THE HIGH COURT

JUDICIAL REVIEW

[2009 103 J.R.]

IN THE MATTER OF THE REFUGEE ACT 1996 (AS AMENDED), AND IN THE MATTER OF THE IMMIGRATION ACT 1999, AND IN THE MATTER OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000, AND IN THE MATTER OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS ACT 2003, SECTION 3(1)

BETWEEN

A. H. I. (SUDAN)

APPLICANT

AND

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

RESPONDENTS

AND

HUMAN RIGHTS COMMISSION

NOTICE PARTY

JUDGMENT of Mr. Justice McDermott delivered on the 12th day of March, 2013

1. This is an application for leave to apply for judicial review by way of *certiorari*, *mandamus* and declaratory relief in respect of an order of the Refugee Appeals Tribunal (the first named respondent) which was notified to the applicant on or about 13th December, 2008. In effect, the relief sought in this case relates to an order of *certiorari* quashing the first named respondents' decision as the other reliefs add nothing to the applicant's case.

Extension of Time – Ground 18

2. The notice of motion initiating these proceedings was filed on 30th January, 2009. The applicant was informed by letter dated 10th December, 2008, of the decision made by the first named respondent. The applicant's then solicitors sought in correspondence with the Tribunal to have the decision withdrawn. This correspondence did not result in any change to the decision made. By letter dated 15th January, 2009, the applicant was informed by the Refugee Legal Service that the Tribunal had refused to withdraw its decision and advised to seek the services of a private lawyer. He then contacted his present solicitors who sought his file. The file was received by his solicitors on 26th January, 2009, and a brief was prepared for counsel. An affidavit was sworn by the applicant on 29th January, 2009, and the notice of motion was issued on 30th January.

3. In the circumstances of this case, as deposed to on affidavit, the court is satisfied to extend the time for the initiation of these proceedings in the interests of justice as it is satisfied that there is good and sufficient reason to do so in accordance with s. 5 of the Illegal Immigrants (Trafficking) Act 2000. The court is satisfied having regard to the very short time available and the importance of affording the applicant a fair and reasonable opportunity of access to the courts to seek vindication of his constitutional right to fair procedures that the time should be extended for the bringing of this application.

Background

4. The applicant claims to be from the Darfur region of Sudan. He claims that he was born on 1st March, 1981, at Shagra village where he lived all his life. He was of the Marareet tribe and claims that the Sudanese government and the Janjaweed militias routinely kill members of his tribe on account of their ethnicity. He states that a campaign of genocide had been conducted over a number of years in Darfur. In 2003 he fled to Greece. From there he was deported to Libya where he was imprisoned before being taken to the border and told that if he entered Libya again he would be shot. He returned to his home in Shagra. On 29th October, 2004, he claims that the Janjaweed militia attacked Shagra. He believed that his entire family was lost in that attack and he was captured and detained for over three weeks during which time he was tortured. He fled again and made it as far as France. He applied for asylum there but on learning that he might be sent to Greece, he fled. He then arrived in Ireland on 25th February, 2005, and applied for asylum.

Questionnaire

5. In the course of that application he completed a questionnaire. He stated that he had benefited from six years of primary school education between 1988 and 1994, and then worked as a farmer from 1994 until 2003, on a private farm in the Shagra Tawella area. He stated that his father was deceased and he had lived in Shagra with his mother, younger brother and sister. He had no documents to submit as part of his application as his house had been burnt in a Janjaweed attack. At question 21, when asked why he left his country of origin he replied that it was because of racial persecution. He said:-

> "Al Janjaweed militias with the government forces burned our village and took my family and they arrested me. I was badly tortured until the Tawella City was occupied by the Justice and Equality Movement army, so I escaped from the prison guards and got out from prison and I went to Sudan Port and from there I travelled to Ireland."

He claimed that he was detained from 29th October, 2004, until 22nd November in Tawella. He said that his family were also detained on the same day but he knew nothing of their whereabouts. He said that he left Sudan on 3rd February, 2005, and paid a smuggler in Sudan US$2,500 to assist him out of the country. He travelled to Ireland via France where he landed for 40 minutes in transit on 23rd February. He denied applying for refugee status anywhere else.

Section 11 Interview
6. A s. 11 interview was also carried out under the Refugee Act 1996. In the course of that interview the applicant volunteered that he had been in Greece in 2003. He said that when he reached Greece the police arrested him with six other people who were Arabs. They placed him in a camp for three months. The six people said that they were Libyan and the Greek authorities returned all of them to Libya, notwithstanding the fact that he stated he was from the Sudan. In Libya he was imprisoned and after two further days he was taken to the border with Sudan with a group of about 40. He was told to return to Sudan and that he would be shot if he returned to Libya. He returned to his village. He also said that in 2004 he applied for asylum in France but was informed that he would be returned to Greece as he had applied for asylum there first. He then left and came to Ireland. Though he had applied for asylum in Greece and France, he did not obtain any decision.

