THE HIGH COURT

JUDICIAL REVIEW

[2016 No. 880JR]

BETWEEN

I.L.

APPLICANT

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL,

THE MINISTER FOR JUSTICE AND EQUALITY,

IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Mr Justice David Keane delivered on the 19th June 2019

Introduction

1. This is the judicial review of a decision of the Refugee Appeals Tribunal, now the International Protection Appeals Tribunal ('the IPAT'), dated 1 November 2016 and made under s. 16(2)(a) of the Refugee Act 1996, as amended ('the Refugee Act'), affirming a recommendation of the Refugee Applications Commissioner ('the Commissioner') that the first applicant should not be declared to be a refugee ('the IPAT decision').

2. On 28 November 2016, Humphreys J gave the applicant leave to apply for various reliefs, principal among which is an order of *certiorari* quashing the IPAT decision.

3. At the time when leave was granted, the IPAT was known as the Refugee Appeals Tribunal ('the RAT'). When s. 71(5) of the International Protection Act 2015 ('the Act of 2015') came into force on 31 December 2016, the former was substituted for the latter in these proceedings by operation of law.

4. It is not clear why Ireland and the Attorney General have been made respondents to the application. No relief is sought against either of those juristic persons, nor is any issue raised in which either of them has a direct interest, as a matter of law. However, nothing turns on it.

Background

5. The applicant is a Nigerian woman, born in 1978, who presented herself to the immigration authorities in Dublin on 29 September 2014, claiming to have arrived at Dublin Airport from Nigeria via France on 4 September 2014.

6. In essence, the applicant claims to have a well-founded fear of persecution on the ground of her religion if returned to Nigeria because she has been victimised, and believes she will be killed, by a religious cult against which adequate state protection is not available.

7. The applicant was interviewed by an immigration officer in accordance with the requirements of s. 8 of the Refugee Act on 1 October 2014, and completed an asylum application ('ASY-1') form on that date.

8. Having completed the necessary questionnaire for the Office of the Refugee Applications Commissioner ('ORAC') on 6 October 2014, the applicant was then interviewed by an authorised officer of the Commissioner, pursuant to s. 11 of the Refugee Act, on 29 November 2014.

9. The recommendation of the Commissioner, dated 3 March 2015, based on a report, dated 2 March 2015, was that the applicant should not be declared to be a refugee because she had not established a well-founded fear of persecution; or that adequate state protection would not be available to her in Nigeria in respect of the persecution she claims; or that internal relocation within Nigeria would not be a reasonable option available to her in that regard.

10. Through her legal representatives, the applicant submitted a notice of appeal, dated 9 April 2015, against the recommendation of the Commissioner. It was followed by written submission, dated 7 July 2016. Through different legal representatives, the applicant delivered further written submissions, dated 19 September 2016, under cover of a letter of the same date, together with certain country of origin information ('COI').

11. An oral hearing of the applicant's appeal took place before the tribunal on 22 September 2016.

12. The IPAT decision is dated 1 November 2016 and was furnished to the applicant under cover of a letter, dated 3 November 2016. It concluded that the applicant had established a well-founded fear of persecution by non-state actors but had failed to establish the absence of adequate state protection in Nigeria against such persecution. Further, the IPAT decision found that, in addition to the conclusion that such persecution would not be repeated, there were no compelling reasons arising out of the previous persecution of the applicant that would warrant a finding in favour of her recognition as a refugee.

Procedural history

13. The applicant sought, and was granted, leave to bring these proceedings on 28 November 2016, based on an undated statement of grounds, supported by an affidavit of the applicant's solicitor, sworn on 16 November 2016, and a verifying affidavit of the applicant, sworn on the same date. The Minister filed a statement of opposition, joining issue with the applicant on each of the grounds raised, on 23 March 2017. It is grounded on an affidavit of John Moore, a higher executive officer with the IPAT, sworn on the same day. Matthew Kennedy, another officer with the IPAT, swore a supplemental affidavit on 31 October 2017, exhibiting certain COI that had been before the tribunal and to which reference was made in its decision.

