Neutral Citation: [2014] IEHC 492

THE HIGH COURT

JUDICIAL REVIEW

[2010 No. 382 J.R.]

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 5 OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000

BETWEEN

M.A.A.

APPLICANT

AND

REFUGEE APPEALS TRIBUNAL AND MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENTS

JUDGMENT of Mr. Justice Barr delivered on the 2nd day of October, 2014

Background

1. The applicant claims to have been born on 261h November, 1985. He is of Reer Hamar ethnicity and lived in Somalia with his parents and five siblings. He lived in the Yakhshid area of Mogadishu. One of his brothers had been missing for three to four years before the applicant left the country.

2. The applicant stated that armed militias used to come to his house and attack him and his family. The applicant states that he himself was never physically attacked or threatened, as he was a child.

3. The applicant claims that some time in 1998, on a date that he cannot remember, his family was attacked by an armed militia. On this occasion, the militia killed his father and other members of the family. The applicant was shot in the leg and lost consciousness. He states that when he regained consciousness approximately one day later, he was in a pharmacy, where he had been brought by a neighbour. The applicant alleges that one day after regaining consciousness, another neighbour travelled with him on a bus out of Somalia and they went to the border with Ethiopia and there he took another bus which brought him to Addis Ababa. The neighbour apparently brought him to a family which comprised of an elderly woman and a son and her daughter. The applicant lived with them for approximately one year. The applicant states that after approximately one year, the family that he was staying with all decided to leave Ethiopia. They did not bring the applicant with them. The old lady gave the applicant the sum ofUS$200. He put this money into a safe compartment in his trousers. After this time, he lived on the streets of Addis Ababa for a period of around three years. The applicant states that he did not spend the sum of US$200 which had been given to him but kept it in his secure pocket.

4. The applicant claims that although he encountered some "*chaotic people*" while living on the streets in Ethiopia, no one threatened him directly. He was able to save around US$400 from the proceeds of his begging. He used this money together with the US$200 which had been given to him to travel to Aden in Yemen. The applicant stated that he spent three years in Yemen but he did not apply for asylum there. He did not work but continued to beg on the streets. The applicant gave an account of being enslaved by people from Yemen who had forced the applicant to clean their houses in return for money which was not forthcoming. After three years, the applicant left Yemen and made his way to Jeddah in Saudi Arabia.

5. In Saudi Arabia, the applicant obtained work in a car washing facility. He also used to sleep there on mats which had been left out. He lived in Jeddah for a period of three years.

6. A customer whose car the applicant used to wash, arranged for the applicant's departure from Saudi Arabia to Ireland. In return for arranging the applicant's travel, the applicant was asked to pay US$4,000. The applicant stated that he managed to raise this money having received some US$2,000 from relatives of his who lived in Europe who sent the applicant the money and that as a result of his own work he was able to pay the balance of the money.

7. The applicant claims that he left Saudi Arabia by plane on the night of 28th September, 2008. He stopped in an unknown country en route and arrived in Ireland on 29th September, 2008. The applicant states that having arrived at Dublin Airport, he was taken by the agent and put on a bus to Belfast where he was abandoned. The applicant claims that he spent a period of some two days living on the street in Belfast before he was allegedly arrested on a sea boat. The applicant's account in relation to this arrest is difficult to follow. He stated that he had bought a ticket to enable him to go on the boat but he thought this was only going to another part of the city of Belfast. However, when he got on the boat he was told that he was entering another country. It was at this point that he was arrested and taken to a camp in Belfast where there were some Somalis and they apparently told him to seek asylum. The applicant stated that he applied for asylum in Belfast. He states that he stayed in the city for a period of one month before being deported from Belfast to Dublin on an aeroplane.

8. The applicant had a Yemeni passport in the surname of B.S. The applicant denied that this was his name. Attached to the passport was a valid visa authorising entry to Ireland to enable the passport bearer to study English. The applicant stated that he was unaware of this. The UK authorities had informed the Irish authorities that the Yemeni passport used by the applicant to travel to Ireland was a valid one and that this indicated that the applicant was in fact a national of Yemen. The applicant claims that he told the authorities that this was not his passport and that he was simply using it to travel to Ireland. The applicant denied ever having been to Riyadh while he was allegedly living and working illegally in Saudi Arabia.

9. It was put to the applicant that a visa application using the applicant's photograph and signature were submitted to the Irish Embassy in Riyadh and that this application had been made on 30th August, 2008. The applicant denied any knowledge of this and claimed that he never made any contact with the Embassy there. It was put to the applicant, who admitted that he had completed

his questionnaire himself, that the visa application bore the same signature as that to which the applicant had signed on his own questionnaire. The applicant denied that they were the same. It was put to the applicant that notwithstanding his denial that the signatures were not the same, they looked similar. The applicant continued to deny that the signatures were similar.