7. He claimed that he was imprisoned in Al Tawella and tortured. He claimed as follows:-

> "They tied my hands and feet and hanged me on a stick and began to torture me. After that they began to beat me and this type of torturing, Al Taira Kamet, they call it the plane begin to fly as I was tied like a plane with my arms spread out. I met many people in the prison and they were all tortured and we did not do anything, they also told me they would take us to Al Fashar Prison, it is called Shalla Prison. Before they took me I managed to run away."

8. On the 9th December, 2005, the applicant made an attempt on his life by jumping into the River Liffey and was taken to the accident and emergency unit of the Mater Hospital where he was detained for a number of days. He was clearly a very distressed and traumatised person.

9. By letter dated 5th September, 2007, the applicant was informed that the Refugee Applications Commissioner had recommended that he not be declared a refugee and a copy of the s. 13 report was enclosed.

10. The applicant appealed this decision to the Refugee Appeals Tribunal by notice of appeal on 25th September, 2007.

The SPIRASI Report
11. This appeal was supported by country of origin documentation and a report from the Centre for the Care of Survivors of Torture (SPIRASI) of Dr. Jaseem Siddiqui, dated 17th November, 2007, which had been prepared following a two hour consultation with the applicant on 22nd October. The report sets out a history furnished by the applicant stating how his village was attacked on 29th October, 2004, by the Janjaweed militia and was burnt down. He was arrested and saw his brother, sister and mother being taken away. He claimed to have been imprisoned. He became upset while describing his prison experiences and as a consequence "he felt that he could not describe them in detail". In the course of a physical examination the following abnormalities were noted:-

> "(i) He had a mark from a cut on his left wrist, which was of traumatic origin.
>
> (ii) He had a mark from a cut near the small toe of his left foot, also consistent with trauma.
>
> The rest of the physical examination was unremarkable."

His mental state was also assessed and the report states:-

> "Mr. I. presented as a young man who was extremely distressed and oppressed. He found it difficult to talk about his experiences. He broke down several times during the interview. His mood was subjectively and objectively very depressed and he said "mafi fada hayati" which in Arabic means "what is the point of living". His speech was slow and retarded, and his concentration very poor with memory lapses. He was not psychotic. He admitted to having thoughts of self-harm but did not appear to be actively suicidal at the time of the consultation."

It was also noted that he had attempted to harm himself in 2005. The following is the relevant part of the conclusion:-

> "On physical examination Mr. I. revealed two marks which appeared to be of traumatic origin. Mental state assessment showed him to be significantly distressed by his experiences and to be subjectively and objectively depressed."

12. This report is of very little assistance to a decision maker in reaching any conclusion as to the cause of the injuries identified on the applicant's body. The two matters noted are not in any way correlated by the doctor to the description of ill-treatment alleged by the applicant. The likely age of the scars is not discussed. Various levels of assessment set out in the Istanbul Protocol are not addressed.

13. The range of terms generally used in the Istanbul Protocol – Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (United Nations 2004) issued by the Office of the United Nations High Commissioner for Human Rights are:-

> "(a) Not consistent: the lesion could not have been caused by the trauma described;
>
> (b) Consistent with: the lesion could have been caused by the trauma described, but is non-specific and there are many other possible causes;
>
> (c) Highly consistent: the lesion could have been caused by the trauma described, and there are few other possible causes;
>
> (d) Typical of: this is an appearance that is usually found with this type of trauma but there are other possible causes;
>
> (e) Diagnostic of: the appearance could not have been caused in any way other than that described."

Since the medical opinion provided does not engage with the Istanbul Protocol, the decision maker was not assisted in determining the consistency or otherwise of the traumas described with their alleged cause.

