

**THE HIGH COURT
JUDICIAL REVIEW**

[2014 No. 738 J.R.]

BETWEEN

P. S.

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Colm Mac Eochaidh delivered on the 11th day of July, 2016

Introduction:

1. Leave to seek judicial review was granted by this Court on the 8th December, 2014, following an *ex parte* application made pursuant to s. 5 of the Illegal Immigrants (Trafficking) Act 2000, as amended by s. 34 of the Employment Permits (Amendment) Act 2014, which includes a requirement that the applicant show substantial grounds for their claim that the decision of the Refugee Appeals Tribunal ought to be quashed.

2. The applicant seeks, *inter alia*, an order of *certiorari* quashing the decision of the R.A.T. affirming the recommendations of the Office of the Refugee Applications Commissioner that the applicant not be declared a refugee and an order remitting the appeal for fresh determination by a separate tribunal member.

3. A secondary relief sought involves a challenge to the constitutionality of s. 16 of the Refugee Act 1996 (as amended). It is stated at relief 6 as follows:-

"In the alternative, if necessary, a declaration that Sections 16 of the Refugee Act, 1996 (as amended) is invalid having regard to the provisions of Article 40.3 of the Constitution."

The constitutional issue falls to be determined, if at all, as the last issue in the case.

4. In the Supreme Court decision in *Sivsiivadze v. Minister for Justice and Equality* [2015] I.E.S.C. 53, delivered on the 23rd June, 2015, Murray J. decided that if the primary relief sought is challenging the constitutionality of a statute, even where the facts are agreed and there is no requirement for the court to hear oral evidence, the proceedings must start by way of plenary summons. The learned Judge said at para. 27:-

"...this Court has pointed out on several occasions that proceedings challenging the constitutionality of an Act of the Oireachtas should be in the form of plenary proceedings and not a remedy pursued by way of judicial review."

On that basis, if the applicant loses every other point and the challenge to the constitutionality of the Act of 1996 (as amended) remains, the Court will hear the parties as to whether it is possible to proceed with that issue in view of the time limits within which any challenge to a decision of the R.A.T. must be brought. (Section 5 of the Illegal Immigrants (Trafficking) Act 2000, as amended by s. 34 of the Employment Permits (Amendment) Act 2014, provides that such challenge must be brought within 28 days.)

Background:

5. The applicant is a Nigerian man born on the 31st October, 1981, who says he is gay. He avers that he had been canvassed by people associated with the Movement for the Emancipation of the Niger Delta (M.E.N.D.) since 2008. He informed members of M.E.N.D. of his homosexuality and in February 2012 he was attacked by them outside a bar. The applicant further avers that the police refused to help him after the attack because of his homosexuality. He believes members of M.E.N.D. subsequently tried to kill him by burning his house while he was inside. He also avers that he received death threats, was abused and socially isolated, banned from attending some premises and forced to live a solitary lifestyle in Nigeria.

6. The applicant avers that a man with whom he had a relationship helped him obtain a visa for Ireland and arranged his travel to this State. The applicant arrived in Ireland on the 3rd October, 2012, but did not apply for asylum on arrival as he avers that he felt safe for the three month currency of his visa and for nine months thereafter, owing to the accommodation of women the applicant befriended while in Ireland.

7. The applicant applied for asylum on the 23rd September, 2013. He was interviewed by the O.R.A.C. on the 30th October, 2013, and was notified by letter dated the 29th November, 2013, of the Commissioner's recommendation that he not be declared a refugee. The Commissioner decided that s.13 (6) of the Refugee Act 1996 (as amended) applied as it was found that he had, without reasonable cause, failed to make an application for asylum as soon as reasonably practicable upon his arrival in the State. Consequently, his appeal to the R.A.T. was by written submissions only without an oral hearing. The applicant was notified of the negative decision of the R.A.T. by letter dated the 12th November, 2014, and received by him on or about the 14th November, 2014.