The Language Analysis Report
10. The applicant attended at the Office of the Refugee Applications Commissioner on 18th June, 2009, for the purpose of undergoing a language analysis interview. The applicant had a detailed interview with a representative of the company Sprakab, which interview was conducted over the telephone. The purpose of the interview was to provide a language analysis of the applicant's speech in Somali. Language analysis is the examination of a person's speech by a language analysis company in order, as specifically as possible, to locate the geographic origin of that person's speech. The analysis characterises the person's languages/dialects in terms of phonetics, morphology, syntax and lexicon. The language analysis report is part of the overall evaluation of the asylum application.

11. Having carried out the language analysis, the reporting company set out the following summary of its findings:-

> *"The person on the recording speaks Somali to the level of a mother tongue speaker. He speaks a variety of Somali, the Reer-Hamar dialect, with certainty found in southern Somali such as in the Mogadishu area. The person has good knowledge and local knowledge of the area he says he comes from. "*

12. In its s. 13 report, the Refugee Applications Commissioner recommended that the applicant should not be declared a refugee. The applicant appealed this to the Refugee Appeals Tribunal.

13. The RAT returned to the question of the Yemeni passport. The applicant denied that his name was that shown on the passport. It was put to the applicant that there was a valid visa attached to this passport for the purposes of entering Ireland to enable the passport bearer to study English. The applicant replied that he was unaware of this. Further, the UK authorities had informed the Irish authorities that the Yemeni passport used by the applicant to travel to Ireland was a valid one and that this indicated that the applicant was in fact a national of Yemen. The applicant claims that he told the authorities that this was not his passport and that he was simply using it to travel to Ireland.

14. The applicant denied ever having been to Riyadh while he was allegedly living and working illegally in Saudi Arabia. It was put to the applicant that a visa application using the applicant's photograph and signature were submitted to the Irish Embassy in Riyadh and that this application had been made on 30th August, 2008. The applicant denied any knowledge of this and claimed that he had never made any contact with the embassy there. It was put to the applicant, who admitted that he had completed his questionnaire himself, that the visa application bore the same signature as that to which the applicant had signed his own questionnaire. The applicant denied that they were the same. It was put to the applicant that notwithstanding his denial that the signatures were not the same, they looked similar. The applicant continued to deny that the signatures were similar.

15. The Tribunal noted that in light of the unequivocal nature of the information provided by the United Kingdom authorities to the Irish authorities in relation to the applicant's name and nationality together with the similarity between the signatures on the copy visa application form and the applicant's own questionnaire, it was clear to the Tribunal that the applicant's assertion relating to the passport, to the visa, and to his signature on various documents, was simply not capable of being believed.

16. The Tribunal had great difficulty in believing that the applicant could have saved the sum of money which was necessary arising out of his activity begging, or working in the car wash facility. The applicant stated that he had saved approximately US$2,000 and that the remainder for his travel to Ireland was supplied by relatives living in Europe, in particular living in the Netherlands. It was put to the applicant that among the application details for the visa which were contained in the passport which the applicant used to travel to Ireland, a fee of €2,520 was found to have been paid to an English language school in Dublin to enable the applicant to attend a full time English language course at the Centre of English Studies in Dame Street, Dublin. The applicant claimed that he was not aware of any money paid to this school or fees that may have been paid. He stated "*I am not aware of how much the agent paid for anything*". The Tribunal came to the conclusion that the figures effectively did not add up and taking into account, the applicant's account of how the money was allocated, it would appear, as found by the Commissioner, that the agent would have been left with very little money for services rendered by him and to enable the applicant to travel to Ireland.

17. The Tribunal noted that the applicant was asked at various parts of his interview why he had not sought asylum in any of the countries where he claimed to have lived for various periods of time. The applicant maintains that he did not know about asylum. However, the applicant was able to say that his relatives in the Netherlands had fled from Somalia after the civil war had started and they had sought asylum there. The applicant was asked, in light of this, why had he stated he did not know about asylum or refugees at the time he entered this jurisdiction in September 2008. The applicant in reply claimed "*these people, they sought asylum a long time ago where they live now and I don't know how to seek asylum when I came here*". The Tribunal stated that this was "*simply nonsensical*".

18. The Tribunal dealt with the language analysis report in the following terms:

> *"A language analysis test was carried out on the applicant and the findings are to the effect that the applicant spoke a variety of Somali found with certainty in southern Somalia such as in the Mogadishu area. Further the report concluded that the applicant spoke a variety of Swahili, the ReerHamar dialect, with certainty found in southern Somalia such as in the Mogadishu area. The language analysis report has to be considered in the light of the applicant's overall account. "*

