrest warrant was issued for him in February 2011.
- vii. The first-named Respondent erred in law and breached natural and constitutional justice requirements in making a credibility issue in relation to the Applicant being able to continue to attend court on a daily basis, where he would be meeting government lawyers at a time when he was summonsed to appear before the authorities. This issue had not been put to the Applicant at the hearing, thereby giving him an opportunity to respond, more particularly having previously not put any issue to the Applicant in relation to the summons or when in fact it was issued, in this regard.
- viii. The first-named Respondent erred in law and breached natural and constitutional justice requirements in making no assessment of what protection would be available to the Applicant if he were to return to Cameroon, more particularly having regard to the fact that the first-named Respondent confirmed in his decision that the country of origin information stated that "any person having an association with SCNC would be vulnerable".
- ix. The first-named Respondent erred in law and breached natural and constitutional justice requirements in failing to apply the provisions of the European Convention of Human Rights Act 2003 to the Applicant's claim. The first-named Respondent erred in law in failing to give any reasons in his decision as to why the two previous decisions of the Tribunal

are of little probative value.

3. An affidavit was sworn by the Applicant for the purpose of verifying the facts relied upon in the statement of grounds in the application for judicial review. He was born in Muyuka, Southwest Region, in the Republic of Cameroon on the 15th September, 1975 and is a member of the Dackkerian Backkerian/Bayeng ethnic group. He is married and has one dependant child, both of whom still remain in Cameroon.

4. He stated he claimed asylum in Ireland on the 25th May, 2011 and confirmed that he had supplied the following documentation:

- a. a copy of his birth certificate
- b. a copy of his national identity card
- c. his copy of the SCNC membership card
- d. a copy of an attestation from Chief Isaac Enow Oben, Chairman of South Cameroon National Council dated the 3rd July, 2011
- e. a copy of an arrest warrant issued in respect of him
- f. a copy of an affidavit from Joseph Tabi Tanchi of Chuantu Law Chambers in respect of him, dated the 1st of July 2011.

5. He was interviewed on the 22nd June, 2011 and the 18th July, 2011 by the Commissioner. He was notified by the Commissioner of the recommendation that he shall not be declared a refugee which was dated the 9th November, 2011.

6. On the 29th November, 2011 a notice of appeal and grounds of appeal were lodged on behalf of the Applicant together with country of origin information. Also included were two previous decisions of the Tribunal submitted in support of his claim. The hearing before the first-named Respondent took place on the 17th January, 2012 and the decision of the second-named Respondent was dated the 28th February, 2012.

7. The Applicant in his affidavit avers that he was of the view that the oral hearing conducted by the first-named Respondent into his case on the 17th of January, 2012 was carried out in such a way that he always had serious doubts and reservations about whether or not the Tribunal member had full knowledge of the important facts of the case.

8. He says that when he was undergoing his interview with the Refugee Applications Commissioner he produced the originals of:

- a. Birth Certificate
- b. SCNC membership card
- c. Letter of endorsement from the Chief of the SCNC
- d. Arrest warrant
- e. Affidavit from Chuantu Law Chambers whom he worked for

9. He said that he had these original documents in his possession at the time of his interview with the Office of the Refugee Applications Commissioner on the 18th July, 2011 apart from the original SCNC membership card, of which he had a copy. He said that he tendered his original documents to the interviewer on the 18th of July 2011 and that the interviewer did not retain the originals and took a copy of each of the documents before handing the originals back to the Applicant. He said that he had placed his original SCNC membership card with his questionnaire when he was returning same to the Office of the Refugee Applications Commissioner. He said that the Commissioner's Office informed him at his interview on the 18th of July 2011 that the SCNC membership card was not with his papers. He said that his application to the Refugee Applications Commissioner and the Refugee Appeals Tribunal was seriously prejudiced as they were not in possession of the originals of these documents. He further says that it is a matter of some concern to him that the first-named Respondent had made no findings in his decision in relation to his nationality and identity given that the Refugee Applications Commissioner had accepted, at s.3 (i) of his s.13 report that he was a national of Cameroon and that he had also produced his birth certificate and national identity card.

