

THE HIGHT COURT

JUDICIAL REVIEW

[2010 No. 634 JR]

BETWEEN/

K. H. B. AND H. M. B. [Pakistan]

APPLICANTS

AND

THE REFUGEE APPEALS TRIBUNAL AND THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENTS

JUDGMENT of Mr. Justice Barr delivered on the 14th day of May, 2015

1. This is an application for leave to seek an order of *certiorari* by way of judicial review to quash the decision of the Refugee Appeals Tribunal ("the RAT") dated 25th February, 2010, to affirm the recommendations of the Office of the Refugee Applications Commissioner ("ORAC") that the applicants be refused refugee status.

Extension of time

2. The notice of motion challenging the joint decision of the RAT dated 25th February, 2010, was issued on 18th May, 2010. This was outside the statutory time limit laid down by s. 5(2)(a) of the Illegal Immigrants Trafficking Act 2000, which provided that an application for leave to apply for judicial would have to be made within the period of 14 days commencing on the date on which the person was notified of the decision, unless the High Court considered that there was good and sufficient reason for extending the period within which the application could be made. The respondents are not opposing the applicants' application for an extension of time.

3. In their statement of grounds, at para. 12, it is stated as follows on behalf of the applicants:-

"The applicants sought advice from the Refugee Legal Service in relation to the prospects of judicially reviewing the decision of the respondents upon receipt of the decision, and instructed that an application be made for a certificate to bring proceedings. Due to lack of resources and pressure of work, legal advice was delayed and on due consideration of the file, the applicants were advised that there were difficulties with the decision but to engage informally with the respondents before pursuing proceedings. The attempt at informal resolution proved unsuccessful and the Legal Aid Board authorised a certificate for counsel's opinion on the 20th April, 2010. Thereafter, a decision to issue a certificate was made on the 13th May, 2010, and proceedings were drafted forthwith. The applicants are not responsible for the delay in the institution of the within proceedings."

4. Having considered the explanation proffered by the applicants for the short delay in this case, I am satisfied that there is good and sufficient reason for extending the period of time in which to initiate proceedings up to and including 18th May, 2010, which was the date on which the notice of motion issued herein.

Background

5. The applicants in this case are a nephew and uncle from Pakistan. They claim to have a well-founded fear of persecution on account of their involvement with Muslim League N Group (hereinafter referred to as "the N party") in Pakistan. The first named applicant's father (brother to the second named applicant) is reported missing, and it is believed that this was due to his similar political activities.

The Evidence of the First Named Applicant (the nephew)

6. The first named applicant is a single man and was born on 15th December, 1983. He is a Pakistani national, and received twelve years' education, having attended school in Pakistan from 1988 to 2000. The applicant claimed asylum in Ireland on the basis that he had a well-founded fear of persecution on account of his political views and support for the N party in Pakistan. The applicant stated that he fears being killed if returned to Pakistan.

7. The RAT noted that he submitted a birth certificate and a medical report from the Services Institute of Medical Services, Lahore in support of his claim. A SPIRASI report was also submitted.

8. The first named applicant claimed that he and his uncle received threatening phone calls in which they were told to leave the N party and to join the Pakistan Muslim League Q ("the Q League"). The applicants refused to do so. As a result of this, they claim to have been kidnapped and taken to an unknown location, where they were detained for three days and tortured. Following this, the applicants were released and they claim to have spent seven days in hospital being treated for their injuries. The applicant explained that he and his uncle were kept in separate rooms in the dark. He said they were tied and held upside down and beaten. They claimed to have been told that this was happening to them as a result of their failure to leave the N party.

9. The first named applicant stated that his toenails on his left foot were pulled out and that he was beaten with a hot rod. The RAT decision notes that an issue arose as to whether it was the left or right foot; the questionnaire records that it was the right foot. The first named applicant stated that the people who had tortured them had inflicted these injuries. He said that he and his uncle were of the view that these people were either from the Secret Service or the Q League. He stated that when he and his uncle, the second named applicant, were in hospital, his father and another uncle went to the police and reported what had happened. The uncle made the report to the police rather than the first named applicant's father because, the applicant stated, his father was also a member of the N Party and feared that the same would happen to him. In this regard, reference was made to a letter from the first named applicant's uncle to the inspector general of police in Lahore.

10. The first named applicant also stated that he was given medicine and injections while in hospital, and that he was bandaged. He stated that he and his uncle returned to the N party, but not to the same extent as before.

11. The first named applicant claimed that his father was kidnapped in July 2007. He said that he and his uncle were fearful because

of what they had been through and stated that they continued to receive threats. They were more fearful following the kidnapping of the first named applicant's father.

12. The first named applicant was asked to explain the circumstances of his father's kidnapping. He stated that his father went to the shop but did not return by evening. The family became suspicious and went to the police. He stated that his uncle reported the father as missing but that the police did not take much notice of this.

13. The applicant stated that on 28th February, 2007, armed men came to his house at between half past one and two in the morning. He said they did not know who these men were, that it was dark, and that he did not see their faces. He said that there was a truck outside. These men knocked on the door of the applicants' house. The applicants were afraid; they looked from the roof and saw that the men had weapons, and since his father had been kidnapped, the first named applicant and his uncle decided to flee. They jumped over to the neighbouring house and exited through the neighbour's door. The applicant was asked why the men, who he and his uncle believed had come to kidnap them, would simply knock on the door. He said that they must not have wanted to wake the neighbours.

14. The first named applicant stated that he and his uncle went to the bus station in a rickshaw. From there they went to Faisalabad where they stayed for a month with his maternal uncle. However, his maternal uncle feared that he was jeopardising the safety of himself and his children by harbouring the applicants. He therefore arranged for the applicants to leave the country with the help of an agent. The agent, with whom the applicants met a couple of times, arranged their travel. On 28th March 2007, the agent told the applicants to go to Lahore Airport early in the morning.

15. The agent provided them with fake passports, which were red in colour, and had photographs of the applicants in them. The first named applicant stated that he and his uncle travelled by Gulf Airlines from Lahore to Bahrain. They remained in Bahrain for a number of hours before travelling by air to Dublin, where they arrived on 30th March, 2007.

16. The first named applicant stated that when they came to an immigration desk the agent would give them the passports to show. The agent told them to copy what he was doing.

17. The applicant was asked about the origin of the newspaper reports on file. He stated that his brother had sent them from Pakistan. The first named applicant said that he had no idea where his father was. The applicant was asked about what contact he had with his family in Lahore. He said that he speaks to his brother and sister and to his uncle's wife on the phone. He stated that they have a number of homes in Pakistan and that they moved around to different uncles' houses because they were afraid.

18. The applicant was asked why he did not stay in Pakistan and move around like other members of his family do. He said that his brothers and sister are N party members but that they are afraid. He said that he and his uncle were very lucky to have returned home after the kidnapping. He said that a lot of people in Lahore had gone missing.

19. The Presenting Officer asked the applicant about the misspelling of the word surgical as "sorgical" on the hospital report from the Services Institute of Medical Sciences in Pakistan, which the applicant had furnished to the RAT, and which the applicants claimed related to the treatment they received for the injuries suffered at the hands of their kidnappers. The applicant replied that the report was given to him by the hospital which, he said, was a government hospital.

20. The applicant was asked about the geography of Lahore. He said that Lahore was not far from India, but he was unsure how many kilometres it was. He was asked to name the first city one would pass through when travelling from Lahore to India. The applicant replied that he did not know as he had never been there. The applicant was asked whether Faisalabad was north, south, east or west of Lahore. He replied that he does not drive so he did not know; he said he just knew that if he were to sit on a bus it would take him to Faisalabad.

21. The applicant said that he had lived all his life in Lahore. He said that he would travel between Lahore and Faisalabad once or twice a year to meet his paternal uncle. The applicant was asked whether there was anything he could tell the RAT which would lead the Tribunal to conclude that he was from Lahore. The applicant replied that he was not given much freedom; that he had not been allowed to leave the house much; and that he literally went from home to school and back again.

