Neutral Citation Number: [2008] IEHC 139

THE HIGH COURT
JUDICIAL REVIEW

2006 No. 911 J.R.

BETWEEN

U. R.

APPLICANT

AND
MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM AND BERNARD G. McCABE, THE REFUGEE APPEALS TRIBUNAL

RESPONDENTS

Judgment delivered by Mr. Justice Herbert on the 8th May, 2008.

1. This is an application for leave to seek judicial review. There was a delay of thirty one days on the part of the applicant in seeking this relief, which s. 5(2)(a) of the Illegal Immigrants (Trafficking) Act 2000, stipulates must be sought within a period of fourteen days from the specified date, unless this Court considers that there is good and sufficient reason for extending the period. I considered the evidence, which was put before the court in the Affidavit of the applicant sworn on 6th July, 2006, and in the Affidavit of Noori Alkazzaz, Medical Doctor, sworn on 21st July, 2006. I have also had regard to what was advanced by Counsel for the applicant, to the statement by Counsel for the respondents that they were making no objection to time being extended and, to the conclusion of the Authorised Officer of the Refugee Applications Commissioner in his Report made pursuant to the provisions of s. 13(1) of the Refugee Act 1996, (as amended), that the applicant suffers from the effects of mental stress.

2. Having assessed these matters in the light of the principles identified by Finnegan J. in *"G.K." v The Minister for Justice, Equality and Law Reform* [2002] I.L.R.M. 81, I am satisfied that this applicant in the special circumstances which I found to be established, had shown reasonable diligence in seeking this relief and that there was good and sufficient reason for it extending the time, despite what would otherwise be an altogether excessive and unacceptable delay on the part of the applicant in seeking this relief. I therefore exercised my discretion in favour of the applicant and made an Order extending the time to enable him to prosecute this application.

3. The decision of the Member of the Refugee Appeals Tribunal (Bernard G. McCabe), which the applicant seeks leave to judicially review, is eighteen pages in length and, was given after an oral hearing before the Tribunal on 11th January, 2006, and the 2nd February, 2006, at which the applicant was represented by a Solicitor from the Refugee Legal Service.

4. The Member of the Refugee Appeals Tribunal found that the applicant appeared to possess no identification documents and provided no reasonable explanation for the absence of such documents. He found that the applicant had been living in Europe for a considerable length of time and that it was neither plausible nor credible that he could provide no document establishing his identity to the Refugee Appeals Tribunal and, that this undermined his credibility. The Member of the Refugee Appeals Tribunal had regard to the provisions of s. 11B(a) of the Refugee Act 1996, (as inserted by s. 7(f)) of the Immigration Act 2003), which directs that in assessing credibility he shall have regard to whether the applicant possesses identity documents and if not, whether he has provided a reasonable explanation for their absence.

5. It was submitted by Counsel for the applicant that the decision of the Member of the Refugee Appeals Tribunal, that the applicant had provided no reasonable explanation for the absence of documents, was not reasonable or rational and was in the teeth of common sense having regard to the information before the Refugee Appeals Tribunal. In addition, Counsel said, that the Refugee Appeals Tribunal, pursuant to the provisions of s. 16(6) of the Refugee Act 1996, (as amended), could and should have caused the Refugee Applications Commissioner to make further enquiries from the Police Authorities in the Netherlands and also from the Garda Síochána, before reaching a conclusion as to the credibility of the applicant. In support of this argument Counsel for the applicant cited para. 196 of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status which provides that:-

> "It is a general legal principle that the burden of proof lies on the person submitting a claim. Often, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently without personal documents. Thus, while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application. Even such independent research may not, however, always be successful and there may also be statements that are not susceptible of proof. In such cases, if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt."

6. Section 16(6) of the Refugee Act 1996, (as amended) provides as follows:-

> "The Tribunal may, for the purposes of its functions under this Act, request the Commissioner to make such further inquiries and to furnish the Tribunal with such further information as the Tribunal considers necessary within such period as may be specified by the Tribunal."

7. The evidence relevant to this issue was recorded by the Member of the Refugee Appeals Tribunal in his decision, and the following is a summary of that evidence.

8. The applicant claims to be a university educated Syrian national, who became suspected by the Security Service in Syria of communicating with a militant political group opposed to the present Head of State and was imprisoned and tortured. As a result of this maltreatment he suffered a mental breakdown, requiring hospital treatment and, nervous attacks which lasted for approximately three years. He accepted that he had no medical evidence of this torture or maltreatment. His family secured his release from prison through their contact with a highly placed official and had arranged for him to leave Syria, from where he travelled to Germany and from there to the Netherlands. He said that he had two false passports, one Syrian and one Iraqi. He left these for safekeeping with a person with whom he had shared a hostel. That person was subsequently arrested by the Netherlands Police on suspicion of murder. The applicant said that the Netherlands Police had sent these two false passports to the Syrian Embassy in Brussels and had also sent two reports on him to that Embassy. He felt that this had put his life in danger.