19. The RAT came to the following conclusion in relation to the applicant's claim:-

> *"No one aspect of the applicant's claim can be considered in isolation instead an applicant's claim has to be considered in the round. In the instances of this applicant's claim, the applicant claimed that he left Somalia in 1998. He lived on his own account begging in Ethiopia, in Yemen and in Saudi Arabia. He survived on his own account by begging and by working in a car wash. The applicant never applied for asylum in any of these countries on his own account at any time. Notwithstanding the fact that the applicant had a valid passport from Yemen and that the applicant had a valid visa issued by the Irish Embassy in Riyadh, the applicant denied that this was his documentation and denied ever having applied for a visa to travel to Ireland The applicant's account in relation to the circumstances of his arrest following on his attempt to board a boat in Belfast was nonsensical to say the least and simply not capable of being believed. The applicant's account of the funding of his journey to Ireland literally does not add up. There is an onus on every refugee to apply for asylum in the first safe country to which they go to. In the instances of this applicant's claim on his own account, he had lived, begged and worked in three other jurisdictions prior to coming here. The actions of the applicant are not those of one fleeing persecution. The applicant has not satisfied me at any level that he has a well founded fear*

of persecution on any convention grounds. That being said, the applicant is not a refugee and accordingly the decision of the Commissioner is upheld

Conclusion

The Tribunal has considered all relevant documentation in connection with this appeal including the notice of appeal, country of origin information, the applicant's asylum questionnaire and the replies given in response to questions by or on behalf of the Commissioner on the report made pursuant to s. 13 of the Act. Accordingly, pursuant to s. 16(2) of the Act, I have found the recommendation of the Refugee Applications Commissioner made in accordance with s. 13 of the Act. "

The Applicant's Submissions

20. The main thrust of the applicant's complaint in relation to the RAT decision, was that the Tribunal Member erred in concluding that the language analysis report had to be considered in the light of the applicant's overall account and was therefore undermined by the member's findings regarding the applicant's general lack of credibility. The applicant submitted that the report was an objective piece of information based upon an objective methodology and its findings stand irrespective of the other subjective findings in relation to the applicant. Thus, it was argued that irrespective of those credibility findings, the Tribunal was still, in the light of the language analysis report procured by the Commissioner, faced with an appellant who, on the basis of objective findings, bore the indicia of a member of the Reer-Hamar who lived in the Mogadishu area. As a member of such a clan, the applicant was, on the Tribunal Member's own acknowledgment, vulnerable to attack and persecution.

21. The applicant accepts that the findings of the language analysis report are not conclusive of the issues before the Tribunal, or that its findings can never be displaced or undermined, but it was submitted that if it is to be undermined or displaced, it must be done by evidence which refutes its conclusions regarding the applicant's dialect, language and/or local knowledge or by evidence which points to an error in the analyst's methodology or conclusions and not merely, as here, by general evidence tending to point to a lack of credibility. It was argued that in this case, the Tribunal Member had effectively found that the applicant could not be believed and refused the appeal on that basis. That finding, however, does not impact upon the objective findings of the language analysis report. The Tribunal Member did not treat the language analysis report as objective information before her which she must consider separately and which is independent of and unaffected by her credibility findings in relation to the applicant. It was submitted that it was encumbent upon a Tribunal Member to consider that objective information separately, and, if rejecting it, to set out the reasons for so doing.

22. The applicant relied in this regard on the judgment of McDermott J. in *AMN v. Refugee Appeals Tribunal* [2012] IEHC 393, in relation to the consideration of medical reports which were before the Tribunal. The learned judge stated as follows in the course ofhisjudgment:-

> *"... the Tribunal erred in law in failing to describe what significance was attached to the medical report and if significance attached to it, why it was discounted as against other factors in the case. It was incumbent on the Tribunal to deal specifically with the medical report and state reasons as to why it was not accepted. The report is discounted on the basis of the applicant's 'overall account to the Tribunal'. The medical report was an objective piece of evidence that required more careful consideration. The mere recital of its terms does not amount to a sufficient consideration of its contents. I do not regard this case as one in which the primary findings of fact pertaining to the applicant's credibility were of such force as to outweigh the medico legal report to the extent that it could be dismissed in such a summary fashion. I am satisfied that in reaching its decision the Tribunal erred in law in failing to consider the medical report adequately and failing to give any adequate reason or explanation for rejecting the probative value of the report. The Tribunal failed to provide cogent reasons for rejecting a piece of evidence that was significantly supportive of the applicant's claim. "*

23. The applicant also relied on the decision of Clark J. in *P.E. v. Refugee Appeals Tribunal* [2013] IEHC 253, in which the Tribunal refused the applicant's refugee appeal on the basis of negative credibility findings which were not found to be outweighed by the terms of a SPIRASI report which concluded that the applicant's injuries were consistent with her account. In quashing the decision, Clark J. stated as follows:-

> *"It appears to the Court that the Tribunal Member disregarded the corroborative potential of the medical evidence too readily simply because he had made credibility findings based mainly on discrepancies in the applicant's evidence rather than putting the medical reports, especially the SPIRASI report, into the totality of the evidence to be assessed The medical reports were capable of making a difference to the Tribunal's assessment of credibility and of causing a fair minded assessor to pause and ask how else a young Hutu girl from Rwanda with her accepted history could have such a wide distribution of marks and scars, if not from the type of maltreatment described The inconsistencies in her evidence were minor and some findings were made in error and must surely have been counterbalanced by the medical reports on the applicant's emotional state and multiple scars on her body. For this reason alone the decision cannot stand"*