Grounds of challenge
14. In her statement of grounds, the applicant enumerates three separate grounds of invalidity of the IPAT decision: first, that the tribunal erred in fact and in law in concluding that adequate state protection was available to her in Nigeria; second, that the tribunal erred in its consideration or application of the 'compelling reasons' test; and third, that the tribunal erred in fact and in law by rejecting the authenticity of certain purported police reports that the applicant had furnished in support of her claim.

Analysis
i. adequate state protection

15. The applicant argues that the tribunal erred in fact and in law in concluding from the COI before it that adequate state protection was available to her in Nigeria.

16. I cannot reconcile that argument with either the law or the facts of this case.

17. At the material time, an application for refugee status was dealt with under the Refugee Act and the European Communities (Eligibility for Protection) Regulations 2006, as amended ('the 2006 Regulations'). The 2006 Regulations transposed Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless person as refugees or persons who otherwise need international protection and the content of the protection granted ('the Qualification Directive').

18. Article 7 of the Qualification Directive provides, in material part:

> '1. Protection can be provided by:
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> (a) the State; or
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> (b) parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State.
>
> 2. Protection is generally provided when the actors mentioned in paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, *inter alia*, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.'

19. That provision was transposed under Reg. 2(1) of the 2006 Regulations, which states:

> '"protection against persecution or serious harm" shall be regarded as being generally provided where reasonable steps are being taken by a state or parties or organisations, including international organisations, controlling a state or a substantial portion of the territory of that state to prevent the persecution or suffering of serious harm, *inter alia*, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, where the applicant has access to such protection.'

20. There are innumerable authorities for the principle that Birmingham J described in the following way in *G.O.B. v Minister for Justice* [2008] IEHC 229, (Unreported, High Court, 3rd June, 2008) (at para. 28):

> 'I feel I must also have regard to the principle, accepted both domestically and internationally, that absent clear and convincing proof to the contrary, a state is to be presumed capable of protecting its citizens. This was established in the seminal case of *Canada (AG) v Ward* [1993] 2 SCR 689, which has been approved in a number of Irish cases, including the judgments of Hedigan J. in *P.L.O. v The Refugee Appeals Tribunal & Anor* [2007] IEHC 299 and Feeney J. in *O.A.A. v The Minister for Justice, Equality and Law Reform* [2007] IEHC 169. There must be few police forces in the world against which some criticism could not be laid and in respect of which a trawl through the internet would fail to produce documents critical of their effectiveness and sceptical of their capacity to respond.'

21. As Clarke J explained in *Evuarherhe v Refugee Appeals Tribunal* [2006] IEHC 23, (Unreported, High Court, 26th January, 2006) (at para. 3.7):

> 'It has often been pointed out that State protection does not mean a State guarantee. No State is in a position, in practice, to guarantee the complete safety of its citizens. The test is as to whether the State, in practical terms, provides adequate protection, in general, in relation to the type of persecution feared. Just as the fact that a State will not be absolved from its obligation to provide such practical protection by having laws which, for whatever reason, are not enforced in practice, similarly a State will not be found to have failed to provide adequate protection because it can be shown that some incidences of the violation concerned have occurred. This latter will be particularly so where it would appear that adequate and appropriate State measures have been taken to deal with such situations or instances as arise.'

22. Turning to the facts of this case, at the forefront of the COI relied upon by the applicant and considered by the tribunal was a document in a series published by the United Kingdom on *Country Information and Guidance*, entitled *Nigeria: Background information, including actors of protection and internal relocation* (Version 2.0, August 2016) ('the guidance document').

23. Under the sub-heading 'Protection' in the 'Guidance' section of that document, it states:

> '2.1.10 Where the fear is from non-state agents (including rogue state agents), effective protection is in general likely to be available despite weaknesses in the system. However an assessment must be made in relation to the particular circumstances and profile of the person. The onus is on the person to demonstrate that the state is not willing and able to provide protection.'

