

THE HIGH COURT

Record Number: 2006 No. 51 JR

BETWEEN

J.B.R.

APPLICANT

AND

RICARDO DOURADO ACTING AS THE REFUGEE APPEALS TRIBUNAL

RESPONDENT

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM,
IRELAND AND THE ATTORNEY GENERAL

NOTICE PARTIES

Judgment of Mr Justice Michael Peart delivered on the 31st day of July 2007

1. This Burundian national arrived in this country on the 17th December 2003 when he was then almost 23 years of age, having left Burundi one week previously, and applied for asylum here on the basis of race and political opinion.

2. He has stated that he is of the Hutu race and that his father was killed by Burundian soldiers, and that he and his mother were forced to flee. He did not mention any siblings in his ASY 1 form, but it appears from a letter dated 29th December 2003 which the applicant wrote to the Minister that he has "brothers and sisters" who disappeared while fleeing Burundi and that he does not know what has become of them. However in his interview he clarified that he had one brother and sister. His siblings assume some relevance in relation to the adverse credibility finding made by the respondent in his decision.

3. Part of the applicant's story is that shortly after he was born in 1982 the family fled from Burundi to Rwanda in 1983. He says that from 1983 he, his parents and his brother and sister lived in Kigali in Rwanda until they all fled to Tanzania in 1994. During these years his father worked as a teacher in Kigali at the same school which he himself was attending.

4. He explained that they had fled Kigali in order to escape the Hutu/Tutsi genocide in 1994. He said that it was very difficult to escape to that stage but in spite of road-blocks they managed to do so, since his father was able to pay some money to a soldier who put them into a military truck which headed east to the border with Tanzania, and that the soldier was able to explain to the Rwandan soldiers at the border that this family were Burundian refugees who wanted to go back to Burundi via Tanzania. His father apparently had enough money with him to do all this as well as stay in a hotel in Tanzania for a few days before they continued their journey to Dar-es-Salaam. When they reached that city they rented accommodation and remained there until 1999 when they returned to Burundi. He did not attend school during the years in Dar-es-Salaam, but his parents taught him at home.

5. He was asked at his interview why they had returned to Burundi in 1999 and at first he said that he did not know why his father "decided to go back", but then went on to say:

"At that particular time there was [sic] arbitrary arrests of Burundian refugees by the Tanzanian police and also we were having a very bad life. Also at the time in Burundi, political parties were allowed to work openly and were taking part in the national government so my father decided to go back".

6. At interview he was asked whether they returned to Burundi with the assistance of UNHCR or any other NGO group or whether the family returned on their own, to which he replied "we went back on our own". At a later point of his interview, when asked to explain why in December 2003 he his mother had not remained in Tanzania since he and his family had previously lived for a number of years, as already set forth, the applicant stated:

"Because when we left Tanzania 1998/1999 to return to Burundi, we were *forced to leave* because my father had problems with the authorities in Tanzania because he was a Burundian refugee and all Burundian refugees were forcibly repatriated. But in our case *my father decided to go back of his own accord*." (my emphasis)

7. He explained in this regard that his father had been arrested on several occasions in Dar-es-Salaam because he was a refugee and had no passport or other documents to live in Tanzania.

8. The voluntariness or otherwise of the family's return to Burundi from Tanzania in 1999 assumes some relevance later in relation to the adverse credibility finding by the respondent. Relevant to that issue is also that at interview the applicant was asked in this context about the contents of a letter which he had sent to the Minister shortly after his arrival here and to which I have referred. He was further questioned in this regard during his interview, and asked to explain why at interview he had stated that his father had decided to go back "*of his own accord*" yet in the letter to the Minister he had stated "*we were sent back to Burundi along with all the Burundian refugees*".

9. In answer the applicant stated that "most of the Burundian refugees were forced to return to Burundi", and that in that regard he was referring to "all Burundian refugees, mostly those who had been living in Tanzania for a short time and those who had been living in Tanzania for a long time but did not have permission to remain" and that "those Burundians who had no visa or any documents allowing them to stay were forced to return to Burundi". He went on as follows:

"Before being repatriated, Burundians were being arrested and jailed. Anybody could go home voluntarily and would be given a paper to allow them pass through the border. Those who did not wish to return voluntarily were put into trucks that were driven to the border. If handed over to the Burundian authorities they would have been put into refugee camps inside Burundi at the border between Burundi and Tanzania called "Kobero". The HCR were responsible for those camps. Those who wanted to return voluntarily could do so without going through the HCR refugee camps."