9. At this point the oral hearing before the Refugee Appeals Tribunal was adjourned at the request of the applicant's Solicitor to enable him to take further instructions.

10. Correspondence received by the Refugee Appeals Tribunal indicated that on the 23rd September, 2005, at Ennis Garda Station the applicant was questioned by two members of An Garda Síochána who were accompanied by three members of the Netherlands Police Authority.

11. The oral hearing before the Refugee Appeals Tribunal resumed on 2nd February, 2006, and the applicant stated that the Netherlands Police knew his real identity because they discovered two different passports in his name. He said that in 2000 and 2004 the Netherlands Police had received two false reports alleging that he was a member of Al Qaeda. Officers of An Garda Síochána and of the Netherlands Police had questioned him about his relationship with persons called Ahned Al-Ashqar and Basil Al-Eisa in connection with the investigation by the Netherlands Police into the murder of a well known film maker in the Netherlands. He said that the Irish and the Netherlands Police would not give him any information because it related to terrorist activities.

12. The applicant said that in November 1996, he had a genuine Syrian passport and had no difficulty leaving that State. He said he travelled to Germany but did not seek asylum there. He arrived in the Netherlands in November 1996, and sought asylum there because Syria did not have an Embassy in the Netherlands. He said that it was not until 1999 or 2000 that he received a decision refusing his application for asylum.

13. Meanwhile, in December 1997, he had returned to Syria for financial and family reasons. He had used his genuine passport to return to Syria. He accepted that he was not questioned and had no difficulties with the Authorities in Syria. However, he then said that the Syrian Authorities were trying to confiscate his passport as he had delayed his military service. To leave Syria again, he said, that he needed to get the agreement of the Syrian Security Services and that this was not provided. He went to the Turkish Embassy and got a visa. He remained in Syria for about four months. The passport he used, he gave to Ahmed Al-Ashqar for safekeeping.

14. Between September 2004 and March 2005, he went to the United Kingdom. He flew from Amsterdam to London using a false French passport which he later destroyed. The two false passports which he had left for safekeeping with Ahmed Al-Ashqar had fallen into the hands of the Netherlands Police.

15. From 2000 to 2004 he was in receipt of State benefits in the Netherlands. He had worked as a decorator in the Netherlands and when he went to the United Kingdom he obtained work through the Mosque as a painter and decorator. When his money ran out he became "fed up" with the United Kingdom and he was also afraid that he would be sent back to Syria. He was advised to come to this State because this State did not deport people to Syria.

16. This is a relatively brief summary of the evidence which occupies ten pages of the Decision of the Member of the Refugee Appeals Tribunal.

17. In my judgment, there is sufficient material here upon which it was reasonably and rationally open to the Member of the Refugee Appeals Tribunal to conclude, as he did, that this applicant had not provided a reasonable explanation for the absence of any form of identification document, particularly as he had been living in European Union countries since November 1996, with the exception of a period of four months in 1997/1998 when he claims he returned to his family in Syria. The documents which he alleges he left with a fellow resident in a hostel in the Netherlands for safekeeping are identified as two false passports which he claims were in his name. These, he said had come into the possession of the Netherlands Police who had sent them to the Syrian Embassy in Brussels. Such admitted false documents could not establish the identity of this applicant, nor if recovered on the arrest of Ahmed Al-Ashqar would it confirm that they were given to him by the applicant for safekeeping. Apart from these false passports the applicant did not identify any other document of his which he claimed would establish his identity and which he claims had come into the hands of the Netherlands Police.

18. Section 16(6) of the Refugee Act 1996, (as amended), is in my judgment an enabling provision vesting a discretionary power in the Refugee Appeals Tribunal. On the foregoing evidence, as found by the Member of the Refugee Appeals Tribunal, I am satisfied that the exercise of that power by the Refugee Appeals Tribunal in the manner suggested by Counsel for the applicant, would not produce any evidence in support of the applicant's application for refugee status in this State, as contemplated by para. 196 of the UNHCR Handbook. I am therefore unable to accept the submission that the failure of the Refugee Appeals Tribunal to require the Refugee Applications Commissioner, "to initiate some inquiry with the Netherlands Police or with An Garda Síochána before concluding that the applicant lacked credibility because he had no identity documents whatsoever and had failed to provide a reasonable explanation for the absence of such documents, was an unfair procedure".