The R.A.T. decision:

8. The tribunal member found the applicant to be lacking in credibility. The findings in relation to credibility are as follows:-

"1. The Appellant claimed that he specifically obtained a visa for the purpose of travelling to Ireland and claiming asylum, yet the Appellant not only did not apply for asylum immediately on arriving in the State (October 2012), he failed to apply

for asylum until September 2013, notwithstanding the fact that his visa was only valid for 3 months. The first time that the Applicant applied for asylum was on 23/09/2013. Thus the Appellant was in this State almost one year, nine months of those illegally, before applying for asylum. I do not accept the reasons given by the Appellant for failing to claim asylum earlier, I also point out that his explanation that he was living with some ladies and no-one was stressing him to be unacceptable. If the Appellant truly came to this country to claim asylum on account of alleged persecution experienced, it is reasonable to expect him to apply for asylum upon arrival, not almost one year later.

2. The Appellant could not provide an address of where he was living with these so-called ladies, I point out that this Appellant is not illiterate, he holds a degree in Economics and he lived with them for approximately 9 months according to his evidence. I do not accept this account as being credible under the circumstances.

3. It is not plausible that the Appellant could not remember the name of the gay bar that he allegedly attended in Temple Bar. The Appellant is well educated, he may have stumbled upon this gay bar by chance, however I believe that if the Appellant was looking to make contact with the gay scene in Dublin it is not plausible that he did not note the name of this bar for future reference.

4. I do not consider it plausible that the Appellant, if he was, as he alleges, in a gay bar in Temple Bar, would know about The George, arguably the most famous gay bar in Dublin, and yet not know even approximately where it is (some footsteps away from Temple Bar).

5. I do not find it plausible that the Appellant, as someone who had arrived in Ireland with no friends and family here, and who had allegedly experienced problems on account of his sexuality in his home country, would not seek support from an organisation, such as the one mentioned in the interview, while here in Ireland. The Appellant's claim that he went to the offices of the LGBT in Parnell Street, but simply did not bother to go back because it was closed at the time, leads me to believe he was not experiencing any problems on account of his alleged sexuality in his home country.

6. The Appellant claimed that he told M.E.N.D. that he was gay in January 2011, he thinks they did not believe him at the time, it was only in February 2012 that they targeted him as they 'believed' him at this time. The evidence is unreliable, it is based on speculation as to what M.E.N.D. did or did not believe.

7. As regards country of origin information, the section 13 report quotes information that was consulted, it is noted that despite extensive research no information could be found that M.E.N.D. targets homosexuals in Nigeria, the Appellant claims that they do. The Appellant can provide no proof of this apart from his testimony, and I find his testimony to be lacking in credibility. I do not accept this aspect of the Appellant's account as I prefer the independent COI and it was open to the appellant to provide some COI to support his contention, which he has not.

8. In relation to the process of application for a tourist visa to travel to Ireland, the Appellant's testimony in this respect is also lacking in credibility, it is not credible that the Appellant would not remember whether or not he had provided his fingerprints for this purpose.

9. The Appellant also claims that he would have problems with the police if he returns as he is gay, yet the Appellant claims he told the police he was gay while giving a statement in relation to an alleged attack, they did not arrest him, nor cause any problems for him. Given the submissions made as to the attitude of the police in Nigeria, I find that if the Appellant is indeed homosexual and advised the police of this, that it is not credible that they ignored this fact.

10. The Appellant allegedly lost a bag with his passport in it, or it was stolen, either way the loss or theft of a passport is a serious issue, it was not reported. I find this aspect of the Appellant's claim raises questions over what happened to the passport and perhaps more importantly what that passport might divulge if it were to be submitted. It is not credible that if there were no suspicious basis for failing to report a lost passport that it would not be reported."

The tribunal member goes on to conclude that:-

"5.5 ...I find that there are sufficient grounds for me to come to a conclusion that this Appellant's claim lacks credibility. I do not accept either that he was persecuted in Nigeria, or indeed that he is a homosexual who is at risk of persecution in Nigeria."