The Tribunal Decision
14. Following an oral hearing on 12th March, 2008, the Tribunal issued its decision on 5th December, 2008. The Tribunal determined that the applicant should be refused refugee status and upheld the decision of the Refugee Applications Commissioner. The conclusion is set out at para. 7:-

"While the applicant has displayed in the course of his interview a knowledge of Sudan, his accounts (*sic)* relating to his capture, incarceration and treatment in detention is simply not credible. The applicant's account of being in France is not supported by any documentation. The applicant, notwithstanding his claim to have been a frequent visitor to Tawella where he claims he was imprisoned, seemed totally unaware of any attacks that occurred in Tawella save for an attack which occurred on 22nd November, 2004. Country of origin information indicates that on 27th February, 2004, Tawella town was attacked and some 5,500 people fled the town (Darfur Crisis Sudan, UN Darfur Task Force Situation Reports of 4th May, 2004). If, as the applicant claims, he visited the town on such a regular basis and indeed his uncle lived there and assisted him to leave from Sudan, it seems unconceivable *(sic)* but that the applicant would have been aware of the situation relating to this attack. The applicant has no travel documentation and the Tribunal does not know other than the applicant's account when and how the applicant actually arrived in the jurisdiction.

The applicant has not satisfied me at any level that he has a well founded fear of persecution on any Convention grounds."

Grounds of Application

15. Nineteen grounds were set out in the statement of grounds on which relief was sought. The first ground is descriptive of the applicant's case. The second ground claims a mistake of law on the interpretation and application of s. 2 of the Refugee Act 1996. The claim in relation to delay at para. 3 was not pursued and the balance of the grounds with the exception of ground 18 which related to the extension of time, consist of a generalised attack on the adequacy of the Tribunal's determination as follows:-

"(4) The Tribunal failed to make any assessment of the applicant's core claims of a fear of persecution on account of his race, *i.e*. membership of the Marareet tribe, that he was a supporter of the Justice and Equality Movement (JEM) and that he was a farmer from a black African tribe subjected to a genocidal policy pursued by the Sudanese authorities and the Janjaweed Militia;

(7) A claim that the Tribunal relied upon conjecture in arriving at adverse credibility findings in relation to the applicant's capture by the Janjaweed and his subsequent escape;

(8) A claim that the Tribunal attached excessive weight to matters of a peripheral nature and, in particular, to the applicant's travel to Ireland;

(9) A claim that the Tribunal erred in respect of the applicant's perceived lack of any association with (JEM) related to ground 4 above;

(10) The alleged failure by the Tribunal to consider and make findings upon significant elements of the applicant's evidence of past persecution or submissions contained in the notice of appeal;

(14) An alleged error in taking into account matters irrelevant to the determination of the appeal or a failure to take into account relevant considerations;

(16) An alleged error in failing to consider and assess whether the applicant had a well founded fear or persecution for a Convention reason and whether there is a real chance or possibility of persecution if the applicant was refouled to Sudan (related to ground 4 above);

(17) A claim that the decision was unreasonable, irrational and flew in the face of commonsense in the light of all the circumstances of the case."

16. In addition, it was claimed in ground 11 that the Tribunal erred in law in failing to afford a rational analysis of the medical evidence, including reports from SPIRASI and the Mater Hospital. It was also claimed at ground 6 that the Tribunal failed to afford any reason as to why it chose to have no regard to previous decisions of the Tribunal relating to persons in a like position to the applicant which were submitted to the Tribunal for its consideration. The grounds set out at 5, 12, 13, 15 and 19 were not pursued. Ground 18 refers to the extension of time as discussed above.

Grounds 7, 8, 9, 10, 14 and 17

17. It was not entirely clear from the statement of grounds or from the resume of grounds set out in the submissions of the applicant what precisely the applicant's complaint was in respect of these matters. However, in oral submission counsel elaborated to some degree on the nature and extent of the complaints. These were broken down into a number of headings.

Credibility

18. The Tribunal determined that the applicant was lacking in credibility in a number of respects. These were:-

(1) The applicant's responses to questions relating to attacks on the area adjacent to the village in which he claimed to live;

(2) The applicant's account of his previous experience in leaving Sudan and travelling to Greece and France and his engagement with immigration authorities there;

(3) His detention and escape from detention in Sudan;

(4) The absence of travel documentation evidencing how he travelled to Ireland.

The Applicant's Knowledge as to Local Events

19. The Tribunal accepted that the situation in Sudan was "indeed dire". It was accepted by the Tribunal that the situation around Darfur was a cause of great concern to the international community. It was also accepted that government forces had been complicit with the Janjaweed Militia in carrying out a war of attrition on native Africans. It was accepted that "terrible atrocities had been carried out and as a result the situation has been monitored very closely by the international community and accordingly, there is up to date and accurate information available regarding the ongoing situation. It is against this background that the applicant's claim falls

to be assessed". The Tribunal examined the country of origin information in respect of the history of attacks by government forces and the Janjaweed in and around the Darfur area. The Tribunal noted that:-

> "The applicant was pressed in the course of his hearing as to details, times and dates, in particular relating to attacks on surrounding areas where the applicant claimed to live. The applicant's responses were generalised and vague to say the least. The best the applicant could do was to tell the Tribunal that the Janjaweed attacked and burned the villages in the area and that they are supported by the authorities. The applicant denied that any agencies worked in the village to assist the people, notwithstanding the fact that country of origin information indicates that agencies such as DED and SRC have worked in the area."