24. The applicant also relied on the decision in *A.A. v. Minister for Justice* [2013] IEHC 355, which involved consideration of the content of a language analysis report. In that case, the applicant whose asylum application had been refused on account, in essence, of negative findings of a Sprakab language analysis report thereafter obtained his own language report that supported his claim to be Bajuni/Somali. The applicant made as. 17(7) application seeking to be readmitted to the asylum process. The Minister refused to allow him to re-enter the asylum process, partly because of a visa hit which showed he travelled on a valid Tanzanian passport. After the s. 17(7) refusal, the Minister went on to refuse the applicant's subsidiary protection application and ultimately made a deportation order on the basis that he was Tanzanian. There was no evidence, however, in either the subsidiary protection or deportation decisions as to the applicant's language analysis reports. MacEochaidh J. quashed all the challenged decisions, with this finding:-

> *"In my view it was incumbent on the decision maker to weigh these reports before rejecting the claims made. In essence, the decision maker should have balanced the evidence from the UK that the applicant was Tanzanian with the evidence from the language reports that he was Somalian. This exercise never occurred. In my view the conclusions reached in the absence of this exercise are unlawful. "*

25. The applicant further relied on the decision of Cooke J. in *I.R. v. Minister for Justice and Equality* [2009] IEHC 353, where the judge set out the following principle in relation to the assessment of documentary evidence:-

"Where an adverse finding involves discounting or rejecting documentary evidence or information relied upon in support of a claim and which is prima facie relevant to a fact or event pertinent to a material aspect of the credibility issue, the reasons for that rejection should be stated. "

26. The applicant also relied upon the decision of Clark J. in *N.M. (Togo) v. Refugee Appeals Tribunal* [2013] IEHC 436, in which the decision of the Tribunal was quashed, *inter alia*, because of the defective manner in which the Tribunal dealt with the documentary evidence submitted in support of the appeal. As Clark J. noted, that documentary evidence which "*simply was not mentioned in the Tribunal decision*", was "*evidence of potentially significant probative weight in corroborating key facts and events*". Clark J. continued:-

"In the Court's view this document required serious assessment and reasoning before discounting its validity or content. Had the document been accepted for its content, there is every likelihood that the benefit of the doubt would have applied cumulatively to the medical reports, the COL the identity documents and the claim in relation to the detentions and escapes. The applicant's lack of knowledge of the relatively minor issues on which so much reliance was laid might then have been seen in a different light. "

27. The applicant also referred to the decision of the UK Upper Tribunal in *M.K. (Pakistan) v. SSHD* [2013] UK UT 641 (IAC). In rejecting the appeal on the basis of credibility findings, the First-Tier Tribunal had rejected a letter which had been put in evidence by the applicant. The Tribunal merely stated that "*taking into account the complete lack of credibility shown from the evidence before me I attach no weight whatsoever to the letter from the [AMA]*". The Upper Tribunal allowed the applicant's appeal and set aside the Tribunal's decision on the basis of a failure to give reasons for the rejection of this evidence.

28. The applicant submitted that the respondent did not act in accordance with the principles set out in the case law cited above. It was alleged that she erroneously regarded the objective findings in the language analysis report as undermined by her general credibility findings. It was submitted that in rejecting the conclusions and/or corroborative effect of that report, she did not engage in the proper assessment and weighing process of this document and the other evidence before her, nor did she provide any proper reasoning for her rejection of the findings of that report. It was submitted that a brief, almost tangential reference to a document as crucial as this positive language analysis report is not sufficient and does not meet the standards set out in the case law. It was submitted that had the respondent considered the content of the report in an appropriate manner then, as in the judgment of Clark J. in *N.M. (Togo),* her other negative findings would not have assumed the same significance.

29. It was submitted on behalf of the applicant that the first named respondent failed to determine all relevant issues in the context of the appeal, namely the core issue of nationality and ethnicity of the applicant. In that regard, the applicant relied upon the decision of Cooke J. in *E.S. v. Refugee Appeals Tribunal* [2009] IEHC 335, where the learned judge said:-

"It is axiomatic that the establishment of the country of origin of a claimant to refugee status is fundamental to the assessment of the claim because it is otherwise impossible to determine whether the claimant is outside that country owing to a Convention based fear of persecution. That is not infrequently an extremely difficult exercise and while the onus of establishing refugee status is on the claimant, the UNCHR handbook points out at paragraph 196:

> *'While the burden of proof in principle rests with the applicant, the duty to ascertain and evaluate all relevant facts is shared between the applicant and the examiner. Indeed, in some cases it may be for the examiner to use all means at his disposal to produce the necessary evidence in support of the application. '*

The ambiguity and uncertainty in the Contested Decision in this case lies in the fact that on the one hand it gives the clear impression that the Tribunal Member comes to the same view as the authorised officer in the Section 13 Report namely, that the applicant is not a national of Zimbabwe, but the decision contains no conclusion to that effect in express terms. "

30. The above dicta was endorsed by MacEochaidh J. in *R.S. (A Minor) v. Refugee Appeals Tribunal* [2014] IEHC 55.

31. The applicant argued that while both the applicant's ethnic background and his nationality go to the core of his claim, the Tribunal Member in this instance had determined neither issue, relying instead on credibility concerns about peripheral issues. It was further submitted that in failing to make any determination in relation to the core of the applicant's asylum claim, the Tribunal also violated another of the principles set out by Cooke J. in *I.R. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 353 in which the learned judge stated as follows:-

"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."