24. The 'Policy summary' in the 'Guidance' section of that document, which the applicant's written submissions do not address, states:

> '3.1.1. In general a person will be able to access state protection against persecution or serious harm from non-state actors (including rogue state actors) but this will depend on the particular facts of their case and profile of the person. Effective protection may not be available in all cases or areas, particularly in areas where armed insurgent/terrorist groups

are active. Each person's individual circumstances will need to be considered.

3.1.2. Where the threat is from non-state agents internal relocation to another area of Nigeria to escape the risk is likely to be generally viable but will depend on the nature and origin of the threat as well as the individual circumstances of the person.'

25. Given that guidance it might have been imagined that the applicant's argument would be that the tribunal wrongly failed to conclude that, whatever about the general availability of adequate state protection, it is not available to her in her specific circumstances. But that is not her argument. Instead, it is that the tribunal engaged in a selective review of country of origin information by paying no, or no sufficient, regard to the various reports on police misconduct and corruption that are referred to in the guidance document and by having exclusive, or excessive, regard to the various reports it refers to on the measures that have been taken to address those problems.

26. I can find nothing in the review of the COI by the tribunal in this case, comparable to the type of selective review condemned by the court in *D.V.T.S. v Minister for Justice* [2008] 3 I.R. 476; *T.M. (Zimbabwe) -v- Refugee Appeals Tribunal* [2015] IEHC 813, (Unreported, High Court (Eagar J), 17th December, 2015); or *L.O.J. v. Refugee Appeals Tribunal* [2011] IEHC 493 (Unreported, High Court (Hogan J), 16th December, 2011).

27. This is not a case in which certain COI was cited by the decision-maker while conflicting or contradictory COI was ignored. The tribunal in this case quoted at some length from those portions of the guidance document relied upon by the applicant to establish the shortcomings and deficiencies of the police force in Nigeria, but also had regard to the range of efforts in place to address those problems, and the applicant's own narrative concerning the practical assistance that she had received from the police in Nigeria in the past, before concluding overall that adequate state protection was available to her. In the event, the tribunal reached the same conclusion on the availability of adequate state protection in the circumstances of the applicant's case, as the guidance document reached on the availability of state protection in Nigeria generally.

28. In *D.V.T.S. v Minister for Justice* [2008] 3 I.R. 476 (at 496-7), Edwards J stated:

'43. The courts attention was drawn to the decision of the High Court in *O.A.A. v. Refugee Appeals Tribunal* [2007] IEHC 169 (Unreported, High Court, Feeney J., 9th February, 2007) wherein it was stated:-

"As pointed out by the High Court (Herbert J.) in *Kvaratskhelia v Refugee Appeals Tribunal*[2006] IEHC 132, (Unreported, High Court, Herbert J., 5th May, 2006) it is the function of the Refugee Appeals Tribunal and, not of this court in a judicial review application, to determine the weight, if any, to be attached to country of origin information and other evidence proffered by or on behalf of the applicant. The Tribunal member correctly identified that the obligation was on the applicant to provide clear and convincing evidence of the State's inability to protect. This was not a situation of a complete breakdown of law and order and therefore the correct approach was that it must be presumed that the State was capable of protecting its citizens. It was recognised that such presumption could be rebutted but such rebuttal required clear and convincing evidence."'

29. Thus, I reject this ground of challenge to the tribunal's decision.

30. Before moving to the next ground of challenge, I must consider the applicant's novel ancillary argument in support of this one that the availability of adequate state protection in Nigeria is not enough to defeat her refugee status claim in Ireland because, in order to succeed, it is only necessary that, in the words of the refugee definition under the Convention, the Refugee Act and the Qualification Directive, she should be 'unwilling to avail herself of the protection of that country.'