As already noted, the Tribunal thought it incredible that the applicant would not have been aware of a major attack on the town of Tawella, a town which he claimed to have frequently visited and where he was ultimately imprisoned which took place on 27th February, 2004, as a result of which 5,500 people were forced to flee. He was aware of only one attack that had occurred on 22nd November, 2004.

20. Complaint is made in that regard that the Tribunal was in error in stating that Tawella was a town in which the applicant's uncle lived, when in fact his uncle lived in the nearby town of Kajara (a fact that is referred to at para. 3 of the Tribunal decision in the summary of the applicant's claim).

21. Complaint was also made that the criticism of the applicant's failure to provide dates and numbers in respect of the attacks on nearby villages was unfair because he had said that he did not remember specific attacks on nearby villages as they were not his village, but he had heard about the burning of villages and the killing of people as stated in his s. 11 interview. It was said that insufficient regard was had to the fact that he was able to draw a rough map of the area in which his village, Shagra, was located thereby demonstrating a familiarity with the geography of the area. It was also claimed that the Tribunal paid insufficient regard to the applicant's explanation about the attack on Tawella as set out in his notice of appeal namely, that he had stopped travelling to Tawella in 2004 when the security situation deteriorated. He was aware that many attacks were taking place in neighbouring towns and villages and, therefore, stayed on his farm during that period. In addition, it was complained that an adverse finding based on fact that the applicant had denied that any agencies worked in his or other villages to assist his people notwithstanding the fact that country of origin information indicated that agencies such as DED and SRC operated there, was unfair. He stated in his notice of appeal that these organisations were concerned with work to combat desertification and drought, a form of relief which his farm did not require because it was irrigated from a nearby river.

22. Country of origin information from the United Nations Resident Coordinator (UNRC) dated 4th March, 2004, upon which the Tribunal relied in respect of the attack on Tawella, stated that it occurred on 27th February, 2004. UN officials visited the scene and found 100 people left in the town and approximately 70 to 80 dead bodies. 5,500 refugees approximately fled the attack which was carried out by well armed soldiers and militia, included irregular cavalry.

23. It should be noted that the applicant claimed to be very familiar with Tawella. He described finishing his primary school and stated that he lived with his uncle near the City until 1998. He visited the town about seven or eight times every year during 2003 and 2004. He said that he had not heard about any attacks on Tawella and knew only of the attack on his own village on 29th October, 2004. This would have been seven months after the attack on Tawella. Following that attack on his village, he said he was detained in a prison compound in Tawella for a period of months. In those circumstances, the court is satisfied that it was entirely reasonable for the Tribunal to conclude that it was not credible that the applicant would not have been aware of the situation relating to this attack.

Applicant's Account of Experience in Greece and France

24. It is claimed that the Tribunal attached excessive weight to matters of a peripheral nature and in particular the applicant's account of his journey to Ireland and his experience in Greece and France.

25. The Tribunal considered this aspect of this case in the following way:-

> "The applicant, on his own account, told the Tribunal that he claimed asylum in France and was taken by the French police to a police station. He was asked if he wanted to apply for asylum and was told to fill out a form. He stayed in France for some fifteen days and then left France travelling on to Ireland. He was fearful that the French Authorities would return him to Greece. However there is no evidence from the usual sources namely EURODAC that the applicant was ever at any time in Greece. The applicant had no papers relating to his application for asylum in France, nor has he any documentation from Greece or any notification to the effect that he was deported from Greece to Libya or documentation from the French Authorities that they would return the applicant to Greece. When this was put to the applicant, the applicant claimed that he instructed his solicitor that while he was fingerprinted in Greece, he did not make a claim for asylum there. It was put to the applicant that in his s. 11 interview and in the account given by the applicant to the consulting doctor in the SPIRASI report the applicant stated that he indeed claimed asylum in Greece. The applicant told the Tribunal that it was a misunderstanding. If defies belief that a misunderstanding in relation to such a pertinent issue could have occurred on two separate occasions in two separate situations. The applicant's account in this regard is simply not capable of being believed".

There is no challenge to the accuracy of the facts in relation to this issue as stated in the Tribunal decision.

26. The Tribunal in its conclusion stated:

"The applicant's account of being in France is not supported by any documentation... The applicant has no travel documentation and the Tribunal does not know other than from the applicant's account when and how the applicant actually arrived in the jurisdiction."