The applicant's submissions:

9. Counsel for the applicant, Mr. Conlon S.C., submits that the correct inference to be drawn from findings 3 and 4 is that the tribunal member disbelieves the applicant's claim that he was in the bar based on an assumption that the applicant was interested in associating with the L.G.B.T. community in Dublin. Mr. Conlon submits that the tribunal member made no allowance for the possibility that the applicant was not interested in so associating but had, nevertheless, experienced persecution because of his sexuality in Nigeria.

10. Counsel for the applicant referred the Court to the decision of this Court in *R.O. (an infant) v. Minister for Justice & Equality & anor* [2012] I.E.H.C. 573 as authority for the principles which may be used to assess the adequacy of reasons for credibility findings in asylum cases. In that case, the following principles were revealed following a survey of the case law in relation to the adequacy of reasons for credibility findings in asylum cases:-

(i) Reasons must be intelligible in the sense that the reasons should enable the reader to understand why the applicant for protection is disbelieved on a certain point and/or generally (see *South Bucks County Council v. Porter (supra)* and *Deerland Construction v. Aquatic Licensing Appeals Board (supra)*).

(ii) Reasons must be specific, cogent and substantial (see *Memishi v. The Refugee Appeals Tribunal (supra)* and *Diaz-Marroquin v. Immigration and Naturalisation Service (supra)*).

(iii) Reasons must be drawn from correct facts and must bear a legitimate connection to the adverse credibility findings (see *I.R. v. The Minister for Justice, Equality and Law Reform (supra)*).

(iv) Reasons must relate to the substantive basis of the claim and not to minor matters. (see *I.R. v. The Minister for Justice, Equality and Law Reform (supra)*).

This Court went onto say:-

"27. In identifying these principles I am not saying they are to be applied mechanically or sequentially or in any particular way. Neither am I suggesting that it is necessary to deconstruct credibility findings, to borrow the phraseology of Cooke J. in *[I]R.* (supra). It was appropriate to engage in fairly minute examination of reasons for credibility findings in this case because of the single, pointed ground upon which leave was granted.

28. In addition to the principles on adequacy of reasons which emerge from case law, I observe that when a court is reviewing the adequacy of reasons for credibility findings, it is not conducting the same level of scrutiny of the adequacy of reasons as it might undertake if it were reviewing a substantive decision, such as a decision to grant a planning permission or grant a mobile phone licence. As I have observed earlier, credibility findings in an asylum application are subordinate decisions on the pathway to the substantive decision - to grant or withhold international protection.

29. I should also say that reasons, self-evidently, must be rational in the traditional public law sense. That case law does not include rationality as a requirement for adequacy of reasons on credibility findings is probably because such a defect would attract a challenge to the rationality of the resulting substantive decision rather than an attack on the subordinate decision as to credibility. Thus, if the RAT were to say 'I don't believe the applicant because she has blue eyes', the challenger would be more than likely to say that the resulting decision refusing international protection was irrational rather than limit the challenge to a plea that an inadequate reason had been given for rejecting credibility.

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

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

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

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

(iv) Were they based on correct facts?

(v) Were they rational?"

11. Mr. Conlon S.C. for the applicant submits that although it may be unusual that the applicant cannot remember the name of the nightclub he visited, it does not follow that it was reasonable for the decision maker to infer that the applicant was not telling the truth in relation to that aspect of his claim. Counsel for the applicant respectfully submits that the proper meaning of the word "cogent", within the meaning articulated by Peart J. in *Memishi v. The Refugee Appeals Tribunal* [2003] I.E.H.C. 65, involves reasons founded on "compelling logic" that suggest the applicant is telling lies in relation to particular aspects of his claim. Mr. Conlon submits that this purported "compelling logic" test is not satisfied in respect of the tribunal member's finding in relation to not remembering the name of the bar.

12. In the s.11 interview, questions regarding the applicant's association with the L.G.B.T. community in Ireland were put to him in the following terms:-

"Q28 Have you been associating with the LGBT community in Ireland since you arrived here?