The injuries

10. It appears according to his account of events at interview that after two weeks back in Burundi in 1999 he was beaten up by the Burundian military (4 Tutsi soldiers) and that as a result he sustained injuries which required him to be hospitalised until some time in 2002. These injuries were to his back and his left leg. When asked why he had been beaten he stated that he was riding his bicycle in Bujumbura and was stopped by the military and asked if he was "the son of Ribanje who had returned from Tanzania", and when he said that he was, he was then beaten unconscious and woke up in hospital. Upon waking he said that he had bandages around his

head, his lower back, his left wrist and right elbow.

11. When he described the incident at interview he stated that the four Tutsi soldiers used the butts of their guns to hit him, and that he remembered being hit on the head and on his back, and that from the injuries that he received they must have continued to beat him after he lost consciousness. He said that he had some open wounds on his forehead and on the back of his head, and that there was a very large open wound to his left lower back and that a bone was protruding from this wound. He also said that his left leg was twisted and broken below the knee. The reason he gave for being in hospital from 1999 to a date in 2002 was because he was lying on his back for more than a month during which period he was unable to turn, and that he then commenced a rehabilitation programme, involving the use first of all of a wheelchair and then crutches, and massage. He described other treatment for his leg during that time.

12. At interview he had no documentation to support his claim. Neither did he have any medical evidence from Burundi in relation to his injuries, but he was able to produce a note from a General Practitioner, Dr Ryder dated 9th November 2004 which referred to the taking of an x-ray showing "an old healed fracture of his fibula and tibia left leg" (sic). It refers to the fact also that the applicant was suffering from a significant amount of psychological distress as a result of flashbacks to torture he suffered in his home country. In passing I should state, even though no mention was made of this in the Decision or the recommendation that it is at least curious that a medical doctor would use an incorrect word "tibia". Surely this was intended to be "tibia". The correct word appears in the later report dated 20th April 2005. However no question was raised as to the authenticity of the earlier document, so I pay no further attention to the matter.

13. The applicant stated also that he had attended a psychologist here on one occasion, but whose name he could not recall. In spite of the fact that he said that he was hospitalised from 1999 until 2002 with his injuries he was unable to give the name of any of the doctors and could remember the name of only one nurse who had treated him, namely "Regina".

Applicant's father

14. He stated that his father was put in prison less than one week after he himself had been beaten up in 1999, which was a short time after their return to Burundi. He said that the reason why his father was imprisoned was on account of his political views and his support for opposition parties such as the Front National de Liberation (NFL), the government being a Tutsi government. He stated that his father was released at the end of 2002, and he was unaware whether his mother had been able to visit his father while in prison since he himself was in hospital. Neither did he know why his father was released in 2002.

His flight

15. He stated at interview that the reason that he left Burundi on the 10th December 2003 was that his father was murdered during the previous night. Before describing what he stated about the aftermath of that occurrence, I need to refer to the fact that at interview he was referred again to the letter which he had sent to the Minister just after his arrival in this country and to the fact that in that letter he had stated:

"We were sent back to Burundi along with all the Burundian refugees. My father was killed by the Burundian military on our return to Burundi". (my emphasis)

16. The return to Burundi referred to was in 1999, and the applicant had already stated that shortly after the return to Burundi he himself had been beaten up and that his father had been arrested and imprisoned where he remained until 2002, and that it was the 9th December 2003 that his father was killed. He was asked to explain this discrepancy. In response the applicant stated:

"What I said in the letter was that my father was killed after we returned to Burundi but I didn't specify when he was killed."

17. In the Decision of the respondent this is referred to also, and the respondent states that in his evidence to the appeal the applicant stated that in this regard he "meant his father was killed in Burundi by Burundians but not immediately."