22. He stated, however, that he was given a little more freedom when he reached his 10th class at school. The Presenting Officer questioned the applicant's lack of knowledge of local geography, and suggested that it would be natural to expect that the applicant would be aware that Amritsar is across the border, and that he would be able to say in which direction Faisalabad was in relation to Lahore. In this regard the Presenting Officer stated to the applicant that Amritsar was closer to Lahore than Faisalabad and that in those circumstances it seemed extraordinary that the applicant would not know of its existence. The applicant replied that he had never been to Amritsar and could only tell a little about Lahore.

23. The applicant was asked to provide some specific information about Lahore. He replied that the Ravi Bull river is near to the Minar-e-Pakistan and that all the traffic crosses this river to travel to other cities. The applicant was asked whether he would go over this river to go to Faisalabad. He replied that the buses go over and that there was a toll there.

24. The RAT noted that the applicant submitted a birth certificate as his sole identity document.

25. The applicant stated that he and his uncle had completed their questionnaires together as their cases were linked. In his questionnaire, the applicant stated that it was his right foot that was injured. He was asked to comment on this and replied that the damage was to his left foot as a result of the torture. The applicant said that he had written down his right foot but that this was a mistake and that he should have written down left. The Presenting Officer suggested to the applicant that this was a serious mistake to make in circumstances where it was the basis of his claim. The applicant, in reply, explained that he is not very educated, though he did receive twelve years of education in Pakistan.

26. It was put to the applicant that he and his uncle had not been harmed since April 2006. The applicant agreed that this was correct. The Presenting Officer suggested to the applicant that he and his uncle had plenty of time in which to report what had happened to them, but that they did not do so. The applicant replied that when they were threatened on the last occasion, they were told not to be part of the N party anymore but that they continued nevertheless and that they were told they would have something done to them if they would not leave the N party. The applicant was asked why, after the kidnapping and torture, they decided to stay with the N party and continue to hold meetings. The applicant stated that they supported the party because it was a good party with good policies and that they wanted peace in the country.

27. It was suggested to the applicant that he and his uncle were safe in Faisalabad, where they had stayed for a month without incident. He replied that they were not safe there; that there were forty government agencies there; and that if they had felt safe in Faisalabad they would have stayed there. But, he said, anyone could have recognised them there. When it was put to the applicant that nothing had happened to them during the month they had stayed in Faisalabad following the unsuccessful alleged kidnapping in February 2007, the applicant replied that this was because they did not leave the house much, but that if they had left the house their location would have been discovered.

28. The Presenting Officer suggested that if the government agencies wanted to find the applicants in the first named applicant's maternal uncle's house, that it would have been easy for them to have done so. The applicant replied that it would take the government agents some time to find out where his maternal uncle's house was.

The Evidence of the Second Named Applicant (the uncle)

29. The second named applicant was born in Pakistan on 10th July, 1962. He received twelve years' education in Pakistan, having attended school there from 1966 to 1978. He is married and has two children, who were born in 1988 and 1992 respectively. His wife and children still live in Pakistan.

30. The applicant sought asylum in Ireland on the basis that he had a well-founded fear of persecution on account of his political activities and involvement with the N party. The applicant stated that he joined the N party in 2005 and that he considered their policies to be in the best interests of the country.

31. The applicant gave the following account of the events of 14th April, 2006, to the RAT. He said that at two o'clock in the afternoon four to five men came to the applicants' home; they had weapons and a truck. It was a military truck and had no number plate but it had a design or monogram on it. He was asked whether these men, who he said were in Pakistani dress, were attached to a government agency. The applicant said that maybe it was the FBI. The Presenting Officer asked: "*So are you saying that there is an organisation called the FBI or did you just make it up?*" The applicant said that it just slipped out of his mouth. The applicant was asked why he had said the FBI. The applicant appeared to have found this amusing and was laughing when giving this evidence.

32. The applicant, when questioned further, said that it was the FIA. He said this stood for Federal Investigation or something. The Presenting Officer put it to the applicant that the FIA was an agency that dealt with the investigation of crime, particularly terrorist crime. The applicant replied that this organisation was known to frame people and to put pressure on them in order to make them get into line and follow the present government.

33. The applicant stated that when he and his nephew were abducted, they were driven for an hour and a half to two hours. He said their heads were covered and that they could see nothing. He stated that they were beaten at this time.

34. The applicant stated that they were detained for three days. He stated that they were put in cells, where their blindfolds were removed. He described the cell as a small, dark room. He said he was hung upside down and beaten. He stated that his captors also cut his hand and arm, as a result of which he had four stitches on his arm. He said that one could see these burn marks on the arm and that these were mentioned in the medical report.

35. The applicant said he also had four teeth knocked out. The SPIRASI report noted that the applicant seemed to have had a left molar tooth surgically extracted. The report further noted that the second named applicant had some teeth missing and some marks on his wrist which could be consistent with his history.

36. The applicant stated that he has not been able to sleep properly since being hung upside down and that he is taking medication, including pain killers, a difene spray, and sleeping tablets.

37. During the period of their detention, the applicant said that his captors kept repeating that he and his nephew should leave the N party. After three days they were released. Family members brought them to the hospital for medical treatment which, in the second named applicant's case, included stitches in both arms. He stated that his brother reported the matter to the police.

38. The applicant said that after two or three months he and his nephew recommenced their political activities, which included attending political meetings. He explained that you struggle for your cause if you believe in something. He stated that they started receiving threatening phone calls once or twice a week and that his brother then wrote to the inspector general of police in Punjab requesting protection for the applicants. This letter is on the RAT file.

39. The applicant stated that on 11th February, 2007, his brother (the first named applicant's father) was kidnapped and is still missing. He said his brother was going to the bazar and some unidentified men pulled him into a car and took him away. He stated that people who witnessed this happening had related the details to him. The applicant stated that his brother has good relations with the police and so he went to them to report the kidnapping.

40. He was asked about the circumstances of the attempted kidnapping of himself and his nephew on 28th February, 2007. He said that around one or two o'clock in the morning there was a knock on the door, which was not a normal time to visit in Pakistan. He said that he and his family were scared. He took his family downstairs and his wife said that it looked like secret agents. He stated that they could not see the agents' faces from upstairs but that they could see that they had weapons, that there was a truck, and that they had sticks. He said that they jumped to the next house and fled on a rickshaw to the bus station and from there to a town near Faisalabad, called Samundri, in order to save their lives.

41. The applicant was asked how they knew their lives were in danger. He replied that first they had been tortured and that, secondly, his brother had been kidnapped and was still missing. He stated that obviously the men had come again to kidnap them. He said that they stayed in Faisalabad for a month but that the maternal uncle was concerned for his own safety and for the safety of his family so he arranged for an agent to take them out of the country. This account is essentially the same as that of the first named applicant.

42. The applicant was asked similar questions about the geography of Lahore as had been put to the first named applicant. He had no idea about the direction from Lahore to Faisalabad. He was aware, however, that the sun rose in the east. He was asked whether India was on the east or west of Pakistan. He replied that from Sindh all the way to Kashmir is the border.

43. The applicant was asked about the political situation in Pakistan. He was aware of the change of government in February 2008. He confirmed that the Q League had been responsible for harassing him in Lahore and was asked whether he considered the Q League to still be a threat even though they were no longer in government. The applicant stated that Zardari was brought into government

by way of an agreement with Parvez Musharraf and that therefore they were in the same party. He was asked whether he was saying that Zardari and Musharraf worked together. The applicant replied that Musharraf was the person who brought Zardari to power. The Presenting Officer put it to the applicant that Musharraf had to be impeached for Zardari to get into power. The applicant replied that *"these are just the things which are for the public."*

44. As regards his travel to Ireland, the applicant stated that he only had his passport in his hand at immigration and that the passport was in the agent's possession at all other times. He said that the agent took the passports back from them after they arrived in Dublin on 30th March, 2007.

The Present Proceedings

45. The applicants arrived in Ireland on 30th March, 2007, and attended at ORAC on the same day. They both applied for asylum in the ordinary way. They were interviewed by ORAC, which subsequently recommended that the first named applicant not be declared a refugee in its decision dated 14th November, 2007. ORAC recommended that the second named applicant not be declared a refugee in its decision dated 14th August, 2007.

