

**THE HIGH COURT
JUDICIAL REVIEW**

[2012 No. 466 J.R.]

BETWEEN

**M.B.A., N.A., M.S. (A MINOR SUING BY HIS FATHER AND NEXT FRIEND M.B.A.),
M.A. (A MINOR SUING BY HIS FATHER AND NEXT FRIEND M.B.A.),
M.H. (A MINOR SUING BY HIS FATHER AND NEXT FRIEND M.B.A.)
(PAKISTAN)**

APPLICANTS

AND

**THE REFUGEE APPEALS TRIBUNAL,
THE MINISTER FOR JUSTICE AND EQUALITY, IRELAND AND
THE ATTORNEY GENERAL**

DEFENDANTS

JUDGMENT of Mr. Justice Eagar delivered on the 26th day of November, 2015

Introduction

1. This is a telescoped application seeking an order of *certiorari* by way of an application for judicial review quashing the decision of the first named respondent to affirm the recommendation of the Refugee Applications Commissioner. The grounds upon which relief is sought is as follows:

1. The Tribunal erred in law in failing to speculate in making credibility findings, erred in law and in fact in failing to have any or any reasonable regard to case specific documentation and including, *inter alia*, the medical report in respect of the third applicant, the first information report dated the 17th March, 2008, birth certificates and marriage certificate.
2. The Tribunal erred in law and in fact in failing to offer cogent reasons for challenging the authenticity of documents placed before it.
3. The findings made by the Tribunal in regards to the Time magazine report dated 16th January, 2012 are irrational such that findings with respect to credibility and internal relocation are misconceived and/or inaccurate.
4. The Tribunal, in making findings in respect of state protection and internal relocation, erred in law in failing to reasonably consider the country reports, and the submissions contained in the notice of appeal. The Tribunal failed to assess the adequacy of the state protection deemed to be available and failed to identify any place of proposed internal relocation. The Tribunal failed to have any regard to the UNHCR guidelines on internal relocation.
5. The Tribunal failed to make any clear findings on significant elements of the evidence and including evidence of past persecution.
6. The Tribunal erred in law in taking into account matters irrelevant to its determinations and/or failed to take into account relevant considerations.
7. The Tribunal erred in law in failing to speculate on the likelihood of exposure of the applicants to persecutory risk on *refoulement* to Pakistan in light of the applicants particular circumstances and including, *inter alia*, by reason that the persecutors of the applicants exercise complete control over the police and in particular in Punjab.
8. Pursuant to the European Union law principles of equivalence and effectiveness, any delay in raising any relevant matters in the within proceedings cannot be relied upon by the respondents as s.5 of the Illegal Immigrants (Trafficking) Act 2000 is not compliant with the said principles.

2. The affidavit of M.A., the first applicant herein verifies the said statement of grounds. M.A. says that he is the husband of the second named applicant and is father and next friend of the minor applicants herein. He said he was born in Pakistan on 18th October, 1969, his wife was born in Pakistan on 14th May, 1977. Their children were respectively born in Pakistan on 15th October, 2000, 18th October, 2001 and 15th June, 2007.

3. He said that he was of Arian ethnicity while his wife is Kashmiri. He said that they had married out of love and notwithstanding the view of his wife's step-father CSA, that he would decide whom she would marry. This did not cause the couple difficulties in their earlier years of marriage but with the passage of time and the assumption of power by CSA's son ASA who is a member of the National Assembly for the Muslim League (NAWAZ) and ASA's uncle SS who is the Chief Minister of Punjab and with full control of the police in Punjab his wife and children and he were subject to sustained persecution.

4. He said that he survived a shooting attempt on 16th March, 2008 when returning from a political meeting. His survival was only as

the result of the intervention of his business partner Dr. A.M. a member of the National Assembly for the Pakistan People's Party. Following the shooting attempt the family left Faisalabad and went to Lahore. On 15th May, 2009, the third and fourth named applicants required hospital treatment following an attack and attempting kidnapping while at school. After that they were only able to attend school intermittently. The family repeatedly changed location in Lahore.

5. On 5th December, 2010 two members of the landlord's family, who resided in the downstairs of the house that they lived in were killed. The first named applicant firmly believed that they were the targets. Following this they were determined to leave Pakistan before one or all of them would be killed.

6. The first name applicant stated in his affidavit that the family arrived in Ireland on 14th August, 2011 and applied for asylum. His application was treated as a separate application while the children were included in his wife's application.

7. He said his wife and himself attended for interview with the Refugee Applications Commissioner on 5th September, 2011. He stated that on 30th November, 2011 both he and his wife were informed that the Commissioner determined that the family's applications be refused.

8. Appeals were submitted to the Refugees Appeals Tribunal and oral hearings were held on 19th December, 2011 and oral hearings at the Refugee Appeals Tribunal on 8th February, 2012.

9. The first named applicant states in his affidavit that at the hearing, it was suggested that the family could relocate to Karachi and in response to this a country report was submitted to the Tribunal by letter dated 13th February, 2012. The first applicant swore that by letter dated 10th May, 2012, and received by the family on the 14th May, 2012 the family were informed that the Tribunal affirmed the decisions of the Commissioner and he seeks this Court for the relief sought in the notice of motion for *certiorari*.

Evidence of M.A. and M.B. before the Refugee Appeals Tribunal

10. The report of the decision of the first named respondent is a comprehensive 40 page decision. The evidence given by both M.A. and M.B. are set out in full detail to the satisfaction of this Court.

11. M.A. said he was born on 18th October, 1969 and he is from Pakistan. He was asked when his problems in Pakistan began and he said he first met his wife in 1998 and they got married in 1999. He said the first problem he had was in March 2008.

12. The applicant met his wife at a festival and then they got married in 1999. They got married in Court because the father in law didn't give permission. No family members were present at the wedding. He said there were a couple of issues, one, he is from an Arian family which is a cast and she is a Kashmiri.

13. He stated that he belonged to the Pakistan People's Party (PPP) and her step father belongs to the Muslim League. His wife's father died and her mother remarried. Her real father's name was B and he died in 1990 and the mother married again in 1995. The step father in law C was a member of the Muslim League. It has always been the case that when the Muslim League were in Government the PPP were in opposition and the reverse is also true.