In accessing credibility the Tribunal is required by s. 11B of the Refugee Act 1996 as amended to have regard to whether the applicant possesses identity papers and, if not, whether he has provided a reasonable explanation for their absence. It must also have regard to whether the applicant has provided a reasonable explanation to substantiate his claim that the State is the first safe country in which he arrives since departing from his country of origin. It must consider whether the applicant has provided a full and true explanation of how he travelled to and arrived in the State and whether the applicant has furnished as soon as reasonably practicable all information in his possession relevant to his application.

27. The Court is satisfied that the Tribunal's consideration of these factors was reasonable and lawful and that no disproportionate emphasis was placed on the evidence available in respect of this issue. The Tribunal was entitled to consider the explanations offered

by the applicant in relation to issues raised directly with him in the absence of independent clarification of his account of travelling to Greece and France and his application for asylum and, in particular, the absence of independent verification of these events that might reasonably be thought to exist from EURODAC or other documentary evidence.

The Applicant's Detention and Escape
28. The applicant complains that the Tribunal relied upon conjecture in arriving at adverse credibility findings in respect of his account of his capture by the Janjaweed and subsequent escape. His account was summarised by the Tribunal as follows:-

"On 29th October 2004, A.H.I. was asleep and was woken when he heard shooting. He tried to run but was unable so to do. The Janjaweed came and he was beaten and he was taken by them to Tawella. He was taken in a car together with a lot of people and the journey to Tawella took some forty minutes. There, he was taken to a house and was called a slave, he was tortured, tied up and beaten. On the second day of his captivity, his captors came to him with a big file, his name was written down and he was accused of assisting rebels and being part of a movement. His photograph and fingerprints were taken. His escape occurred when he heard loud gun shots and banging on doors, the door was broken down and he was told by his liberators that he was free. The shout "victory to JEM" was made. He was asked if he was willing to join JEM but he refused as he had family responsibilities. He went to his uncle in Kajara as he did not know what else to do, in seeking information about his family..."

29. The Tribunal stated:-

"The applicant, on his account, was not affiliated with any political organisation and did not come to the attention of the authorities prior to his alleged incarceration. The applicant, on his account, refused to join JEM subsequent to his alleged escape..."

The Tribunal found that his accounts relating to his capture incarceration and treatment in detention were "simply not credible". It dealt with his detention in the following way:-

> "The applicant at his hearing today said that when he was detained in Sudan, he was photographed and fingerprinted. When asked why he had not given this information in the course of his interview or in his questionnaire, the applicant told the Tribunal he had no chance to explain everything. When asked why the authorities would have taken the applicant's photograph and fingerprints given he had no known affiliations with any anti-Government forces, the applicant made no reply. The applicant was asked if the documentation concerning details relating to him were not destroyed when the facility where he was being detained was attacked by rebels, the applicant claimed he had no idea what happened. The applicant, however, was able to tell the Tribunal that all his other documentation relating to his identity and his nationality were destroyed when the Janjaweed attacked his village, notwithstanding the fact that the applicant, on his account, had been taken away to Tawella".

A number of criticisms were made of this aspect of the decision. It was said to be unfair to suggest that he had been taken away to Tawella and could not, therefore, have known that documents relating to his identity and nationality were destroyed by the Janjaweed attack on his village when he had always maintained that his house was burnt at the time when he was taken away. In addition, it is submitted that the Tribunal failed to have any proper regard to the SPIRASI report submitted on behalf of the applicant, together with medical notes of his attendance at the Mater Hospital. It was further contended that that report supported the applicant's account of ill-treatment whilst in custody.

The SPIRASI Report - Ground 11
30. The contents of the SPIRASI report submitted on behalf of the applicant have already been set out above. The Tribunal considered the report and the medical notes submitted and noted that the applicant had on examination a mark from a cut in his left wrist and a mark from a cut on the small toe of his left foot. It was noted that the medical notes from the Mater Hospital related to the incident on 11th December, 2005, when the applicant jumped into the Liffey from the Halfpenny Bridge. The Tribunal considered these documents in the light of the applicant's overall testimony.

31. In *R.M.K. (DRC) v. Refugee Appeals Tribunal and the Minister for Justice, Equality and Law Reform* (Unreported, High Court, 28th September, 2010) Clarke J. considered how medical evidence of the type submitted in this case should be considered:-

"22. There is a long line of authority on the general subject of the weight to be accorded to medical reports in asylum cases. While it always a matter for the decision maker to access the probative value of the contents of such reports, it is incumbent on the decision maker to provide reasons for rejecting the contents. A report which is general in terms has obviously little weight and requires no great explanation for its rejection. However, while medical reports are rarely capable of providing clear corroboration of a claim, it is well recognised that there are occasions when examining physician's reports contain objective findings and use phrases which attach high probative value to those findings. Such reports are capable in an objective way of supporting a claim. Obviously in such cases the need for reasons to be given for rejecting the probative value of the report must be more fully addressed".