31. That point can be shortly disposed of. Under the refugee definition, the 'unwillingness' concerned must be based upon a 'well-founded fear.' As LaForest J pointed out with irrefutable logic in *Canada (Attorney General) v Ward* [1993] 2 S.C.R. 689, 'if a state is able to protect the [applicant], then his or her fear is not, objectively speaking, well founded.' It follows that the tribunal's conclusion that adequate state protection is available to the applicant in Nigeria, renders her subjective unwillingness to avail of it insufficient to make out her claim.

ii. the Reg. 5(2) compelling reasons clause

32. The applicant submits that the tribunal erred in finding that there were no compelling reasons arising out of the previous persecution of the applicant alone that would warrant a determination that she is eligible for refugee status.

33. It seems to me that there is some validity in the Minister's criticism that this ground was broader in submissions and at the hearing of the application than the one that was pleaded in the applicant's statement of grounds. What had been pleaded narrowly as the asserted failure of the tribunal to set out with sufficient clarity (which I take to mean particularity) its conclusions on the previous persecution (or threats of persecution) to which the applicant had been subjected, was now being argued as the delivery by the tribunal of a decision that unambiguously flew in the face of fundamental reason and common sense. The Minister argues that this shift in argument amounts to a failure by the applicant to precisely set out the grounds upon which her application was to be advanced of the kind expressly deprecated by the Supreme Court in *A.P. v DPP* [2011] 1 IR 729 at 733 (per Denham J).

34. Regulation 5(2) of the 2006 Regulations, as substituted by Regulation 32(2) of the European Union (Subsidiary Protection) Regulations 2013 provides:

'(2) The fact that a protection applicant has already been subject to persecution, or to direct threats of such persecution, shall be regarded as a serious indication of the applicants well-founded fear of persecution, unless there are good reasons to consider that such persecution will not be repeated but compelling reasons arising out of previous persecution alone may nevertheless warrant a determination that the applicant is eligible for protection as a refugee.'

35. As I had occasion to point out in *B.A. v International Protection Appeals Tribu*nal [2017] IEHC 36, (Unreported, High Court, 27th January 2017) (at para. 6):

'The final sub-clause of reg. 5(2) – the "compelling reasons" sub-clause – differs from the remainder of that clause in that it does not form part of the transposition of Council Directive 2004/83/EC of 29 April 2004 ("the Qualification Directive"). Article 4(4) of the Qualification Directive states:

> "The fact that an applicant has already been subject to persecution or serious harm or to direct threats of such persecution or such harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or harm will not be repeated."'

36. In *N.N. v MJELR* [2012] IEHC 499, Clark J. observed that the genesis of the discretion conferred by the final clause in reg. 5(2) is not easy to establish, but speculated (at para. 16 of the judgment) that the legislative intent appears to have been to apply a humanitarian exception to the refusal of refugee status, directly comparable to the exception to the cessation of refugee status provided under Section 1C(5) of the Geneva Convention and reflected in s. 21(2) of the Refugee Act.

37. Section 1C of the Geneva Convention states, in relevant part:

> 'This Convention shall cease to apply to any person falling under the terms of Section A if:
>
> …
>
> (5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;
>
> Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke *compelling reasons arising out of previous persecution* for refusing to avail himself of the protection of the country of nationality….'
>
> (emphasis supplied)

38. Section 21(2) of the Refugee Act states, in relevant part:

> 'The Minister shall not revoke a declaration [that a person is a refugee] …where the Minister is satisfied that the person concerned is able to invoke *compelling reasons arising out of previous persecution* for refusing to avail himself or herself of the protection of his nationality or for refusing to return to the country of his or her former habitual residence, as the case may be.'
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> (emphasis supplied)

39. In *V.Z. v Minister for Justice* [2002] 2 I.R. 135 (at 145), the Supreme Court (per McGuinness J., Keane C.J., Denham, Murphy and Murray JJ. concurring) noted the use by the High Court in the decision then under appeal of the *United Nations Handbook on Procedures and Criteria for Determining Refugee Status ('the UN Handbook')* as an aid to the interpretation of the Geneva Convention (at 145). The Supreme Court endorsed that approach as correct (at 148).