18. Anyway - to return to what the applicant stated about his father's murder and his escape. He and his sister and brother heard gunshot, became afraid and having opened the door of the back yard, they ran away, leaving their mother and father in the house. He stated that each went in different directions at that point and became separated. At any rate he himself hid in the banana plantation.

19. He was asked at the oral hearing on the appeal why when his father was killed his mother had not been killed as well. He is noted in the Decision as having replied that "he did not have a camera to capture the scene", and that he had gone on to say that he did not know why and had nothing more to say about that. The Tribunal Member states in this regard that he found this answer to be "facetious and totally lacking in credibility".

20. His account continues that after a few hours he says that he heard his mother calling out his name at the plantation, and he says that she told him that they had to leave and so they went to a man, who they did not know, but who had a car and they knocked at his door. He apparently, on being told what had happened by mother, drove them into Tanzania. When he was in the car he asked about his siblings and mother told him not to worry about them as they were together. He stated at interview that it was not until they reached Tanzania that his mother told him that his father had been shot. When they reached Tanzania he stated that his mother then told him that his father had been murdered and that she did not know where his siblings were.

21. They stayed in Dar-es-Salaam for six days after their arrival in Tanzania, and with a man who was known to his father. From there they travelled by bus to Nairobi, Kenya, and he then made his way to Ireland by air in the company of a lady referred to as "Mama Ali" who was able to organise all the necessary documentation for him. His mother on the other hand remained in Kenya. He was unable immediately to answer the question as to why he had left Kenya without his mother, but went on then to say at page 30:

"When we left Burundi to go to Tanzania there was a lot of confusion. When my mother was organising my journey with Mama Ali she wasn't sure where she was sending me to. We were just confused because we were fleeing. I'm not sure what she did, she may have committed suicide. I don't understand why she didn't come with me or know what she was thinking."

22. But he was able to say that while his mother had gone to the airport at Nairobi with him and Mama Ali she had not gone into the airport with them. Neither he nor his mother had ever been to Nairobi before, but could not say whether his mother could have stayed in Nairobi or have gone back to Dar-es-Salaam to the friend of his father with whom they had stayed on their arrival there.

23. The applicant concluded his interview by stating that he fears that if he was returned to Burundi he would be killed by the Burundian government because of his father's involvement with the FNL, and also because "the problems between ethnic groups in Burundi hasn't finished yet" and "people are still dying because they belong to a particular ethnic group".

24. The Refugee Applications Commissioner considered this application under s. 13(1) of the Refugee Act, 1996 (as amended), and concluded that the applicant has failed to establish a well founded fear of persecution as defined under Section 2 of the Refugee Act, 1996 (as amended), and recommended that the applicant should not be declared a refugee.

25. It was against this recommendation that the applicant appealed to the Refugee Appeals Tribunal. The applicant was represented on that appeal on the 18th May 2005 by Counsel instructed by the Refugee Legal Service. In his decision which runs to sixteen pages the respondent refers to the facts disclosed in the ASY 1 form, the Questionnaire, the Interview, the s. 11 and s. 13 reports, and the applicant's evidence to the Tribunal. He then sets out the evidence given to the Tribunal. In this summary of the evidence given at the Tribunal the respondent states in relation to the return from Tanzania to Burundi in 1999:

"The applicant claims that in 1999 (he could not recollect the date/month) he and his parents returned to Burundi voluntarily. He claims if he did not return voluntarily the Tanzanian authorities would repatriate them in which case they would be sent to a camp where the conditions were poor. If they returned voluntarily they could choose where to go. They returned to their house that they had been living in prior to their departure from Burundi."

26. I have already set out what was said at interview and in the letter to the Minister in the letter written by the applicant. In relation to the letter, the respondent states in his Decision that the applicant was referred to that letter and to his statement therein that they had been "sent back to Burundi along with all the Burundian refugees". In that regard the respondent states in the Decision:

"When reminded today at the appeal that he stated that he and his family returned voluntarily, he replied he meant in general all refugees were returned to Burundi".

27. The respondent has stated in the Decision that he does not accept the applicant's explanation of what he meant in this regard, since the letter stated categorically that they were sent back to Burundi along with other Burundian refugees.