14. The applicant was asked whether there were any problems during the period 1999 to 2008. He said that in 1999 Pervez Musharraf was in government. He had seized control of the government through a military *coup d'état* in 1999. It was an army coup and the first applicant's uncle was a brigadier in the army. A person rang the first applicant's uncle and said that the first applicant had married his daughter and that what he had done was not good. He confirmed there was not much contact between the families. ASA is his wife's step-brother and C is her step father. Her step brother is a member of the National Assembly of the Muslim League and the Muslim League is in power in the Punjab province.

15. In 2008 the Muslim League came to power in the Punjab and her step brother became a member of the National Assembly in 2008. Her uncle is also the Chief Minister in the Punjab province. The applicant said that he had a business partner whose name was Dr. A.M. and he is a member of the Punjab Assembly. When they were returning from a political meeting they were stopped at the traffic light, four men came on two motorcycles and as soon as they came, they started shooting the two of them. They shot in the window this happened on the 16th March, 2008. A friend who was sitting with him then phoned Dr. A.M. who was sitting in the car in front of them with security guards. The people on the motor cycle said that the first applicant had married S.A.'s daughter and that what he had done wasn't right and there wouldn't be a good outcome for him. At this time his business partner Dr. A.M. came back with guards and the assailants fled on the bikes. After that he went to the police station to take out a first information report (FIR) and this took a lot of time. The police would not take it out he said because he wanted take the FIR out with ASA's name on it but they wouldn't do it.

16. He then said that he had consulted with his partner who advised him that he should leave Faisalabad and move to Lahore. The family moved to Lahore in 2008 and there was another incident when his children were attacked on 15th May, 2009.

17. The first applicant said that when he got to the school he saw a crowd of people in an area. He saw that his eldest son was there and he had blood all over him. The applicant said he was very upset and he gathered his children together. The guard told him that a car came to the school with four men in it, they tried to kidnap his son. The guard also fired at them and there were a lot of people there at the time. The first applicant said that he took the children to the hospital. He said it was the same people who attacked them as the guard said that these people said they were not going to leave the children but they were going to get them. He took his child to the private hospital but he didn't say what actually what happened. He just said that he got hurt in the playground. The applicant was asked if his son had been shot. He said he didn't know because it happened in the playground but that his son had a few stitches. After that he said he took his children to his uncle in Lahore. Subsequent to this he changed his address in Lahore a few times. He said that this was the second incident that had happened. He said that the Chief Minister has a lot of property and he didn't want to take the risk as they were looking for him. He said he didn't want them to trace the children. He said that as he is sitting there he is asking himself where he went wrong.

18. The applicant told the first named respondent that he had made two mistakes. The first one was that his kids were going to a school in Faisalabad and he transferred them to a different branch to the same school in Lahore. He said he didn't change his car and that his number plate was a Faisalabad number.

19. He said that in December 2010 the third attack occurred. He was living in rented premises on the first floor and the landlord lived on the ground floor. In the evening time they opened fire and for five or ten minutes they were firing and in that time two people were killed. These were members of the landlord's family.

20. The applicant said he came out to see what had happened. A couple of doors away there was a general store and a person said that he had seen the people a few times in the last couple of days. The person said that one time when these people came, the door was locked up. The person said they came looking for the first applicant and they were asking about him. They asked if he was from Faisalabad. The applicant was very scared and upset by this and he spoke to his uncle. He left that base and went with his family to his uncle in Lahore. The situation was so bad that the uncle advised the family to leave. This happened on 5th of December, 2010 and he moved in with his uncle on the same day. The applicant was asked how long he stayed with his uncle and he said he stayed there for a week or ten days and after that he rented another accommodation, this was still in Lahore. He was asked how long he remained there prior to leaving the country and the applicant stayed there for seven months. He said those seven months were very tough because they couldn't leave the house in daylight.

21. The applicant's uncle arranged to meet him with an agent. He said he first met him three months before he came over this was in June. He said he arrived here on 14th August so it was June. He was asked what day of the week it was when he met him and how often he met the agent. He said he met him at his uncle's house and they arrived here on 14th August having transited in Abu Dhabi with Ethihad Airlines. He said the tour agent was with them.

22. The applicant was asked what he feared for himself and his children so if he was to return to Pakistan. He said the three incidences happened with them and they managed to trace them when they lived there. He said if they go back they will trace them and kill them. He said you can't get lucky every time. On file were national identity cards and birth certificates.

23. In answer to the presenting officer he was asked why he didn't move further then Lahore if he was afraid of being killed. He said that he was staying with uncle because he was protecting them. The presenting officer asked if his uncle's house would not be the first place they would check in circumstances where he is a relative. The applicant said he had discussed it with his uncle who said the Muslim League had been in power twice and they had links nationwide. He said they could trace them anywhere.

24. The presenting officer said that he was a member of the PPP. He said they were workers for the family but had never had any major problems in it. The presenting officer commented that the first applicant didn't say that he was a member of the PPP when he came in. The first applicant said he was attacked the first time he returned from a political meeting.

25. The presenting officer asked if the PPP were in power in Pakistan at the moment, the first applicant said the central government maybe the PPP but in the Punjab it is the Muslim League. He said his partner at the time suggested that he should move to Lahore.

26. The presenting office asked the applicant why he did not move from the Punjab. He said that because the Muslim League could trace him wherever he went. The presenting officer pointed out that the PPP were in power and the applicant said that they might be in power but the Muslim League had roots nationwide. The presenting officer said that the PPP appeared to have more roots and asked how many got elected in the last election. The first applicant said that he thought about 130 or 137 for the Peoples Party and the presenting officer said that in the last election the PPP had 27 and the Muslim League had seven. The presenting officer said it would seem that the Peoples Party were more powerful than the Muslim League. The first applicant said "there is no doubt that the PPP has always been more powerful". The presenting officer said that he could have moved away from the Punjab and country of origin information from CIA fact sheets were sent in.

27. The applicant insisted that his main source of protection was his uncle and that is why he wanted to stay with him.

28. The applicant was asked how he knew he was the target of the attack in December. He said that this was because a person who owns the local shop said he had seen the people who had shot at the shop around the area in the 10 days prior to the incident. He said that on one occasion they asked about him, he said that maybe they made a mistake or maybe he got lucky. He said they came to kill him.