32. The applicant's challenge to the rationality of the analysis of the medical evidence by the Tribunal is entirely unwarranted. This is a case in which the report is of very little use to a decision maker in the asylum process. It did not engage with the Istanbul Protocol and provided no opinion suggesting a connection between the marks observed and the alleged ill-treatment suffered by the applicant.

33. The court is satisfied that all of these matters relating to the credibility of the applicant were fairly and reasonably considered by the Tribunal. The court is satisfied that the conclusions concerning the applicant's credibility in respect of past persecution were not based on any material error of law or infringement of any statutory provision or any principle of natural and constitutional justice. It is clear that the analysis of credibility carried out in this case was conducted by reference to the overall picture that emerged from the available evidence. The court is satisfied that the guidelines for judicial review findings as to credibility by the Tribunal are those set out by Cooke J. in the well known case of *I.R v. The Refugee Appeals Tribunal* [2009] IEHC 353 as follows:-

> "(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 been being told.
>
> (5) A finding 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 findings.
>
> (6) The reasons must relate to the substantive basis of the claim made and not to minor matters or to facts which are merely incidental in the account given.

(7) A mistake as to one or even more facts will not necessarily vitiate a conclusion as to lack of credibility provided the conclusion is tenably sustained by other correct facts. Nevertheless, an adverse finding based on a single fact will not necessarily justify a denial of credibility generally to the claim.

(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 when the conclusion takes particular account of the demeanour and the reaction of an applicant when testifying in person.

(9) When 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."

34. The court is satisfied that the Tribunal in this case made an assessment having regard to all the available evidence and information "taken as a whole, when rationally and analysed and fairly weighed". There is no substantive error of fact and the inferences drawn from the facts found are cogent and relate to the substantive basis of the claim, not to minor or peripheral matters merely incidental to the account furnished by the applicant. Attempts have been made by the applicant to focus criticism upon a number of isolated elements of the Tribunal's decision such as those related to the absence of documentation which had been burnt in a fire of the applicant's house and the error said to have been made by the Tribunal in suggesting that his uncle's house was in Tawella rather than Kajara. This fails to have regard to the decision on credibility "as a whole" in respect of the applicant's account of past persecution. The court is satisfied that the applicant has not established that any of the matters raised constitutes a substantial ground upon which to grant leave to apply for judicial review in accordance with s. 5 of the Illegal Immigrants (Trafficking) Act 2000, in respect of Grounds 7, 8, 9, 10, 11, 14 and 17.

Previous Decisions of the Tribunal – Ground 6
35. A number of previous decisions of the Tribunal were submitted in the course of the applicant's appeal and the tribunal member considered these decisions. The Tribunal correctly stated that it was not in any way bound to follow previous decisions concerning other appeals and, in particular, emphasised that it had taken into account the individual facts of the applicant's case and the most up-to-date country of origin information as it was required to do. It did not find that the previous decisions submitted were of sufficient relevance to the applicant's appeal to warrant the conclusion that the Commissioner's recommendation be overturned. The court is satisfied that it was unnecessary for the Tribunal to specify each of the decisions submitted to the Tribunal and considered in its decision. The court is satisfied that this ground is unstateable.

Assessment of Future Risk of Persecution – Grounds 2, 4 and 16
36. The applicant also contends that there was a failure on the part of the Tribunal to assess the element of future risk to the applicant on the basis that he was from Darfur, notwithstanding that the applicant's account of past persecution was deemed not to be credible. It was claimed that the Tribunal's consideration of future risk amounted to a misapplication of s. 2 of the Refugee Act 1996. It was further submitted that there was a failure to determine the applicant's ethnicity or that if there were evidence supporting his claim to be a Marareet from North Darfur, the Tribunal failed to consider the possible risk of future persecution if he were to be returned to Sudan.

Fear of Future Persecution
37. The applicant claimed that he was from the village of Shagra in Sudan and a member of the Marareet Tribe, one of the tribes of the Darfur region. He stated that there were four villages in his area occupied by four tribes, Masalit, Berti, Tonger and Marareet. He was able to outline on a very rough map, the location of these villages and the village of Kajara where he lived with his uncle when attending primary school until 1997/1998 in the City of Al Tawella. Tawella formed a prominent part of his narrative about which there was some country of origin information which was taken into account in relation to his credibility concerning a major attack on that city. He gave an account of geographical distances between the various towns and villages.