A No, but I went to the gay bar.

Q29 What bar is this?

A It is a gay bar in Temple Bar, I don't remember the name

Q30 Do you know the name of any gay bars in Ireland?

A I only know the George pub, that is all.

Q31 Can you tell me where the George is?

A No I don't know."

Counsel for the applicant submits that the tribunal member's adverse credibility findings based on, what is submitted is a relatively innocuous interaction, amounts to speculation, as the extent of the questioning in relation to the matter is brief and no follow up questions were asked of the applicant.

13. With respect to the tribunal member's conclusion on the applicant's credibility, Mr. Conlon submits that the tribunal member failed to make an unequivocal finding as to whether she believes the applicant is gay or not. Counsel for the applicant relies, *inter alia*, on the decision of this Court in *E.P.A. v. Refugee Appeals Tribunal* [2013] I.E.H.C. 85 for authority that it was the duty of the tribunal member to state clearly and unequivocally whether or not she accepted that the applicant is homosexual and to reach such a determination in the light of the Yogyakarta principles and the U.N.H.C.R. guidance note.

14. I reject the applicant's argument that the R.A.T. was obliged to decide whether or not the applicant was gay. (c.f. *P.D. v. Minister for Justice and Law Reform* [2015] I.E.H.C. 111.) However, as will be seen later, my view is that a finding on the applicant's sexuality was made by the R.A.T..

The respondent's submissions:

15. In the written submissions and in oral submissions before the Court, counsel for the respondent, Mr. O'Connor B.L., submits that the correct test to be applied in refugee claims is the balance of probabilities, which on the basis of *Miller v. Ministry of Pensions* [1947] 2 All ER 372 is long settled as meaning it must be more likely than not that something is true. Mr. O'Connor submits that the test in relation to any finding on credibility is, therefore, that it is more likely than not that it happened. Counsel for the respondent submits that this standard is met when an alleged fact is found to be implausible which he says is another way of saying it is unlikely

to be true and therefore on the balance of probabilities, untrue.

16. Mr. O'Connor further submits that cogency is not to be equated with a higher standard of "outside the bounds of human experience" as this, it is submitted, is a higher standard even than the well-settled definition of beyond reasonable doubt in the criminal sphere, and a conflation of this with cogency of reasoning is a fundamental error. The requirement of cogency is that the reasons given must solidly support a finding that it is less likely than not that the account presented is true. In the instant case, there is a list of solidly-based, rational decisions founded on the evidence given by the applicant and tested in the interview. This, it is submitted, is the necessary cogency pointing to the conclusions reached that the applicant's account is not more likely than not.

17. Mr. O'Connor submits that the standard that the court must adopt in reviewing the decision of the decision maker is that set out in *The State (Keegan) v. The Stardust Victims' Compensation Tribunal* [1986] I.R. 642 in which Henchy J. said at p. 658:-

"I would myself consider that the test of unreasonableness or irrationality in judicial review lies in considering whether the impugned decision plainly and unambiguously flies in the face of fundamental reason and common sense. If it does, then the decision-maker should be held to have acted ultra vires, for the necessarily implied constitutional limitation of jurisdiction in all decision-making which affects rights or duties requires, *inter alia*, that the decision-maker must not flagrantly reject or disregard fundamental reason or common sense in reaching his decision."

On that basis, Counsel for the respondent submits that to quash an asylum decision which is based on a negative credibility finding, it must be shown that the decision that an asserted fact is unlikely to be true or is implausible flies in the face of fundamental reason and common sense. I cannot fault this submission.

18. This Court, on an application for judicial review, is not asked to decide whether on the balance of probabilities events are more or less likely to have happened. To do so would be to usurp the function of the decision maker. The question for the Court, on the facts of this case, is whether the decision that events or circumstances were implausible was rational as a matter of law. The Court is being asked to decide whether the credibility findings were rational.

Are the credibility findings rational?

