Neutral Citation: [2015] IEHC 587

THE HIGH COURT

JUDICIAL REVIEW

Record No.2012/196/JR

BETWEEN

A. T.

APPLICANT

AND

THE REFUGEE APPEALS TRIBUNAL

THE MINISTER FOR JUSTICE AND EQUALITY

ATTORNEY GENERAL

IRELAND

RESPONDENTS

JUDGMENT of Ms. Justice Faherty delivered on the 22nd day of September, 2015

1. The applicant seeks an order of *certiorari* of the decision of the first named respondent affirming the recommendation of the Refugee Appeals Commissioner not to declare her a refugee.

2. Extension of time

The applicant was approximately nineteen days outside of the statutory period within which to initiate judicial review proceedings. In her affidavit, the applicant provided an explanation in that she was in the process of changing solicitors. In those circumstances and noting that she moved promptly to procure new legal representation upon receipt of the letter of 17 February 2012 from her erstwhile solicitor, the court is satisfied to grant the necessary extension of time.

Background

3. The applicant is an Algerian national of Berber ethnicity who claimed that she worked as a tailor in selling clothes at a named university in Algeria. She asserted in the course of the asylum process that one of her clients was a named female lecturer who was associated with the National Co-ordination for Change and Democracy (N CCD) in Algeria. The applicant claimed that this lecturer asked her to look after a file or files which the applicant agreed to do. However, some people from the government intelligence wanted the files and on learning this, the applicant disposed of them. Notwithstanding having done so, the applicant believed that she was being watched and followed by the police and it transpired that they duly searched her bag in the town square in Algiers but did not locate any of the files. Accordingly, she was not arrested. It was the applicant's claim however that her brother was arrested by the police in the family home, in connection with the files, while the applicant was visiting her aunt. She believed her brother was arrested in her stead. The police were looking for the file or files given to the applicant. Her brother was released after two weeks and upon his release he advised the applicant that he had been tortured and interrogated about the location of the files and about the applicant. The applicant then left to stay with her aunt where she remained for approximately two weeks, telephoning and visiting her family home on occasion. According to the applicant, a lecturer at the university was killed on the 23 April 2011 and on the 10 May 2011 the lecturer who had given her the files was also killed. The applicant claimed that she left her home in Algiers in June 2011 and drove to Tunisia. She met a stranger there who helped her fly to Italy. She did not want to stay in Italy as she did not know anyone there and she asked the stranger to bring her to Ireland. The applicant had a brother and sister in Ireland. She arrived in the state on the 22 June 2011.

Procedural History

4. She commenced her asylum application on the 27June 2011 and completed an ASY1 form on that date. Her questionnaire was completed on the 1st of July 2011. She claimed persecution on grounds of political opinion and feared returning to Algeria on grounds of *"torture, imprisonment or murder"*.

5. She underwent a s.11 interview on 13 July 2011 through the medium of Arabic.

6. The s.13 report issued on 26 October 2011. The report found that the applicant had not established a well founded fear of persecution on the basis of a number of adverse credibility findings made by the Commissioner.

7. A Notice of Appeal was lodged with the first named respondent under cover of a letter dated 17 November 2011.

8. The Tribunal hearing took place on the 19 January 2012 and the decision issued on 30 January 2012, rejecting the appeal on credibility grounds.

9. Proceedings were duly instituted by the applicant challenging the decision. The grounds on which the decision is sought to be challenged are as follows:

- The Tribunal misconstrued the evidence before it. In particular, the National Co-ordination for Change and Democracy is a movement for political change comprised of many different elements and organisations.

- The Tribunal erred in law and failed to consider a core element of the applicants claim, that as a person supportive of the National Co-ordination for Change and Democracy, she was exposed to persecution. Prejudgment cannot be

discounted.

• The Tribunal erred in law in basing its decision wholly on adverse credibility findings, many based on conjecture and others relating to peripheral matters, without having any regard to the country of origin reports and the evidence of past persecution.

• The Tribunal erred in law in taking into account matters irrelevant to its determinations and/or failed to take into account relevant considerations.

• The Tribunal erred in law in failing to lawfully speculate on the likelihood of exposure of the applicant to persecutory risk on refoulement to Algeria in the light of her imputed political opinion.

Section 6 Analysis
10. The Tribunal Member commenced his analysis by stating:

> *"The Tribunal was not generally satisfied as to the appellant's credibility in relation to the particular claim for asylum advanced by her. Some of her evidence just ran contrary to common sense and was implausible and on other occasions her evidence was contradictory, vague and incoherent."*

He then set out thirteen examples, which are effectively the credibility findings which are sought to be impugned in the course of these proceedings. They are recited hereunder and numbered by this court for the purposes of clarity.

(i) "The appellant claimed at the outset of the appeal hearing that she was a member of the National Co-ordination for Change and Democracy Party, and joined that party in January, 2011. This contradicts her earlier contention that she was not a member of this party. (see, for example, p 3 of her Notice of Appeal and Q 32 of the s.11 interview)."

(ii) "The appellant then claimed that her acquaintance, [the named university lecturer] gave her a file for safekeeping in February, 2011. Again, this contradicts her earlier statements to the effect that [the lecturer] gave her the file in March, 2011." (Q 23 s.11 interview).

(iii) "The appellant was clear at the appeal hearing that [the lecturer] only ever handed over one file to her and that this file was about half an inch thick. Again, this contradicts her earlier contention that [the lecturer] had handed over more than one file to her (see, for example, p.3 of her Notice of Appeal)."

(iv) "The appellant then claimed that at the time [the lecturer] handed over the file to her, she explained to the appellant that the reason she was doing so was that the police were looking for this file. Again, this contradicts her earlier statement that it was only some time after she had been handed the file that the appellant "discovered the government intelligence officials were looking for these files". (see, for example, p.3 of her Notice of Appeal and Q 33 of the s.11 interview)."

(v) "The appellant told the Tribunal that she disposed of the file in a bin immediately on the same day after [the lecturer] gave them to her and had never brought them back to her house as she was fearful of the consequences which had been explained to her by [the lecturer] of holding the file. Again, this contradicts what she had previously said to the effect that it was only after some time that she disposed of the files (plural – sic.) and that she disposed of it by merely throwing it on the road (see, for example, p. 3 of her Notice of Appeal)."