38. In the analysis of the applicant's claim the Tribunal stated:-

"The applicant may well have fears of returning to Sudan, however what the Tribunal must decide is, if he has such fears they be well-founded fears based on proper Convention grounds."

The applicant's claim was then examined and found to be lacking in credibility in respect of the account which he gave of past events. The Tribunal as part of its conclusion stated that:-

"While the applicant has displayed in the course of his interview a knowledge of Sudan, his account relating to his capture, incarceration and treatment in detention is simply not credible."

The Tribunal also stated:-

"The applicant has not satisfied me at any level that he has a well-founded fear and persecution on any convention of ground".

It is submitted by the applicant that notwithstanding this extensive finding in relation to his lack of credibility nevertheless, the Tribunal failed to address adequately the risk of future persecution if he is returned to Sudan. It is claimed that notwithstanding the finding of credibility, there was no determination that the applicant had a particular nationality or ethnicity or that he came from the Darfur area which he described. It is claimed that even though he was not believed about his involvement in the events described, nevertheless this does not obviate the need to consider future risk of persecution if there are elements of his story which furnish a basis for making that assessment.

39. In *A. (MAM) v. Refugee Appeals Tribunal and Others* [2011] IEHC 147 Cooke J. considered a challenge to a decision of the Refugee Appeals Tribunal on the following ground:-

"Having found that the applicant's account of past persecution was not credible, the Tribunal erred in law in failing to assess any future risk to the applicant if returned to Sudan."

In that case the tribunal member fully rejected as incredible the facts and events given by the applicant as the basis for his contention that he had suffered past persecution before leaving the Darfur area of Sudan from which he claimed to have originated. The question for the court was whether the Tribunal should have gone further and enquired nevertheless, whether there was a prospective risk of persecution for the applicant, should he return to Sudan. It was contended that even where the past persecution was not established, the decision maker must be satisfied that there is no well-founded fear of future persecution upon repatriation before the claim can be rejected. It was submitted that though the story of past persecution in that case had been wholly discounted, there was no finding in the decision of the Refugee Appeals Commissioner or on appeal to the Tribunal that the applicant was not from Darfur or of the Berti tribe of which he claimed to be a member which was a tribe alleged to have the subject of persecution.

40. It was contended by the applicant in *A. (MAM)* that the Tribunal's findings concerning the situation in Darfur also made it imperative that the appeal decision should address the issue as to forward looking risk should the applicant be returned to Sudan. In that regard it is of interest to note that the situation as described in the *A. (MAM)* case in respect of Darfur is word for word the same as in this case, in that both Tribunals describe the situation as follows:-

"It is accepted by the Tribunal that the situation in Sudan is indeed dire. In particular the ongoing situation in and around Darfur is a cause of great concern to the internationality community. Government forces have been complicit with Janjaweed militia in carrying out a war of attrition on native Africans."

Cooke J. considered how the risk of future persecution ought to be considered in the following way:-

"17. ...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 repartition. 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 on the nature and extent of the finding which rejects the credibility of the first stage. This 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.

18. It must be borne in mind that in making an asylum claim there is a basic onus of establishing the fundamental elements of the claim which rests with the applicant even if the examination of the claim is strongly investigative in character on the part of the asylum authority and is to be carried out in cooperation of the applicant. Furthermore, one of the crucial elements in the definition of "refugee" as stated in s. 2 of the Act of 1996 based upon Article 1A of the Geneva Convention, is that the asylum seeker "is outside the country of his or her nationality" owing to a well-founded fear of persecution for one of the convention reasons. The assessment of the fear claimed thus involves identifying a country of origin. Accordingly, if the finding on credibility goes so far as to reject a claim that the asylum seeker has a particular nationality or ethnicity or that he or she comes from a particular region or place in which the source of a claimed persecution is said to exist, there may be no obligation upon the decision maker to engage in "reasonable speculation" as to the risk of repatriation in the case. On the other hand, if the decision maker concludes that the asylum seeker is opportunistically seeking to place himself in the context of verifiable events, in a particular place but decides that while such events did occur, the asylum seeker was not involved in them, the risk of future persecution may still require to be examined if there are elements (the language spoken or obvious familiarity with the locality for example) which establish a connection with that place. Thus, opportunistic lying about participation in events involving previous persecution will not necessarily foreclose or obviate the need to consider the risk of future persecution provided there are some elements which furnish a basis for making that assessment".