19. It is important to bear in mind that the credibility findings were based on a papers only review of the applicant's claim - there was no oral hearing at the appeal stage. Paragraph 5.1 of the impugned decision immediately expresses dissatisfaction with the fact that the applicant sought asylum almost one year after arriving in the State. The tribunal said that:-

"If the appellant truly came to this country to claim asylum on account of alleged persecution experienced, it is reasonable to expect him to apply for asylum upon arrival, not almost one year later".

20. The finding, as seen above at para. 8 where it is more extensively set out, does refer to the explanation given by the applicant for the delay. It is hard to fault the decision maker for expressing concern about such delay in seeking asylum and this finding meets the standards set out in R.O., *supra*, at para. 10. The respondent was entitled to discount the explanations offered for the delay, and in doing so did not offend fundamental reason or common sense.

21. The second reason given for rejecting credibility is that the applicant could not provide an address for the place he was living. No irrationality attaches to the finding that the applicant's inability to remember his address undermines credibility.

22. The third credibility finding is related to the applicant's sexual orientation. The decision maker says:-

"It is not plausible that the Appellant could not remember the name of the gay bar that he allegedly attended in Temple Bar. The Appellant is well educated, he may have stumbled upon this gay bar by chance, however I believe that if the Appellant was looking to make contact with the gay scene in Dublin it is not plausible that he did not note the name of this bar for future reference".

23. In my view, this finding is unsustainable. There was no evidence that the applicant was seeking to make contact with "the gay scene" in Dublin and the decision maker is not entitled to assume that he was. The applicant's evidence was that he went to this bar once, and it is thus irrational to reject his assertion that he could not remember the name of the bar which he had only visited once.

24. The fourth credibility finding rejects the applicant's evidence that he could not remember or did not know the location or address of a bar called "The George." There was no evidence that the applicant had ever been to that bar. It is unfair to criticise a (then) recently arrived non national for not knowing the street address or location of a bar, especially as there was no evidence that he had ever been in that bar. It is to be recalled that during the s. 11 interview the applicant was asked:-

"Question: Do you know the name of any gay bars in Ireland?

Answer: I only know the George pub, that is all

Question: Can you tell me where the George is?

Answer: No I don't know."

25. He was not asked whether he had been to The George. He was asked whether he knew the name of any gay bars in Ireland and he answered that he knew the **name** of one such bar. Given the absence of an oral hearing in this case it was of great importance that the decision maker not assume that the applicant had been to the bar in question and ought therefore to know its address or location. This negative credibility finding seems to me to be on infirm foundations.

26. The fifth credibility finding is that the applicant's failure to seek support from gay organisations undermines his case. The decision maker says:-

"[This] leads me to believe he was not experiencing any problems on account of his alleged sexuality in his home country."

This seems to me to involve speculation and assumptions on the part of the decision maker as to the way gay people behave and whether or not they seek to belong to gay support organisations. There are many reasons why a person might not join support groups - shyness, lack of knowledge, lack of interest, to name but a few. In a case where no oral hearing occurred and where the reasons

why the applicant did not join or associate with groups were not put to him at a s. 11 interview, it was unfair to conclude, as appears to have happened, that the applicant was not gay because he was not interested in certain organisations or groups related to gay people.

27. The sixth reason given for discounting the applicant's credibility is in the following terms:-

"The appellant claimed that he told M.E.N.D. that he was gay in January 2011, he thinks they did not believe him at the time, it was only in February 2011 that they targeted him as they 'believed' him at this time. The evidence is unreliable, it is based on speculation as to what M.E.N.D. did or did not believe."

28. In this regard the applicant's evidence was as follows:-

"... I told M.E.N.D. I was gay in January 2011, as they had been pestering to join them so I told them I was gay so they would not want me to join. But I think they thought I was joking with them. Also, they did not know my address as when they contacted me it was at the Casablanca bar. But in February 2012 they found out my address and believed me that I was gay and so they wanted to kill me then."