(vi) "The appellant said that the police never approached or questioned her brother[ ]after they released him. This contradicts Q 21 of her written questionnaire."

(vii) "The Tribunal finds it inherently implausible that the appellant would accept a file from [the lecturer], a person barely known to her (having met her for the first time a month earlier) for safekeeping immediately after she had been told by the same [lecturer] that this file was leading her into trouble and that the police were looking for it. The appellant's solicitor sought to explain this implausibility by stating that the reasons the appellant did so was that [the lecturer]had been instrumental in significantly increasing her business. However, the appellant herself contradicted this claim, stating to the Tribunal that her business had not grown to any real extent after meeting [the lecturer] and, moreover, she stopped going to the university for business after [the lecturer] gave her the file as she was afraid of the consequences. Accordingly, the Tribunal would uphold the credibility finding made at para. 3.3 of the s. 13 report in this respect."

(viii) "The Tribunal finds it incongruous that the only person who had been detained by the police about the files, her brother, was the same person who assisted the appellant in leaving Algeria rather than seeking to leave there himself."

(ix) "The appellant said at her s.11 interview that the police were satisfied that her brother did not have the file nor did he know where it was and, as a result, released him. In the circumstances, it is hardly surprising that the authorities never arrested the appellant herself and that the last contact she had with them was in April, 2011 despite living at the same house within that period (she said that she left her family home on the 12th June). In those circumstances and in light of the serious credibility difficulties, the subjective fear held by the appellant does not appear objectively well founded."

(x) "The appellant said that the police interrogated her brother about the appellant's location despite having arrested him from the family home, where the appellant remained living during the period of his detention. She said that the police had never returned to her family home after they arrested her brother."

(xi) "The appellant's contention that she passed through immigration controls on a false passport without encountering any difficulties with trained immigration officers is implausible. Following, U v. Refugee Appeals Tribunal [2008] IEHC 10, the Tribunal considers that this aspect serves to undermine the credibility of the story presented by the appellant, particularly when one considers her contention that she was blithely unaware of the details contained on the said document used by her."

(xii) "The appellant stated that she transited at least two other countries, including Italy on her way to Ireland from

Algeria. Failure to claim asylum there tends to undermine any objective aspect to the fear of persecution alleged and it is a matter this Tribunal is mandated to consider in assessing the credibility of the claim advanced per s.11 (B) of the Act of 1996. Her explanation for her failure to claim asylum there was unconvincing to say the least. This aspect of para. 3.3 of the s.13 report is upheld in this respect."

(xiii) "In light of the serious credibility issues, the Tribunal finds that the documents submitted by the appellant do not support her asylum claim in any material way and that the dual visa applications made by her for Ireland and the United Kingdom in 2008 is not a mere coincidence but further adds weight to the implausibility of the appellant being a genuine refugee."

11. The Tribunal Member went on to state that the credibility issues upon which he had opined *"[led] to the conclusion that the appellant is not credible in her evidence."*

12. He continued:- *"[n]otwithstanding the principle enunciated in Folarin v. Minister for Justice …. that 'once such a fundamental lack of credibility is found, the Tribunal is not obliged to refer to country of origin information to see whether the story can be believed'. This Tribunal has considered all of the various country of origin information reports and information which were submitted in relation to this appeal".*

The submissions advanced on behalf of the applicant

13. In the first instance, the applicant's counsel challenged the lawfulness of some of the aforesaid findings on the basis that the contradictions and inconsistencies relied on by the Tribunal Member were not put to the applicant in the course of the hearing, as they should have been. Counsel emphasised that it was not the case that the contradictions and inconsistencies were internal to the oral hearing itself, rather the Tribunal Member made such findings on the basis of a comparison of the applicant's oral testimony with what had been stated by her at prior stages of the asylum process. Accordingly, the issues which exercised the Tribunal Member should have been put to her and an explanation sought so that the Tribunal Member could then assess and say if the explanations proffered were unsatisfactory in some way. While counsel acknowledged that there were contradictions in the applicant's evidence to the Tribunal when viewed against her earlier accounts, the salient issue was that they were not teased out with the applicant.

14. Arguing that the Tribunal Member's approach was not a proper one to adopt, counsel referred the court to "The Law of Refugee Status", Hathaway and Foster (2nd Ed.) where, in considering the reliance by decision-makers on contradictions and inconsistencies, the authors advocate the approach adopted by the US Court of Appeals for the Third Circuit (USCA Third Cir.2003) which cautioned *"against placing too much weight on inconsistencies between an asylum affidavit and subsequent testimony at a hearing".* In alleging the Tribunal Member's unfairness in failing to alert the applicant to inconsistencies and contradictions in her account, counsel relied again on Hathaway and Foster who caution, as follows:-

> *"[T]he intention to make a negative credibility assessment on the basis of any perceived evidentiary inconsistency must be disclosed in a timely way, and the applicant given a fair opportunity to respond to same. Because '[a]ll plausible and reasonable explanations for any inconsistencies must be considered,' there is a duty to 'give the petitioner an opportunity to explain any alleged inconsistencies;".*

15. Counsel stated that Hathaway and Foster go on to acknowledge that there was a stronger case for questioning credibility on the basis of *"significant"* testimonial inconsistencies within the primary refugee status hearing itself (because such inconsistencies occur after the initial confusion and suspicion of arrival have ordinarily dissipated) but this approach also had to be qualified in that *"an inconsistency is relevant to credibility only where it relates to a matter of some real substantive import…[t]he focus should instead be on testimony that is both 'immediately, relevant' and which goes 'to the heart' of the claim. The applicant's testimony may not be adjudged unreliable on the basis of inconsistencies in 'isolated snippets off the record' ; the inconsistencies identified must rather call into question an important component of the applicant's evidence that is needed to establish the existence of a relevant well-founded fear."*

Counsel argued that while there might have been some contradictions or inconsistencies relating to the applicant's core claim, they were minor and should not have been held against her.

16. Indeed, even where the inconsistency relates to a matter of clear substantive importance, he relied on Hathaway and Foster's observation that senior courts have further determined that *"minor discrepancies"* are to be ignored.