19. In his Decision the Member of the Refugee Appeals Tribunal, found that the applicant's contention that a portion of his evidence given during the course of the Section 11 Interview, had been thrown out, was neither plausible nor credible. The Member of the Refugee Appeals Tribunal gives the following reason for this conclusion:-

> "The Applicant admitted in the course of the hearing that the information in his ASY 1 form was wrong. He was also asked about the information he provided on travel and he also said that was wrong. He was asked if the date of arrival in the country was right or wrong and he also said that was wrong. He further confirmed that the place where he arrived was incorrect.
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> The Applicant then contended that he told the interviewing officer at the Section 11 interview the correct answers for the ASY 1 form and that it was not recorded. He was asked to repeat his position in respect of this and he said that it may have been thrown out. The Applicant was given a further opportunity to expand on his position in which he went on to say that part of his Section 11 interview may have been thrown out.
>
> I found the Applicant's evidence in this regard to be neither plausible nor credible. He did not offer any plausible or credible reason for providing incorrect information for what he contends is incorrect information on the ASY 1 form or about his travel or about his place of arrival. I did not accept his contention that a portion of the Section 11 interview had been thrown out. I found this to be neither plausible nor credible."

20. It was submitted by counsel for the applicant that the only proper inference to be drawn from this finding by the Member of the Refugee Appeals Tribunal, is that it was a failure on the part of the Presenting Officer to accept, - as evidenced by the repetition of the question, – that the applicant had told the Authorised Officer of the Refugee Applications Commissioner at the Section 11 interview the correct answers to these travel questions, which had led the applicant to conclude that his answers were either not recorded at all or, that the relevant section of the Interview record must have been thrown out.

22. Counsel for the applicant submitted that the applicant had accepted that he had not provided a full and true explanation of how

he travelled to and arrived in this State but had offered an explanation for this. Counsel for the applicant submitted that this explanation is set out at p. 21 of the Interview record where the Authorised Officer of the Refugee Applications Commissioner asks the applicant:-

> "Why did you not feel that you could tell the truth in your questionnaire?"

23. and the applicant replies:-

> "Because if I told the truth they would deport me to Holland again. I was waiting for the answer from Syria if everything was ok. I have a job there, my family wants me back."

24. Counsel for the applicant submitted that in reaching the conclusion that the applicant "did not offer any plausible or credible reason for providing incorrect information on the ASY 1 form about his travel or about his place of arrival". The Member of the Refugee Appeals Tribunal wholly disregarded this reply. The applicant had, he said, corrected the record acknowledging that the answers given by him as regards his travel to and arrival in this State in the ASY 1 form and in the Questionnaire were wrong.

25. In my judgment, the Member of the Refugee Appeals Tribunal did not conclude that the applicant had not provided a reason for giving this incorrect information in the ASY 1 form and in the Questionnaire. What the Member of the Refugee Appeals Tribunal in fact found, was that the explanation given by the applicant was not plausible or credible. The weight to be given to any piece of evidence is a matter solely within the jurisdiction of the Member of the Refugee Appeals Tribunal. This Court, in hearing an application for leave to seek judicial review, has no jurisdiction to substitute its own conclusions for those of the designated decider of fact. As found by the Member of the Refugee Appeals Tribunal, the record of the Section 11 interview does not contain "correct answers", in lieu of the answers given in the ASY 1 form and in the Questionnaire now admitted to be incorrect regarding the applicant's travel to and arrival in this State. Every sheet of the Interview record is numbered sequentially and at the foot of the text carries the printed legend – "Read to and agreed by the applicant" which is then signed or initialled by the applicant. The final questions of the Interview, – on p. 23 of the record, – are "Is there anything else you want to add?" to which the applicant replied, "No." and, "Are you happy with how the interview was conducted?" to which the applicant replied "Yes." The Interview record concludes with a formal "Interview Closing Stage," – in this case on p. 24, – which is also signed by the applicant. There is no evidence, including internal evidence that any page is missing from the Interview record. In these circumstances, I am satisfied that there was sufficient evidence before him upon which it was reasonably and rationally open to the Member of the Refugee Appeals Tribunal to find that the applicant's contention that a portion of the Section 11 Interview containing allegedly the "correct answers" was thrown out, was neither plausible nor credible.

26. The Member to the Refugee Appeals Tribunal recorded in his Decision that the applicant stated that he had been detained by the Syrian Political Security Branch for 50 days. He said he was blindfolded and kept in a place where nobody spoke to him. He was beaten and accused of being a traitor and an imperialist. He was questioned about the persons with whom he was working. He was tied to a chair. Sometimes he was put in a car tyre. He claimed that as a result of this interrogation and the treatment he received he suffered a nervous breakdown and "found himself in hospital". He remained some time in hospital and was then taken before a judge who sentenced him to six months imprisonment. He continued to have nervous attacks for three years after this and would sometimes faint. The Member of the Refugee Appeals Tribunal recorded that the applicant was asked about the duration of this torture and he stated that he could not tell the amount of time because of the condition he was in: he did not think of time and was unconscious for some of the time, he thought for seven or eight hours. He was missed after three days and his family secured his release. In his conclusions the Member of the Refugee Appeals Tribunal records that the applicant had said that as a result of information provided by the owner of a bookshop where he had purchased a book, he had come to the attention of the Authorities in Syria and as consequence had been tortured and maltreated.