40. Paragraph 136 of the *UN Handbook*, which appears under the heading 'Nationals whose reasons for becoming a refugee have ceased to exist' and which refers to Section 1C(5) of the Geneva Convention, states:

> 'The second paragraph of this clause contains an exception to the cessation provision contained in the first paragraph. It deals with the special situation where a person may have been subjected to very serious persecution in the past and will not therefore cease to be a refugee, even if fundamental changes have occurred in his country of origin…. The exception, however, reflects a more general humanitarian principle, which could also be applied to refugees other than statutory refugees. It is frequently recognized that a person who – or whose family – has suffered under *atrocious forms of persecution* should not be expected to repatriate. Even though there may have been a change of regime in his country, this may not always produce a complete change in the attitude of the population, nor, in view of his past experiences, in the mind of the refugee.'
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> (emphasis supplied)

41. It is therefore evident from the terms of the *UN Handbook*, first published in 1979 and most recently republished without relevant alteration in 2011, that the meaning of the term 'compelling reasons arising out of previous persecution', as it applies to the refusal of a person to avail himself of the protection of his or her country of nationality, is illuminated by the humanitarian principle whereby a person who – or whose family – has suffered under 'atrocious forms of persecution' should be protected from repatriation to that country.

42. Making the necessary allowance for the fact that the court was dealing with 'serious harm' for the purpose of subsidiary protection, rather than 'persecution' for the purpose of refugee status, the following passage from the judgment of Cooke J in *MST & JT v Minister for Justice* [2009] IEHC 529 is also helpful in identifying the scope of the discretion conferred by the final clause:

> '[T]here cannot be any doubt, in the Court's view, that the additional wording can only be construed as intending to permit some limited extension to the conditions of eligibility prescribed in article 4.4 designed to allow some latitude in according subsidiary protection based exclusively upon the fact of previous serious harm when it is accompanied by compelling reasons. It is relevant to bear in mind that "serious harm" is defined as including "inhuman or degrading treatment". (See para. 23 above.) It is possible therefore to envisage a situation in which an applicant had escaped from an incident of mass murder, genocide or ethnic cleansing in a particular locality. Even if the conditions in the country of origin had so changed that no real risk now existed of those events happening once again, the trauma already suffered might still be such as to give rise to compelling reasons for not requiring the applicant to return to the locality of the earlier suffering because the return itself could be so traumatic as to expose the applicant to inhuman or degrading treatment.'

43. In this case, the tribunal addressed the application of the final clause to the applicant's claim in the following way:

> '[7.1] It is questionable that the appellant's past experience satisfy the definition of persecution. Even extending the benefit of the doubt to the appellant in that regard in finding that, cumulatively, the experiences constitute persecution, the Tribunal is entirely satisfied that her experiences do not come close to establishing that there are compelling reasons for accepting her claim. In particular, the experiences are not of a level of atrociousness or seriousness to warrant a

finding that there are compelling reasons for accepting the appellant's claim.'

44. I can see no basis for the ground of challenge originally advanced that the tribunal 'failed to set out with sufficient clarity those material facts or experiences of past persecution which were accepted or rejected' for the purpose of the application of the final clause. It seems to me that, reading the decision as a whole (which, as Peart J pointed out in G*.T. v Minister for Justice, Equality and Law Reform* [2007] IEHC 287, (Unreported, High Court, 27th July, 2007), is the correct approach), the tribunal identified the material assertions of fact that it accepted and those that it did not in the extensive 'analysis of credibility' section of its decision.