Counsel pointed to one example cited by the authors where a US Court had found that differing testimony given about the exact month of an arrest was too "trivial" to warrant impugning credibility. However, this had occurred in relation to the applicant's case, given the Tribunal Member's reliance in rejecting her credibility on the fact that she referred variously to February and March as the month in which she received the files and his reliance on the distinction between *"a file"* and *"files"* in the applicant's account of what she said was given to her by the university lecturer.

17. Moreover, Hathaway and Foster advocate that any proposed finding of non credibility must be made in *"clear"* and *"unmistakable"* terms . As such, a credibility finding should be rejected where "it is couched in vague and general terms". Counsel placed emphasis on the authors' opinion that *"any proposed adverse assessment of credibility must be specifically justified. Personal conjecture on the part of the decision-maker is clearly insufficient; there must be a 'specific, cogent reason for any stated disbelief'".* Counsel highlighted Hathaway and Foster's caution (gleaned from case law cited by them) that assertions that an account is "implausible" does not constitute a finding on the question raised, being more in the nature of an *"observation"* or *"side comment"*, as found by the Australian Federal Court.

The court was urged to assess the decision arrived at by the Tribunal Member in the light of the aforesaid cautions advocated.

18. Turning to the actual findings made by the decision maker, counsel argued that as regards the first finding, it was questionable the extent to which whether the applicant was a member of a political party or movement was part of her core claim. Her core claim was that she was a tailor who had obtained documents from the university lecturer she named. The Tribunal Member's finding on this issue lacked cogency.

19. The contradiction highlighted in the second finding was a minor detail; whether the applicant stated that she had been given the files in February or March was not sufficient to discount her credibility, and again, the finding lacked cogency. That this contradiction had been used against the applicant was "frightening". Similarly, with regard to the third credibility finding, whether it was one or more files that had been given to the applicant, it was a minor matter which should not have been counted against her. It was submitted that there was no cogency in this particular finding.

20. The fourth finding was not made with regard to the reply the applicant had given to Q. 22 of the s.11 interview, where she had intimated that the university lecturer had said that *"she was going to give me files as some people were looking for them"* and where in her reply to Q. 34 (*"If it was only work files why would she be asking you to mind them?"*), the applicant stated that the lecturer asked her to mind the files because she (the lecturer) *"was afraid"*.

21. With regard to the fifth finding, the applicant's written submissions argued that the finding was factually wrong in light of the evidence, and in oral submission it was argued that, at best, the contradiction relied on by the Tribunal Member was between what the applicant had said at oral hearing and what had been advocated by her lawyer in the Notice of Appeal and this had not been put to the applicant at the oral hearing.

22. The written submissions described the sixth finding as "unclear" and appeared to be "irrational", a complaint also levelled at the seventh finding which found a contradiction between what the applicant had stated at oral hearing and the basis upon which her solicitor sought to explain why she would have accepted the files. Counsel also argued that the alleged implausibility had not been put to the applicant at the hearing.

23. It was argued that the eighth finding was irrational, as no evidence of why the applicant's brother had not fled Algeria was before the Tribunal Member. Insofar as there was some basis for the finding, counsel contended that at best it amounted to conjecture on the part of the decision maker. The applicant's written submissions described the ninth finding as conjecture and it was contended that the Tribunal Member gave no reason as to why the tenth finding was an example of *"evidence …..[that was] contrary to common sense…...implausible ……contradictory, vague and incoherent."*

The written submissions described findings eleven and twelve as conjecture and as relating to peripheral matters. In oral argument, the applicant's counsel stated that the applicant had explained to the Tribunal Member that she had an Italian passport with her own photograph thereon, albeit in a different name. Therefore, she had no reason to engage with passport officials. Moreover, the applicant gave an explanation for not claiming asylum in Italy. She did not know anyone there. There was no direct flight to rule in asylum law and no requirement to seek asylum in the first safe country. The applicant had not maintained that Ireland was the first safe country she arrived at or that Italy was not a safe country. Accordingly, the Tribunal member erred in applying the provisions of s.11(B) to the applicants claim. It was maintained that finding thirteen was not cogent logic in light of the principles articulated by Cooke J. in *I.R. v. Minister for Justice* [2009] IEHC 353.

Counsel also contended that the Tribunal Member had a duty to make a clear and unequivocal finding in respect of the applicant's core claim of exposure to persecution by reason of imputed political opinion. It was argued that the Tribunal's decision failed to disclose a view in respect of the core claim; it also failed to give an indication as to role or significance of the NCCD in Algeria. Moreover, having determined the applicant's appeal on the basis of the credibility issues identified, the Tribunal was nevertheless required to speculate on whether the applicant could be exposed to persecution in Algeria by reason of her particular history, and in light of known country conditions, as required by the decision of Cooke J. in *M.A.M.A v. Refugee Appeals Tribunal* [2011] IEHC 147 [2011] 2 IR 729 and *M.M.A. v. Refugee Appeals Tribunal* (Unreported, High Court, 13th February 2013).

The applicant's counsel argued that the manner in which the Tribunal Member dealt with the country of origin information which had been referred to in the Notice of Appeal was not acceptable, in accordance with the dictum of Barr J. in *S.J.L v. Refugee Appeals Tribunal & Ors* [2014] IEHC 608 (Unreported, High Court, 10th December 2014) . Ground 6 of the appeal submissions to the Tribunal advised:

> *"ORAC have erred in fact and in law in failing to give sufficient weight to Country of Origin information which overall, is supportive of the Applicant's claim for asylum. In particular in relation to the OHCHRC article dated 27th April 2011 which is quoted below supports the Applicant's contention that political activists and people related to them are at risk in Algeria: "GENEVA - The United Nations Special Rapporteur on the right to freedom of opinion and expression, Frank la Rue, on Wednesday expressed deep shock and sorrow over the killing of a political activist he had met on a recent official visit to Algeria.*
>
> *The expert had met Ahmed Kerroumi, Professor at the University of Oran, and a member of the opposition party, Democratic and Social Movement (Mouvement Democratique et Social) and the Oran section of the National Coordination Change and Democracy (Coordination nationale pour le changement et la democratie), during his official mission to Algeria from 10-17 April 2011 organised at the invitation of the Government. Mr Kerroumi was one of the civil society representatives with whom the Special Rapporteur discussed the human rights situation in the country at a meeting in Oran on 15 April. He reportedly disappeared on 19 April and his body was found in his office on 23 April."*