32. The applicant noted that the Tribunal Member referred to the "*unequivocal nature of the information provided by the United Kingdom authorities to the Irish authorities in relation to the applicant's name and nationality*". The applicant stated that if this constitutes a finding on her part that the applicant was, in fact, a national of Yemen, then it was submitted that this was a finding based on an error of fact and a finding based upon irrelevant considerations as the information provided by the UK authorities is not of the nature alleged by the respondent. It was submitted that the information provided by the United Kingdom authorities show that the passport was a validly issued passport, in other words that it was not a forgery and that the validly issued passport states that a person bearing a name similar to the applicant is a Yemen national. It does not offer conclusive evidence that the information on the validly issued passport is correct, i.e. that the applicant himself is actually a Yemen national and not Somali. The applicant gave evidence to the effect that his passport was obtained by the agent. The information provided by the United Kingdom authorities was not unequivocal in that regard, and it does not, of itself, undermine the applicant's account of events. If it is contended on behalf of the respondent that she used the information there as a basis for determining the purported nationality of the applicant, the first named respondent erred in that regard.

33. It was further argued on behalf of the applicant that his denial that his signature was similar to the signature on the application form for a visa to come to Ireland, the Tribunal Member erroneously recorded his response when this issue was raised by the Refugee Applications Commissioner. The applicant, who contends that he did not fill in the form, stated that the signatures were not the same. The response on the part of the applicant is entirely consistent with his evidence that the agent took all the steps necessary to obtain the visa, a state of affairs which must have included filling in the application form and signing it, and copying the applicant's signature in so doing. Once again, it was submitted by the applicant in this regard that this information assumed an undue significance and weight in the context of the applicant's appeal by reason of the flawed method by which the Tribunal Member considered the language assessment report. It was further submitted on behalf of the applicant that the Tribunal Member had erred in stating that

she had to rely on "*general information questions to attempt to establish the applicant's nationality*". The language analysis report procured by the RAC was clearly particular information corroborative and supportive of the applicant's assertion that he was a Somali from the Mogadishu area and of the Reer-Hamar ethnic group. In that regard, it was contended that the first named respondent had failed to have regard to relevant considerations. It was contended on behalf of the applicant that in making that statement to the effect that it is difficult to determine whether people who speak Somali are actually from Somalia and from a stated area of Somalia; the member failed to have regard to the evidence in the report to the effect that the applicant's dialect is spoken in a particular area of Somalia from which he claims to come, and also to the degree of local knowledge displayed by the applicant.

34. It was submitted that in the Sprakab report, it was stated that the applicant had a good knowledge of the area that he said he came from. The report notes that the applicant spoke of well known buildings and places in the city district such as markets, schools, hospitals, hotels and roads. He also provided the names of other city districts found in Mogadishu, named traditional food dishes and holidays celebrated in the area and spoke of the population of the areas and which clans most of them belonged to. As far as his knowledge of the Reer-Hamar dialect is concerned, the report notes that the applicant has a pronunciation and inclination typical of the form of Somali, of the Reer-Hamar dialect spoken in southern Somalia such as in the Mogadishu area. It was also noted that the applicant constructed words and sentences in a manner typical of the dialect and used certain words and expressions common in the dialect also. It was also noted that the report did not make reference to any other areas in which that dialect is spoken or ethnic groups used in the form of Somali used by the applicant.

35. The applicant submitted that the first named respondent did not at any time refer to the detailed local knowledge shown by the applicant, a fact which if taken into account and considered would have countered the generalised observations made by the Tribunal Member as follows:-

> *"The UNHCR stresses that the importance of ascertaining and verifying an applicant's identity and nationality becomes more crucial relative to the security and human rights situation in their stated country of origin. Applicants claiming to be from Somalia require this attention. It is difficult to establish that an applicant is in fact a Somali national and the Tribunal has had to rely on general information questions to attempt to establish the applicant's nationality. There are no reliable forms of documentation available to nationals of that State of the moment. It is also difficult to establish any identity and the balance of probability test on the grounds of language as there are many ethnic Somalis who are not Somali nationals living in neighbouring countries. The UK Home Office Immigration and Nationality Directorate Somalia, November 2004, reports that many non Somali applicants pose as Somalis in the UK Furthermore, while a person claims they are Somali and can speak the Somali language, it does not automatically follow that they are Somali from the stated area of Somalia or that they were forced to flee for reasons related to their particular clan. Reliable sources have indicated that aside from being spoken in Somalia, the Somali language is spoken in Ethopia, Kenya and Djibouti where many ethnic Somalis live."*

36. That concludes the main submissions made on behalf of the applicant. Submissions were also made in relation to the time point which will be dealt with later in the judgment.