10. He also states in his affidavit that it is a matter of serious concern to him that the first-named Respondent, in stating that his alleged connection with the SCNC is contrived, implausible and not reliable, has made no mention of, or assessment on,

"my production of my membership card of the SCNC",

More particularly as he states that:

"To the extent therefore the Applicant claims that being associated with the SCNC can make a person vulnerable, COI (country of origin information) supports this contention."

The Applicant says that it is a matter of concern for him that the First-named Respondent found credibility issues in relation to matters that had not been put to him at his hearing and given him an opportunity to respond and in particular to his warrant for arrest mentioning his failing to appear when served with the summons and continued to go in and out of court on a daily basis up to the time when his summons to appear before the authorities was served. He says that this warrant mentions "complaint" by "State Counsel's Chamber".

11. He said that it was a matter of some concern to him that the first-named Respondent had made assessment of what protection would be available to him if he were to return to Cameroon.

#### **The Applicant's Claim – Described by the First-named Respondent**

12. The first-named Respondent said the Applicant was born in 1975 in Cameroon, is married with one dependant, and was in education for 18 years and training to be a lawyer when he left his country of origin in May 2011. He has seven siblings who continue to live in Cameroon along with his widowed mother. The Applicant claims to be a member of the Southern Cameroon National Council

(SCNC) which he joined in 1999. He claims to have joined that year but only became active in 2006. He claims that in 2006 he was a team leader of five members. He also ran errands for the President, handed out leaflets on behalf of the party and sensitised the people. The Applicant stated that they would hold meetings about six times a year. The Applicant claimed that on the 10th of February, 2011 they had a meeting with the Branch President and who already had a meeting with the overall President. The Branch President asked the Applicant and his team to disseminate information to five villages which were approximately 25 miles away. The Applicant states the total population of the villages would be 100,000 people. He claims the team covered three villages on the 11th of February before returning home. The Applicant stated there was a major meeting that day and he went to it with his team. The authorities ordered the people to disperse. The Applicant went to a friend's house in Barong. While there he received a call from his wife telling him that he should not return home. He proceeded to another friend's house in another area, staying there for a month. He claimed that on 28th February he received a phone call informing him that there was a search warrant and an arrest warrant for him at home. He claimed that the authorities came to his family home on the 2nd of March and arrested his wife, who was detained for six hours and then released. During detention she was questioned as to the whereabouts of the Applicant. The Applicant stayed in Bova until mid-March before going to Douala. He stayed there until the 24th May when he travelled to Ireland. He was asked if he was ever arrested. The Applicant replied that he was once arrested in October 2008 whilst at a meeting with fourteen others. He travelled to Ireland via France and was asked why he did not apply for status there. The Applicant replied that he had never had any intention to leave Cameroon.

13. In answer to the presenting officer on behalf of the Refugee Applications Commissioner, he said that the government does not agree with the aims of the SCNC and he left because he was fearful of being killed. He was asked why he had not qualified as a lawyer, as he was 37, and the Applicant replied that it depends on when the occasion arises to allow people to become lawyers. The Applicant described his work and said that he would go into court on a daily basis and work alongside government people. He claimed to have worked up to and including the 10th February, 2011. When asked what happened on the 11th of February 2011, the Applicant replied that he had distributed leaflets. He was asked about the information contained in the leaflets and he replied, "The usual". It was put to him that there was nothing different to previous occasions he had distributed such material. He was asked what was so special about the leaflets distributed on the 11th February. The first-named Respondent said that the Applicant gave an incoherent reply. He was asked the same question again and replied, "I believe the campaign is different, we were doing something different, we were meeting the people". Asked about the contents of the phone call from his wife on the 11th, the Applicant replied, "My wife told me the police were arresting SCNC members and they were looking for me." He stated that his spouse also informed him that an arrest warrant and search warrant was issued for him.