24. It was contended that this information was not referred to at all in the Tribunal Member's decision. It should have been considered in the decision even if only for the purposes of rejecting it. While the Tribunal Member had referred to the dictum of Peart J. in F. [2008] IEHC 126, that dictum had to be seen in the context of the particular case, where the circumstances were that the applicant there was seeking to quash the decision of the Refugee Appeals Tribunal after a time lapse of 23 months. Counsel stated that the applicant's circumstances were not on par with those which presented in *F. v. Minister for Justice Equality and Law Reform* and in this regard referred the court to the following extract from Peart J.'s judgment:-

> *"I have considered the grounds sought to be put forward in this case. The Tribunal in its decision made very clear credibility findings against the applicant. It is no exaggeration to say that it simply did not believe the account given by the applicant of her reasons for leaving Nigeria when she did and for coming to this State. Neither did it believe the applicant's account of the means by which she came here. The various matters in respect of which the applicant was found not to be credible are clearly set forth in the decision. The Tribunal member states in his decision that the Tribunal "is in no doubt that the applicant has not told the truth about her reasons for leaving Nigeria". It was also satisfied that the applicant had not sought assistance or protection from the authorities in Nigeria and that it was not therefore possible to assess their willingness or ability to afford the applicant protection.*
>
> *It is submitted on behalf of the applicant that in reaching these adverse credibility findings the Tribunal has indulged in conjecture, acted in breach of fair procedures in making findings on matters "not put to the applicant" and by failing to invite explanations for perceived inconsistencies related to matters regarded by the Tribunal as being of central importance. It is also said that the Tribunal failed to determine the appeal by reference to country of origin information, and relied upon factual errors.*
>
> *A feature of the applicant's grounding affidavit on this application is the absence of any particularity in relation to complaints made by her in relation to how the appeal hearing was conducted. There is much generalisation, and little of*

substance. For example, it is stated at paragraph 8 that "the said decision of the Appeals Tribunal contains many contradictions and contains opinions without any factual basis". None of these contradictions or opinions are identified. In paragraph 9 she states, inter alia, that the member ignored her "explanations" yet she has not stated what explanations she is referring to. This averment sits uncomfortably beside a submission to which I have referred, namely that the Tribunal acted in breach of fair procedures by making findings on matters "not put to the applicant". Clearly, if she is stating that she gave explanations, these must have been given in relation to matters for which explanations were sought. In the absence of any particularity as to what findings she is referring to where they were not put to her, this Court has no way of identifying which explanations were ignored.

In my view it is not even arguable on the facts as disclosed in the grounding affidavit, and in the light of the very detailed reasons which based the credibility finding, that the Tribunal erred in the manner in which it concluded that the applicant could not be believed in her story. Once such a fundamental lack of credibility is found, the Tribunal is not obliged to refer to country of origin information to see whether her story could be true. The first and essential matter for determination is whether the story can be believed. It is only when that hurdle has been successfully overcome that country of origin information can assist in the assessment of whether the alleged fear of persecution is subjectively and objectively justified.

I had reason to consider a similar type of credibility finding in Imafu v. Minister for Justice, Equality and Law Reform, unreported, 9th December 2005. Much of what I concluded in relation to the credibility finding in that case is apt in the present case also. No amount of country of origin information would assist in assessing credibility in this case since the facts asserted by the applicant are personal to her and family-related. In so far as the applicant relies on an absence in the decision of reliance on country of origin information, I find no basis for arguing that as a ground of objection in this case.

25. Counsel argued that even having regard to the bar set by Folarin (and *Imafu*), as to when reference to country of origin information was not necessary, the applicant had not crossed that particular line in the context of the considerable detail she gave, which was sufficient to impel the Tribunal Member to consider the country of origin information which had been submitted.

26. While the Tribunal Member stated he had considered country of origin information, no reason was stated as to why it was disregarded. There was no proper assessment of the necessary information as required by s. 5(1)(a) of the 2006 Regulations and in this regard, counsel referred to the judgment of this court in *M.A.I. v Refugee Appeals Tribunal* [2014] IEHC 623.

27. In the context of the alleged erroneous handling by the Tribunal Member of country of origin information, counsel requested the court to take note of Hathaway and Foster's reference to the *"procedural benchmarks"* laid down by appellate courts *"to guard against the artificial insulation of negative decisions rendered on credibility grounds"*, and in particular the dictum of the full Federal Court of Australia:-

"[t]he reasons of the decision-maker should disclose whether the proper approach has in fact been taken. This is the safeguard against the problem that arises where the [decision-maker] records the self direction, but does so in a hollow formulaic way...to attempt to immunise the decision against criticism for failure to take the proper approach to the assessment of credit."

28. This type of formulaic self direction was, counsel submitted, evident in the Tribunal Member's assertion that he had *"considered"* country of origin information, yet he made no reference to the specifics thereof in the decision or to the view he adopted with regard to same.

The respondents' submissions

29. In the first instance, counsel objected to the applicant's counsel's reliance on matters not having been put to the applicant at the oral hearing. This complaint was introduced by the applicant's counsel for the first time in the course of his oral submissions to the court and had not been canvassed in the applicant's written submissions, much less pleaded in the statement of grounds. The statement of grounds only attacked the Tribunal Member's credibility findings on the grounds that they were arrived at on the basis of conjecture and that they related to peripheral matters, arguments which were repeated in the applicant's written submissions.

30. It was contended that there were substantial inconsistencies and contradictions in the applicant's evidence to the Tribunal, when compared to accounts she had given at prior stages of the asylum process. These inconsistencies and contradictions were accepted to be the case in these proceedings by the applicant's counsel. Firstly, there was the issue of the applicant's claim of political involvement. In the course of the applicant's counsel's written and oral submissions, it was suggested that by virtue of what the applicant stated in her oral testimony to the Tribunal, that the Tribunal Member should have accepted that the applicant was someone who was involved politically or a supporter of a political party. Counsel referred the court to the manner in which the applicant had addressed this issue throughout the asylum process. In her questionnaire she claimed to be a member of the *"Tagheer Party – National Coordination for Change and Democracy belonging to the Amazigh".*

In the course of her s. 11 interview, she was questioned as follows:-

"Q30. Are you yourself involved in politics in any way?