The Respondents' Submissions

37. The respondents submitted that the well established principles laid down in *The State (Keegan) v. Stardust Victims Compensation Tribunal* [1986] I.R. 642, and in *O'Keeffe v. An Bord Pleánala* [1993] 11.R. 39, applied to the present case. That meant that unless the court is of the view that there was no evidence on which the Tribunal Member could reasonably have arrived at her decision, then there would be no ground for an order of *certiorari* in respect of the decision. Furthermore, they submitted that it was entirely a matter for the decision maker to assess the weight to be given to the various matters of fact and inferences of law. These principles were specifically approved of in an immigration context in *Baby O v. Minister for Justice* [2002] 2 I.R. 168, where Keane C.J. stated as follows at p. 180:-

> *"Unless it can be shown that there was some breach of fair procedures in the manner in which the interview was conducted and the assessment arrived at by the officer concerned or that, in accordance with the well established principles laid down in The State (Keegan) v. Stardust Victims Compensation Tribunal [1986] JR. 642 and O'Keeffe v. An Bord Pleanála [1993]1 I.R. 39, there was no evidence on which he could reasonably have arrived at the decision, there will be no ground for an order of certiorari in respect of the decision. "*

38. The respondent submitted that the effect of the foregoing was that the court cannot set aside findings of primary fact unless there was no evidence to support such findings and it ought not to set aside inferences drawn from such facts unless such inferences were ones which no reasonable decision making body could draw. The same principles were identified by O'Neill J. in the context of a statutory appeal in *E.H. v. Information Commissioner* [2001] 2 I.R. 463, where O'Neill J. stated as follows at p. 488:-

> *"I would accept counsel for the applicant's submission that to constitute an error of law in this regard there would have to be either no evidence at all to support the conclusion of the head of public body or the Commissioner, or alternatively that the decision must be one which on the basis of the facts, flies in the face of reason and common sense, namely the test set out in State (Keegan) v. Stardust Compensation Tribunal [1986] I.R. 642. If either of those two situations were to exist it would warrant the conclusion that the head of a public body or the Commissioner had misdirected himself into an error of law."*

39. The respondent noted the criticism was made in the applicant's submissions that either the Tribunal failed to take into account relevant considerations or that the Tribunal took into account irrelevant considerations. Given the claims made in this regard, it is helpful to set out the governing principles regarding this issue. A sharp distinction is to be drawn between the situation in which considerations are specified in a statutory framework that must be considered by the decision maker and the situation obtaining where they are not so specified. In the latter case which arises here in the context of determining an appeal by the Refugee Appeals Tribunal, the degree of discretion exercised by the decision maker is significantly more extensive than that applicable to where the statutory framework prescribes the relevant considerations.

40. The respondents cited the following extract from "*Judicial Review of Administrative Action -A comparative analysis"* by Prof. Hillary Biehler, where she observed at p. 94:-

> *"So clearly where a factor may or may not be taken into account, failure to do so will not provide sufficient grounds for review. The point was made by Cooke J in his judgment in CREEDNZ Inc v. Governor General as follows:*
>
> *what has to be emphasised is that it is only when the statute expressly or impliedly identifies considerations required to be taken into account by the authority as a matter of legal obligation that the court holds a decision invalid on the*

grounds now invoked It is not enough that a consideration is one that may be properly taken into account nor even that it is one which many people, including the court itself, would have taken into account if they had to make the decision.

The distinction between mandatory and discretionary consideration is therefore an important one and the courts cannot interfere in cases where there has been a failure to take into account a consideration which a decision making body is not obliged to take into account. "

41. The respondents submitted that this position has been endorsed by the English Courts. The respondents cited the decision in *R. (Hurst) v. London Northern District Coroner* [2007] 2 A.C. 189, where Brown L.J. referred at para. 57 to *CREEDNZ* and noted that:-

"Some considerations are required to be taken into account by decision makers. Others are required not to be. But there is a third category: those considerations which the decision maker may choose for himself whether or not to take into account. "

42. The respondent submitted that the assessment of a weight of a particular consideration by a decision maker is a matter in respect of which the court should be slow to interfere. They noted that much criticism was made of the decision maker in this case with regard to the weight attached to the language analysis report by the decision maker and his finding that it was simply one matter to be taken into account. This was clearly a weighing exercise and was entirely a matter for the decision maker. The respondents referred to the dicta of Denham J. in *Scrollside Limited v. Broadcasting Commissioner of Ireland* [2007] 1 I.R. 166, at p. 176:-

"The factor of piracy was considered by the respondent- this is not in issue. Each party submits that a different approach should be taken to the factor. This means that what is at issue is the weight to be applied to that factor. It appears to me that that is quintessentially a matter for the specialist body, in this case the respondent. Consequently, the applicant seeks to quash a decision of a specialist body essentially on the issue of the weight to be applied to a factor in the decision making process. It hardly needs to be pointed out that this is a heavy burden for the applicant. "

43. Turning to the merits of the appeal, the respondents noted that the basic claim in the statement of grounds and in the submissions, essentially was that the Tribunal failed to have sufficient regard to the evidence contained in the language analysis report and that there was an error of law by the Tribunal in concluding that the findings of the language analysis report were undermined by the credibility findings in relation to the applicant.