29. The applicant was asked if he took the children out of school and stayed inside all of the time and he responded in the affirmative.

30. The applicant was asked if the children had gone to school up to then and he said yes. The presenting officer asked if this was the case even though there was an attempt to kidnap them the year prior to that. He said that even after there was no regular school. The presenting officer said that he just said that he took the children out of school and that they stayed indoors constantly. That meant the children were still going to school up to December 2010. The applicant said they did go but did not go regularly. He said that during 2009 the schooling was erratic and then after December 2010 he did not want to take any risks at all.

31. The presenting officer asked if there was an attempted kidnap on his children in 2010 it was not credible that he would return them to school for a year and half afterwards. The first applicant said that they were going to school but they were not attending regularly. He said that at the time there was a problem, they had to be educated.

32. The presenting officer said that in relation to the attempt of kidnapping that his son had a deep wound and he was bleeding. The first applicant was asked where the wound was. He said that on the left side, underneath the arm. The presenting officer said that the hospital notes there is a small bruise, a small cut on the nose and knee. The presenting officer said "surely if a kidnapping was attempted at the school they would have to report it". The presenting officer said it was not credible that he would just go simply to a private hospital and say there was a fall in the playground when in fact it was an attempted kidnapping. The first applicant said that if he went to a public hospital it would become a police case and he did not want to go and confront these people.

33. The first application was told that there were two medical reports. The first applicant was asked why they would try to kidnap his son. He said that they were looking for all of them but that it just so happened they traced his children first. He said that he did not know what they were going to do after they had kidnapped him. The presenting officer said that it was not credible that he would not tell the police about the kidnapping. He said that he went to the police when he was attacked, they tried to help him the second time around but anyway he was in hiding.

34. The applicant was then referred to the shooting that occurred when he was at the traffic lights. He was asked how many times they shot at him; he said 6, 7 or 8 at least. He was asked if he was stationary at each occasion. The applicant said that the delay in time was because they were trying to drive. The presenting officer said that in certain circumstances where he marries his wife in 1999 why would they wait until 2008 to do anything. He said that at that time the Muslim League were not in power. He said that both the stepfather and stepbrother were in exile at the time and they were very weak. His uncle was in the army at that time and if they had done anything at that time he would have been fully protected and supported.

35. The applicant was asked why he could not move to Karachi as it has approximately 12 million people in it and the greater Karachi

area appears to have even more people in it. He was asked why he would not be safe there. He was reminded that he had a degree and was an educated person. The first applicant said this was right that at the time he was getting protection from his uncle and that secondly if they could trace him in Lahore, they could trace in Karachi. He was asked how long he lived in Lahore and if he was familiar with Lahore. He said it was a two hour drive from Faisalabad. He said that he was very familiar with Lahore as they were always coming and going. The applicant was asked if the questioning officer was in Lahore and he wanted to go to Sialkot would he travel North or South, East or West. The first applicant was told that the posing of the question was to see how familiar he was with Lahore, he answered that you could go to Sialkot via the GT road. He was asked again was this North, South, East or West. He was told that it was not a trick question it was for the purpose of finding out his familiarity with Lahore. He applicant replied that you travel South. The applicant at that point was told that Sialkot was in fact North, then he said that you go North. The applicant said he had never been to Sialkot but that Sialkot is North. The applicant was then asked if one was to travel East of Lahore across the border into India and travel 100km what city would one arrive. The applicant made no reply. The applicant was told that he would arrive at Amritsar.

36. The first applicant said he had a restaurant business and he was asked how the business was going for him. He said it was very good. There was one branch at that time, 137km south of Faisalabad.

Evidence of NB

37. Q was asked to tell them when her problems in Pakistan began. She said they started in 2008. She met her husband in 1998 and married in 1999. She was with her stepfather and stepbrother and they were not happy with her wedding. Her stepfather was Kashmiri and from the Muslim League. Her husband is Arian and he is from the Peoples Party.

38. Her husband was attacked for the first time in March 2008 when he was coming back from a meeting. He was stopped at lights when bikes came from behind him, one stopped on the right side of the car and they started firing. Then the family moved to Lahore.

39. She was asked what happened after that to her and their children in Lahore. She said that at the end of the school a guard told them that people had tried to kidnap the children and a lot of people had congregated. Her elder son was bleeding from under his left arm. The little one was there as well but was not hurt as seriously as the eldest son. They called an ambulance.

40. She was asked if she moved house again. She said they changed address two or three times after that. They were attacked a third time. She was asked when this happened. She replied that this happened in December 2010. She said that they lived on the first floor and people lived underneath them on the ground floor, some men came one day and they shot at them. She was asked what happened after that. She said that a few people got together that day and they found her in a shop a few doors down and that the men had been seen before and that they had been asking about them. The day they asked about them neither of them was in the house at the time. After that her husband got in touch with his uncle and they moved to her husband's uncle's house. They stayed there for approximately 10-15 days. The uncle then said that their lives were in danger and he was the one who arranged the agent for them to leave the country. She was asked how the conditions were and she said they were just staying in the house and they weren't going out. They were scared as they did not know what would happen to them and the children were not going to school.

41. She was asked if it was normal for people to marry outside their class. She said that it did happen but that it was more frequent that you would marry within your own class. She said that she married of her own accord. She was asked what her standard of living was like in Pakistan prior to these problems and she said that she had a good life.

42. She was asked if education was important to her, she said very important, she was asked if she would fear for herself and her children if she returned to Pakistan. She replied that in Pakistan they were settled and then suddenly all of their problems started and they had come here. They had to leave the country for the safety of themselves and their children. She said yes they were very afraid for their lives.

43. The presenting officer then asked a number of questions. She was asked when her father died and she said in 1990. She was asked if her mother worked after he died and she said no. She was asked who looked after her financially after her father died and she said that her father was a teacher in a college and that he had money in the bank which was a fixed deposit and they received a monthly income from that. She was asked if she knew the man her mother married prior to her getting married and she said no. She was asked if her mother had any children with him, she said no. She was asked prior to marrying him how many children did he have. She said that she does not know very much about his family, she just knows his son and maybe another three. The presenting officer asked if she moved in and lived with him after her mother married him. She said they stayed in their own home, she was asked if her mother married him but did not move in with him. She said that her stepfather had even told his own family that he had got married and it only came out in 2000.