A. No.

Q. 31 Are you a member of any political party?

A. No

Q32. But in question 23 of your questionnaire you state that you are a member of a political party (Applicant shown questionnaire).

A. That is a mistake. I am not a member of a political party. [The lecturer]was a member of this party."

31. Insofar as the applicant's written submissions referred to the applicant having given administrative assistance to the university lecturer named by her– a claimed activist with NCCD – that claim was never made by the applicant in her questionnaire, in the s. 11 interview or at the oral hearing. It first surfaced in the appeal submission to the Tribunal.

32. Furthermore, the applicant's interview demonstrated that she claimed to have met the university lecturer in her capacity as a tailor. The applicant did not, either in her questionnaire or in the course of her s. 11 interview, suggest that she left Algeria on the basis that she was a member of a political party or because of fear for any reason associated with a political party or because she held a political opinion. Yet, by the time of her oral testimony, she claimed to have been a member of NCCD since January 2011. No further evidence was given by her at the oral hearing of any other involvement in political matters. In all of those circumstances, the Tribunal Member was entitled to characterize her account of political involvement as contradictory. There was a significant contradiction to which the decision maker was entitled to have regard. Even if the Tribunal were to accept that the applicant was a member of a political party, there were contradictions regarding her membership. She offered no evidence to the Tribunal of political activity. Her statements in the course of the s. 11 interview was that she was never involved in politics and that she believed the files given to her related to the lecturer's work. Thus, it was not clear whether the applicant had or held a political opinion. Had she held a political opinion she would have known what was in the files, but she did not have that knowledge.

33. There was a contradiction in her account as to how long she kept the files and as to her knowledge of the contents of the files. Her evidence to the Tribunal was that when she was given the file, the lecturer told her the reason she was giving her the file was that the police were looking for it, causing the applicant to *"immediately (drop) this file in a waste bin on the street the same day"*. In the course of her s. 11 interview, she stated that she kept the file until she learned that the intelligence authorities were looking for it. The matter was addressed with her in that interview as follows:-

> *"Q26. Why did you agree to take the files?*
>
> *A. She said please, please could you take these files for me and I took the files from her.*
>
> *Q27. When exactly did you dispose of these files?*
>
> *A. In March also.*
>
> *Q28. So you held these files for less than a month?*
>
> *A. Yes"*

34. On the issue of her core claim, there can be no suggestion but that the applicant's core claim was considered by the Tribunal Member. The applicant gave her reason for claiming asylum in her s. 11 interview and in her questionnaire. That was the claim assessed by the Tribunal Member. Her core claim was not that she was involved in politics or a political activist or assisting in administrative tasks associated with a political movement or party, the latter suggestion only emanating from the appeal submissions (and the submissions to this court) and were never the subject of evidence from the applicant to the Tribunal. In any event, insofar as such an assertion of political involvement was made, the evidence did not tally with her claim of how she met the university lecturer or with her engagement with that individual thereafter.

Furthermore, there was no suggestion that the applicant's evidence to the Tribunal was not properly recorded or recounted in the decision.

35. Insofar as the applicant's counsel relied on the views expressed by Hathaway and Foster on the question of inconsistencies and contradictions, it was reiterated that significant aspects of the applicant's claim were contradictory. Her case was not one where the assessment of credibility boiled down to a difference in emphasis of phraseology such as might vitiate a finding based on such reliance: here, there were concrete differences between the evidence tendered by the applicant at oral hearing and her earlier accounts in relation to significant matters. The discrepancies were not minor.

36. If the High Court were going to parse the decision, rather than read it as a whole, one might agree that some findings were peripheral but other significant findings made by the Tribunal Member could not be classed as peripheral, for example the applicant's various claims as to how long she held the files and when she became aware that the file was being sought by the police. These matters related to her core claim. Counsel also rejected the applicant's contention that the Tribunal Member relied on conjecture or speculation. The Tribunal Member's findings were reasoned and rational. He was entitled to rely on common sense and he had applied that in relation to particular aspects of the applicant's account, particularly with regard to credibility findings eight, nine and ten.

37. Counsel submitted that the Tribunal Member's decision on the applicant's credibility complied fully with the principles articulated by Cooke J. in *I.R. v. Minister for Justice Equality and Law Reform* and in that regard counsel relied in particular on principle seven and eight thereof. Furthermore, counsel relied on the judgment of MacEochaidh J. in *M.R.C.S v. Refugee Appeals Tribunal* [2013] IEHC 326.

38. Applying the principles in *I.R.*, and adopting the approach of MacEochaidh J. in *M.R.C.S.,* it was submitted that the Tribunal Member's decision, when read as a whole, showed that the inconsistencies and contradictions upon which the Tribunal Member relied were cumulative and substantial.

The respondents' counsel acknowledged that the Tribunal Member, while stating that he had considered country of origin information, had not set out the weight attributed to it. Counsel however relied on the dictum of Peart J. in *Imafu v. Minister for Justice Equality and Law Reform* [2005] 1EHC 416;-

> *"In my view, while accepting as a general proposition that the Horvath principle is a good one and in many if not most cases might be appropriate, it does not mean that there cannot be an exceptional type of case where the Tribunal Member can quite adequately and completely assess and reach a conclusion on the personal credibility of the applicant, such that there would be no possible benefit to be derived from seeing whether the applicant's story fits into a factual context in her country of origin. It is particularly relevant in my view to the present case. It would be no mystery or surprise to the Tribunal to know that women are trafficked from Nigeria to Italy for the purposes of prostitution. One must ask what would have been added to the sum of knowledge of the Tribunal Member by referring to such information as may be available on the subject of trafficking of women from that country to Italy, and what might happen to them if returned to Nigeria by way of prosecution. The reality, and reality must enter into these matters at this stage, is that the Tribunal Member while disbelieving the applicant completely as to her own particular story, would have seen that something like what the applicant has said about her life, if true, could potentially happen, because what she says happened is documented in a general way. To that extent any lingering doubt the Member may have had could be corroborated by the country of origin information, and could assist the assessment of credibility. But in the present case the applicant was not believed as to her personal tale, and it is reasonable to conclude therefore that no matter how much evidence or material may have been available as to the state of things in Nigeria from an objective viewpoint, this*

could not have persuaded the Member to believe the personal story. In this way the case is different from many other cases where the country of origin information may have the capacity to corroborate the actual story of the applicant."