29. This rejection of credibility is unfair. The applicant had indicated that he was attacked outside a bar in River State. The applicant gave clear evidence at the s. 11 interview that M.E.N.D. targeted him and wished to kill him because he was gay. He gave clear evidence that he told the M.E.N.D. organisation that he was gay. It was never put to him that there might be other reasons why M.E.N.D. might wish to attack him. It was never put to him that it was pure speculation on his part that the reason M.E.N.D. wished to kill him was because he was gay. In a case where there was no oral hearing the decision maker was not entitled to reject the applicant's belief about the reason M.E.N.D. attacked him without exploring this issue with him, or without evidence of the issue having been properly examined at first instance in a way that gave the applicant a chance to answer the claim that his conclusion was speculation and that there might have been other reasons why M.E.N.D. sought to kill him.

30. The seventh reason the applicant's credibility appears to have been rejected was because country of origin information concerning the M.E.N.D. organisation did not describe it as an anti-gay group. The decision maker appears to conclude that because country of origin information does not record the M.E.N.D. group as targeting people because they are homosexual, that it is therefore unlikely that they targeted the applicant in this case for that reason. This seems to me to be an irrational reason for rejecting the applicant's claim that the organisation targeted him because of his sexuality. The decision maker was not entitled to exclude the possibility that M.E.N.D. attacked the applicant motivated by homophobia merely because the country reports did not ascribe such motivation to them.

31. The eighth reason given for rejecting credibility is:-

"In relation to the process of application for a tourist visa to travel to Ireland, the Appellant's testimony in this respect is also lacking in credibility, it is not credible to the Appellant would not remember whether or not he provided his finger prints for this purpose."

I accept that the decision maker has properly rejected credibility in relation to the question of the tourist visa. The applicant's testimony was that his friend obtained the visa for him and that he did not supply any documents, that he merely told his friend his details and his address. Given that the applicant had stated that he travelled to Ireland on his own passport in which the visa he obtained must have been affixed, this credibility finding is consistent with the evidence and is fair and rational.

32. The ninth credibility finding is in the following terms:-

"The Appellant also claims that he would have problems with the police if he returns as he is gay, yet the Appellant claims he told the police he was gay while giving a statement in relation to an alleged attack, yet they did not arrest him, nor cause any problems for him. Given the submissions made as to the attitude of the police in Nigeria, I find that if the Appellant is indeed homosexual and advised the police of this, that it is not credible that they ignored this fact."

33. It seems to me that this was a most unfair credibility finding. The applicant's evidence in respect of what happened with the police was as follows:-

"Question: Have you ever come to the attention of the police because of your sexuality?

Answer: Yes, once, when I was attacked, I was at a bar called Casablanca in River State, M.E.N.D. attacked me outside the bar, they just attacked me, no-one else. The police arrived because I was beaten and they took me to the station *but when they heard I was gay they did not do anything.*" [emphasis added]

34. On any fair reading of the applicant's evidence, he was saying that the police failed to help him when he was attacked because he was gay. The decision maker has asserted that the police ignored the fact that he was gay. The opposite happened according to the evidence. The police, according to the applicant, failed to help him because he was gay. On this account the police did not ignore his sexuality but rather treated him less favourably because of his sexuality. This credibility finding is irrational because it is based on a misunderstanding of the evidence.

35. The tenth credibility finding is in the following terms:-

"The Appellant allegedly lost a bag with his passport in it, or it was stolen, either way the loss or theft of a passport is a serious issue, it was not reported. I find this aspect of the Appellant's claim raises questions over what happened to the passport and perhaps more importantly what that passport might divulge if it were to be submitted. It is not credible that if there were no suspicious basis for failing to report a loss passport that it would not be reported."

I accept this finding to be rational and related to the evidence.

36. The tribunal states as part of the overall conclusion that:-

"I do not accept either that he was persecuted in Nigeria, or indeed that he is a homosexual who is at risk of persecution in Nigeria."