45. Nor can I see any basis for the broader ground of challenge now advanced – that the tribunal's decision on the application of the final clause was an unreasonable one in the *Meadows* sense. I repeat the observations that I made in *B.A. v IPAT* [2017] IEHC 36, (Unreported, High Court, 27 January, 2017). There is no mathematical equation whereby reasons can be demonstrated as either compelling or not compelling. Nor is there any mechanical process for determining whether a form of persecution is, or is not, atrocious. As Faherty J. explained in *N.B. and O.C.B.* (at para. 64), the circumstances of each case will fall to be considered by the decision-maker to determine whether the threshold has been met. The tribunal did not accept that the attacks that the applicant had described on her person and on places where she was present met that threshold. To overturn that finding, it would be necessary to be satisfied that it was one that plainly and unambiguously flew in the face of fundamental reason and common sense. The applicant has failed to discharge that burden.

iii. authenticity of documents

46. The applicant's final ground of challenge to the tribunal's decision is that, in its consideration of the application of the compelling reasons clause, the tribunal wrongly rejected the authenticity of two police reports that the applicant had produced in support of her claim.

47. The tribunal's decision records the applicant's evidence that, after her arrival in Ireland, her ex-husband had informed her that their daughter had been kidnapped and that he had obtained a police report about the investigation of the kidnapping. The applicant's evidence was that, at the time her ex-husband told her this, she trusted him 'about 70%', but had begun to suspect that he was a religious cult member and did not have complete confidence in what he told her. In support of her refugee status claim, the applicant submitted, amongst other documents, a copy of that police report, dated 20 September 2014, and a copy of another police report of the same date, recording a report that the applicant and her ex-husband made to the police on 1 September 2014, concerning an attack on their residence by five armed men on 30 August 2014, from which they escaped with the help of neighbours. The applicant gave evidence that, in November 2015, her ex-husband told her on the telephone that some people had telephoned him to say that their daughter was dead.

48. The applicant went on to give evidence to the tribunal that she had since learned from friends that her ex-husband had stolen her business and had defrauded her. She no longer fully believed him about anything. Women with whom she had stayed in touch in Nigeria had told her that her ex-husband is a cultist.

49. In assessing the credibility of the applicant's claims, the tribunal ruled in material part as follows:

> '[5.4] At the appeal hearing the [applicant] stated that she had only "70%" trust in her ex-husband at the time that he told her about her daughter's kidnapping and that she has since lost trust in him completely as a result of discovering that he has been defrauding her.
>
> [5.5] The [applicant's] source of information concerning the fate of her daughter, ..., is her ex-husband. In addition to what he told the [applicant], he provided the [applicant] with the police report concerning their daughter's alleged kidnap. Given the complete lack of confidence the [applicant] has in her ex-husband, which was manifested very clearly at the appeal hearing, the Tribunal finds that it is not possible to rely on him for any information concerning the fate of [their daughter]. This includes the police report, which the Tribunal notes has no security features that might be associated with an official document such as a passport. The Tribunal rejects the facts of the kidnap and killing of the [applicant's] daughter,..., as not having been established on the balance of probabilities.'

50. And later:

> '[5.10] The Tribunal does not rely on the police report concerning the attack [at the applicant's residence] for the same reasons outlined at [5.5] in circumstances where it was provided by the [applicant's] ex-husband. With some hesitancy, the Tribunal extends the benefit of the doubt to the [applicant] in relation to the balance of the material facts of the [applicant's] claim and accepts them.'

51. The applicant argues that the Tribunal erred in failing to carry out inquiries into the authenticity of the police reports or in failing to make a request to ORAC to do so under s. 16(6) of the Refugee Act.

52. In advancing that argument, the applicant relied on the decision of this court in *A.O. -v- The Refugee Appeals Tribunal & ors* [2015] IEHC 382, (Unreported, High Court (Barr J), 16th June 2015). However, the controlling authority was then, and remains, the decision of the Court of Appeal in that case; [2017] IECA 51, (Unreported, Court of Appeal (Hogan J; Peart and Hedigan JJ concurring).

