Neutral Citation: [2017] IEHC 621

THE HIGH COURT

[2012 No. 395 J.R.]

IN THE MATTER OF THE REFUGEE ACT 1996 (AS AMENDED) AND IN THE MATTER OF THE IMMIGRATION ACT 1999 (AS AMENDED) AND IN THE MATTER OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000

BETWEEN

F. S.

APPLICANT

AND

MINISTER FOR JUSTICE AND EQUALITY, ATTORNEY GENERAL AND IRELAND

RESPONDENTS

JUDGMENT of Ms. Justice Faherty delivered on the 30th day of June, 2017

1. This is a telescoped hearing, in which the applicant seeks an order of *certiorari* by way of application for judicial review quashing the decision of the respondent to deport him, as made on 3rd April, 2012.

2. A short extension of time was required to commence the within proceedings, which the court was satisfied to grant having regard to the contents of para. 7 of the applicant's grounding affidavit.

3. The applicant is a national of Pakistan. He says that he left Pakistan in 2001 when he entered the United Kingdom on a student visa. According to the applicant, he overstayed his UK visa and worked illegally in that jurisdiction until he was detected in 2004. On 14th May, 2004, he lodged an application for asylum in the UK which was refused. He subsequently fled to Ireland, arriving on 10th October, 2004. Again, he worked illegally in this jurisdiction until he was detected in early 2008. He applied for refugee status on 6th March, 2008, and completed his application on 10th March, 2008. He completed an asylum questionnaire on 18th March, 2008, wherein he stated that he left Pakistan on account of family problems and lack of freedom.

4. By letter dated 23rd September, 2008, the applicant was advised by the Office of the Refugee Applications Commissioner (ORAC) that it had been determined that his application for asylum was one that should be properly examined by the UK, pursuant to the provisions of Article 13 and Article 16(1)(e) of the Council Regulation EC (No. 343/2003 (Dublin 11 Regulation)). A Transfer Order was duly made on 7th October, 2008. ORAC's determination was upheld by the Refugee Appeals Tribunal by a decision dated 3rd November, 2008.

5. Subsequently, however, on foot of his application for refugee status of 6th March, 2008, the applicant was invited to attend an interview with ORAC on 24th May, 2010. It is common case that the applicant did not attend this interview and by letter dated 22nd June, 2010, he was advised that the investigation of his asylum application under s. 11 of the Refugee Act, 1996, was terminated and that it was recommended that he should not be declared a refugee. According to the applicant, he did not receive the notice calling him for s. 11 interview as he had changed address.

6. The applicant was duly invited by the first named respondent to make representations as to why he should not be deported. Representations were made by his solicitors by letters dated 20th July, 2011, 1st November, 2011 and 11th January, 2012.

7. The representations focused on the applicant's fear of exposure to forced marriage if he was returned to Pakistan, general security conditions within Pakistan, the length of time the applicant had spent in the State and his various medical conditions.

8. In particular, with regard to s. 5 of the Refugee Act, 1996, as amended ("the 1996 Act") (prohibition of refoulement),the applicant's solicitor submitted:

> "The applicant fears for his safety if returned to Pakistan, as he does not want to be forced into an arranged marriage and also wants to live an [i]ndependent life which would be denied him in Pakistan and is also afraid of the general prevailing circumstances of repression in the country at present and the dangerous powder keg which could be ignited at any time. The applicant is here six years and nine months approximately has a job to step into, speaks fluent English, has Hepatitis B, has integrated fully into society and would love to make a contribution to the country."

9. The representations were accompanied by a letter from the applicant which read as follows:-

> "There is not just one reason, but lots of reasons why I do not want to return to Pakistan. Everyday people are being killed there. Life is not safe there. Everyday there are suicide bombers. People have attacked the Police Academy in Lahore, and a lot of people died during that attack. Now the United Nations has declared that Pakistan is a war zone. There is no freedom there. There are a lot of restrictions there.
>
> I also have a lot of personal family problems there, that I don't understand. I want to live my life my own way. I cannot choose who I want to marry if I got back there. I will be forced to have an arranged marriage. This is a complicated situation. You tell me who would like to go there in that situation?
>
> I have been here a long time. Sometimes I don't remember who I am. I am mentally disturbed and I am sick. I am attending a doctor at Cork University Hospital.
>
> If I go back, I can't live my life the way I want to. There are no advantages for living in that society. There is no justice. Rich people buy the justice, but poor people can't buy justice. There is no justice system there. There is no order there. Law is not equal. I want to become normal. I want to start my life here."