Considerations

39. The applicant contended that the Tribunal Member in the course of the hearing failed to draw the applicant's attention to the contradictions and inconsistencies which, *inter alia*, were later relied on to reject the applicant's appeal. The first thing to be said is that I agree with counsel for the respondent that this specific fair procedures argument was not averted to in the statement of grounds or in the applicant's written submissions. As far as the statement of grounds is concerned, in terms of what could be classed as a fair procedures ground, it was claimed that the Tribunal Member took into account irrelevant matters and failed to take account of relevant considerations. The court finds it somewhat curious that such a fundamental allegation that certain matters were not put to the applicant was not pleaded in the statement of grounds or at the very least elaborated on in the written submissions.

40. The court will however address the argument advanced given that the respondent's counsel, although forcefully making the point that the matter had not been set out in the statement of grounds or the written submissions, did not suggest that the matter should not be addressed by the court.

41. In the course of the oral hearing, the court was referred to the decision of MacEochaidh J. in *M.R.C.S v. Minister for Justice Equality and Law Reform & Ors* [2013] IEHC 326.

42. In *M.R.C.S.*, the applicant's case was that there was a failure to make findings of fact in relation to matters pertaining to the core claims of the applicant and by failing to adequately deal with these core issues. It was argued that the impugned negative credibility findings, being based on peripheral or minor matters, were not legally sound. In *M.R.C.S.*, the applicant made a variety of complaints which were described by Mac Eochaidh J. as falling under the *'fair procedures'* umbrella. The applicant had argued that the tribunal member failed to put its concerns to the applicant adequately, or at all. Mac Eochaidh J., in his decision on the fair procedures issue, stated:-

> *"I have found all of these findings to be well within the bounds of rationality. Against this background it is difficult to find space for the complaints of want of due process which effectively seek to reiterate the complaints as to credibility under other heads of complaint. I accept the respondent's submissions in this regard and can find no basis for any reading of want of fairness or due process or anything unfair that might have led to an unjust result."*

He went on to state:

> *"Extremely detailed and well-written submissions were delivered by the applicant in this case running to some 32 pages of single spaced text . The industry of the applicant's counsel has to be admired but ultimately the points raised cannot overcome a clear and careful Tribunal decision despite every conceivable criticism being raised against it. This was a classic example of an attempt to deconstruct a decision of the Tribunal and to avoid reading it as a single decision which Cooke J. counselled against in I.R. v. Minister for Justice, Equality and Law Reform [2009] IEHC 353.. I have no hesitation upholding this decision of the Tribunal. Leave to seek judicial review is refused."*

43. There is reference in that judgment to the dictum of Hedigan J. in *B.N.N. v. The Minister for Justice Equality and Law Reform & Ors* [2008] IEHC 308, to the effect that a decision-maker is not required to debate with the person who is to receive the decision every one of the conclusions on credibility that might be made. In the particular circumstances of the present case, where the applicant was the person who gave the information in the initial stages of the asylum process and where she had the opportunity in the course of the oral hearing to once again recount the events upon which her claim was based, I do not perceive any procedural unfairness on the part of the decision maker in the manner in which he addressed the contradictions in the applicant's account. It is clear that there was a difference in the recounting of certain factual matters. As stated by MacEochaidh J. in *M.R.C.S., "the Tribunal Member was entitled to weigh this in the balance as one of the many factors used to assess credibility."* It must also be borne in mind that the applicant was legally represented at the oral hearing. Thus, in all the circumstances, the Tribunal Member was entitled to consider the difference between the evidence given by the applicant in the course of the oral hearing and the version set out by her in her earlier interactions with the asylum process.

44. Whether there was any substantive unlawfulness in the manner in which the Tribunal Member weighed the information provided by the applicant in the course of the oral hearing against information previously provided by her will be analysed in these judicial review proceedings in the context of the grounds set out in the statement of claim and as elaborated on in the course of the written and oral submissions.

The credibility findings

45. The applicant's counsel submitted that the Tribunal Member's decision was flawed on the basis that the credibility findings did not address the core claim. I am not persuaded by the arguments advanced in this regard. The applicant's core claim was that she was under threat from state authorities in Algeria because of her claimed liaison with the University lecturer. That was the account underpinning the applicant's claim for asylum as made in her s. 11 interview and at oral hearing before the Tribunal. That claim was considered by the decision maker and rejected for want of credibility, based on the Tribunal Member's assessment of a series of contradictions and inconsistencies in her account and the implausibility of other aspects of her account. I turn now to the criticisms levelled at the factors relied on by the decision maker's conclusion that the applicant was not credible in her evidence.

46. With regard to the first credibility finding, I am not persuaded by the applicant's counsel argument that there was a lack of cogency on the part of the Tribunal Member in making the findings he did. In my view, the Tribunal Member was entitled to consider the difference between the evidence tendered at hearing and the prior versions given by the applicant at the earlier stage of the s. 11 interview as to her non connection to any political party. I so find in circumstances where, in particular, the applicant firmly resiled from the answer she herself had given in the questionnaire (namely that she was a member of the *"Tagheer Party – National Coordination for Change and Democracy.."*) on the basis that that was a mistake in the questionnaire. In circumstances therefore where the applicant in the course of the s. 11 interview had forcefully rejected any notion of her being involved in a political party, the Tribunal Member was entitled to take account of the about turn made by her on this issue in the course of the oral hearing. With reference to ground one of the statement of grounds, I do not find any merit in the argument that the Tribunal Member misconstrued the evidence before him, in circumstances where the applicant in her questionnaire referred to the NCCD as a political party. In any event, whether the NCCD was a political party or a movement for political change comprised of many different elements and organisations was immaterial given that the issue which confronted the Tribunal Member was the contradictory nature of the applicant's evidence as to whether or not she was involved with a political party.

47. With regard to the second and third credibility findings, I take the view that they were minor matters and would in any overall assessment of credibility have to be approached with particular caution by the decision maker, particularly having regard to the obligation, as described by Hathaway and Foster, to have regard to an inconsistency *"of real substantive import"* which *"goes 'to the heart' of a claim"*, a sentiment which is echoed in principle 6 of the guidelines set by Cooke J. in *IR v. Minister for Justice*. However, I am not persuaded that the Tribunal Member was obliged, in the round, to disregard them, as argued for by counsel for the applicant, in circumstances where a number of credibility deficits were found to attach to the applicant's core claim with which, for the reasons set out in this judgment, this court finds no reason to interfere.