44. The applicant accepted that the findings of the language analysis report were not conclusive with regard to the appeal before the Tribunal Member. However, his submissions advanced the case that there were objective findings which could not be displaced by the credibility findings of the Tribunal Member. The respondent noted that it was difficult to see how the applicant's argument in this regard could be reconciled with the principles applicable in a judicial review which have been outlined above. It is clear that the Tribunal was well aware of the difficulties in terms of identifying nationality of a person claiming to be a Somali national. The Tribunal Member correctly stated that the ability to speak Somali did not mean that the person concerned was a Somali and/or from a stated area of Somalia and/or that the person concerned was forced to flee for reasons related to their particular clan. The Tribunal Member noted:-

"Reliable sources have indicated that aside from being spoken in Somalia, the Somali language is also spoken in Ethiopia, Kenya and Djibouti where many ethnic Somalis live. "

45. The respondents noted that whilst the Tribunal Member had the benefit of the language analysis report and clearly considered the report and its contents, the Tribunal Member decided that the report had to be considered in the light of the applicant's overall account and no one aspect of applicant's claim could be considered in isolation. Instead, the claim had to be considered in the round. They submitted that this was an unimpeachable approach by the Tribunal to the task entrusted to it by statute in determining the appeal.

46. It was submitted that it was abundantly clear that the case being made related to the weight attached by the Tribunal Member to the report. As stated in *Scrollside* by Denham J., this was "*quintessentially a matter for the specialist body*". A court should be very reluctant to interfere with the weight attached by a decision maker in a body such as the Refugee Appeals Tribunal to any aspect of the evidence.

47. The respondents submitted that the next issue to be considered was that of utility. It was stated that it was crucial to note that the decision will not be quashed where the alleged failure to take into account a relevant consideration (or taking into account of an irrelevant consideration) would have made no difference to the decision. The respondents relied on the case of *Health Service Executive v. Information Commissioner* [2009] I.R. 700, at p. 718, relating to the refusal to remit a decision to the Information Commissioner where the remittal would only result in the reformulation of conclusions and would have no impact on the substance of the Commissioner's decision.

48. The respondents stated that it was clear that even if the applicant meets with the considerably elevated standard of proof to demonstrate that the decision maker attached insufficient weight to the evidence concerned (such that no reasonable decision maker would have come to the same conclusion), the applicant must also show that the remittal of the matter to the Refugee Appeals Tribunal would be such as to lead inevitably to a different decision being rendered.

49. The respondents stated that there was nothing before the court to show that this could possibly be the case. The impugned decision was notable for the very considerable emphasis placed by the decision maker on the evidence regarding the Yemeni passport and the applicant's signature. This matter was clearly at the core of the decision. Whilst the decision maker does not in any sense exclude the possibility of the applicant having a Somali background, it was submitted that it was clear that the decision maker accepted that the applicant was a Yemeni national. In this regard, the following passage was of crucial significance to the determination:-

"There is an onus on every applicant in the asylum process to tell the truth. In light of the unequivocal nature of the information provided by the United Kingdom authorities to the Irish authorities in relation to the applicant's name and nationality, together with the similarity between the signatures on the copy visa application form and the applicant's questionnaire, it is quite clear to the Tribunal that the applicant's assertions relating to the passport, to the visa and to his signature on various documents is simply not capable of being believed. "

50. In the concluding paragraph, the Tribunal Member returned to this issue and stated:-

"Notwithstanding the fact that the applicant had a valid passport from Yemen and that the applicant had a valid visa issued by the Irish Embassy in Riyadh, the applicant denied that this was his documentation and denied ever having applied for a visa to travel to Ireland. "

51. The applicant argues that the decision is deficient in law such that it ought to be quashed by virtue of the fact that the Tribunal Member does not actually say the applicant is a Yemeni (or presumably a Somali) national. It was submitted that this fell very far short of the standard of proof necessary for the applicant to succeed in this case. The reasons given by the decision maker were clear and discernable. The weight attaching to the various factors was a matter within the decision maker's competence and clearly the decision maker has a wide margin of appreciation in this regard. It was submitted that the case being made was one which was more appropriate for an appeal but simply did not meet with the principles applicable to the judicial review process.

52. The respondents submitted that it was quite clear that any decision to remit the matter for reconsideration would not lead to a different conclusion given the unequivocal nature of the Tribunal's findings with regard to identity and nationality and could at most lead to a decision where the decision maker would simply say that the applicant clearly has a Somali background. That, of course, is something that is expressly accepted in relation to claims of Somali nationality/ethnicity/background, in general by the decision maker at the outset of the decision.