14. Counsel on behalf of the Applicant made oral submissions in addition to which reliance was placed on the written notice of appeal and the grounds contained therein. Country of origin information from Amnesty International was produced and the first-named Respondent noted that Cameroon is noted for its disregard for Human Rights and Amnesty International had written extensively about the regime.

#### **The Analysis of the Applicant's Claim**

15. The Applicant presents as a 37 year-old married male from Cameroon. Both his spouse and one dependant continue to live there. He is articulate, competent, highly educated, and was well able to communicate to the Tribunal. He claims that he joined the SCNC in 1999 but became active in 2006. He said he was training to become a lawyer between 2006 and 2011, the year he left Cameroon. His role in the organisation was that of Team Leader, delivering messages for the President and sensitising the population about the aims of the SCNC. He claims that, in 2008, he was arrested by the authorities for being a member of the SCNC, detained for a short period and released when "Human Rights" became involved. Nothing further occurred until February 2011 when he states that after distributing leaflets he returned to Muyuka to attend meetings calling for people to work towards sovereignty. He claimed his friend D. told him that the police were after arresting members of the SCNC. He received a call from his wife who informed the Applicant that the police visited the family home searching for him. He told the Tribunal that his family hired a car for him, and he went to Bova where he spent a month. He claimed he received a phone call from his spouse on the 28th February to say the police left a search warrant and an arrest warrant at the family home. The Applicant stayed in Bova until mid-March before going to Douala where he lived until he departed in May for Ireland.

16. The first-named Respondent said that country of origin information on the SCNC shows that the organisation advocates complete secession, or full independence, of southern Cameroon from the rest of the country. The SCNC is not a political party and is not registered, but shares a number of supporters with opposition parties, most notably the Social Democratic Front (SDF). The government regards the SCNC as an illegal organisation because it advocates secession, which the law prohibits. Security forces continue to arrest and detain leaders, members and supporters of SCNC to prevent them from participating in unauthorised political meetings which advocate the partitioning of Cameroon. According to one report of January 2007, some members of the SCNC have used violence to obtain political concessions from the government. The report also states that local provincial government officials continue to restrict press freedom by arresting and harassing journalists suspected of being members of the SCNC. To the extent therefore that the Applicant claims that being associated with the SCNC can make a person vulnerable, country of origin information supports this contention.

17. The first-named Respondent then indicated that the onus is on the Applicant who appeals the Commissioner's recommendations to prove that he is a refugee. He then points out a number of problematic inconsistencies with the Applicant's account which tend to undermine his credibility and thus question the legitimacy of his claim. The First-named Respondent said he followed the principles set out in relation to the assessment of credibility by Cooke J. in *I.R. v. Minister for Justice Equality and Law Reform* [2009] IEHC 353 dated the 24th of July 2009. The following credibility issues were identified by the first-named Respondent:

- i. When questioned by the presenting officer, he told the Tribunal that he stopped working on the 10th February, 2011 and the following day he accompanied four other SCNC members to villages 25 miles away to distribute leaflets to a population of 100,000 people. He was asked what was significant about the 10th February. The first-named Respondent said that the Applicant gave an "incoherent reply" (although he did not explain what he meant by "an incoherent reply"). When asked again what was different about the 11th February such that he had to leave his job and make arrangements to go to the villages the next day, after considerable hesitancy, the Applicant replied, "I believe the campaign is different, we were doing something different, we were meeting the people". He was asked what information was contained in the leaflets and he replied "the usual". It was put to him that there was nothing different to what he was doing before as he previously gave evidence to the effect that his role in the organisation entailed distributing leaflets and sensitising people about the SCNC. He replied, "It was different". The Applicant claims his work as a lawyer brought him into contact with government lawyers and on a daily basis "inside and outside court over a three-year period." The first-named Respondent said "it was difficult to believe therefore he was not targeted by the authorities anytime between 2008 and before the 11th February 2011, considering he claims the authorities arrested and detained him in 2008 for membership of the SCNC. The Applicant gave no evidence that he was of interest to the authorities or that he was warned by them between his arrest in 2008 and February 2011. The second-named Respondent said that on

its own this is not fatal to his claim.