46. Both applicants appealed ORAC's recommendations to the RAT and their oral hearings were heard sequentially on 17th February, 2010. By decision dated 25th February, 2010, the RAT affirmed ORAC's recommendations that the applicants not be declared refugees. The RAT issued a single decision in respect of both applicants.

The RAT decision

47. The decision of the RAT in this case runs to some forty-five pages. The analysis of the first named applicant's claim is nine pages in length, while the analysis of the second named applicant's claim runs to some eleven pages. Before turning to consider the submissions, it is necessary to provide a brief overview of the decision of the Tribunal in respect of each applicant.

The First Named Applicant

48. The RAT found as follows in respect of the first named applicant's claim:

- (i) The Tribunal member found that he could not rely on the report from the Services Institute of Medical Services, *"Surgical Unit"*, because the word surgical was misspelt.
- (ii) The Tribunal member found that the applicant's lack of knowledge of Lahore and the surrounding areas, coupled with his demeanour when answering questions about this, undermined his credibility. The RAT was of the view that he should have been able to provide plausible answers to these questions.
- (iii) The applicant only provided a birth certificate in order to establish his identity. His failure to provide additional identity documents, or provide an explanation for his failure to do so, undermined his credibility.
- (iv) The applicant stated in his questionnaire that his right foot was injured; it was in fact his left foot that was injured. The Tribunal member found that he could *"draw no conclusion from this error."*
- (v) In considering the SPIRASI report, the Tribunal member cited the decision of Storey J. in *RT (medical reports, causation of scarring) Sri Lanka* [2008] UKAIT 00009 (07 February 2008) in which he held that where a SPIRASI doctor describes the scarring or injury as *"highly consistent"* with the applicant's claimed history, but omits to address the *"few other possible causes"*, then the SPIRASI report will be of less value than if it had done so. Storey J. concluded that this *"may properly lead an immigration judge to find that a finding of 'highly consistent' has very limited value."* In this regard, the RAT noted that the SPIRASI doctor in this case had failed to address the relative likelihood of other possible causes. The RAT concluded that nothing in the SPIRASI report linked the applicant's injuries to his allegations.
- (vi) The RAT found that if the applicant was from Faisalabad or Lahore he could safely internally relocate in Faisalabad in circumstances where he claimed to have resided there for a month with his family without incident. Having reviewed relevant case law and other authorities on internal relocation, and having had regard to the general circumstances prevailing in Pakistan as well as the personal circumstances of the applicant, the RAT concluded that the applicant could reasonably have been expected to relocate to another part of Pakistan. The RAT found that the applicant did not give any reason as to why internal relocation would not have provided a reasonable alternative.
- (vii) The RAT held that the applicant had failed to discharge the burden of establishing that state protection was not available to him in Pakistan.

The Second Named Applicant

49. In respect of the second named applicant's claim for asylum, the RAT found:

- (i) The applicant's suggestion that the men who came to kidnap the applicants were from the FBI, coupled with the fact that the applicant was laughing when giving this evidence, was not, in the Tribunal member's view, indicative of a person who had been in a life-threatening situation.
- (ii) The applicant had no knowledge of the organisation, the FIA, that he claimed came to kidnap him. The RAT found that this lack of awareness of the FIA's role, his suggestion that the FIA frames people, which was unsupported by COI, as well as his demeanour when giving this evidence, suggested that his evidence was neither plausible nor credible. The RAT was of the view that had there been COI which supported the applicant's claims about the FIA, it would have been put before the Tribunal. The RAT found that if the applicant had had dealings with the FIA, and if he feared that organisation, he would at least have known its name. The Tribunal found that the applicant's evidence in this regard was not plausible and undermined his credibility.
- (iii) The RAT found that the applicant contradicted himself when he stated that his nephew was present with him when they were told that the second named applicant's brother (the first named applicant's father) had been kidnapped. The RAT found that the applicant largely ignored this conflict in the evidence and that he subsequently tried to say that it was possible that his nephew was not present. The RAT found that this conflict had not been resolved and that it undermined the applicant's credibility. The Tribunal further concluded that taking the evidence of both applicants as a whole, and with reference to each other, their evidence was not credible.

(iv) The RAT noted that it appeared that the applicant had fled from his home and abandoned his family. In this regard, the RAT stated that he had been asked why it would be unsafe for him to return to Pakistan. The RAT noted that his reply was to the effect that he would be unsafe because he had not given written confirmation that he would leave the N party. The Tribunal found that this evidence was of a general nature and lacked the type of detail one would expect from a person who had been involved in such a traumatic incident.

(v) The RAT found that the applicant did not have specific knowledge of the geography of Lahore, where he claimed to have lived. The RAT noted that the applicant knew that the sun rose in the east, and that since he claimed to have lived in Lahore all his life, one would expect he would be able to say in what direction Islamabad was, it being a major city. The applicant was also unable to say whether India was to the east or to the west of Pakistan. The Tribunal member found, having heard this testimony and observed the applicant's demeanour, that his evidence was not plausible and that this undermined the applicant's credibility.

(vi) The RAT noted that the presenting officer had put it to the applicant that the Q League was no longer in power and that they would, therefore, no longer pose a threat to him and that the applicant would, in light of this, be able to return to Pakistan and live there in safety. The applicant doubted that this would be possible. The RAT found that *"the applicant's own evidence contradicts his position in that he accepts that the Q League are no longer the major force that it was and if (and I don't accept the evidence as being plausible or credible) he was being harassed the people carrying out the harassment by his own evidence are no longer in a position of influence."* The RAT found that this undermined his credibility.

(vii) The Tribunal found that the second named applicant contradicted the evidence of the first named applicant in that they gave what the Tribunal described as *"entirely different"* stories about the kidnap of the second named applicant's brother (the father of the first named applicant). The RAT noted that no plausible explanation was provided for this discrepancy. The Tribunal concluded: *"I am of the view that this conflict in the evidence is so stark that was there a plausible explanation for the conflict in the evidence, Mr. K.H.B. [the first named applicant] would have been recalled to clarify."* The Tribunal member continued: *"This did not happen and I am of the view that taking the evidence of both applicants into account, neither applicants' evidence is plausible nor credible and I find it undermines their credibility..."*

(viii) The RAT noted that the SPIRASI report stated that the applicant had marks on his wrists which were consistent with the history that he gave; and that it further stated that the mental examination revealed signs and symptoms which may be consistent with someone who had been under stress in the past. Having referred to the judgment of Storey J. in R.B. (supra) the RAT found that nothing in the report indicated that cause could be attributed to the incidents complained of by the applicant. The RAT concluded that the SPIRASI report *"does not in any way link the applicant's claims to the injuries discovered"* and that, insofar as it said the injuries were consistent with the history given, there were many other possible causes.

(ix) The RAT found, having regard to the relevant authorities, that it was reasonable to have expected the applicant to have internally relocated in Pakistan. The RAT noted that the proposed site of relocation, Faisalabad, did not present a distinct risk of even generalised serious harm, and that the applicant had not identified any risk attached to relocation to Faisalabad where, on his own evidence, he had stayed for a month without incident.

(x) The applicant had not discharged the burden of establishing that state protection was unavailable to him in Pakistan.

The Threshold for Leave

50. Before turning to consider the individual grounds raised by the applicants, it is necessary to set out the threshold for leave as laid down by section 5 of the Illegal Immigrants (Trafficking) Act 2000, which provides:

"leave shall not be granted unless the High Court is satisfied that there are substantial grounds for contending that the decision, determination, recommendation, refusal or order is invalid or ought to be quashed."

51. In *McNamara v. An Bord Pleanála (No. 1)* [1995] 2 ILRM 125, Carroll J. stated that: *"In order for a ground to be substantial it must be reasonable, it must be arguable, it must be weighty. It must not be trivial or tenuous."* She also held that *"[a] ground that does not stand any chance of being sustained (for example, where the point has already been decided in another case) could not be said to be substantial."*

52. This was approved by the Supreme Court in *Re Article 26 and the Illegal Immigrants (Trafficking) Bill 1999*, where it was stated that:

"As regards the requirement that an applicant for leave to issue judicial review proceedings establish "substantial grounds" that an administrative decision is invalid or ought to be quashed, this is not an unduly onerous requirement since the High Court must decline leave only where it is satisfied that the application could not succeed or where the grounds relied on are not reasonable or are "trivial or tenuous".