48. On the issue of the fourth credibility finding, I can find no basis to impugn the Tribunal Member's reliance on the contradictions between what the applicant stated in evidence before the Tribunal and her earlier account. The extracts from her s. 11 interview relied on by the applicant's counsel in the course of these judicial review proceedings to impugn this finding do not, to my mind, serve to undermine the Tribunal Member's entitlement to conclude as he did, namely that she was contradictory. This contradiction went to the core of the applicant's claim. I adopt a similar view in respect of the applicant's counsel's argument as to the fifth credibility finding. I do not accept that this contradiction was merely between what the applicant said at the oral hearing and something adverted to by her legal representative in the Notice of Appeal submissions. While the Tribunal Member highlighted the contradictory nature of her oral evidence by referencing the Notice of Appeal, the submission made in the latter document was to all intents and purposes a reiteration of what the applicant had said at her s. 11 interview, which was that she had held onto the files for a period of time. Accordingly, the contradiction at issue was between what the applicant stated at the oral hearing and what she said at interview. Therefore, no blame or error of law or procedure can be laid at the feet of the Tribunal Member for taking the contradiction into account, since it impacted on her core claim.

49. With regard to the sixth credibility finding, there was a blatant contradiction between what the applicant said at the oral hearing, namely that the police had never approached her brother again after his release from questioning and what was stated by her in reply to Q. 21 of the questionnaire, which on its face suggested that post the applicant's flight from Algeria, her brother *"was accused of helping (her) escape outside the country"*. There was no great oral argument advanced as to how the Tribunal Member erred in finding the applicant contradictory in this regard, although the applicant's written submissions took issue with the finding as *"unclear"* and that it appeared *"irrational"*. I find neither contention to be sustainable. The basis for the contradictory finding was clear on its face and moreover it was entirely rational for the Tribunal Member to conclude that the applicant gave a contradictory account of how matters fared for her brother post his release by the police.

50. Turning to the seventh credibility finding, namely the finding of implausibility in the applicant's account of having accepted a file from the University lecturer after being told that the police were looking for it. I do not accept that this finding breached the bounds of rationality, as contended by the applicant's counsel. This was a conclusion open to the Tribunal Member on the facts as alleged. The mere possibility of a different view being reached on the same alleged facts does not meet the test in judicial review. The Tribunal Member was equally entitled to reject the economic/financial imperative explanation advanced by the applicant's solicitor as to why the applicant took the file, in circumstances where the applicant's own evidence to the Tribunal contradicted the argument advanced by her legal representative. With regard to the complaint that this particular issue was not put to the applicant, the court notes, over and above the finding of this court that there is no requirement for the Tribunal Member to debate the conclusions that might be reached on credibility, that in any event the applicant was on notice from the s. 13 report that this aspect of her claim was found to be implausible, albeit that the Commissioner's concern was in the context of the applicant having accepted files from a college lecturer without knowing what was in the files.

51. As far as the eighth credibility finding is concerned, the court does not perceive this finding to be irrational. There was an evidential basis for the finding, namely that the applicant gave evidence of her brother's alleged arrest and torture by the Algerian police which, to my mind, was sufficient to ground the Tribunal Member's conclusion. The second limb of the compliant levelled at this finding was that insofar as there was an evidential basis underpinning it, the conclusion amounted to conjecture. I find no merit in this complaint, again given the evidential basis upon which the conclusion was based.

52. The court had some difficulty in fathoming the reasoning inherent in finding nine. While the Tribunal Member noted that the applicant remained in her family home while allegedly her brother was detained by the police, and thus found that the applicant's subjective fear was not objectively well founded, this finding appears to be premised on the Tribunal Member's observation that "it was hardly surprising"(emphasis added) that the police never arrested the applicant. However, in finding ten, although not spelled out, the reason for the Tribunal Member's incongruity that the applicant was not arrested by the police is patent given that on her account she remained living in the family home during the period of her brother's detention. As such, the deficiency I identified in finding nine was overtaken by the rationality patent in finding ten.

53. Findings eleven and twelve concerned the applicant's travel to the State. I find that it does not offend reason or rationality for the Tribunal Member to consider as implausible the applicant's assertion that she was blithely unaware of the details on the passport as she went through immigration control. Common sense would dictate that the applicant, albeit she claimed she was using a false passport, would have some knowledge of the details thereon, if only by way of precautionary measure lest she be asked questions as she transited immigration control. The Tribunal Member's finding in this regard is thus upheld as within jurisdiction.

54. However, the court does not believe that the Tribunal Member was entitled to consider it implausible that the applicant could have gone through immigration control on a false passport, in circumstances where her contention was that she had been provided with an Italian passport which had her photograph thereon. It was thus conceivable that she could have passed through immigration control on what, on its face, could be perceived by the relevant authorities as a genuine passport. This impugned finding however relates to a peripheral matter and would not be sufficient to vitiate the decision.

55. The s.13 report stated:

> *"The applicant claims that she travelled to Ireland via Tunisia and Italy. She claims that she spent four days in Italy but did not apply for asylum there as she states 'I don't know anyone there. At least here I have my brother and sister'…..Therefore, Ireland is not the first safe country the applicant arrived in after leaving Algeria. If the applicant was fleeing persecution and required international protection, then it is expected that she would seek that protection in the first safe country she arrived in."*

The Tribunal Member upheld the Commissioner's findings on the applicant's failure to claim asylum in Italy, stating that the Tribunal was *"mandated"* to consider s.11B of the Refugee Act 1996, as amended in this regard. While subsection (b) of s.11(B), which provides that the Tribunal is required to have regard to whether an applicant has provided a reasonable explanation that Ireland is the first safe country in which he or she has arrived since departing his or her country of residence, was not specifically cited in the Tribunal decision, it would appear, that the Tribunal Member was upholding the Commissioner's finding that the applicant had not

provided a reasonable explanation that Ireland was the first safe country she arrived in, by reference to the provisions of s.11B. However, the applicant made no claim that Ireland was the first safe country she arrived at. Therefore s. 11Bof the 1996 Act, insofar as it pertains to this issue, should not have been applied to the assessment of her credibility. Again however, this impugned finding however related to a peripheral matter and would not of itself vitiate the decision.