27. It was submitted by Counsel for the applicant, that this evidence of torture and maltreatment was not accepted by the Member of the Refugee Appeals Tribunal. Counsel for the applicant pointed to the fact that the country of origin information referred to at para. 4.2 of the report of the Refugee Applications Commissioner, which is a citation of part of a USA State Department Report on Syria, indicate that:-

> "The government uses its vast powers so effectively that there is no organised political opposition, and there have been very few anti regime manifestations. Serious abuses include the widespread of torture in detention; poor prison conditions; arbitrary arrests and detention; prolonged detention without trial; fundamentally unfair trials in the security courts; an inefficient judiciary that suffers from corruption and at times, political influence; infringement on citizens' privacy rights; denial of freedom of speech and of the press, despite a slight loosening of censorship restrictions; denial of freedom of assembly and association; some limits on freedom of religion; and limits on freedom of movement."

28. Counsel for the applicant submitted that the Member of the Refugee Appeals Tribunal was required to consider the applicant's story of the torture and maltreatment he had suffered in the context of this country of origin information and did not.

29. The Member of the Refugee Appeals Tribunal noted that the applicant was asked at the oral hearing before the Tribunal if he had any medical evidence of the torture which he claimed he had suffered and he stated that he did not. Since the Member of the Refugee Appeals Tribunal found that the applicant was not personally credible and that his story was not plausible or credible for a large number of reasons, fully set out in his decision, the fact that a part of that story describes arbitrary arrest, prolonged detention without trial and the use of torture in detention, all events which in the light of the country of origin information before the Tribunal could have occurred in Syria is irrelevant. The Member of the Refugee Appeals Tribunal gave no weight to this evidence, not because it was not reasonably likely, (that was the standard of proof which he applied), to have occurred in Syria, but because he found that the applicant was not personally credible and this was a conclusion which it was within his powers to reach from the evidence before him.

30. It was submitted by counsel for the applicant that the finding by the Member of the Refugee Appeals Tribunal that the applicant lacked credibility and that his story was not plausible or credible was reached by the application of unfair procedures and by reliance upon matters peripheral to the principle issues in the application and without any sufficient and rational analysis of the applicant's case. I am fully satisfied that the Member of the Refugee Appeals Tribunal carried out a most painstakingly careful and detailed analysis and assessment of this applicant's case and in no sense could his decision, that the applicant was not credible be said to be based "upon a gut feeling or a view based on experience or instinct that the truth is not being told" (*Da Silveiria v. the Refugee Appeals Tribunal* (Unreported, High Court, Peart J. 9th July, 2004), *Zhuchkova .v The Minister for Justice, Equality and Law Reform* [2004] I.E.H.C. 166).

31. The Member of the Refugee Appeals Tribunal found that the credibility of the applicant was undermined for the following reason,

set out in his decision:-

> "He then says that he received a decision in respect of asylum from the Dutch authorities in 1999 or 2000 refusing his application and that it was in September 2004, that he went to England. He was then asked could he give information about what he did between the years 2000 and 2004. He said he was getting benefits from the Dutch authorities and that in 2004 to March 2005, he was in the United Kingdom. The applicant, in spite of being asked on a number of occasions, did not give any evidence as to what he had done between the year 2000 and the year 2004. Having had an opportunity of observing the applicant's demeanour and hearing his reply to these questions I formed the view that he simply did not wish to answer these questions."

32. It will be recalled that earlier in his Decision the Member of the Refugee Appeals Tribunal had recorded that when asked how he had supported himself in England, the applicant had responded that in Holland he had worked in decoration and in England he went to the Mosque and got a job painting and decorating.

33. Counsel for the applicant submitted, that the Member of the Refugee Appeals Tribunal had misdirected himself in fact and had reached a decision that the applicant was not credible in a material matter based on that mistake of fact and that this was an unfair procedure. I find that there was no such error of fact. It is perfectly plain and, that in my judgment not open to doubt, much less open to a reasonable doubt, that this conclusion reached by the Member of the Refugee Appeals Tribunal was based solely on the view, – a view which in my judgment it was reasonably and rationally open to him to reach on the evidence, – that the applicant did not wish to answer questions about what he had done in the Netherlands between 2000 and 2004.