53. In his judgment in *R. A. v. Minister for Justice, Equality and Law Reform and anor. (Ex tempore, High Court, Mac Eochaidh J., 21st December, 2012)* Mac Eochaidh J. stated that this means that the High Court *"should only grant leave on a ground which has a decent chance of success at a full hearing."*

54. I now turn to consider the grounds upon which leave was sought.

Grounds 1 and 2 – Failure to consider relevant evidence

55. Grounds 1 and 2 make a general complaint about the alleged failure of the respondents to exercise their functions in accordance with the requirements of constitutional justice by failing to consider relevant evidence. The material that the applicants state the RAT failed to consider is then particularised and dealt with in more detail in the subsequent grounds. I do not therefore propose to grant leave in respect of grounds 1 and 2.

Ground 3 – Failure to properly weigh or assess medical reports

56. The applicants submitted that the Tribunal member failed to weigh or assess the SPIRASI reports in each case, and that the Tribunal member also failed to explain why the reports did not support or provide corroborative evidence regarding the applicants'

claims of past persecution. The applicants submitted that in doing so the RAT acted contrary to its duty to consider the evidence in accordance with the requirements of constitutional justice.

57. The SPIRASI report in respect of the first named applicant noted that the physical examination showed that:-

"Mr B. had an area of hyperpigmentation with an irregular edge at the insertion of his Achilles at his left ankle which is typical of a burn injury. He also had a disfigured nail on his left little toe which is consistent with his history of his toenail being forcefully removed. There is no evidence of falanga and he had normal heel contours."

58. The SPIRASI doctor reached the following conclusions:-

"In my opinion Mr B. has areas of hyperpigmentation on his left Achilles area which is typical of his history of being burnt with a metal rod. He also had a disfigured little toe nail which is typical of re-growth following trauma to the area."

In my opinion Mr B. is suffering from post traumatic stress disorder as he meets International Classification of Disease criteria for post traumatic stress disorder.

In my opinion Mr B. is also suffering with an anxiety disorder of moderate severity under the International Classification of Disease by virtue of the fact that he has been experiencing panic attacks. These symptoms are exacerbated and maintained by his current stressors of social and cultural alienation.

I have referred Mr B. for counselling here at SPIRASI to help him deal with experiences of alleged abuse, cultural displacement, post traumatic stress disorder and moderate anxiety."

59. In its consideration of the SPIRASI report in respect of the first named applicant, the RAT made no specific reference to its contents. Instead, the Tribunal having mentioned the SPIRASI report, proceeded to quote from the decision of Storey J. in *R.B.* (supra), and held as follows at p.30:-

"In examining the above decision it is clear that the medical report and medical records does not address the relative likelihood or the causes in examining it by way of the Istanbul Protocol. Nothing in the report indicates that cause can be attributed to the incidents complained of by the applicant."

Having considered the medical report and medical records nothing in the medical report or medical records alters my view as set out above.

Nothing in the SPIRASI report links the applicant's injuries to his allegations. I reached this conclusion on the basis of the application of the Istanbul Protocol."

60. The SPIRASI report in respect of the second named applicant records that the following abnormalities were observed during the course of a physical examination of Mr B:

"(i) He was missing his left molar teeth, which appeared to have been surgically extracted;

(ii) He had linear cut marks on both wrists;

(iii) He had a deviated nasal septum, which was not related to trauma."

61. On foot of the above evidence, the SPIRASI doctor reached the following conclusions:

"On physical examination, Mr B had teeth missing and some linear cut marks on his wrists which could be consistent with the history he gave of the trauma he experienced when he was detained in his own country. Mental state examination revealed signs and symptoms which may be consistent with somebody who has been under stress in the past."

62. Having considered the SPIRASI report in respect of the second named applicant, the RAT noted its contents in the following terms:

"The examination of the applicant in the SPIRASI report indicated that there are marks on his wrists and that they are consistent with the history he gave. It further indicates that the mental state on examination reveals signs and symptoms which may be consistent with someone who has been under stress in the past."

63. The RAT then quoted from the decision of Storey J. in *R.T.* (supra) and held as follows:

"In examining the above decision, it is clear that the medical report and medical records do not address the relative likelihood or the causes in examining it by way of the Istanbul Protocol. Nothing in the report indicates that cause can be attributed to the incidents complained of by the applicant."

Having considered the medical report and medical records nothing in the medical records alters my view as set out above.

The SPIRASI report does not in any way link the applicant's claims to the injuries discovered and insofar as it says consistent with, there are many other possible causes."

64. The applicants submitted that these are not sustainable findings. They submitted that it is not open to the decision maker to decide to attach no weight to the SPIRASI reports, as he purported to do. In this regard, the applicants relied on the decision of McGovern J. in *M.N. v. Minister for Justice, Equality and Law Reform* [2008] IEHC 130, where the applicant's appeal to the RAT was similarly rejected on the credibility grounds in a case involving medical evidence. At para. 10 of his judgment, McGovern J. held:

"10. [...] The Tribunal member is entitled to weigh up the account of the applicant and his credibility in deciding whether to accept medical reports. But where the medical reports appear to support the applicant's claim, I think that it is incumbent on the Tribunal member to specifically deal with the medical reports and state why he does not accept them."

11. *It is no doubt true that the applicant's anxiety or Post Traumatic Stress Disorder which was found by the doctors, could be due to reasons other than torture. But it seems to me that where the medical evidence is significantly supportive of the applicant's claim, that cogent reasons for rejecting it should be furnished and, in my view, the Tribunal member has failed to do this."*

65. In granting an order of certiorari in similar circumstances in *E(P) [Rwanda] v. Refugee Appeals Tribunal & Anor.* [2013] IESC 253, Clark J. stated at para 29:-

"29. It appears to the Court that the Tribunal Member disregarded the corroborative potential of the medical evidence too readily simply because he had made credibility findings based mainly on discrepancies in the applicant's evidence rather than putting the medical reports, especially the SPIRASI report, into the totality of the evidence to be assessed. The medical reports had not been before the Commissioner and were capable of making a difference to the Tribunal assessment of credibility and of causing a fair minded assessor to pause and ask how else a young Hutu girl from Rwanda with her accepted history could have such a wide distribution of marks and scars, if not from the type of maltreatment described. The inconsistencies in her evidence were minor and some findings were made in error and must surely have been counterbalanced by the medical reports on the applicant's emotional state and multiple scars on her body. For this reason alone the decision cannot stand."

66. The applicants submitted that while it was accepted that the medical reports in this case did not prove the persecutory treatment alleged, they were consistent with it and required to be considered as part of the evidence in the case. The applicants submitted that here the Tribunal Member wrongly decided to attach no weight to the SPIRASI reports at all.

67. The applicants further submitted that the separate finding that the SPIRASI report had no evidential value, apparently because it used the words "consistent with" rather than "*highly consistent*", is unsustainable. They stated that the report had evidential weight and that the approach adopted by the Tribunal member was illogical and flew in the face of common sense.

68. In reply, the respondents submitted that while it is true that the SPIRASI reports were not considered to be corroborative evidence by the Tribunal member, they were considered and it was made clear that that was very much in the context of applicants found to be otherwise lacking in credibility. The respondents stated that the Tribunal devoted two pages to the SPIRASI reports but found that where the applicants lack credibility and the reports state that the injuries are typical of and consistent with the claim, they are not corroborative.

69. In relation to the RAT's finding that nothing in the SPIRASI report linked the applicant's injuries to his allegations, the respondent submitted that that statement was consistent with the decision of Cooke J. in *K. v. Refugee Appeals Tribunal* [2011] IEHC 125, where the learned judge stated at para. 19:-

"The report of Dr. O'Sullivan dated 22nd November 2005, having listed the various scars and marks presented by the applicant, expresses its only opinion in the following sentence: "The scars and the marks have the random appearance of repeated physical abuse which could be consistent with the story that he gives". Clearly, this is an opinion at the lowest end of the consistency scale. In the absence of any expression of view to the effect that the scars and marks could only have been inflicted by another person as an act of violence, the corroborative value of the medical report in these circumstances was negligible in so far as the claim was based upon the mistreatment described in the military camp. The Tribunal member did not reject the medical evidence as being unreliable as such, but because, having disbelieved the applicant's claim to have been detained and mistreated as he described, the medical evidence as it stood did not weigh in the balance to make the account credible."