56. Given that this court has upheld the credibility findings which relate to the applicant's core claim, I am not persuaded by the applicant's counsel's argument that the thirteenth credibility finding lacks the cogency demanded by principle 5 of *IR v. Minister for Justice*. The reliance on the fact that the applicant applied for or was denied a visa in 2008, while it would not, of itself, logically or rationally lead to the conclusion that the applicant was not in need of protection in 2011, was nonetheless a factor which the decision-maker was entitled to weigh in the round, having regard to the credibility deficits he identified in the applicant's claim for protection.

57. I turn now to the issue of the Tribunal Member's treatment of country of origin information. The Notice of Appeal submissions to the Tribunal made the case that the Commissioner erred in fact and law in failing to give sufficient weight to country of origin information which it was claimed was supportive of the applicant's claim for asylum. In fact, the s. 13 report does not refer at all to prevailing conditions in the country of origin, and it would appear that insofar as there was information before the Tribunal, it was that which was submitted by the applicant on appeal, and which is quoted elsewhere in this judgment.

58. Counsel for the applicant placed reliance on *S.J.L v. Refugee Appeals Tribunal & Ors* where Barr J. stated:-

> *"In the present case there was a large amount of country of origin information submitted on behalf of the applicant, both to the RAC and on appeal to the RAT. The RAT appears only to have had regard to one piece of COI on the basis that it dealt with Fugian province. This was the UK Home Office Report of April 2002 which was attached to the s. 13 report. Where COI documentation is submitted, it must be looked at and incorporated into the decision of the Tribunal, even if only reject the documents, but the reasons for so rejecting the documentation should be clearly stated."*

59. However, the present case is not one where a large amount of country of origin information was submitted to the decision maker; rather specific reference was made to one report in the Notice of Appeal submissions.

60. Counsel for the respondents relied on the decisions in *F. v. Minister for Justice* and *Imafu*, and argued that the decision of this court in *M.A.I Refugee Appeals Tribunal* [2014] IEHC 623 could be distinguished from the present case given that with regard to the applicant, the prevailing factor was that no aspect of the applicant's subjective situation was accepted as credible. The test formulated by Peart J. in *F v. Minister for Justice and Imafu*, as to when it is in order for a decision maker to dispense with the requirement to refer to country information is referred to in detail elsewhere in this judgment.

61. The obligation to consider such information is mandated by regulation 5.1(a) of the 2006 Regulations and principle 9 of IR. As this court has stated in *M.A.I v. Refugee Appeals Tribunal* [2014] IEHC 623, this obligation can be departed from in clear and specific circumstances and with good and sufficient justification. In the present case, the Tribunal Member considered the applicant's lack of credibility *"even applying the principle of the benefit of the doubt to [her]"* met the test set down in *F. v. The Minister for Justice* [2008] IEHC 126, where it was held to be permissible for a decision-maker not to refer to country of origin information where "a fundamental lack of credibility is found".

62. Yet, by the same token, the Tribunal Member stated that he considered *"all of the various country of origin information reports and information which were submitted in relation to this appeal"*.

63. In my decision in M.A.I. v. Minister for Justice [2014] IEHC 623, I stated:

> *"46. Thus, in all the circumstances, I am of the view that once acknowledged (as it was here) in the Tribunal Member's Decision that country of origin information had been considered, it was incumbent on the Tribunal Member, in accordance with the principles set out by Cooke J in IR v. MJE and another (24th July 2009 [2009] IEHC 353) to give an account of the nature of that consideration and to detail the weight attached to it and if it were to be rejected (as it appears to have been), the reasons for the rejection.*
>
> *47. The obligation imposed by reg. 5.1 (a) of the 2006 Regulations and the principle of fair procedures require no less.*
>
> *48. As stated by Cooke J.,*
>
> *"The assessment of credibility must be made by reference to the full picture that emerges from the available evidence and information taken as a whole, when rationally analysed and fairly weighed It must not be based on a perceived correct instinct or gut feeling as to whether the truth is or is not being told "*
>
> *"Where an adverse finding involves discounting or rejecting documentary evidence or information relied upon in support of a claim and which is prima facie relevant to a fact or event pertinent to a material aspect of the credibility issue, the reasons for that rejection should be stated.""*

64. That remains the starting point as far as this court is concerned and there must be good and sufficient reason expressly or implicitly discernible from the decision to depart from this premise. However, I am satisfied that that threshold has been reached in this case. In the overall context, I am not convinced by the argument, effectively made by counsel for the applicant, that there was a possible benefit to be derived from seeing whether the applicant's story fitted into a factual context in her country of origin. While it would have been preferable for the Tribunal Member, once he stated that he considered the country of origin information, to have set out the basis upon which that information was not found by him to assist the applicant, it remains the case that this court has upheld the credibility findings arrived at by the Tribunal Member with regard to all of the salient aspects of the applicant's core claim. The findings on the applicant's core claim satisfy the requirements of *IR v. Minister for Justice*. Thus, in my view, in this particular case, the absence of any analysis in the decision as to why the country of origin information did not assist the applicant does not offend against principle 9 of IR.

65. At the end of the day, absent procedural unfairness or irrationality, the court in the exercise of its judicial review jurisdiction, must respect, in the words of Cooke J. in IR, *"the cumulative impression"* made upon the decision-maker, whose function it is under statute to assess credibility.

Summary

66. The court has upheld the credibility findings made by the Tribunal Member with regard to the applicant's core claim; two credibility findings relating to her travel have been impugned.

67. The court is mindful, notwithstanding the infirmity which attaches to two of the factors which informed the decision maker's rejection of the claim, that the legality of the decision could nonetheless be sustained. As I have stated previously, this will be a question of degree in each case and assuming one can discern the weight attributed by the decision maker to the various factors in assessing credibility. In the present case, while it is not possible to discern the weight the decision- maker attached to the two impugned findings in reaching his overall assessment on credibility, I am nonetheless satisfied that they relate to peripheral matters, and in my view they do not impinge on the Tribunal Member's lawful rejection of the factual matrix said to give rise to the applicant's decision to flee her country of origin. In all the circumstances, I am not satisfied that substantial grounds have been made out in this case and the relief sought in the Notice of Motion is denied.