28. In his grounding affidavit the applicant complains that while the contents of this letter were raised by the respondent at the appeal hearing, he did not raise any issues in relation to inconsistencies or contradictions in it or gave any opportunity to further explain the return to Burundi with other refugees. The applicant refers to the explanations which he gave at his interview. He submits that the consideration of this matter by the Tribunal is not properly conducted and is unfair because there was no opportunity given to address the matters which gave the respondent cause for concern.

29. In relation to the injuries suffered by the applicant the respondent states in his Decision that the applicant produced no medical report from the hospital where he was from 1999 until 2002, but that a medical report was produced at the appeal from Dr Ryder already referred to. In that regard the respondent states that Dr Ryder states that "the applicant's injuries are *consistent* with the story told by the applicant to the doctor" (my emphasis). The applicant submits to this Court that this statement does not accurately reflect what Dr Ryder stated in his report since the latter stated in this regard: "The scarring on his abdomen and back would be *in keeping with* a severe beating with a strap or stick of some kind " (my emphasis). The respondent also took into account a further medical report from a Dr Patrick O'Sullivan dated 1st June 2005. This report uses the word "consistent".

30. The applicant seeks to draw a distinction of substance between the word "consistent" and the words "in keeping with" used by Dr Ryder, and to thereby impugn the integrity of the Decision. But the Tribunal Member states that if there had been some medical evidence from the hospital in Burundi this may have provided some detail as to how the applicant suffered "the alleged injuries" and the duration of his stay in hospital.

31. The respondent notes in his Decision a further inconsistency between what the applicant stated at interview and what was stated in his evidence to the Tribunal. That is in relation to whether his mother visited his father when the latter was in prison during the period 1999-2002. At interview the applicant stated that he did not know since he was in hospital, but the respondent states that in his evidence to the appeal that his mother did not visit his father every day but did so often. His explanation of the inconsistency is set out in the Decision in some detail and the respondent concluded that the applicant's subsequent attempt to rectify the contradiction is not credible. The applicant states in his affidavit in this regard that "it is a matter of very serious concern to me that the respondent at paragraph 7 of his decision makes a credibility issue of my answers at interview and oral hearing with regard to the fact of when and if my mother had been able to visit my father when he was in prison, while making no assessment of the reason why he was so imprisoned, and having no consideration of the fact that during this period I was seriously ill in hospital and still recovering when I came home."

32. The respondent refers in his Decision also to the fact that in the ASY 1 form the Applicant had made no mention of having any siblings, whereas at interview he stated that when the soldiers arrived at their house and attacked his father he and his brother and sister ran to the banana plantation, but that his siblings went their own way. The respondent says that if this is what happened it is not credible that the applicant would allow them to go their own way or would not stop them from doing so. He concluded also that it was not credible that if his father was killed by these soldiers when they entered their house that they would not also have killed his mother. He does not believe the applicant's account, and concludes that "the event did not occur".

33. The applicant complains in his affidavit that the respondent did not raise any issue at the oral hearing in relation to his having omitted the names of his siblings in his ASY 1 Form and Questionnaire, and as to why his mother and he fled to Tanzania without finding the siblings. He says that the respondent has failed to refer to the fact that at his interview on 22nd June 2005 he had in fact named his siblings. He says in his affidavit that the reason why his mother and he left without finding the siblings was that it was dark and that they feared that if they waited until daybreak they would be found by their attackers and killed by them.

34. There are other bases stated for a finding of a lack of credibility by the respondent, such as that it is not credible that he would not have known the name of the man with who he and his mother stayed in Tanzania for six days when he was being interviewed in June 2004, whereas when that interview resumed in December 2004 he was able to give the name. It was also found not to be credible that if his mother's life was in danger that she would not have to come to this country with him. In these respects the applicant complains in his affidavit that he was given no opportunity to address these concerns since no issue was raised with him at the hearing in relation to them, and refers to what he stated at page 30 of his interview and which I have set out above in relation to not knowing why his mother did not go with him and that maybe she had committed suicide, and so on. He submits that the failure of the respondent to refer to that explanation given at interview, undermines the lack of credibility finding on this point, and that he has

failed to have regard to his mother's mental state at that point in time.