34. I accept that this refusal on the part of the applicant does not directly relate to any of the key events in his story. However, when the only evidence that an applicant is who he claims to be, is a national of a particular country and suffered the persecution described for the "convention" reasons claimed, is the oral evidence of the applicant himself, in my judgment anything which reflects upon the plausibility of his story or his personal credibility, provided it is not trivial, unreasonable or unfair, could not reasonably or justly be said to be an unfair basis upon which to arrive at a conclusion, merely because it does not relate or directly relate to some principal element of his story. I am satisfied that it was rationally and reasonably open to the Member of the Refugee Appeals Tribunal on the evidence indicted, to find as he did and, to conclude therefrom that this refusal undermined the credibility of the applicant. In my judgment the issue involved could not reasonably be described as "trivial" and the questions were neither unreasonable nor unfair.

35. I have already dealt sufficiently with the submission that in the absence of an inquiry made with the Netherlands Police or with An Garda Síochána pursuant to the provisions of s. 16(6) of the Refugee Act 1996, (as amended) the following finding of the Member of the Refugee Appeals Tribunal was unfair and unreasonable and contrary to the provisions of para. 196 of the UNHCR Handbook, that is:-

> "With regard to the applicant's identity he appears to possess no identification documents and has not provided any reasonable explanation for the absence of such identity documents. He appears to have been living and residing in Europe for a considerable length of time and I find it neither plausible nor credible that no document of identity is available to the Tribunal. In this regard I find that this undermines the applicant's credibility."

36. I am satisfied that this issue could not justifiably be described as merely peripheral or incidental and could not be trivial, having regard to the express provisions of s. 11B(a) of the Refugee Act 1996, (as amended). I am further satisfied that the questions put and the conclusions reached were neither unreasonable nor unfair.

37. I have already found that the Member of the Refugee Appeals Tribunal did not conclude that the applicant had not provided reasons for giving incorrect information in the ASY 1 form and in the Questionnaire. The Member of the Refugee Appeals Tribunal did not, as submitted by Counsel for the applicant, "ignore the explanation given," he considered it but found that it was not plausible or credible. As I have already indicated the evaluation of the evidence and the weight to be given to any particular piece of evidence is solely a matter for the Member of the Refugee Appeals Tribunal.

38. Section 11B(c) of the Refugee Act 1996, (as amended), requires that the Member of the Refugee Appeals Tribunal, in assessing the credibility of an applicant, to have regard to whether an applicant has provided a full and true explanation of how he or she travelled to and arrived in the State. Section 11B(b) of the same Act, requires that the Member of the Refugee Appeals Tribunal have regard to whether the applicant has provided a reasonable explanation to substantiate his or her claim that this State is the first safe country in which he or she arrived since departing from his or her country of origin or habitual residence. In this respect the Member of the Refugee Appeals Tribunal made the following finding, which he considered went to undermining the credibility of the applicant:-

> "The Applicant appears to have left Syria in 1996 by his own evidence when he was 28. Asked when he left school and he said he was 16 or 17 and how long he was in University, his reply was he was six years. Asked when did he finish University and he said when he was 25. He was then asked what had he done between the years of 25 and 28 which he had not mentioned. In spite of being given a number of opportunities to address this issue of missing years, the Applicant made no meaningful response."

39. It was accepted that it was open to the Member of the Refugee Appeals Tribunal to reach this conclusion. However, Counsel for the applicant submitted that this was only one of eight findings which the Member of the Refugee Appeals Tribunal claimed undermined the credibility of the applicant and, that even having full regard to it, in itself it was not a sufficient reason for concluding that the applicant was not personally credible. In the circumstances it is not necessary for the Court to address this point.

40. Still in the context of s. 11B(c) of the Refugee act 1996, (as amended), Counsel for the applicant submitted that the Member of the Refugee Appeals Tribunal did not given any reasons for finding that the applicant had not provided a full and true explanation of how he travelled to and arrived in the State and that the decision of the Member of the Refugee Appeals Tribunal was therefore invalid and should be set aside.

41. The Member of the Refugee Appeals Tribunal in his decision made the following findings:-

> " … in spite of indicating the information on the ASY 1 form is wrong, that the travel arrangements were wrong and that the place of arrival was wrong, the Applicant did not fully address these issues in a plausible or credible way beyond saying that he travelled from Syria to Turkey and from Turkey to Frankfurt and from Frankfurt to Dublin. For that reason I found his evidence to be neither plausible nor credible."