ii. The Applicant states the authorities came to his home when he was not present and that an arrest warrant was issued for his apprehension. A photocopy of same was put in evidence. The Applicant said he left Cameroon as he faced arrest, imprisonment and potentially death for his activities on the 11th of February 2011, however the purported arrested warrant is dated the 7th of February 2011. The first-named Respondent said he had taken into consideration the Applicant's statement that he could have been left in his workplace however he told the Tribunal he worked up to and including the 10th February 2011. Further, the workplace makes reference to the Applicant failing to appear when served with the summons. The first-named Respondent said he did not find it credible that the Applicant continued to go in and out of court on a daily basis where he was meeting government lawyers at a time when he was summoned to appear before the authorities. Further it is not credible that the authorities were seeking him for a treasonable offence, revolution and secession as stated in the arrest warrant while he continued his daily routine. In his interview he stated inter alia that he "did cases on daily basis and I knew the judicial police".

iii. The Applicant put in evidence photocopies of documents listed in the s.13 report which the Commissioner was unable to verify. The Applicant gave no plausible reason why original documents could not be produced. One of the documents purports to be an affidavit verifying that the Applicant worked with the deponent in Chuantu Law Chambers until October 2010 when he no longer attended due to his political activities. However the Applicant told the Tribunal he continued working as an advocate on a daily basis up to and including the 10th of February 2011. He also stated in the questionnaire that he worked in Chuantu Law Chambers up to February 2011. The first-named Respondent then quoted a number of authorities in relation to the reliability of documents, and then the first-named Respondent said that he was satisfied the photocopied documents put in evidence cannot be relied on.

iv. The applicant claims his wife informed him that the authorities were seeking him and other SCNC members and consequently he had to flee Cameroon. However he claims his mother, brother and sister are with the SCNC but the Applicant gives no evidence that any harm has come to them. Indeed he was asked if they were safe and well, and he replied "yes". The first-named Respondent continued by saying that the Applicant was highly educated and claims to have been an active member of the SCNC, and one of his functions included telling people to access the internet to find out about the SCNC. Moreover, when questioned about the website and how to view this information, he was far from convincing and knew nothing about the SCNC's internet distribution strategy. He also appeared to know little about how the organisation promoted themselves on the internet.

18. The Applicant showed some knowledge of the SCNC however much of it is in the public domain.

19. The first-named Respondent said with regard to the evidence provided by the Applicant in assessing the manner by which such evidence was delivered, and witnessing his overall demeanour, the Tribunal was satisfied that his alleged connection with the SCNC is contrived, implausible and not reliable. He concluded by saying that he affirmed the recommendation of the Refugee Applications Commissioner made in accordance with s.13 of the Refugee Act 1996 (as amended).

#### **Submissions by Counsel for the Applicant.**

20. Counsel for the Applicant, Michael Conlon SC (with James Healy BL) having set out the background to the Applicant's claim and the documentation produced by the Applicant in support of same, then proceeded to discuss the Refugee Applications Commissioner's determination of the Applicant's claim. In this case however, the Applicant has not sought to seek judicial review of the decision of the Refugee Applications Commissioner.

21. Counsel for the Applicant argued that the first-named Respondent erred in fact and in law in failing to make any findings in this decision in relation to the Applicant's identity and nationality given that the Refugee Applications Commissioner had accepted that the Applicant was a national of Cameroon allied to the fact that the Applicant had produced his birth certificate and national identity card with a photograph.