70. Similarly, Clark J. stated in *R.M.K. (DRC) v. The Refugee Appeals Tribunal* [2010] IEHC 367 at para. 19:

"While such medical findings might and indeed should cause a Tribunal Member to hesitate before rejecting such a claim, he is nevertheless entitled to do so. There would be little practical advantage in assessing the probative value of medical evidence that an applicant has injuries highly consistent with torture before carrying out a basic credibility assessment in relation to the asserted fear of persecution for a Convention reason."

71. In this case, the SPIRASI report in respect of the first named applicant found that the applicant had areas of hyperpigmentation on his left Achilles area which was "*typical of his history of being burnt with a metal rod.*" The report further noted that he had a disfigured little toe nail which, it opined, was "*typical of re-growth following trauma to the area*", and was "*consistent with his history of his toenail being forcefully removed.*"

72. As regards the second named applicant, the SPIRASI doctor found that he had "*some linear cut marks on his wrists which could be consistent with the history he gave of the trauma he experienced when he was detained in his own country.*" The report further noted that the mental state examination "*revealed signs and symptoms which may be consistent with somebody who has been under stress in the past.*"

73. In considering these reports, the RAT found that nothing in the SPIRASI reports linked the applicants' injuries to their allegations. This was despite the fact that the SPIRASI report had found the first named applicant's injuries to be "*typical of*" the trauma that he claimed to have suffered; and the second named applicant's injuries were described as being "*consistent with*" the history he had given.

74. In these circumstances, while the SPIRASI reports are not of course determinative, particularly since the applicants have been found to be lacking in credibility for the reasons stated in the RAT decision, I am nevertheless satisfied that the applicants have made out substantial grounds for arguing that the RAT failed to weigh or assess the SPIRASI reports properly in each case, and that the RAT failed to provide an adequate explanation as to why, in its view, the reports did not support or provide corroborative evidence regarding the applicants' claims of past persecution. I therefore propose to grant leave on ground 3 of the applicants' statement of grounds.

Ground 4 – Failure to address evidence that applicants were from Lahore

75. The applicants submitted that the Tribunal member failed to address the evidence adduced by them which showed that they were from Lahore. In this regard, they submitted that the RAT adopted a selective approach to the available evidence and that in doing so, the Tribunal member failed to determine the question in accordance with the requirement of fair procedures.

76. The RAT decision on this issue, in respect of the first named applicant, is in the following terms:

"The applicant said he was born in Lahore. He was unaware how far it was to Faisalabad nor was he aware what city he will reach if crossed the Indian border. He would reach Amritsar which is an internationally known religious centre. He was unable to indicate whether he would go north, south, east or west if he were to leave Faisalabad. His reply to his lack of knowledge on this question was that he would sit in a bus and it would take him to Faisalabad. On being asked if there was any information he could give that would lead to the conclusion that he was from Lahore, his reply was that he was not allowed to leave the house much. He was unable to say whether the airport was north, south, east or west of Lahore. He proffered the information that in order to go to Faisalabad you have to cross a bridge and a river and that the buses go on a toll road.

Having heard this evidence and observed the demeanour of the applicant while he gave his evidence and having considered it, I reached the conclusion that if the applicant were from Lahore I am of the view that the applicant would have been able to provide plausible and credible answers to questions. He did not do so nor has he provided any plausible or credible explanation for not doing so I find this undermines his credibility."

77. In his grounding affidavit, the first named applicant addressed this finding by the RAT in the following terms at para. 16:-

"The Tribunal member also expresses doubts about me being from Lahore because he considered that I was unable to answer questions which he would expect I should be able to answer concerning the location and distance of the airport and the city of Faisalabad. He expresses these doubts without weighing the fact that I was in a position to answer other questions about Lahore showing that I was indeed from Lahore. For example, I submitted country of origin information in relation to bus routes and toll roads in relation to the journey from Lahore to Faisalabad which corroborated the evidence which I had been in a position to give but appeared not to impress the Tribunal member. I correctly told the Refugee Applications Commissioner's Ms. Noreen O'Connor that Faisalabad was about 125 km from Lahore and I told her that I made this journey by bus (see page 20 of Section 11 interview Notes dated 27th September, 2007). The Tribunal member did not seem to consider the fact that I had submitted my mother's death certificate, two Pakistani police reports, my PML Q membership card, my uncle's Pakistani marriage certificate and my own original birth certificate – all of which corroborate that I am indeed from Lahore."

78. The RAT decision in respect of the second named applicant found as follows:

"When the applicant was asked specific information in respect of Lahore and how he would get to Islamabad, his reply to this was that he would go by bus or rail. He was unable to say whether Islamabad was north, south, east or west. He confirmed that he was aware that the sun rose in the east. Taking this evidence given by the applicant, I reached the conclusion that his evidence was neither plausible nor credible. I am of the view that if a person who had lived in Lahore for the period of time the applicant contends he had, he would be able to offer some explanation as to the direction of Islamabad being a major city. I reached the conclusion that his evidence was neither plausible nor credible and I find that it undermines his credibility.

He was asked is India in the east or the west of Pakistan. He was unable to answer this question this is all the more lacking in credibility in circumstances where Lahore is so close to the Indian border on the east of Pakistan. Having heard the evidence and observed the demeanour of the applicant while he gave his evidence and taking into account that the applicant had attended school for 12 years, I found it to be neither plausible nor credible that he would not be able to give basic information if he were from the area. I find this undermines the applicant's credibility."

79. In his grounding affidavit, the second named applicant addressed this finding at para. 15:-

"The Tribunal member expresses doubts about me being from Lahore because he considered that I was unable to answer questions which he would expect I should be able to answer concerning the location and distance of the city of Islamabad and the direction of India. He expresses these doubts without weighing the evidence I was in a position to give demonstrating that I was from Lahore, not least documentation including two Pakistani police reports, my marriage certificate, and my birth certificate, all of which corroborate that I am indeed from Lahore."

80. The applicants submitted that in reaching credibility findings based on the inability of both applicants to answer questions about Lahore, the RAT failed to address the evidence actually adduced by them that tended to demonstrate that they were from Lahore. In this way, the applicants stated that the Tribunal member appeared to attach very significant weight to the fact that the first named applicant was unaware of how far or in which direction he travelled to Faisalabad but did so without considering to a sufficient degree that he knew that one had to cross a bridge and a river; that he knew the name of the river; and that the busses go onto the toll road. The applicants submitted that the Tribunal member did not allude to the fact that the subsequent country of origin information furnished corroborated these statements. The applicants contended that in these circumstances, the strength of the negative credibility findings made in this respect is questionable, where other details of Lahore and the neighbourhood were furnished. The applicants stated that the credibility finding does not draw from the full information related to local knowledge, which was supplied to the Tribunal member.

81. The applicants submitted that, by reason of having adopted a selective approach to the evidence available, the Tribunal member has not had regard to relevant material before him and, in overlooking material submitted to him, has failed to determine the question of whether the applicants meet the test of entitlement to refugee status in accordance with the requirements of fair procedures.

82. In her judgment in *Traore v. Refugee Appeals Tribunal* [2004] 2 I.R. 607, Finlay Geoghegan J. found that the credibility assessment must be carried out in accordance with the principles of constitutional justice. She elaborated on this to the effect that constitutional justice requires consideration of the relevant evidence given in making the decision. She put the test in the following terms:-

"Simply applying the same well established principles relating to the obligation to exercise the power of adjudication conferred by statute in accordance with the principles of constitutional justice which includes an obligation to consider relevant evidence, it appears to me that the decision must be considered invalid. The evidence not considered is potentially relevant to the conclusion reached on the credibility of this part of the applicant's story. The conclusion on this issue is an integral part of the overall conclusion on credibility."