42. In my judgment, having regard to the evidence, this was a sufficient reason which it was reasonably and rationally open to the

Member of the Refugee Appeals Tribunal to form and adopt. The evidence of the applicant set out by the Member of the Refugee Appeals Tribunal in his decision, – which was not challenged, – and his notice of appeal to the Refugee Appeals Tribunal contains several conflicting accounts of his travel to and his arrival in this State, including various conflicting dates. These contradictions are plain and obvious to anyone reading the Decision of the Member of the Refugee Appeals Tribunal. I am unable to accept the submission by Counsel for the applicant that despite the express and mandatory provisions of subsections 11B(c) and 11B(b) of the Refugee Act 1996, (as amended), this issue is "peripheral" and not a just and proper basis for a finding that the applicant was not credible.

43. In his Decision the Member of the Refugee Appeals Tribunal recalled that it had been put to the applicant that he stated that he had returned to Syria in 1997 and on his own evidence was not questioned in any way and had no difficulty with the Authorities there. The Member of the Refugee Appeals Tribunal found that the applicant did not address this issue in a plausible way and sought to ignore it. Counsel for the applicant submitted that this was a mistake of fact on the part of the Member of the Refugee Appeals Tribunal. Counsel for the applicant submitted that the applicant had not sought to ignore the issue of why he had left Syria for the second time in 1998 and had set out the reasons for leaving in his notice of appeal to the Refugee Appeals Tribunal to which the Member of the Refugee Appeals Tribunal must have regard by reason of the provisions of s. 16(16)(a) of the Refugee Act 1996, (as amended).

44. The relevant sections of ground 2 of this notice of appeal are as follows:-

> "The Appellant suffered a breakdown under torture and the State Authorities finally relented somewhat. The Appellant states that he was able to get word to his family, and through their intervention he was brought to a prison where the regime was not as harsh. He states that later he was brought before a Judge and released. The Appellant suffered severe depression and suicidal ideation. He worked for a period with his brother and subsequently left for Holland in 1996. The Appellant states that his mother persuaded him to return to Syria in 1996 and because he missed his family and hoped that the situation had improved he agreed. Having returned to Syria the Appellant soon realised that he had made a grave mistake and found that the same repressive regime had continued and given his specific circumstances he was unable to remain there. He therefore returned to Holland where he claimed asylum. Having been refused asylum in Holland in 1996 he went to the United Kingdom where he remained from September 2004 to February 2005. The Appellant feared that because he was illegally in the United Kingdom that the immigration authorities would deport him to Syria. He was also making inquiries to see whether it was safe to return. He claims however, that the Dutch authorities had made inquiries with the Syrian authorities relating to false passports he had travelled on when arriving in Holland. He believes that this places him in danger were he to return to Syria.
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> The Appellant states that failure to support the Baa'th Party results in a pervasive form of suppression and exclusion in Syria. The Appellant in November 1996 went to Holland and after he returned to Syria the security authorities treated him with suspicion as they believed Holland to be an imperialist country. He states that they tried to force him to do military service even though he was exempt. He believed that this was ruse in order to have him killed by the army.
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> The Appellant fled Syria on the 11th February, 2005, and arrived in Ireland on the 13th March, he paid a trafficker €2,500 who made arrangements for him to travel from Syria en route to Ireland via Turkey. He made application on the 15th March, 2005, at the Office of the Refugee Applications Commissioner pursuant to S. 8 of the Refugee Act 1996, that he be declared a refugee. On 29th March, 2005, the Appellant returned the completed Questionnaire."

45. In his decision the Member of the Refugee Appeals Tribunal records that the applicant gave oral evidence to the Tribunal that he returned to Syria in December 1997, for money reasons and for psychological reasons. Conditions he said were poor in the Netherlands and he was in constant contact with his family while there. He stayed in Syria about four months, but left because a friend told him that he was being watched. He returned to the Netherlands. The applicant was questioned by the Presenting Officer and the Member of the Refugee Appeals Tribunal records the relevant portion of his answers as follows:-

> "The Applicant then indicated that in 1997, he returned to Syria having left in 1996 and he did not return to Syria after he left in 1998. He says he was imprisoned in Syria and his family affected his release. Asked in what year did he buy this book and he said in 1995, asked if he held a Syrian passport on his return in 1997, however, in 1997 and 1998 he was not questioned and had no difficulties with the authorities. The Applicant then said the authorities were trying to confiscate his passport as he had delayed his military service and he went to the Turkish Embassy to get a visa. In order to leave the country his evidence was that in order to leave the country it is necessary to get the agreement of the Syrian security services. This letter of agreement was apparently not forthcoming. He says that they sought to force him to take part in military service. Asked what passport he had in 1996 and he said it was a genuine passport and he had no problem leaving. On return he used the same passport and in 1997 when he went to Holland."