22. Counsel for the Applicant said that the first-named Respondent erred in fact and in law and breached natural and constitutional justice requirements in failing to make any assessment of the Applicant's membership card in relation to his association or connection with the SCNC. Counsel referred to the decision of Barr J. in *A.O. v. the Refugee Applications Tribunal & Anor* [2015] IEHC 253, in which Barr J. considered the nature of the requirement of the Refugee Appeals Tribunal to adopt an investigative role. Barr J. found that the Court did not mean that the Tribunal must personally undertake the investigative steps which the Court has suggested: "*It seems to the court to be clear that it is open to the Tribunal to carry out further inquiries or obtain further information by way of a request to ORAC pursuant to s. 16(6) of the Refugee Act 1996.*"

23. Counsel argued that the first-named Respondent erred in law and breached natural and constitutional justice requirements in making credibility issues in relation to the Applicant's demeanour and the way in which he gave his evidence to him in respect of his evidence being "contrived, implausible and not reliable".

24. Counsel on behalf of the Applicant stated that the first-named Respondent made a material error of fact in stating that "the Applicant gave no evidence that he was of interest to the authorities or that he was wanted by them between his alleged arrest in 2008 and February 2011", when his evidence to the Commissioner was recorded at Question 62 and 64 of his interview notes of the 22nd of June 2011 was to the effect that before the 10th of February 2011 he had meetings with Chief Isaac Enow Oben, the Chairman of the Cameroon Ideology Party (CIP). He was the brain father. He wanted to get an active part in the activities of the SCNC, to use the internet, door-to-door, the plans to call the people to massive protest. "I went with the pamphlets, tracts and leaflets". Counsel on behalf of the Applicant also argued that the first-named Respondent had erred in law and breached natural and constitution justice requirements in making a credibility issue in relation to the warrant to arrest that had been issued against the Applicant, mentioning that he had failed to appear pursuant to a summons. When such matter had not been put to the Applicant at the hearing, and he having been given an opportunity to respond.

25. Counsel for the Applicant also argued that the first-named Respondent also erred in law and breached natural and constitutional justice requirements failing to put to the Applicant the conflict in his evidence in relation to working with the Chuantu Law Chambers until February 2011. He then referred to the law on refugee status by Hathaway & Foster ("The Law of Refugee Status, 2014, Cambridge University Press).

#### **Submissions by Counsel on Behalf of the Respondents**

26. Counsel on behalf of the Respondents, Denise Brett BL, argued that the key issue in the determination of the first-named Respondent was the failure of the Applicant to establish his subjective credibility. Counsel submitted the following express findings in

respect of the Applicant's lack of credibility:

- i. The vagueness of his answers when questioned on key issues
- ii. The implausibility of being targeted after the 11th February, 2011 when no specific difference in activities had been identified and the state authorities had had a three year prior opportunity to target the Applicant
- iii. Contradiction in dates in respect of the arrest warrants and the timings thereof was between the oral and written evidence
- iv. The seriousness of the offences set out in the arrest warrant in the context of continuing a daily routine over a long period in the proximity of state authorities
- v. The contradiction between his work timings and dates between his oral evidence of working until the 10th November, 2011, as compared to the alleged activity of his Law Chambers indicating that he had ceased work in October 2010
- vi. The absence of threat or harm to his family who remain in Cameroon
- vii. His paucity of information in relation to a key activity he was engaged in, on behalf of the SCNC and the fact that what knowledge he had in respect of the SCNC was knowledge in the public domain.

27. Counsel for the Respondents submitted that the reasons for each of such findings as set out in the decision are discernible, intelligible/understandable, specific, cogent, substantial, rational, and based on correct facts, and quoted the decision in *I.R. v. The Minister for Justice and Law Reform* [2009] IEHC 353. She also referred to the decision in *Imafu v. The Minister for Justice and Law Reform* [2005] IEHC 416, a judgment of Peart J. delivered on the 9th December, 2005. The decision of Peart J. was cited with approval by Stewart J. in *MLTT (Cameroon) v. The Minister for Justice and Law Reform* [2012] IEHC 568, and also quoted from *R.O. (an infant suing by her mother and next friend A.O) v. The Minister for Justice Equality and Law Reform and Margaret Leavy* [2012] IEHC 573, a judgment of MacEochaidh J. where MacEochaidh J. said as follows:

*"In view of the foregoing, I approach the review of the adequacy of reasons in this case by asking the following questions:*