35. Another finding adverse to credibility is in relation to his journey to Ireland with "Mama Ali". He does not find it credible that no immigration difficulties were encountered along the way. This evidence is all set out in the Decision and a conclusion is reached that the story is not credible.

36. Many other complaints of a similar kind are made by the applicant in relation to not being afforded an opportunity of addressing these concerns of the respondent during the course of the appeal hearing, since it was never put to the applicant that these matters might give rise to concern as far as credibility is concerned. I do not propose to set out each in detail having set out so many matters already.

Medical evidence before the Tribunal

37. There was some medical material in the form of two medical reports before the Tribunal before the Decision was made. These were a report from Dr Ryder dated 20th April 2005 and one from Dr O'Sullivan dated 1st June 2005.

38. There was before the Tribunal also the note from Dr Ryder dated 9th November 2004 to which I have already referred. There was no report from any medical personnel in Burundi.

39. The Tribunal Member has concluded his Decision by stating that he has carefully considered all the papers submitted to him, as well as all matters required to be considered under s. 16 of the Refugee Act, 1996 as amended, and that he has had regard to other provisions of the Act in so far as they apply to the determination of the appeal, and he notes that he is required by s. 16(16A) of the Act to affirm the recommendation of the Refugee Applications Commissioner unless he is satisfied, having had regard to s. 16(16) of the Act, that the applicant is a refugee. He states that he is not so satisfied, and goes on as follows:

"I found the applicant hesitant, evasive and contradictory in his evidence as to its contents and presentation and I found his story to be implausible and seriously lacking in credibility.

40. I have concluded, accordingly, that the applicant does not hold a well-founded fear of persecution in his country of origin for any reason set out in Section 2 of the Refugee Act, 1996 (as amended). I find the applicant's account most unconvincing in terms of credibility and substance. I consider that he has not discharged the burden of proof provided for in Section 11(A) of the Refugee Act, 1996 (as amended). Having considered the matters referred to in Section 16(16) I am not satisfied on the basis of reasonable likelihood that he is a refugee within the meaning of Section 2 and I, accordingly, pursuant to Section 16(16A) that the recommendation of the Refugee Applications Commissioner should be affirmed.

41. In arriving at my decision I have had regard to Section 11(B) of the Refugee Act, 1996 (as amended) and in particular subsections (a),(b),(c),(d),(e), (f), (i)."

42. These latter subsections in section 11 set out a number of matters which the Tribunal shall have regard to when assessing credibility. Those had regard to in this case by the Tribunal Member are as follows:

"(a) whether the applicant possesses identity documents, and, if not, whether he or she has provided a reasonable explanation for the absence of such documents;

(b) 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;

(c) whether the applicant has provided a full and true explanation of how he or she travelled to and arrived in the State;

(d) where the application was made other than at the frontiers of the State, whether the applicant has provided a reasonable explanation to show why he or she did not claim asylum immediately on arriving at the frontiers of the State unless the application is grounded on events which have taken place since his or her arrival in the State;

(e) where the applicant has forged, destroyed or disposed of any identity or other documents relevant to his or her application, whether he or she has a reasonable explanation for so doing;

(f) whether the applicant has adduced manifestly false evidence in support of his or her application, or has otherwise made false representations, either orally or in writing;

(g) ...

(h) ...

(i) whether the applicant has complied with the requirements of section 11C."

Legal submissions

43. Hugo Hynes SC for the applicant has submitted that the Tribunal Member was wrong to home in on matters referred to as inconsistencies such as whether the applicant's father did or did not go back to Burundi voluntarily or whether he was sent back with other refugees, or that it is not credible that mother was not killed by the soldiers when her husband was killed, or the inconsistency about whether or not the applicant has siblings and if so whether it is credible that neither he nor mother looked for them before making their own escape from the banana plantation. In his submission it is unreasonable to home in on what he describes as minor discrepancies in evidence, if at all, and that the applicant's answering in general was credible and that insufficient weight was given to his answering overall.