The applicant has argued that the Tribunal failed to decide whether or not he is gay. The statement just quoted is somewhat unclear. But bearing in mind the negative credibility findings connected with the applicant's sexual identity, my view is that the tribunal member does not accept that the applicant is gay, notwithstanding the ambiguous statement just quoted.

37. Of the ten credibility findings four of them are lawful; six of them are unlawful. The four lawful findings are not related to the applicant's sexuality. The six unlawful findings relate to his claim that he is gay and that he was persecuted for that reason. Though the two categories of negative credibility findings are seemingly unrelated, severance of the good from the bad is unrealistic in this case because a central part of the applicant's case has been unlawfully rejected.

38. The decision maker does not believe that the applicant is entitled to refugee status because his asserted sexual orientation is rejected. It is rejected unlawfully and so the decision must fail.

39. I should mention the respondent's reply to the applicant's argument that a forward looking test must be applied even where credibility is rejected. On the basis of the judgment of Dunne J. in *Xiao v. R.A.T.* [2005] I.E.H.C. 167 Mr. O'Connor B.L. submits that where, as in this case, the applicant's case is found not to be credible, that is sufficient to deal with issues of future persecution on grounds claimed where there has been no claimed change in circumstances. Dunne J. said at p. 21 of Xiao:-

"The assessment of an applicant's claim to have a well founded fear of persecution does not take place in a vacuum. The passage quoted from Goodwin-Gill to which I have already referred is particularly apposite. There are as pointed out two issues - could the applicant's story have happened, or could his/her apprehension come to pass, on their own terms and given what is known from available country of origin information? Secondly, is the applicant personally believable? There is undoubtedly a difference between a case in which there are some inconsistencies in a person's story and a case such as the present where there has been a clear finding on credibility. The applicant simply was not personally believable."

40. It is well established that international protection decision makers are not required in every case to assess conditions in a country of origin or the risk of future persecution. Such assessment will normally be required where the applicant's credibility is accepted and the nexus between harm suffered and feared and the 1951 Convention is established. Where credibility is fundamentally rejected the decision maker is entitled to cease deliberations at that point. Thus for example, in this case where the applicant claims to be Nigerian, the decision maker would not be required to assess the conditions in Nigeria if it were established that the applicant was not Nigerian.

41. Case law has addressed the circumstances in which decision makers must form an assessment of the risk of future persecution and/or conditions in a country of origin notwithstanding negative credibility findings. In *M.A.M.A. v. the Refugee Appeals Tribunal* [2011] I.E.H.C. 147 Cooke J. reviewed the authorities on this point and noted as follows:-

"The sole fact that particular facts or events relied upon as evidence of past persecution have been disbelieved will not necessarily relieve the administrative decision maker of the obligation to consider whether, nevertheless, there is a risk of future persecution of the type alleged in the event of repatriation. In practical terms, however, the precise impact of the finding of lack of credibility in that regard upon the evaluation of the risk of future persecution must necessarily depend upon the nature and extent of the findings which reject the credibility of the first stage. That is because the obligation to consider the risk of future persecution must have a basis in some elements of the applicant's story which can be accepted as possibly being true. The obligation to consider the need for 'reasonable speculation' is not an invitation or pretext for gratuitous speculation: it must have some basis in and connection to, the apparent circumstances of the applicant."

42. I accept the respondent's submissions on this question. Once credibility has been rejected, it is not necessary to carry out a forward looking test to see if a claimant faces a risk of future persecution unless there is some doubt as to the negative credibility finding. I would have thought that this issue is now so clear as to not merit argument. It is not possible to say whether the risk of future persecution should have been undertaken in this case as the requirement to do so only arises after a proper credibility assessment. It is possible that a lawful credibility assessment might reject the applicant's narrative in a manner which would obviate the need for an assessment of future risk.

43. The decision of the respondent is quashed. That being so, there is no need to determine the issue as to the constitutionality of s.16 of Refugee Act 1996 (as amended) nor of the related procedural issue.