46. In the course of his Interview conducted pursuant to the provisions of s, 11 of the Refugee Act 1996, (as amended), the applicant was asked why he left Syria for the last time in what he said was May 1998. He said that the security police had started to ask about him. That they usually did this before they arrested you. The Netherlands were considered to be an Imperialist country and he had stayed there for a long time. He was exempt from military service, but they wanted to take this back. Three people from his area of Syria had been killed by the authorities in the army. They tried to deny this but one of those killed was the son of a detective and he had the body exhumed and found bullet wounds. He said that his mother had persuaded him to return, he missed the family a lot and thought he would return to Syria and get married. However, having experienced freedom in Holland he had forgotten that life was different in Syria and he was talking as if he was still in Europe. His family feared that he would be imprisoned again and induced him to leave as soon as possible. In the course of the same Section 11 interview the applicant stated that before he joined the army he had a nervous breakdown and was exempt from military service. He then had treatment and started military service in July 1994. In early 1995 he officially ended his military service. This nervous problem returned because of the bad treatment he had received in the army. At question 24 of the Questionnaire he was asked the following:-

> "If you have ever served in a military organisation or grouping (including military service) in your country of origin please give full details including dates, rank etc."

47. His reply to this question was:-

> "I served the military obligatory service in 7/1994, but I was excused from the obligatory mandatory service at the end of 11/94."

48. I am satisfied that the Member of the Refugee Appeals Tribunal in his conclusion was clearly addressing the issue of the manifest

inconsistency between the evidence of the applicant to the Tribunal, that on his return to Syria in 1997 he was not questioned in any way and had no difficulties with the authorities while there and had no difficulties in leaving Syria and these accounts of the authorities attempting to confiscate his passport and trying to force him to do military service even though he was exempt, which he believed was a ruse to have him killed by the army. I am disregarding entirely the further conflicts with the answers given by him during the course of his Section 11 Interview because the Member of the Refugee Appeals Tribunal came to his conclusion by reference to the indicated matters only.

49. I cannot say whether or not the applicant sought to ignore the inconsistency. That was the finding of the Member of the Refugee Appeals Tribunal. Counsel for the applicant submitted that the Member of the Refugee Appeals Tribunal had misdirected himself in fact in concluding that the applicant did not have any difficulties with the authorities after his return to Syria from the Netherlands in 1997 when the applicant had clearly set out in the notice of appeal to the Refugee Appeals Tribunal and in his oral evidence to that Tribunal that he did. The Member of the Refugee Appeals Tribunal, said Counsel, ignored this evidence of difficulties with the authorities in Syria. I am satisfied that Counsel is mistaken in this submission. In his Decision the Member of the Refugee Appeals Tribunal does not conclude that the applicant did not have any difficulty with the Syrian authorities on his return to Syria in 1997. On the contrary, the Member of the Refugee Appeals Tribunal clearly and specifically points out that this was the applicant's own evidence but finds that the applicant did not address in a plausible way the issue of the contradictory evidence given by him of having signaficant difficulties with the authorities on his return to Syria. I am satisfied that this was a conclusion which it was reasonably and rationally open to the Member of the Refugee Appeals Tribunal to reach on the evidence before him.

50. It was submitted by Counsel for the applicant that the decision of the Member of the Refugee Appeals Tribunal was invalid, because of a failure on his part to comply with the provisions of paras. 206 to 212 inclusive of the UNHCR Handbook dealing with applications by mentally or emotionally disturbed persons whose condition impedes a normal examination of the application and requires different techniques of examination. Counsel for the applicant pointed to the fact that the Authorised Officer of the Refugee Applications Commissioner found as follows:-

> "It is clear that the applicant suffers from the effects of mental stress and by his own account is prone to nervous breakdown and may therefore have a subjective fear of persecution in Syria. The applicant has not shown however, that he is at risk of persecution in Syria and therefore is not in need of international protection."

51. The recorded evidence of the applicant to the Authorised Officer of the Refugee Applications Commissioner and to the Member of the Refugee Appeals Tribunal was that he had suffered a nervous breakdown, followed by three years of nervous attacks with occasional episodes of fainting before he left Syria for the first time in 1996. In his Section 11 Interview, he informed the Authorised Officer of the Refugee Applications Commissioner that he received treatment and commenced military service in July 1994, which he finished in November 1994. However, he claimed that his nervous problems recurred because of bad treatment he had received during this service. He was therefore exempted from further military service by the Syrian Authorities. He told the Authorised Officer of the Refugee Applications Commissioner that his mental condition improved while he was in the Netherlands and he felt able to return to Syria. On his evidence before the Member of the Refugee Appeals Tribunal he returned to Syria in December 1997.