83. The applicants submitted that the requirements of fair procedures are such that the Tribunal member must consider all relevant material submitted to him. In overlooking material submitted to him in this case, the Tribunal member has failed to determine the question in accordance with the requirements of fair procedures.

84. The respondents, in reply, submitted that the applicants were questioned closely by the Tribunal and presenting officer and could not explain why they could not answer what direction Faisalabad is from Lahore. They claimed to have lived in Lahore and to have moved to Faisalabad.

85. The respondent stated that, similarly, the applicants were asked whether Lahore or Faisalabad was closer to Amritsar, but they could not answer. The first named applicant said simply that he had never been there. He said: *"I wasn't given much freedom – I literally went from home to school – I was give [sic] a little bit more freedom – can draw a map of my locality."* However, the respondent submitted that his claim was that he worked in a shop, that he was politically active, and that meetings were held in their shop; he further claimed that he had travelled to Faisalabad and stayed there for a month, and had paid 1.3 million rupees (approximately €9,600) to leave Pakistan. The reference therefore to documents was not persuasive in circumstances where he himself was unable to answer basic questions. The same was true of the second named applicant who was noted to have had an education and twenty-six years of business experience. He too had no idea whether India was closer to Lahore or Faisalabad, or whether Faisalabad was north, south, east or west of Lahore. He confirmed that the sun rose in the east thereby confirming that he knew east from west.

86. The respondents submitted that while the applicants claimed that the RAT used a selective approach to the evidence when undermining the applicants' claim to be from Lahore, this was in fact a very clear finding made by the Tribunal based on the exchange as evidenced by the attendance note of the hearing which the respondent suggested, on any reading, is extremely damaging for the applicants. The respondent submitted that whereas the applicants had documents which purported to prove a connection to Lahore, their personal testimony fell far short of demonstrating that they were familiar with Lahore or indeed Pakistan and its neighbours. The respondent stated that it is a central part of their claim and, if untrue, it undermines the full claim.

87. I am satisfied that the respondents' submissions on this issue are correct. It seems to me that the conclusions of the RAT in this regard flow from the evidence given by the applicants at hearing and are not unreasonable or irrational. The RAT's conclusions in this regard were reasonably open to it on the basis of the evidence before the Tribunal. Accordingly, I am satisfied that the applicants have not made out substantial grounds for arguing that the RAT erred in its assessment of whether the applicants were from Lahore as claimed. I will not, therefore, grant leave on this ground.

Ground 5 – Treatment of internal relocation

88. The applicants sought leave to argue that the Tribunal member failed to address the evidence offered by the applicants as to why they could not internally relocate.

89. In addressing the question of internal relocation in respect of the first named applicant, the Tribunal member held:

"The appellant could have moved away from the area in which the difficulties were and from the place the source of the applicant's alleged difficulties. The proposed site of internal relocation, i.e. Faisalabad, does not present a distinct risk of even generalised serious harm, and the appellant did not identify any risk attached to relocation to Faisalabad... I find that it would be reasonable to require the applicant to relocate to Faisalabad. The applicant in this case did not give any reason why he would not provide a reasonable alternative to leaving his country of origin"

90. The RAT's consideration of internal relocation in the decision on the second named applicant's case is in similar terms.

91. In his grounding affidavit, the second named applicant dealt with this issue as follows:

"I also do not understand the conclusion that I could have relocated within Pakistan in light of the fact that members of the government were behind my abduction and torture and my evidence that even since I have left Pakistan, my wife and family have continued to experience harassment."

92. The applicants submitted that in his treatment of the question of internal relocation the Tribunal member failed to address the evidence offered by the applicants as to why it was not possible in this case. The Tribunal failed to give any or any adequate consideration to the fact that the applicants claimed that members of the government were behind their abduction and torture. The applicants stated that in this regard, the Tribunal failed to weigh the evidence of threatening phone calls and letters and the evidence that since the second named applicant left Pakistan his wife and children had been subjected to harassment by State agents and were forced to flee to the house of the second named applicant's parents-in-law. The applicants submitted that the Tribunal member also failed to distinguish or even refer to the earlier decision of the Tribunal, relied upon in submissions on behalf of the applicants, in relation to another applicant for refugee status on grounds of his membership of the PML-N party, to the effect *"it is not clear that the applicant's problems would not follow him to another province given his political leanings."*

93. In reply, the respondent submitted that Pakistan has a population of some 162 million and the applicants were unharmed from April 2006 until the time of their departure from Pakistan in March 2007. The respondent submitted that given that the Tribunal member did not believe that the applicants had a fear of persecution, he did not need to go on to make any assessment of either state protection and/or internal relocation. The respondent submitted that it was therefore unnecessary to examine that aspect of the decision and, if found to be flawed, the respondent would urge the court to sever that aspect of the RAT decision.

94. In *G.O. v. Refugee Appeals Tribunal & Ors.* [2013] IEHC 89, Mac Eochaidh J. stated as follows in relation to the Tribunal's obligation to consider internal relocation and state protection where it has made a finding that the applicants' claim of persecution is not credible:

"It is well established by case law that where the RAT fundamentally disbelieves an applicant's account, there is no legal requirement to examine further matters such as the question of internal relocation, the availability of State protection, etc. But there is no prohibition on the RAT from carrying out such an exercise following negative credibility findings as happened in this case."

95. I am satisfied that in this case the applicants' submissions in relation to the finding as to the availability of internal relocation are reasonable and weighty. In its decision, the Tribunal dealt in general terms with the issue of internal relocation. It set out the general legal principles involved in the consideration of this issue. But the Tribunal member did not deal with the specific points raised by the applicants that they were fleeing from acts of persecution at the hands of government agents. Nor did it deal with the evidence of the applicants in relation to threatening phone calls and letters. The decision did not address the evidence that since the second named applicant left Pakistan, his wife and children have been subjected to harassment by State agents and were forced to flee to a relative's house.

96. The applicants also complained that the Tribunal did not refer to the other RAT decision on which they had relied in their submissions. In fact, in the portion of its decision dealing with the first named applicant, the Tribunal made the following reference to the earlier decision:

"Subsequent to the hearing, further documentation was supplied which does not alter my view as set out above. Having considered the previous decision, I am of the view that that particular decision turned on its own peculiar facts."

97. I am satisfied that the applicants have made out substantial grounds for contending that in reaching its decision that internal relocation was open to the applicants, the Tribunal did not give due consideration to the points raised by the applicants on this issue. Furthermore, the Tribunal did not deal in explicit terms with the previous decision of the RAT other than to say that it turned on its own peculiar facts. In these circumstances, I am satisfied that the applicants have made out substantial grounds for challenging that part of the Tribunal's decision which deals with internal relocation and, accordingly, I will grant leave in respect of ground 5 in the applicants' statement of grounds.

Ground 6 – Error in the assessment of the availability of state protection

98. The applicants seek leave to argue that the RAT addressed the question of the availability of state protection at a level of generality without engaging with the facts of this case when finding that there was a failure on the part of the applicants to demonstrate that state protection was not available. The applicant submitted that the Tribunal member should also have explained why, despite the evidence, he was not satisfied that attempts to procure state protection had not been exhausted.

99. In his grounding affidavit, the second named applicant dealt with this issue in the following terms:-

"I do not understand how the respondents could form the view that I could have reasonably availed of protection in Pakistan given the evidence submitted included the letter from my brother, M.H.B., to the Inspector General of Police, Lahore in relation to the provision of protection and requesting that action be taken to progress the investigation of my abduction. I explained in my evidence throughout the asylum process that the police, despite numerous requests, would not provide me with protection."

100. The applicants submitted that the fact that they sought State protection was clear on the evidence. The applicants submitted that the RAT should have properly addressed the evidence offered in this regard in relation to attempts to get State protection (several reports to the police) and explained why, notwithstanding this evidence and in the face of compelling COI in relation to the absence of State protection, he was not satisfied that attempts to procure state protection were exhausted. The applicants submitted that it was notable that no adequate consideration was given to the letter from the second named applicant's brother to the Inspector General of Police, Lahore, in relation to the provision of protection and requesting that action be taken to progress the investigation of the abduction of the applicants nor of the consistent evidence that the police, despite numerous requests, would not provide him with protection.