44. He submits also that some of the findings made by the Tribunal Member were factually incorrect, such as that it was stated therein that Dr Ryder stated that the scarring was "consistent" with his story whereas what Dr Ryder in fact stated was that the scarring was "in keeping" with a severe beating. In addition he submits that undue weight was attached to the fact that no reference was contained in the ASY1 Form to any siblings since at interview he discloses two siblings and named them.

45. A complaint is made in relation to the fact that while the oral hearing of the appeal was in May 2005 the Decision itself is dated

19th September 2005. It is submitted that there has been a delay between the hearing and the conclusion being arrived at including a finding adverse to credibility and that such a delay renders the Decision void. Just to deal with this submission at this stage, I would feel justified in referring to a phrase used on page 7 of the Decision where a paragraph in the report commenced with the words "When reminded today at the appeal that he stated that he and his family" (my emphasis).

46. I am of the view that while it is desirable and in many cases necessary for a valid credibility finding that a Decision be prepared reasonably promptly following an oral hearing so that the memory of relevant matters and facts does not fade, including such indeterminate matters such as demeanour, it would appear in reality in this case that the Decision was prepared by way of dictation or otherwise immediately after the oral hearing concluded given the presence of the words "When reminded today..." to which I have just referred and that there may have been some delay in either the typing up of the Decision. While there may have been some delay in the signing of it thereafter, I am not satisfied that there can be any inference from the date thereof that it was not prepared until September 2005. That would be going too far.

47. As regards the process by which the Tribunal Member arrived at his conclusion on credibility, Mr Hynes has referred, *inter alia*, to a judgment of this Court in *Da Silveira v. Refugee Appeals Tribunal*, unreported, High Court, 9th July 2004 where I stated:

"Conclusions must be based on correct findings of fact. A factual error of sufficient importance will often have the capacity to at least cast some doubt upon the integrity of the decision-making process and in those circumstances, this Court's function is to intervene and if necessary on a substantive hearing to provide redress."

48. Mr Hynes submits that given the number of matters complained of about the manner in which the Tribunal Member reached his conclusion on credibility, the Decision is invalid and that the Member had no reasonable basis for concluding that the applicant did not have a well-founded fear, and that he failed to consider in this regard the fact that torture had been suffered. He submits that the Tribunal Member has failed to attach any weight to the evidence of torture derived from the marks from the applicant's body and the medical evidence adduced where such injuries are said by Dr Ryder to be "in keeping with" the alleged beating, and the psychological injury disclosed in the reports adduced.

49. Fiona O'Sullivan BL on the respondent's behalf submits that it is manifest from the very length and detailed nature of the Decision that great care and consideration was given to all aspects of the claim on the appeal. She submits that the Member was perfectly entitled for the reasons stated to reach a conclusion that the applicant was not credible as to the story told, and that therefore he had not discharged the onus of satisfying the Tribunal that he should be declared a refugee. She submits that there is no distinction in meaning between the word "consistent" and the words "in keeping with" as used by Dr Ryder and that there is nothing arising therefrom which would interfere with the conclusion reached by the Tribunal Member. Similarly she submits that the Member was entitled to have regard to the fact that there had been no reference to siblings in the ASY 1 form, and to the differences in the applicant's story about whether his father returned voluntarily to Burundi or whether he was sent back with other refugees. She submits that it is clear that the applicant was found simply to be not personally believable, and that there was therefore no need to consider the question of the objective element of the assessment of a well-founded fear of persecution. She submits that there is no basis on which this Court could interfere with the credibility assessment, and that substantial grounds have not been made out, and that leave should be refused.

Conclusions

50. It is important to state at the outset that this is an application for leave only and that the hurdle to be overcome by the applicant is to establish that there are substantial grounds for contending that the Decision should be quashed and that the matters complained of as to the manner in which credibility has been assessed has rendered the Decision invalid. It is an application on notice and the Court has had the opportunity to consider the matters in as much detail as if it was a substantive hearing. Nevertheless the Court must be careful to ensure that this application is not decided on a basis appropriate for the substantive hearing. But substantial grounds is a higher threshold than mere arguability. It must be shown that an argument of substance is apparent – one that is supported by significant facts, such as serious errors of fact or a misapplication of the law which could undermine the Decision.