52. The question of his mental health was obviously expressly raised with the applicant during the oral hearing before the Refugee Appeals Tribunal, (most probably by his own Solicitor judging by the format of the Decision of the Member of the Refugee Appeals Tribunal), as it was recorded by the Member of the Refugee Appeals Tribunal in his Decision that the applicant said that he had stopped taking medicine for depression. There was no evidence before the Member of the Refugee Appeals Tribunal, either oral, documentary or behavioural that the applicant was having mental or emotional disturbances of any nature or that he had any such since sometime prior to 1997. I am quite satisfied that there was nothing in the evidence before the Member of the Refugee Appeals Tribunal which would have rendered it incumbent upon him to obtain expert medical advice in respect of the applicant as recommended by the provisions of para 208 of the UNHCR Handbook. In my judgment the provisions of paras. 206 to 212 inclusive of the UNHCR Handbook, were not relevant to this application and the Member of the Refugee Appeals Tribunal did not err by, nor is his decision invalid for, failing to apply these paragraphs.

53. Counsel for the applicant submitted that even if the Member of the Refugee Appeals Tribunal concluded that the applicant was not a credible witness, the only conclusion still open to him was to find that the applicant was a "refugee" within the description of s. 2 of the Refugee Act 1996, (as amended), having regard to the country of origin information before the Tribunal (to which I have already referred) and to the applicant's evidence of his political opinions and activities in Syria. As the basis for this submission, Counsel for the applicant cited the decision of the Canadian Federal Court of Appeal in *Attakora v. Canada (Minister of Employment and Immigration)* [1989] A.C.W.S.J. 53140.

54. In my judgment that case is clearly distinguishable from the instant case on its facts which were totally different. Hugessen J.A. (Heald and Mahony J.J. concurring), held that despite the doubts expressed by the Canadian Immigration Appeal Board about the applicant's credibility, (which he held in any event to be based on an error in law), it nonetheless did not doubt the applicant's identity nor the authenticity of the applicant's signature on a Vaccination and Inoculation Certificate. Neither did the Board doubt that the applicant had been involved in political activities in Ghana which would likely result in his arrest if he returned soon to that country. By complete contrast, in the instant case, the Member of the Refugee Appeals Tribunal found that the applicant was not credible and he did not accept that the applicant had established that he was who he claimed to be and he did not accept any part of the applicant's story.

55. Counsel for the applicant submitted that the Member of the Refugee Appeals Tribunal failed to apply the "forward looking test" in determining whether the applicant had a well founded fear of persecution in Syria. It was accepted by counsel on behalf of the respondents that the Member of the Refugee Appeals Tribunal did not apply this test. In my judgement, the answer to this submission is to be found in the judgment of Feeney J. (Unreported, High Court, 30th June, 2006), in *Botan v. The Refugee Appeals Tribunal and The Minister for Justice, Equality and Law Reform*. At pp. 11 and 12 of the judgment in that case, Feeney J. held as follows:-

> "The Tribunal member expressly referred to and relied upon the judgment of Peart J. in the case of *Ojelabi v. The Refugee Appeals Tribunal and Others* delivered on the 28th February, 2005, referring to the lack of credibility fundamentally infecting the subjective element of a well founded fear of persecution. I have already determined that there was a rational basis for the member in making such a finding of lack of credibility. The approach adopted by Peart J. in *Ojelabi* (at p. 7) is equally applicable to the facts of this case namely:-
>
> > 'It is quite clear that the applicant was simply not found to be believable to any extent at all, and that even if a large measure of allowance was allowed to him in relation to alleged facts, even then he would not come within the meaning of persecution. But credibility was totally absent.'

> I am satisfied that this court can find no reason to fault the manner in which credibility was assessed.
>
> It follows from the above findings that none of the grounds by which it is sought to impugn the decision can succeed and that there are rational and cogent reasons set out for such decision. This is a case where the lack of credibility fundamentally infects the subjective element of an alleged well founded fear of persecution. It is against that background that the court rejects the grounds raised concerning a lack of consideration of the country of origin information and the alleged failure to apply a forward looking test in determining whether the Applicant had a well founded fear of persecution in Iraq."

56. I am satisfied that these observations of Feeney J. may be applied with equal, if not indeed greater force to the facts of the instant case.

57. Having regard to the foregoing, the Court is not satisfied that there are substantial grounds – that is, reasonable arguable and weighty and not merely trivial or tenuous grounds, (*Re: The Illegal Immigrants (Trafficking) Bill 1999*, [2000] 2 I.R. 360 at 394/5 per Keane C.J.) – as required by s. 5(2)(b) of the Illegal Immigrants (Trafficking) Act 2000, for contending that the decision of the Refugee Appeals Tribunal is invalid or ought to be quashed. The Court will therefore refuse to grant leave to seek judicial review and will dismiss the application.