101. The applicants submitted that, furthermore, no consideration was given to the compelling country of origin information submitted to the Tribunal including evidence that forced disappearances are "a tragic 'routine' in Pakistan", that the handling of cases on forced disappearances by the Pakistani justice branch was suspended in November 2007, and the fact that "the use of torture, known and regularly denounced, is in no way opposed by the government." The applicants stated that this information was submitted to the Tribunal in support of the applicants' cases but the RAT reached a decision inconsistent with this information without explaining, by reference to this material, why he was doing so.

102. The applicants submitted that given the weight of the evidence before the RAT regarding the absence of State protection in Pakistan for persons in the applicants' position, as clearly documented in all the international literature before the Tribunal (because he does not appear to expressly so find) the conclusion that State protection is available is unsustainable.

103. The respondents submitted that since that the Tribunal member did not believe the applicants' claims to have a fear of persecution, he did not in those circumstances need to go on to make any assessment of state protection.

104. In its decision, the Tribunal set out a comprehensive statement of the law and practice on state protection. However, the Tribunal did not go on to deal with the specific points raised by the applicants. They had provided evidence of attempts made by them to secure protection from the police. They had also submitted extensive COI on the absence of state protection. The Tribunal mentioned but did not deal with the letter from the second named applicant's brother to the police. In these circumstances, it is arguable that the Tribunal failed to give sufficient consideration to the issue of state protection. Accordingly, I am satisfied that the applicants have made out substantial grounds for contending that the RAT erred in finding that there was adequate state protection available to the applicants, and I will therefore grant leave in respect of this ground.

Ground 7 – Error in assessing identity documents

105. The applicants submitted that the finding of the RAT that the first named applicant did not make reasonable efforts to establish his identity is unreasonable since he had submitted to the Tribunal his original birth certificate, which is an identity document within the meaning of s. 20(1) of the Refugee Act 1996.

106. The applicants submitted that the RAT stated that there had been a failure to establish identity but without explaining why the documentation submitted in support of establishing identity (birth certificates, marriage certificate, death certificate, police reports, newspaper reports, party membership documentation, etc.) were not considered sufficient and without identifying what additional documentation would have been required. The applicants stated that the only document which the Tribunal member specifically suggests is unreliable in terms of its authenticity is the medical report from the Services Institute of Medical Services where a stamp with a misspelling "sorgical" instead of "surgical" is used; and the applicants stated that while it is understood why the RAT decided that it could not rely on this document, no similar explanation was given for discounting the other documentation submitted.

107. The finding that the first named applicant had failed to establish his identity is made without reference to the fact that he had submitted an original birth certificate, the validity of which has not been impugned. This is an identity document within the meaning of section 20(1) of the Refugee Act, 1996, and, in the circumstances, the finding that the first named applicant did not make reasonable efforts to establish his identity is unreasonable absent some attempt to explain why the material actually submitted was not considered adequate. Additional material was also submitted including police reports, party membership details, and hospital records.

108. The respondent submitted that the Tribunal noted that birth certificates were submitted, but found that the applicants did not make reasonable efforts to establish their identities. The respondent stated that there is no dispute about the birth certificate having been submitted. It is on the Tribunal file and at p. 7 of the RAT decision it is noted that the first named applicant said that he had a

birth certificate. The respondent submitted that this means that the RAT did not accept that the document established his identity. At p. 28 of the decision, the Tribunal member again noted that the applicant had a birth certificate. He did not doubt its existence but was in essence saying that it was insufficient to establish the applicant's identity. The Tribunal states at p. 28 that the first named applicant did not provide "any reasonable explanation for the absence of identity documents." At the hearing, the RAT asked about "any other ID docs" (p. 7 attendance note). Although he acknowledged that the applicant has a birth certificate, he was quite reasonably attempting to find out what other documents the applicants might have in circumstances, which they say have been sent to them from Pakistan. There is no breach of constitutional justice simply because the Tribunal tests the applicants on their evidence.

109. I am satisfied that the applicants have made out substantial grounds for arguing that the RAT failed to have sufficient regard to the documentary evidence submitted to the RAT, and failed in its obligation to provide cogent reasons as to why the documentary evidence was being rejected. I therefore propose to grant leave on this ground.

Ground 8 – failure to consider relevant evidence

110. This again is a general ground of complaint centred on the RAT's alleged failure to adequately consider the relevant evidence before it. This complaint was more adequately particularised in the grounds considered above, and leave on this ground is therefore refused.

Ground 9 – Failure to assess the substantive claim advanced

111. The applicants submitted that the decision of the RAT is *ultra vires* by reason of a failure to assess the substantive claim advanced in accordance with s. 2 of the Refugee Act 1996, as amended, as the Tribunal member did not address whether the applicants have a well founded fear of persecution, and the evidence of past persecution, and whether a convention reason is given is never determined by the Tribunal.

112. It is clear from the decision that the RAT gave detailed consideration to the evidence given by the applicants at the oral hearing in which they gave details of the persecution that they claimed to have suffered. The RAT held that the account given by the applicants was not credible and cogent reasons were given for this finding. Accordingly, I will not grant leave on this ground.

Grounds 10, 11, and 12

113. Ground 10 of the applicants' statement of grounds is to the effect that there is an error of law in the decision which breaches Regulation 5(2) of SI 518 of 2006, insofar as the Tribunal failed to have regard to the fact that past persecution alone, without regard to future persecution, can warrant a determination that an applicant is eligible for protection. The said error goes to the jurisdiction of the respondents who have failed to determine the applications in accordance with law.

114. In this case, the applicants' claims as to past persecution were not believed for the reasons set out in some detail in the RAT decision. Since the applicants were found to lack credibility, and since their claims of past persecution were not believed and cogent reasons were provided for that finding, this ground is in my view unsustainable and leave must therefore be refused.

115. The applicants did not pursue ground 11 in their statement of grounds.

116. Ground 12 concerned the application for an extension of time, which the court dealt with earlier in this judgment.

The Respondents' Preliminary Objection

117. The respondents raised a preliminary objection to the proceedings on the grounds that the claim is moot arising out of the political changes in Pakistan. The prime minister of Pakistan, Mr Nawaz Sharif, is the leader of the Pakistan Muslim League – Nawaz Party (PML-N or N Party). In those circumstances, the respondents submitted that no useful purpose could be served by hearing the within application. The respondents submitted that the applicants have made a claim for asylum based only on their membership of the N Party and the risk to them of its previous minority status. If the applicants were successful before this court, the matter would be remitted to the Tribunal, and, based on the claim as formulated, there could be no benefit accruing to the applicants as the alleged threat to them no longer exists.

118. In this regard, Ms. Eileen Credon from the Chief State Solicitor's Office wrote to the applicants by letter dated 29th May, 2014, which was the day before the hearing of this case, in the following terms:

"It appears to the respondent that the proceedings can serve no purpose at this point in time due to the fundamental changes which have occurred in the political landscape in Pakistan. Indeed, as the applicants are no doubt aware, the party of which they have claimed to be members is the ruling party in Pakistan. The leader of that party, Mr. Nawaz Sharif, is Prime Minister of Pakistan.

It is noted, however, that the applicants' legal submissions filed yesterday made no reference to this fact and indeed unwittingly convey the impression that the N Party is a minority party and/or forced to conduct its activities in secret. As your clients purport to be politically active asylum seekers, one would reasonably have expected them to have been alert to this change in government. One would have presumed that it would have been viewed by the applicants as a very positive change from their perspective and one which would have permitted their safe return to Pakistan (even if their alleged fear had been well founded). With respect, it is not credible that your clients were not aware of this material change in political circumstances and one would therefore question the continued accuracy, presuming it was ever accurate, of the averments at paragraph 22 and 23 respectively of the applicants' grounding affidavits. The applicants cannot legitimately maintain that they are "in no doubt but my life would be in danger if I am returned to Pakistan."