*(i) Were reasons given or discernible for the credibility findings?*

*(ii) If so, were the reasons intelligible in the sense that the reader/addressee could understand why the finding was made?*

*(iii) Were the reasons specific, cogent and substantial?*

*(iv) Were they based on correct facts?*

*(v) Were they rational?*

*Returning now to each of the credibility findings, I assess them as follows."*

28. An issue arose in the course of the hearing in relation to the documentation which the Applicant had said had been lodged, and this was the subject matter of an affidavit from John Moffat of the Refugee Appeals Tribunal in relation to the affidavit of the Applicant and affidavit sworn in the proceedings by the Applicant's solicitor, Ms. Sarah Ryan on the 25th June, 2015.

29. It appears to me that nothing in the affidavits of Ms. Ryan or Mr. Moffat affect the decision in this case.

## **Discussion**

30. In *I.R. v. the Minister for Justice Equality and Law Reform the Refugee Appeals Tribunal* [2009] IEHC 353 Cooke J. set out 10 principles which he suggested emerge from the case law as a guide to the manner in which evidence going to credibility ought to be treated and the review of conclusions on credibility to be carried out by the High Court.

31. Cooke J. stated :

*"2. In such cases the decision-makers at first instance have the unenviable task of deciding if an applicant can be believed by recourse to little more than an appraisal of the account given, the way in which it was given and the reaction of the applicant to sceptical questions, to the highlighting of possible discrepancies or to contradictory evidence from other sources. Recourse will also be had in appropriate cases to what is called "country of origin information" but in most cases this will be of use only in ascertaining whether the social, political and other conditions in the country of origin are such that the events recounted or the mistreatment claimed to have been suffered, may or may not have taken place.*

*3. It is because in such cases the judgment of the primary decision-maker must frequently depend on the personal appraisal of an applicant, that it is not the function of the High Court in judicial review to reassess credibility and to substitute its own view for that of the decision-maker. Its role is confined when a finding of lack of credibility is attacked, to ensuring that the process by which that conclusion has been reached is legally sound and not vitiated by any material error of law."*

32. The first-named Respondent stated in his decision that, on the basis of the country of origin information, "with regard to the SCNC being regarded by the Cameroon government as an illegal organisation", he suggested that security forces continue to arrest and detain leaders, members and supporters of the SCNC, and states that, "to the extent therefore the Applicant claims that being associated with the SCNC can make a person vulnerable, country of origin information supports this contention." It is clear that he has established that the first element, the objective issue is with regard to persecution of SCNC is established. However the Applicant must establish that his claim is well-founded.

33. The fifth principle is "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 legitimate connection to the adverse finding."

34. The first-named Respondent sets out in detail the issues in respect of the Applicant's lack of credibility clearly. The view of this Court is that the reasons relate to the substantive basis of the claim.

35. This Court has complained of the failure of the Respondents to provide the Court with a written account of the hearing before the Refugee Appeals Tribunal and, in that regard, the indication by the first-named Respondent that "the Applicant gave an incoherent reply" is difficult to analyse. Was it that the Applicant did not reply? Or was it that he was not understood in his reply? It was noted that he was asked again however and that he had hesitated before replying. This underlines the unsatisfactory nature of the present system of producing all the documentation save that documentation of the hearing before the Refugee Appeals Tribunal.

36. Cooke J., at principle 8 states,

*"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."*

37. It appears to this Court that the principles enunciated by Cooke J. apply to the decision of the first named respondent on credibility grounds, and that the first-named Respondent correctly applied the tests laid down by Cooke J.

#### **Decision**

38. As this is a telescoped hearing of an application for leave to apply for judicial review, this Court refuses the Applicant's application for leave and dismisses the claim.

*Counsel for the Applicant:*

*Michael Conlon S.C., with James Healy B.L., instructed by Sarah Ryan Solicitors*

*Counsel for the Respondent:*

*Denise Brett B.L., instructed by the Chief State Solicitor*