44. She was asked if she moved in with him in 2000. She said she was married in 1999, she said that he would come and go and he did not live permanently in her mother's house. The presenting officer said that she had submitted a marriage certificate and in those circumstances wouldn't people have known that they were married if there was a marriage certificate. She said that people would only know if they made it public and she didn't attend the marriage. The marriage certificate implies that neither of them had children. She does not know but said they were both married before. The presenting officer said that she had submitted this in support of her case but this was the opposite of what she was claiming. The marriage certificate said that these people were not married before and that they had no children. The presenting officer said that the marriage certificate said the age of the mother was thirty-seven and her status was a virgin, it was said that her stepfather was forty-nine and that his status was a virgin. The presenting officer said that the marriage certificate said that neither of them had been married before, that they were both virgins, the second applicant was asked if this had been interpreted correctly.

45. The presenting officer asked would the second applicant agree that her stepfather had two children, a boy and a girl. The applicant said she did not know and she did not know when she was asked. The applicant says the interviewer was insisting that she tell. The presenting officer informed the applicant that she had said they had a boy and a girl but in her evidence she gave previously she said they just had one daughter. This is at p. 21 of the s. 11 interview, this evidence was referring to her stepbrother according to the second applicant.

46. The presenting officer also put it to the second applicant that she said that he was elected in 2008 but in reality this had occurred in 2002. The country of origin information was referred to. The presenting officer said that the second applicant should know these facts if he was her stepbrother. The applicant said she did not know and that she was not interested in politics. She said that when they were having a difficult time, they did not think of when he was or wasn't elected.

47. The applicant said that from 2008 until 2010 it was an army government and her husband's uncle was in the army. She said that the army was normal and run properly. She said that at time the army was in power and they had a stronghold. The presenting officer

said no that the husband was a member of the Pakistan Peoples Party and that the Pakistan Peoples Party is now in power in Pakistan.

48. The applicant was asked why she did not move to another part of Pakistan and live their lives separately. She said where else could they go. Her husband's uncle was supporting them and they had no relatives in any other city. The applicant was asked if she was saying that her own husband's uncle was supporting her, she replied in the affirmative. The applicant said that she understood that her husband's partner was supporting them not the uncle, the applicant said financially, they have a business and a share with her husband's partner, but not support, help or protection.

49. The second applicant was asked why they could not move to Karachi. She said because they can be traced wherever they go. She said they moved Lahore and changed their address so many times and they still had no luck. The presenting officer asked if she could put it to her that they were living in Pakistan and neither of them was hurt. They were living in Lahore for nine months and they had been attacked on three different occasions, including their children. She said that it was by the grace of god that they survived. The presenting officer said that neither the applicant nor her husband were injured or touched. The applicant said they just got lucky.

50. The applicant was asked where she was when her house was attacked. She said they were on the first floor. She was asked how she knew they were targeting them. She said that there was a shop locally and that the men had come in and asked about them specifically in the previous ten days. It was put to her that the gunmen showed up on a day when she and her husband were not at home. She was asked if she was saying that they killed someone else, the applicant said they were upstairs and did not know what was going on downstairs.

51. The second applicant was asked why they had attempted to kidnap their sons. She said that by kidnapping they were trying to get her and her husband. What would have happened in Pakistan was that they would have killed the children their bodies discarded. The applicant was then referred back to the question about her stepbrother and was asked if she was forced to answer it. She said no. The applicant was asked the question again as to how many children her stepfather had, she said she did not know but the interviewer kept on asking her, insisting that she answer the question. The interviewer asked if he only had one daughter and the applicant said she did not know. It was put to her that she had in fact more than that and she had given ages for the children. She said that at the section 11 interview that one of them was aged 15 and the other was approximately 13 years of age. She was told this is very specific information. She was asked why she gave such specific information as to the ages if she is now saying that she did not know anything about them. She said that she really did not know anything about them as she had never met them. She was asked then if she had made up the answer. The applicant said maybe, she just said it because they were been very persistent. The applicant was then asked if she was saying that she made up an answer. She replied that she knew nothing about his family. The applicant was then asked if there was anything in the section 11 interview that she had made up. She said that this was the only thing and that everything else was the same. The applicant was asked if she had an identifying document, she said an I.D. card which they had. She was asked if she had a passport and she said no. She was asked if she ever owned a passport and she said she had never left the country. She was asked if her husband ever owned a passport and the second applicant also had no passport for her children. She was asked if she arrived in Dublin Airport and she said yes. She was asked if she was asked any questions as she was passing through immigration at Dublin Airport and she replied no. She was asked what passport she had, she said her husband had all the passports and they were red passports.

Analysis of the claim of MA

52. The first named respondent in this case stated that he was mindful of the fact that the applicant was an educated person with a degree.

53. On been asked where Sialkot is relative to Lahore he was entirely incorrect, it was only when it was pointed to the applicant that Sialkot is in fact in the North that he purported to say you travel North. The first named respondent said wherever the applicant is from he was not satisfied that he has sufficient knowledge of the places he contends to be from to satisfy him that he is from those places. The first named respondent said it was for that reason that he found the applicant's evidence to be neither plausible nor credible and that this undermines his credibility.

54. The first named respondent said that the first applicant contends that his son was injured in an attack at school, which he found to be of significance in the applicant's evidence that he was specifically asked if his son had been shot and he said he did not no because it had happened before he had arrived but his son had a few stitches. The first named respondent said he found this portion of the applicant's evidence to be neither plausible nor credible that he would have no precise details of the injury he alleges occurred. The first named respondent said the presiding officer pointed out that the hospital notes a small bruise and a cut on the nose and knee and further the first applicant had gone to the hospital and said that the child had fallen in a playground.

55. Having considered this evidence the first applicant had not cleared up inconsistencies in the evidence and having regard to the fact that a simple question such as "was he shot?" could not be answered he finds the applicants evidence to be neither plausible or credible and he finds that it undermines his credibility.

56. He also referred to the fact that the medical notes provided by the applicant simply say a small bruise, a small cut on the nose and knees. This is inconsistent with the applicants contention and was for this reason that he finds the applicant evidence to be neither plausible nor credible and finds it undermines the applicants credibility.