41. In *A (MAM)* Cooke J. held that the case turned upon a consideration of the extent of the rejection of the applicant's credibility in the Tribunal decision. He reviewed the extent to which the full story had been "squarely rejected". He ascribed some importance to the fact that the applicant exhibited extensive familiarity with the geography of North Darfur in his s. 11 interview and that the notes of that interview included a page upon which the applicant was requested to draw a rough map of the area in North Darfur whence he came and which was found to exhibit familiarity on his part with the names of various towns and other places and the approximate geographical relationships between them. He reviewed the Tribunal's findings concerning the fact that the applicant had no evidence of his identity or his country or origin. He also had informed the Tribunal that all his documentation was destroyed in an attack in 2004. He had no travel documentation and much like the applicant in this case had a very unsatisfactory account of how he arrived in Ireland. Cooke J. determined that these matters were insufficient to remove doubt as to the extent to which the Tribunal member intended to reject the credibility of the applicant's claim. There were aspects of the ruling which indicated that "she (the tribunal member) was at least alive to the possibility that the applicant was Sudanese and might well be from Darfur". He held:-

"23. Having regard to the arguable familiarity of the applicant with the geography of part of that region and the absence of any element suggesting where else the applicant might be from apart from Sudan, the court is satisfied that this is an instance in which the obligation to consider the possible risk of future persecution on repatriation arose. The ground for which leave was granted must therefore be taken as made out".

42. The Tribunal in this case did not determine that the applicant was not from the North Darfur area of Sudan or from Sudan. It acknowledged that the applicant had displayed in the course of his interview a knowledge of Sudan and stated that "he may well have fears of returning to Sudan" in the very early stage of the analysis.

43. The court is, therefore, satisfied that the applicant has established that the possible risk of future persecution upon repatriation to Sudan arose in this case but was not considered. The court has considerable doubt as to the extent to which the tribunal member intended to reject the credibility of the applicant's claim to be a villager from the Darfur area, of Black African origin, and a member of the Marareet tribe. This is all the more significant in the light of the conclusion reached that the applicant had displayed a knowledge of the North Darfur area of Sudan, and that there is no suggestion that the applicant might be from anywhere else. Consequently, the court is satisfied that the applicant has established a substantial ground upon which to seek leave to apply for judicial review in respect of Grounds 2, 4 and 16 which are more concisely encapsulated in the ground considered by Cooke J. in the *A. (MAM)* case. The court is also satisfied, having considered the evidence, the written and oral submissions of the parties and the statement of opposition delivered by the respondent in this case, that the applicant has established that the Tribunal erred in law in failing to consider the future risk of persecution of the applicant if returned to the Sudan on those grounds.

44. As outlined earlier in this judgment, no other error of law has been established in respect of the Tribunal's decision and the question therefore arises as to the order which the court should make having regard to the fact that the decision here will be quashed, not because something that was done by the tribunal member, but because of what is missing – the consideration of the prospective risk to the applicant.

45. In similar circumstances in the *A. (MAM)* case Cooke J. directed that the case be remitted to the Tribunal with the court's recommendation that subject to her availability, it be further considered by the same member of the Tribunal so that this further aspect of the review of the examination of the asylum application could be completed by a supplementary decision. The only issue that remained in that case, as in this case, having regard to the possibility that the applicant might be a member of a particular tribe from Northern Darfur was whether there was any basis in current country of origin information relating to conditions in that country for considering that he may face a real risk of future persecution if repatriated. Cooke J. determined that the tribunal member should consult that information, if necessary by means of a request to the Refugee Applications Commissioner under s. 16(6) of the Refugee Act 1996. This country of origin information should be furnished to the applicant for observation and then the matter should be determined in the light of that information, those observations and any further country of origin information the applicant might furnish. It was held that because the issue turned exclusively upon an assessment of the relevant conditions in Sudan and as the applicant had been outside the country for a number of years no reopening of the appeal hearing was necessary unless the tribunal member considered it desirable. It was also directed that if the same tribunal member is no longer in office or otherwise unavailable, it was open to the chairperson of the Tribunal to withdraw the appeal decision and to assign the appeal for rehearing to another member.

46. The court proposes to make an order in the same terms as that made by Cooke J. in *A. (MAM).* There will be an order in the following terms:-

> "(a) The appeal decision of 5th December, 2008, of the Refugee Appeals Tribunal is quashed to the extent only that it failed to make and contain a recent assessment of the prospective risk of future persecution of the applicant if repatriated to Sudan;
>
> (b) The appeal is remitted to the Tribunal with the recommendation of the court that it be further considered by the same tribunal member by the adoption of a supplementary decision which remedies the above omission without obligation to reopen the oral hearing.