53. Giving judgment for the Court of Appeal, Hogan J concluded (at para. 45) that a decision-maker is not obliged as a general rule to conduct his or her own investigations in order to vouchsafe the authenticity of a document relied upon by an applicant for international protection, although there may be special circumstances where that is indeed required.

54. In both the High Court and the Court of Appeal in that case, the applicant for refugee status had placed significant reliance on the decision of the European Court of Human Rights in *Singh v Belgium* (Application No. 33210/11)(2 October 2012). Very helpfully, given that the only extant text of the decision is in French, Hogan J provided the following analysis of it:

> '37. [...] That was a case where the applicants had originally arrived in Brussels Airport on a flight from Moscow. They objected to their deportation to the Russian Federation because they feared in turn repatriation to Afghanistan in breach of Article 3 of the European Convention of Human Rights. The applicants maintained that they were Sikhs who had fled from Afghanistan in 1992.
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> 38. Their claim for refugee status was, however, rejected by the Belgian asylum authorities because they had failed to

prove their Afghan nationality. In the course of an appeal the applicants provided new documents, namely, emails between their legal representatives and a representative of the Belgian Committee for the Support of Refugees (a partner of the High Commission of the United Nations for Refugees (UNHCR)) and the UNHCR in New Delhi. The UNHCR representative in New Delhi had furnished, by way of attachments to the emails, 'attestations' which indicated that the applicants had been recorded as refugees under the UNHCR mandate. Despite the emergence of this new documentation, the Belgian appeal tribunal nonetheless ruled adversely to the claim of Afghan nationality. The appeal tribunal determined that the new documents were to be treated as having no convincing value on the basis that they were of a type that were easy to falsify, saying that the applicants had failed to provide the original copies of the relevant documents.

39. In its judgment the ECtHR found a breach of Article 13 ECHR (the effective remedy provisions) coupled with Article 3 ECHR. Pointing to the otherwise potentially serious consequences for the applicants, the Court concluded (at para. 103 of the judgment) that the obligation of the state authorities was to show that they had been as rigorous as possible and that they had carried out a careful review ('*un examen attentif*') of the complaints based on Article 3 ECHR. The Court observed that since the documents were at the heart of the request for protection, the rejection of them without 'checking their authenticity' fell short of the careful and rigorous review expected of national authorities by the effective remedy requirements of Article 13 ECHR in order to protect the individuals concerned from torture, harm or inhuman or degrading treatment under Article 3 ECHR in circumstances when a simple process of enquiry of the UNHCR would have resolved conclusively whether they were authentic and reliable.

40. For my part, however, I do not read *Singh* as laying down a universal, *ex ante* obligation on all Contracting States to conduct their own review of the authenticity of every foreign document supplied by an asylum claimant in the manner urged by counsel in the present case. It is clear, of course, that there may be special cases with particular facts where it would be simply remiss of the State not to conduct such an inquiry of its own volition. But not every case will be potentially as straightforward as Singh: considerations of relevance, feasibility and cost are also relevant considerations. There may also be many instances where the claimant is in a position to make his or her own inquiries and supply further documentation or other information to the authorities.'

55. Earlier in the judgment, Hogan J had referred to the decision of Clark J in *Nya v Refugee Appeals Tribunal & Anor* (Unreported, High Court, 5th February, 2009) on the general approach of the courts to the question of the authenticity of documents submitted as part of an international protection claim, citing in turn two decisions of the United Kingdom Immigration Appeal Tribunal in *R.P. (Proof of Forgery) Nigeria* [2006] UKIAT 000086 and *O.A. (Alleged Forgery: Section 108 Procedures) Nigeria* [2007] UKIAT 97. However, as Clark J pointed out, each of those decisions concerned the application of s. 108 of the UK Nationality, Immigration and Asylum Act 2002, whereby an allegation that a document relied upon by a party is a forgery and that the disclosure of a matter relating to the detection of the forgery would be contrary to the public interest must be investigated in private. There is no equivalent provision in our law, either under the Refugee Act or elsewhere.