57. He also said that nothing in the medical notes on the file alter his views.

58. The first respondent indicated that the applicant contended that he was a member of the PPP, that he had not held any major position within the party and is not a person of great prominence. Nonetheless, even if he had, the PPP is in power in Pakistan. The applicants knowledge of the PPP did not led the first respondent to conclude that he had any great knowledge or association with them. He reaches this conclusion as a consequence of his responses to questions asked by the presenting officer. The presenting officer had pointed out that the PPP was more powerful than the Muslim League and that in the last election the PPP had twenty-seven MPs elected as opposed to the Muslim League who had seven. He said that it was for that reason that he is of the view that the first applicant was not sufficiently familiar with the party to lead on to conclude that he had any prior position of importance. Indeed the first applicant accepts this and it is for the reason that he finds the applicants contention that he was at risk from been a member of the PPP to be neither plausible nor credible and undermine the credibility of the applicants contention.

59. The first named respondent stated that the first applicant also contended that as a result of marrying a daughter of a person who is involved with the Muslim League he was attacked. The first respondent said he had an opportunity to hear the applicant's evidence in this regard, he is not in any way convincing and having heard the evidence it would not need one to conclude that the first applicant had been involved in such instances. The evidence such as it was, was perfunctory and minimalist at least.

60. The first named respondent had said that the presenting officer had asked the applicant to comment on the fact that his evidence indicated that he had married in wife in 1999 but it was not until 2008 there was attempting to harm them. No plausible or credible evidence was provided by the applicant to the tribunal in respect of this issue raised by the presenting officer.

61. The presenting officer also asked the applicant to comment on the fact that in circumstances where his evidence was his children were nearly kidnapped, yet nonetheless he returned them to school, and circumstances where they were in danger does not seem to be plausible or credible and the applicants only response was that they were not going regularly which runs counter to the applicants contention that they were in danger.

62. The first respondent said that country of origin information furnished subsequent to the hearing referred to violence in Karachi. This suggested in fact that Karachi is a modern progressive city and that people are travelling to Karachi not to Talibanise the city was to gain access to job, healthcare and education.

63. The first named respondent said that country of origin information furnished subsequent to the hearing referred to violence in Karachi. This suggests that in fact Karachi is a modern and progressive city and that people are travelling to Karachi not to Talibanise the city but to gain access to jobs, healthcare and education. It says that *"they even send their children, their girls to school"* which is not something they do back in their hometowns. It would appear from this country of origin information that Karachi is indeed an open city. One portion of the country of origin information indicates that education which was traditionally male dominated now in Karachi universities women outnumber men in large proportions. Country of origin information is indeed reflective of the fact that Karachi is an international financial centre not alone for Pakistan but internationally. Nothing in the applicant's evidence or indeed in the country of origin information would indicate to me that he would not be safe in Karachi. He is a person with third level qualifications.

64. The first respondent said that even if he were to accept the applicant's evidence as being plausible or credible which he does not, internal relocation to Karachi is a viable option. Between Karachi city and the greater urban areas surrounding Karachi there are 25 million people, it is neither plausible nor credible that the applicant would not be safe in those circumstances. Country of origin information from the CIA fact sheet indicates that the Pakistan People's Party has always been a powerful party and is a powerful party within the country. In those circumstances Karachi is an appropriate internal relocation city for the applicant.

65. Even if the applicant has a well founded fear of persecution which he says he does not believe he has in the applicant's case it would appear that internal relocation presented a viable alternative notwithstanding the applicant's claim to be at risk in the entire state. The UNHCR quoted from the UNHCR position paper on relocation it says as follows:

"The judgment to be made in individual cases where relocation is an issue is whether the risk of persecution that an individual experiences in one part of the country can be successful avoided by living in another part of the country. If it can and if such relocation is both possible and reasonable for that individual, this has a direct bearing on decisions relating to the well-foundedness of the fear. In the event that there is a part of the country where it is both safe and reasonable for the asylum-seeker to live, the "well-founded fear" criterion may not be fulfilled."

66. The first named respondent quoted at length from *R. v. Secretary of State for the Home Department (ex parte) Sivakunaran* (1988) A.C. 958. He also quoted from Ward is of the view that the applicant can be reasonably expected to stay in a part of the applicant's country where there is no well-founded fear of being persecuted or real risk of suffering a serious harm. In reaching this conclusion he was having regard to the general circumstances prevailing in that country and the personal circumstances of the applicant.

67. The first named respondent said that he was not satisfied that the applicant made any effort to consider relocating to avoid persecution as he claims he suffered. Country of origin information indicates there is ample protection available for the applicant to relocate. He also says that with reference to the issue of relocation he is required first to consider whether the asylum seeker faces a well-founded fear of persecution for convention reason in at least some part of his country of origin in this particular case because the applicant has not shown a failure of state protection he has concluded that the well founded fear of persecution aspect of the claim was not complied with. However, even if he had found there was well founded fear of persecution for convention reason he is not satisfied that the appellant could not have access to meaningful internal protection. And confirmed that Karachi did not present a distinct risk of even generalised serious harm. He quoted *John Butler v. Attorney General* (NZAR 2005) he said that all of the principles having been applied in consideration of the applicants case concludes that the applicant has not shown a failure of state protection and in the alternative it would not be unduly harsh to expect the applicant to relocate to locations identified in the country of origins.

Analysis of the evidence of NB

68. The applicant's evidence is that her step father is a member of the Muslim League and her husband is from the Pakistan Peoples Party. With respect to her contention that this causes a problem I have concluded that her husband's evidence is neither plausible nor credible and in that regard he cannot see anything that would lead him to conclude otherwise in the applicant's evidence and he does not find her contentions of the cause that this causes any problem for her to be plausible or credible.

69. The applicant contented that her husband was attacked when he was returning from a meeting. This evidence was minimalist and lacked the type of detail one would expect from a person who is in anyway associated with such incident. One would expect details such as the time of day, the surrounding circumstances and so on but this was not forthcoming and I do not find this evidence to be in anyway persuasive.