As your clients' claim is based exclusively on political activity, namely membership of the N Party, which is now in government, it is the Respondent's contention that the within proceedings are moot, save as to costs. Indeed, it is apparent that the proceedings were moot when a hearing date was assigned on 10 March 2014. Even if your client succeeded in the within application, no legitimate purpose could be served by sending the claim back to the Refugee Appeals Tribunal as the asylum claim made by the applicants could not succeed. Indeed, the continued prosecution of the proceedings since the N Party and Mr. Sharif assumed power is questionable.

At this juncture, without any admission of liability, your clients are invited to withdraw the within proceedings. If necessary, this letter will be brought to the attention of the court, including in relation to costs."

119. In reply, the applicants submitted country of origin information by way of affidavit which describes the volatile nature of politics in Pakistan and the general unrest in the country. The applicants submitted that because of this instability the government could

change at any time and that they would then be in danger; and that they would, in any case, be in danger because of the unstable nature of Pakistani politics and society.

120. In his affidavit sworn on 24th October, 2014, and submitted to the court on 2nd December, 2014, the first named applicant stated as follows:

"2. I make this Affidavit in circumstances where both my uncle and I have been made aware of a letter dated 29th of May, 2014 from the Chief State Solicitor's Office to my solicitors in relation to the within proceedings in which it is contended that the proceedings can serve no purpose at this point in time due to changes in the political landscape in Pakistan since the within proceedings commenced and the fact that the N Party, of which my uncle and I were members, is now in government. As a result of this, the Chief State Solicitor's Office have invited us to treat these proceedings as moot on the basis of their belief that it is safe for us to return to Pakistan. I can confirm that the letter from the Chief State Solicitor's Office has been read over to my uncle and me in the presence of our solicitor in the presence of an URDU interpreter.

3. Unfortunately, I cannot agree with the contention that it would now be safe for my uncle and me to return to Pakistan. I understand why the Chief State Solicitor's Office might form this view given that the party of which we are members is now in power but I believe that it is a view premised on a partial or superficial understanding of the political situation in Pakistan where political control is neither stable nor effective.

4. As this Court is already aware from the Country of Origin Information relied upon in these proceedings, government in Pakistan is very unstable and there are a myriad of break-away groups and agencies involved in the widely reported disappearances of persons endemic in Pakistan. It remains the case that despite the fact that the N Party is now in government in Pakistan, my father is still missing and my family have had no information about his whereabouts. It is very clear to my family that being a member of a party in power in Pakistan unfortunately affords no protection from persecution and that is our experience of life in Pakistan.

5. This is not just my family's view and it is widely known that the State is severely dysfunctional. It is not so easy to effect systemic change in a country such as Pakistan and it is not realistic to suppose that because a new political party comes into power that the old anti-democratic and subversive ways are ended or that the influence of the army and its agencies are held in check.

6. The reality is that it does not matter what party is in power in Pakistan. The real political authority is the military and the various agencies under their control. The N Party does not control the army or their agencies. Those responsible for our abduction and torture are not controlled by the N Party and the change in government has not resulted in a change in this regard. I confirm on oath my conviction, shared by my uncle, that once you are known to these agencies you will be immediately arrested and tortured on return to Pakistan. The police are unable to offer protection due to the influence of the army and their agencies. Power is not centralised in political parties in Pakistan and the army continues to be an uncontrolled force.

7. I believe that it is documented that the political situation, particularly in the Punjab region, remains unstable and volatile. There is no guarantee that the existing Government will survive following the protest movements led mainly by Imran Kahn over the summer and membership of the N Party is not a guarantee of safety but a risk factor even when they are the majority. Thus, it remains the position for both my uncle and me that we believe our lives would be in danger if we were returned to Pakistan.

[...]

10. We are very concerned that the purpose of the correspondence from the Chief State Solicitor's Office is to persuade the Court that even if the Court is satisfied that the original decision making process in our cases was flawed that it should not intervene to ensure that our cases are properly considered. We are advised that the effect of what the Chief State Solicitor's Office is asking this court to do is to bypass the specialist role of the Tribunal and enter, itself, into the arena of assessing and deciding on applications for refugee status. I am advised that normally the position adopted by the Chief State Solicitor's Office in defending these types of proceedings is precisely contrary to this in that it is established that it is no function of the Court in judicial review proceedings to put itself in the position of the decision maker whose decision is challenged.

11. My uncle and I are very anxious that our applications for refugee status would be determined in a fair and proper manner and by a body with specialist knowledge and training in relation to the position in Pakistan. International Media reports evidence ongoing political unrest in Pakistan as the situation there continues to evolve. In this regard, I beg to refer to a report downloaded from the internet entitled "Pakistan Political Unrest: In Brief" published by the United States Congressional Research Service and authored by K. Alan Kronstadt and Samir Kumar dating to September this year (September, 2014)."

121. The country of origin information submitted by the applicants in the "Pakistan Political Unrest: In Brief" report, which was prepared by the US Congressional Research Service, notes, *inter alia*, that as of August 2014 the effort to establish democracy in Pakistan is facing serious difficulties as a result of ongoing protests in the capital which, the report suggests, may trigger a new round of direct military intervention in the country's governance.

122. In *The State (Polymark (Ireland) Ltd) v. The Labour Court and The Irish Transport and General Workers' Union* [1987] ILRM 357 it was held that the court will refuse to grant certiorari in circumstances where it would be futile to do so. In the course of his judgment, at p. 362 of the report, Blayney J. quoted with approval the following passage from the judgment of O'Higgins CJ in *The State (Abenglen) v. Dublin Corporation* [1984] IR 381 at p. 393:-

"In the vast majority of cases, however, a person whose legal rights have been infringed may be awarded certiorari ex debito justitiae if he can establish any of the recognised grounds for quashing; but the court retains a discretion to refuse his application if his conduct has been such as to disentitle him to relief or, I may add, if the relief is not necessary for the protection of those rights. For the court to act otherwise, almost as of course, once an irregularity or defect is established in the impugned proceedings, would be to debase this great remedy."

123. Blayney J. then held at pp. 362-363:

This passage reaffirms that certiorari is a discretionary remedy, and the conclusion I have come to is that even if there was a breach of principles of natural justice, the circumstances of the case are such that in exercise of my discretion I should refuse to make the conditional order absolute.

My principal reason is that the granting of an order of certiorari is not necessary for the protection of the prosecutor's legal rights in the sense that it could not in any way protect them. If the determination of the Labour Court is quashed, this will have no effect on the equal pay officer's recommendation which I have found to have been validly made. Her recommendation will remain binding on the prosecutor. In these circumstances the quashing of the Labour Court's determination would be pointless. It would in no way alter the position which has resulted from my finding in regard to the first ground, namely, that there was a valid recommendation made by the equal pay officer which is binding on the prosecutor.

As well as being pointless, an absolute order would, for the reason I have already given, be of no benefit to the prosecutor, and this is a relevant consideration to be taken into account in exercising my discretion. This was the ground upon which Walsh J. based his refusal to make an order of certiorari in the Abenglen case. He said in his judgment:

"If I am correct in this, then an order of certiorari quashing the decision made by the respondents would be of no benefit to Abenglen. While the Court could make such an order in the present case, the Court in its discretion could refuse to do so where that would not confer any benefit upon Abenglen. (at p. 397)."

124. I am of the view that the COI submitted by the applicants, and referred to above, suggests that the political situation in Pakistan remains volatile and unstable, and that although the claimed fear of persecution on the part of the applicants stemmed from their membership of the N party, which party is now in power, that situation could, it seems, change at any time. I am, moreover, of the view that the assessment of COI, and the assessment of whether the basis of the applicants' claimed fear of persecution no longer exists, is properly a matter for the consideration of the RAT, rather than the High Court in an application for leave to seek judicial review. Accordingly, the court rejects the respondent's contention that the applicants' case herein is moot and ought to be dismissed.

Conclusion

125. For the reasons set out above, the court will grant leave to challenge the decision of the RAT on ground 3 (failure to properly assess and weigh the SPIRASI reports); ground 5 (treatment of internal relocation); ground 6 (assessment of the availability of state protection); and ground 7 (error in assessing identity documents), as set out in the applicants' statement of grounds.