56. It seems to me that of more direct relevance and assistance is the decision of the UK Immigration Appeal Tribunal in *Tanveer Ahmed* [2002] UKIAT 00439 (20 February 2002), and in particular the following passage from it:

'33. It is for the individual claimant to show that a document is reliable in the same way as any other piece of evidence which he puts forward and on which he seeks to rely.

34. It is sometimes argued before Adjudicators or the Tribunal that if the Home Office alleges that a document relied on by an individual claimant is a forgery and the Home Office fails to establish this on the balance of probabilities, or even to the higher criminal standard, then the individual claimant has established the validity and truth of the document and its contents. There is no legal justification for such an argument, which is manifestly incorrect, given that whether the document is a forgery is not the question at issue. [The] only question is whether the document is one upon which reliance should properly be placed.

35. In almost all cases it would be an error to concentrate on whether a document is a forgery. In most cases where forgery is alleged it will be of no great importance whether this is or is not made out to the required higher civil standard. In all cases where there is a material document it should be assessed in the same way as any other piece of evidence. A document should not be viewed in isolation. The decision maker should look at the evidence as a whole or in the round (which is the same thing).

36. There is no obligation on the Home Office to make detailed enquiries about documents produced by individual claimants. Doubtless there are cost and logistical difficulties in the light of the number of documents submitted by many asylum claimants. In the absence of a particular reason on the facts of an individual case a decision by the Home Office not to make inquiries, produce in-country evidence relating to a particular document or scientific evidence should not give rise to any presumption in favour of an individual claimant or against the Home Office.'

57. That approach seems to me to be perfectly consistent with the analysis of the Court of Appeal in *A.O*.

58. Turning from the correct approach in principle to the approach adopted by the tribunal in this case, I can identify no error in it. The circumstances were certainly unusual, in that it was the applicant's evidence to the tribunal concerning her ex-husband's dishonesty and unreliability that most obviously called into question the authenticity of the two purported police reports that he had provided to her and which she, in turn, had submitted to the tribunal.

59. Since the tribunal accepted the credibility of the applicant's claims of past persecution, the applicant acknowledges that the contents of the documents concerned were not material to the determination of her claim to come within the refugee definition under s. 2 of the Refugee Act. With some ingenuity, she submits instead that their contents could have been relevant to the consideration of whether there were compelling reasons, arising out of the previous persecution of the applicant alone, that would warrant a determination that the is eligible for refugee status, by application of Reg. 5(2) of the 2006 Regulations.

60. In my judgment, that argument cannot avail the applicant for several reasons. First, since the tribunal accepted the credibility of the applicant's claim that her ex-husband's residence was attacked while she was in it, the establishment of the authenticity of the police report noting the report of that incident can add nothing to the applicant's claim in that regard. Second, the police report on the kidnapping of the applicant's daughter contains no information linking that incident to any particular perpetrator or motive and, hence, nothing linking it to the applicant's claim of persecution at the hands of a religious cult. Third, as has already been noted, the credibility of the applicant's husband, as the person who provided those documents, was directly called into question by the applicant in her evidence to the tribunal. Fourth, this seems to me to be an instance where the applicant, as the mother of the kidnapped girl,

would have been in a position to make her own inquiries of the Nigerian police force, particularly in circumstances where, as the tribunal noted in its decision, her evidence was that the police had provided her with every reasonable assistance in the past. Fifth, unlike *Singh*, this is not a case in which the documents at issue are readily capable of authentication through a simple and obvious line of suggested inquiry.

61. For those reasons, I conclude that this is not in that category of special cases with particular facts that make it remiss of the State not to have conducted an inquiry of its own volition into the authenticity of those police reports.

Conclusion
62. The application for judicial review is refused.