70. The first named respondent said the applicant did not leave with her step father subsequent to her mother's marriage. What would appear from the evidence is that they were married but he didn't move in with her mother subsequent to the marriage. A marriage certificate was submitted but it is clearly at odds with the applicants own evidence. The marriage certificate applies that neither her mother nor her step father have children. This was counter to the applicant's own evidence in those circumstances the applicant did not provide any resolution to this and he could not rely on the marriage certificate.

71. The presenting officer had asked the applicant to a degree that her step father had two children. The applicant replied that she didn't know and was referred to her s. 11 interview where she referred to a step brother. This portion of the applicant's evidence made no logical sense. The applicant in this case was the source of the contradiction in that she presents documents saying that her step father had no children. She gave evidence of a step brother but indicates that she does not know whether there were children. The replies to questions at times made no logical sense such as the presenting officer asking the applicant if she knew anything about her step brother and her reply was that she did not know as she was not interested in politics.

72. No clarity was brought to this issue by the applicant. The applicant did not in the view of the Tribunal make any effort to bring

clarity to these issues and it was for that reason that he found the contradictions of not been resolved by the applicant and as a consequence he finds her evidence to be neither plausible nor credible.

73. The applicant gave evidence of gunmen showing up at family home. She appeared to be unaware as to whether someone else was killed downstairs. She said she was upstairs and she didn't know what was going on. This evidence is so minimalist and lacking in detail that would not lead you to conclude that the applicant 1) to conclude that the applicant had been present at any such incident. I find that it would be only reasonable to expect some level of detail in respect of a gun attack in which the applicant is the target. So these reasons he did not believe this evidence to be plausible nor credible and he finds it undermines her credibility.

74. He stated that the presenting officer had returned to the issue of the step brother and she was asked was she forced to answer question at the s. 11 interview she said no. She was then asked a question again as to how many children her step father had. She said she didn't know but the interviewer kept on asking her until she answered the question. She said that in the s. 11 that one of them was fifteen and one was thirteen. She was asked why she gave this specific information as to their ages and now she is saying she does not know anything about them. Her reply was that she did not know anything about them and that she had never met them. She was asked if she had made up the answer and her answer was "maybe" but because they were so insistent. He said that he found the applicant's evidence to be neither plausible nor credible in circumstances were the s. 11 interview is conducted with a question and answer session. He did not find it plausible nor credible that she will be forced into making up answers and then making up the ages of the children of her step father. He did not find this evidence to be plausible nor credible and found that it undermines the applicant's credibility.

75. With regard to the applicant's evidence as to how she arrived and passed through immigration in Dublin airport he finds this evidence to be neither plausible nor credible that she could show up at Dublin airport and pass through it in a manner in which she contends. It is the practice of the Immigration Authorities to ask questions and seek passports. Each adult is required to have their own passport in their own hand and present them to the immigration officer. I do not accept that her husband could not simply give all the passports in the manner in which she contends. It is for this reason that he finds the applicant's evidence to be neither plausible nor credible and finds this undermines her credibility. He then made a finding that internal relocation presented a viable alternative and made the same findings as the first named applicant.

76. He said that taken both applicants evidence as a whole and being mindful of any stress that the applicants might have been under they were bought less than impressive witnesses. Nothing in their evidence or on the file would lead him to conclude that they would be in any danger on their return if they were returned to Pakistan. And he affirmed the findings of the Refugee Application Commissioner made in accordance with s. 13 of the Act.

Submissions by counsel for the applicant

77. Michael Conlan, S.C., (with Gary O'Halloran, B.L.) set out the background to the claim.

78. Counsel took issue with the manner in which the authorised officer on behalf of the Commissioner became an issue at the oral hearing, and in particular in the questioning by the presenting officer on behalf of the Commissioner, Cecilia Lynch, of the second applicant. He also raised a further aspect of the Tribunal Member's recounting of the oral hearing. The first applicant was asked that if the questioning officer was in Lahore and he wanted to go to Sialkot would he travel north, south, east or west counsel said the applicant said he had never been to Sialkot but that Sialkot is north. However, the Tribunal member commences the decision with the credibility finding based on this question and failure to answer and answering incorrectly and states wherever the applicant is from I am not satisfied his sufficient knowledge of the places he contends he is for me to satisfy that he is from those places. This is the first credibility finding.

79. The second credibility finding related to the attack on his children he was asked if his son had been shot and he said he did not know because it happened before he had arrived. And the third credibility finding was that he was also mindful of the fact that the medical note provided by the applicant simply says small bruise, a small cut on the nose and the knee. The fourth credibility finding was that the presenting officer says that in the last election the PPP had 27 and the Muslim League had seven seats showing that the PPP were more powerful and makes the finding that the applicant's contention that he is of any risk from being a member of the political party to be neither plausible nor credible. The fifth credibility finding was that the applicant also contended that as a result of marrying a daughter of a person who is involved with the Muslim League, he was attacked. The evidence was perfunctory and minimalist in nature.

80. The sixth finding was that the presenting officer asked the applicant to comment on the fact that his evidence indicated that he married his wife in 1999. However, it was not until 2008 that anyone was attempting to harm them. No plausible or credible evidence was provided. The seventh credibility finding is that the applicants evidence is that her step father is a member of the Muslim League and her husband is from the Pakistan Peoples Party and he had already concluded that her husband's evidence is neither plausible nor credible. The eighth credibility finding related to the marriage certificate. The ninth credibility finding relates to the failure of the applicant to make any effort to bring any clarity to these issues. The tenth credibility finding related to who was supporting the family and in relation to this it appeared to this court that support for the family if not financially was certainly the husband's uncle. The eleventh credibility finding related to the killing of the landlords family downstairs and that she was upstairs and did not know what was going on. He said that the first named respondent said that this evidence is so minimalist and lacking in detail it would not lead you to conclude that the applicant had been present. The twelfth credibility finding was a further return to the matters raised above that the interviewer kept on asking her until she answered the question and the thirteen credibility finding was she not accept her husband could simply give all the passports in the manner she contends.

81. Counsel contended that the decision of the Tribunal was vitiated by the reason of the failure to consider and determine whether the applicants are who they claim to be and whether the evidence and fears as presented could not be credible.

82. The Tribunal had erred in law in failing to consider the first information report, the certificates and the country of origin reports as part of the assessment of credibility and referred to *I.R. v. Minister for Justice* [2009] IEHC 353.