Extension of the Statutory Time Limit
53. The decision of the RAT was handed down on 21st January, 2010. Mr. Garrett Searson of the Refugee Legal Service has sworn on affidavit setting out the chronology of events after that time. He stated that the decision of the RAT was received within the Galway branch of the Refugee Legal Service on 29th January, 2010. Mr. Searson believes that legal representatives within the Galway branch of the Refugee Legal Service had a number of concerns about the decision and thereafter discussed these concerns with the applicant on 5th February, 2010. The applicant's file was thereafter forwarded on 18th February, 2010 to the Judicial Review Unit of the Refugee Legal Service which is based in Dublin. Mr. Searson was assigned the applicant's case on 23rd February, 2010, and having read the extensive file, he too was concerned about aspects thereof.

54. On 23rd February, 2010, Mr. Searson sent a letter to the RAT asking it to set aside the decision herein on a number of bases set out in his letter of request. He sought to utilise this informal procedure which had been established in order to avoid the delay and expense of litigation. On 2nd March, 2010, the first named respondent indicated that it did not propose to vacate its decision.

55. In the circumstances, it was then necessary to seek a legal aid certificate authorising the receipt of counsel's opinion. However, before that process could be undertaken, it was necessary to receive the requisite legal aid contribution from the applicant. The applicant forwarded this sum by postal order once he was contacted for that purpose and it was received in the Dublin office of the Refugee Legal Service on 9th March, 2010.

56. When this contribution had been received, Mr. Searson applied for a legal aid certificate for counsel's opinion. The certificate was granted on Friday, 1ih March, 2010. Mr. Searson thereafter arranged for a brief to be prepared for counsel and same was forwarded to counsel on Monday, 15th March, 2010. Mr. Searson believes that counsel received the brief on 16th March, 2010 and that as the offices of the Refugee Legal Services were closed the following day, counsel reverted on 18th March, seeking additional information. Mr. Searson states that the said information was forwarded on Friday, 19th March, 2010 and that counsel thereafter forwarded a written opinion by electronic mail over the weekend of 20th/21st March, 2010.

57. On Monday, 23rd March, 2010, Mr. Searson applied for a legal aid certificate authorising the institution of the within proceedings and that same was granted on or about Tuesday, 24th March, 2010. He arranged for the applicant to attend at the judicial review unit of the Refugee Legal Service on 26th March, 2010, for the purpose of giving final instructions with the assistance of a Somali interpreter for the purpose of confirming the content of the draft pleadings herein and amending same as appropriate.

58. While it is not clear from the papers submitted to the court, it would appear that the necessary motion issued on or about 26th March, 2010, which is the date on which Mr. Searson swore his affidavit.

59. In the circumstances, it is clear that the applicant did not institute the within proceedings within the 14 day time limit set down s. 5 of the Illegal Immigrants (Trafficking) Act 2000. However, I am satisfied having regard to the chronology of events as set out in the affidavit sworn by Mr. Searson that there are good and sufficient reasons why the time period should be extended so as to enable the applicant bring the within proceedings. In particular, I note that there was delay in obtaining a legal aid certificate and further that there is no undue prejudice to the respondents by virtue of the relatively short delay which occurred in this case.

60. Accordingly, I extend the time within which the proceedings herein could be instituted up to and including the date of issue of the notice of motion herein.

Decision
61. The applicant submits that in this case the Tribunal Member failed to have regard to the language analysis report which established that he spoke a dialect of Somali found with certainty in the Mogadishu area. Further, it found that he spoke this language to the level of a mother tongue speaker. He also had good local knowledge of the area that he says he came from. The applicant complains that the Tribunal Member did not give any cogent reasons as to why this document was being discounted.

62. The Tribunal Member noted the content of the language analysis report, but held that it had to be seen in the context of the applicant's story as a whole. The Tribunal Member found the story given by the applicant as being lacking in credibility.

63. The content of the language analysis report had to be seen in the context of the evidence from the UK authorities to the effect that the Yemeni passport in the possession of the applicant, which contained a visa permitting entry into this State, was a valid passport.

64. In these circumstances, the Tribunal Member had to weigh the various pieces of evidence including the language analysis report. This was a matter for the Tribunal Member. She considered the language analysis report in the context of the entire story told by the applicant. I am not satisfied that the Tribunal erred in her assessment of the various strands of evidence in this case. The language analysis report was not conclusive of the issues for determination before the RAT. While it was a clear piece of evidence supportive of the applicant's story, it did not establish that the applicant was a Somali national. Nor did it corroborate the applicant's account of leaving home after an attack in 1998 and his various occupations since that time.

65. The Tribunal Member was entitled to come to the conclusion that the applicant's story was lacking in credibility in relation to how he earned the money he needed to fund his journey to Ireland and his explanation of his arrest on board a ship in Northern Ireland.

She was also entitled to have regard to the evidence from the UK authorities in relation to the passport and the visa being valid. It was a matter for her to decide what weight should be attached to the language analysis report. I can find no objection to the approach taken by the Tribunal Member to the evidence in this case. Accordingly, I refuse the applicant's claim for relief herein.