51. In the present case, I am satisfied that no error has been made in relation to use of the word "consistent" as opposed to "in keeping with" in relation to Dr Ryder's report. Similarly I am satisfied that the Tribunal Member was entitled to have regard to the inconsistency arising from the absence of reference in the ASY 1 Form to siblings. While it is true that siblings were named in the interview it was at least something which the Member was entitled to have regard to in assessing overall personal credibility. That is not to say that if that alone was the basis of the adverse finding it would have been sufficient, but it can certainly be something put into the balance when making the assessment. There was certainly no error on the part of the Member in so doing. The same can be said about the applicant's evidence about whether his father returned to Burundi voluntarily or was sent back with other refugees. Any inconsistency in the manner in which the story is told at different stages of the process is at least a relevant matter to be considered by the decision-maker. The more inconsistencies have appeared the greater the risk that an adverse conclusion will be reached as to overall credibility. It will be for the decision-maker to weigh up all the matters and conclude whether the cumulative effect of all the matters appearing to be relevant amount to a fatal blow to credibility. Provided that the decision maker has arrived at his conclusion on correct facts and not by way of significant factual error, this Court cannot lightly set aside the decision. The reason is that credibility is essentially for assessment and decision by the person who has the benefit of the applicant in person before him or her when oral testimony is being given. A very important aspect of the assessment of credibility is the demeanour of the witness, the manner in which evidence is given and questions are answered. In the present case the Tribunal Member has drawn upon that experience and concluded that the applicant in the manner in which he answered questions was "evasive and contradictory" and at another point described the applicant's answering as being "facetious...". These are findings which would be impossible for any reviewing body, such as the Court, to arrive at from a reading of a transcript or a summary of evidence from the Decision or interview notes and so on. Only the decision-maker present at the oral hearing can make such assessments, and provided that correct facts have been used in the process, the Court could not possibly interfere.

52. In my view the matters identified by the applicant as errors on the part of the Tribunal Member are insubstantial at best. In some cases the alleged error is non-existent. There is no doubt that there were inconsistencies in the story given by the applicant. It is not appropriate to parse and analyse every word and phrase of a decision and isolate a word or phrase here or there and contend that as a result the process is flawed. An error of fact of sufficient significance will of course fatally infect the decision making process. But it must be a clear and significant error of fact. There are none in the present case. I have set out the matters adverted to by the applicant, and by not reciting them all in this part of my judgment I am not overlooking any in stating that none amounts to a matter of substance. In my view the manner in which the Tribunal Member arrived at an adverse credibility finding is not flawed, and it is not substantially arguable that it is. There was more than sufficient basis for deciding that this applicant's story was unreliable, implausible and unbelievable in many material respects. A reading of the questionnaire, the interviews, and the account of evidence at the Tribunal leaves no room for any substantial doubt about the applicant's lack of personal credibility.

53. Once the Tribunal Member was so satisfied, it was not in my view necessary to go further and consider in any more depth than was done whether the applicant's fear of persecution could be well-founded. The finding of lack of personal credibility meant that the applicant's story as to what had happened to him and members of his family was so unreliable as not to have been sufficient to discharge the onus of proof upon him to show that he is a refugee as required by s. 11A(3) of the Refugee Act, 1996.

54. In the present case the applicant was simply not believed as a result of a number of matters which I am satisfied the Tribunal Member was entitled to have regard to in assessing his credibility. An applicant must be credible in order to have his story believed. If that personal story is not believed, and there is shown to be a rational basis for that disbelief, then it serves no useful purpose to consider whether in the light of country of origin information, the story fits that information – in other words could it have happened. There is no purpose in concluding that the story fits available country of origin information if the story told by the applicant is simply not credible or that the applicant is not reliable, consistent and believable, unless of course the country of origin information which is available helps to show that the applicant is credible. In the present case that information does not assist in demonstrating that substantial grounds have been shown by the applicant.

55. Given the conclusion which I have reached I do not need to reach a conclusion on the application for extension of time.

56. I refuse leave to seek reliefs by way of judicial review.