83. He further stated that the Tribunal had failed to state any reason for the rejection of the explanation giving by the applicants and referred to *CCA v. Minister for Justice and Equality Anor* [2014] IEHC 569. Counsel also contended that the Tribunal had acted in breach of fair procedures and act of contrary to Regulation 5(1)(a) of the European Communities Eligibility for Protection (Regulations 2006) providing that:

"All relevant facts as they relate to the country of origin time taking decision on the applicant for protection be taken into account by the decision maker."

84. Counsel submitted that the finding in respect of state protection were irrational in the light of applicant's evidence and particularly the circumstances were made without assessment of the adequacy and practical terms of the protection deemed to be involved and he quoted from Hathaway and Foster "*Law of Refugee Status*" as follows:-

"The ultimate question in refugee law is not whether the home state has satisfied and particular standard – the home states responsibility not been subject of the inquiry but whether it is in fact able to protect against serious harm"

And Hathaway and Foster referred to the standard expressed by concerns in the UK, Canada and Australia's crime protection to be effective meaningful or adequate.

84. He said that with respect to the internal relocation findings the Tribunal failed to make any assessment in accordance with the requisite legal principles and quoted from Barr J. in *K.D. (Nigeria) v. Refugee Appeals Tribunal* [2013] IEHC 481 and *I.V. v. Minister for Justice, Equality and Law Reform & Anor* (an unreported decision) of Mac Eochaidh J. The proper assessment was particularly appropriate in circumstances three of the applicants are children and where country reports support the applicant's claim.

85. With regard to the summary dismissal of the children's claims the decision suffers from all the frailties above and suggested that the applicants claim for refugee status had not been assessed in a spirit of deeply military like procedure free from a perception of candid culture in a quest to believe and quoted from *F.U. (Afghanistan) v. Refugee Appeals Tribunal* [2015].

Submissions on behalf of Counsel for the Respondents

86. Dermot Manning, B.L., indicated that he was adopting the background to the applicant's cases as set out in the applicant's legal submissions. He summarised the findings of the Refugee Application Commissioner and he summarised the decision of the first respondent. He then set out the grounds of which the applicants claimed judicial review and indicated that he relied on the applicant's lack of credibility in their application for refugee status in circumstance where the applicants were applying for discretionary relief from this Court. He submitted that an applicant for refugee status in the State bears the onus of demonstrating "*a reasonable degree of likelihood that he or she would be persecuted for a convention reason if returned to his or her own country*". That the onus was on the applicants to place before the decision maker such cogent plausible and credible testimony in evidence so as to support their claims for asylum in the State and that the applicants in these proceedings have failed to do this.

87. Counsel also referred to the decision of Cooke J. in *SBE v. Refugee Appeals Tribunal and Anor* [2010] IEHC 133, which he stated:-

"In reviewing a decision which terms predominately on credibility, the Court is fully conscious of the fact that the issue is one which is exclusively for the decision maker to determine. It must resist any temptation to substitute its own view of credibility for the assessment made by the tribunal member. It is concerned only to ensure the legality of the process by which the conclusion has been reached."

88. He also referred to the decision of Cooke J. in *I.R. v. Minister for Justice, Equality and Law Reform & Anor* [2009] IEHC 353, which he said:-

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

He set out in that case the ten principles which he said emerged from the case law as a guide in the manner on which evidence going to credibility ought to be treated and the review of conclusions and credibility to be carried out.

89. Counsel detailed the issues in relation to credibility:

- a. an entirely incorrect answer to the location of the Sialkot
- b. the alleged kidnapping attempt of his son from school and
- c. the contradiction of his accounts of his son's injuries by the medical reports attended by the applicants

The applicants had not suffered from any problem from the family of the stepfather of the wife for the first nine years after they were married. He also submitted that the analysis of the wife's claim highlighted a number of inconsistencies in her evidence and in particular the alleged marriage certificate of her mother married to her stepfather.

90. He submitted that the reasons for making the findings against the applicants on the grounds of credibility are clear from the faith of the decision as the first named respondent and that these issues did not relate to minor facts or peripheral facts. He argued that the core of the applicants claim is that they will suffer prosecution in Pakistan because of their marriage against the wishes of the wife's stepfather and the fact that the wife's stepfather was involved in the Muslim League while the first applicant claims to be a member of the Pakistan Peoples Party.

91. He argued that the reasons stated by the first respondent in his decision enabled the applicants as addresses and the court in exercise of its judicial review function to understand the substantive basis for the conclusion and credibility and the process of analysis or evaluation by which it was reached.

92. He also submitted that the first named respondent and the decision of the first named respondent has told that the applicants wholly lacked credibility, the option of eternal relocation was obviously an issue. His decision in relation to the possibility of the applicants internally relocating to this city of Karachi in Pakistan, a city described as been modern and progressive are clear and ambiguous.

Discretion and Decision

93. The decision of the Tribunal in this appeal comes down to the issue of credibility. Both counsel for the applicant and counsel for the respondent noted that the first named respondent identified twelve grounds raising issues of the credibility of the applicants' claim.

94. Counsel on behalf of the applicant challenge the credibility findings as lacking cogency and reasonableness.

95. The decision of Cooke J. in *I.R. v. Minister for Justice, Equality and Law Reform & Anor* [2009] IEHC 353, provides a comprehensive guide to a High Court judge in dealing with a judicial review challenge where the issue of credibility is the main issue. Cooke J. stated:-

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

96. Cooke J. in this case summarised the guidelines which emerge from the case law relating to the process of assessment of credibility. He then set out ten principles which might be said to emerge from that case as a guide to the manner in which evidence going to credibility ought to be treated and the review of conclusions and credibility to be carried out.

97. This Court highlights the following rule:-

"(1) The determination as to whether a claim to a well founded fear of persecution is credible falls to be made under the Refugee Act 1996 by the administrative decision-maker and not by the Court. The High Court on judicial review must not succumb to the temptation or fall into the trap of substituting its own view for that of the primary decision-makers.

(2) On judicial review the function and jurisdiction of the High Court is confined to ensuring that the process by which the determination is made is legally sound and is not vitiated by any material error of law, infringement of any applicable statutory provision or of any principle of natural or constitutional justice.

...

(4) The assessment of credibility must be made by reference to the full picture that emerges from the available evidence and information taken as a whole, when rationally analysed and fairly weighed. It must not be based on a perceived, correct instinct or gut feeling as to whether the truth is or is not being told.

(5) A finding of lack of credibility must be based on correct facts, untainted by conjecture or speculation and the reasons drawn from such facts must be cogent and bear a legitimate connection to the adverse finding.

...

(8) When subjected to judicial review, a decision on credibility must be read as a whole and the Court should be wary of attempts to deconstruct an overall conclusion by subjecting its individual parts to isolated examination in disregard of the cumulative impression made upon the decision-maker especially where the conclusion takes particular account of the demeanour and reaction of an applicant when testifying in person.

(9) 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.

(10) Nevertheless, there is no general obligation in all cases to refer in a decision on credibility to every item of evidence and to every argument advanced, provided the reasons stated enable the applicant as addressee, and the Court in exercise of its judicial review function, to understand the substantive basis for the conclusion on credibility and the process of analysis or evaluation by which it has been reached."

98. This Court notes the following findings of issues of credibility in this assessment of the appeal of the applicants:

(i) The first named respondent stated that he was mindful of the fact that the applicant is an educated person with a degree and on being asked where Sialkot is relative to Lahore, he was entirely incorrect and he came to the conclusion that he was not so satisfied that the first named applicant had sufficient knowledge of the places he contends he is from to satisfy him that he is from these places. In fact, it is interesting to note that the first named applicant suggested that one would take the great Trunk Road which appears not to pass near Sialkot. It appears to this Court that this finding is cogent and reasonable to the first named respondent to make and the portion of the applicant's evidence in relation to the alleged assault on his sons in school to be neither plausible nor credible. He noted that the applicant said he did not know whether his son had been shot at but that his son had a few stitches and the medical reports from their hospital in relation to the third named applicant described that he had an accidental fall in a playground and injury due to some broken glass, apparently losing a pint of blood. In relation to the fourth named applicant, the medical report references an accidental fall in a playground with a small cut on the lower, near the right eye, and small bruises on the knee and shoulder with no stitches being required.

(ii) This Court is satisfied that the Tribunal member satisfies the ninth principle of Cooke J. in that he gives reasons for the rejection of the medical report and the first named respondent makes the point that nothing in the medical reports on file alters his views.

(iii) The third finding of the first named respondent was that the Pakistan People Party was more powerful than the Muslim League and he took the view that the first named applicant was not familiar with the Pakistan People Party to conclude that he had power of position of importance and that his contention that he is at any risk at that party to be neither plausible or credible and, in fact, to suggest the high point of the applicant's evidence accepted this. Again, this Court views this cogent and reasonable.

99. The next item is the first named respondent dealt with was the contention that as a result of marrying a daughter of a person who is involved with the Muslim League, he was attacked. He refers to the way in which the first two applicants gave evidence and he took the view that it would not lead one to conclude that the first named applicant had been involved in such activities and again, the first named respondent appears to have relied on the way in which evidence was given and, in the Court's view, the eighth principle of Cooke J. applies and his warning that the Court should be wary of attempts to deconstruct an overall conclusion where the conclusion takes particular account of the demeanour on the action of an applicant is noted and accepted by this Court.

100. The next issue raised by the first named respondent was that the first named applicant had married the applicant in 1999 and it was not until 2008 that any suggestion of difficulties seemed to have arisen and he made the point that no plausible or credible evidence was provided by the applicant in respect of this issue made by the presenting officer. It again appeared to be a reasonable and cogent finding.

101. The next finding of the first named respondent is in relation to the first named applicant's evidence that his children were nearly kidnapped and he made the point that the applicant had returned them to school and he felt that this was neither plausible nor credible and the applicant's only response was that they were not going regularly which runs counter to the applicant's contention that they were in danger. This again appears to be a reasonable and cogent finding.

102. The next finding was that the first named respondent relates to the country of origin information pertaining to Karachi and he says that nothing in the applicant's evidence or indeed, in the country of origin information would indicate to him that the family would not be safe in Karachi.

103. The next credibility finding related to the marriage certificate of the second named applicant's mother and her stepfather. This was in the analysis of the second named applicant. The marriage certificate submitted is clearly at odds with the second named applicant's own evidence. The marriage certificate appeared to imply that neither her mother nor her stepfather had children but, in fact, both parents had children and in presenting documents that her stepfather had no children meant that her evidence is neither plausible nor credible. This is a clear cogent and reasonable finding.

104. The finding in relation to who was supporting the family was that there seemed to be conflict of the evidence given by the second named applicant's husband's uncle and the suggestion by the presenting officer that it was her husband's business partner. He held that this conflict was not resolved by the applicant and that the onus is on the applicant to prove their case. Again, it appears to be a reasonable finding on behalf of the first named respondent.

105. The next finding of the first named respondent was in relation to the evidence of gunmen showing up at the family home and killing someone downstairs. His finding that the second named respondent's evidence was so minimalist and lacking in detail that it would not lead them to conclude that the applicant had been present at such incident. Again, this is a very clear finding which relates to the evidence and the weight of evidence which was given by the second named applicant.

106. The next finding of the first named respondent was in relation to the applicants' evidence as to how they arrived and passed through immigration in Dublin Airport. In this Court's view, this is a peripheral finding as it is undoubtedly the case that persons who pay agents, find themselves given an EU passport which is taken from them after they come through and are made clear that no information should be given to the authorities in relation to the passports.

107. The second named respondent said he had taken into account Regulation 7 of the European Communities (Eligibility for Protection) Regulations 2006, which states as follows:-

"As part of the assessment of protection needs, a protection decision maker may determine that a protection applicant is not in need of protection if the applicant can reasonably be expected to stay in a part of his or her country of origin where there is no well founded fear of being persecuted or real risk of suffering serious harm."

108. The first named respondent stated that he had reached this conclusion having regard to his finding that there was no well founded fear of persecution.

Decision

109. This Court finds that the credibility findings made by the first named respondent comply with the principles laid down by Cooke J. in I.R. and in the circumstances as this is a telescoped hearing seeking certiorari, this Court rules that the applicants are refused leave to seek certiorari and the application is dismissed.