10. The applicant also furnished a letter which advised that he had an offer of employment in the State. A letter from his landlord was also furnished advising of the applicant's good character. There were other letters of similar ilk.

11. On 11th January, 2012, the applicant's solicitor furnished the first named respondent with a medical report which advised that the applicant suffered from depression. In the accompanying letter, the first named respondent was entreated to grant the applicant

leave to remain on the basis of his duration in the State, his fluency in English, the fact that he had a job to step into and because of his medical condition.

12. On 12th April, 2012, the first named respondent advised the applicant of the making of the deportation order and that the first named respondent was satisfied that the provisions of s. 5 (Prohibition of Refoulement) of the1996 Act had been complied with.

13. Accompanying the letter and deportation order was a copy of the "examination of file" pursuant to s. 3 of the Immigration Act, 1999 ("the 1999 Act").

14. The Court was advised that the applicant has in fact been deported to Pakistan on foot of the deportation order.

15. The within proceedings were instituted on 8th May, 2012. In the course of the hearing, it was confirmed by counsel for the applicant that the decision to deport was being challenged on the grounds that:-

> 1. The first named respondent, in determining whether or not the deportation of the applicant would be in breach of the principle of non-refoulement, erred in law and in fact in finding that the remedy for forced marriage was divorce.
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> 2. The first named respondent erred in law in making a finding in respect of internal relocation without conducting any assessment or identifying any place of feasible relocation for the applicant.

16. At this juncture, it is apposite to set out the first named respondent's considerations on s. 5 of the 1996 Act.

17. The applicant's representations made were addressed as follows:-

> "[I]t is noted that the applicant's claim is based upon a fear of serious harm emanating from *non-State agents* in Pakistan, namely, the people he fears would force him into an arranged marriage. It is noted further, that the applicant has fears in relation to the ongoing security situation in Pakistan. In relation to the applicant's stated fear relating to undergoing a forced marriage, country of origin information should be examined in order to assess the likelihood of the applicant being able to avoid such a marriage in the event of his return to Pakistan. The United States State Department sets out the following in this regard:-
>
> > 'Although the government generally did not interfere with the right to marry, local officials on occasion assisted influential families in preventing marriages to which the families were opposed. The government also failed to prosecute cases in which families punished members (generally women) for marrying or seeking a divorce against the wishes of other family members…'
>
> …
>
> The preceding item of country of origin information indicates, *inter alia*, that although arranged (or forced) marriage remains a problem in Pakistan, and that local officials have helped prevent marriages opposed by families, and failed to prosecute certain cases in which a family member married or sought a divorce against the wishes of the family, it would appear that women are generally the victims in such instances. The same source of country of origin information sets out the following, *inter alia*:
>
> > 'Many young girls and women were victims of forced marriages arranged by their families. Forced marriages was made a criminal [offence] in 2007; while many cases were filed, prosecution remained a problem. There were reports of citizens abroad bringing their daughters back to the country, taking away their legal documents, and forcing them into marriage against their will.'
>
> …
>
> The preceding item of country of origin information indicates that forced marriage in Pakistan has been a criminal offence since 2007, albeit with prosecution remaining a problem. Nevertheless, the following item of country of origin information, cited by the United Kingdom Home Office, states the following in relation to the marriage rights of men:
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> > "…According to Muslim family laws in Pakistan, a Muslim man has a unilateral right to divorce his wife. This is known as Talaq, whereas a Muslim woman can [only] dissolve her marriage with the intervention of [a] court. She does not have the unilateral right to pronounce talaq unless that right is delegated to her by her husband under marriage contract but this right is usually not delegated to [the] wife. While under Christian Family [laws], Christian women seeking to legally dissolve marriage confront such obstacles in terms of very strict grounds to prove, that many have ended up converting. And conversion means termination of any link with their community. Parents do not encourage their daughters to return home for fear of being stigmatised a 'divorcee' which [is] tantamount to being a social pariah while husband's ill conduct is not questioned generally'
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> …
>
> It is noted that the applicant, in his asylum Questionnaire, identifies his religion as 'Islam'; in light of the foregoing, and of the preceding item of country of origin information, it is reasonable to conclude that even were he to enter an arranged marriage in Pakistan, the applicant would be able to dissolve said marriage unilaterally. The preceding country of origin information indicates that the applicant would be able generally to avail of State protection in Pakistan in respect of this particular fear, per the meaning of 'protection' set out in Regulation 2 (1) of the 2006 Regulations."

18. The decision-maker went on to consider "the possibility for the applicant of the option of internal relocation within Pakistan". Reference was made to information compiled by the US State Department, namely that:

> "The law provides for freedom of movement within the country, and for uninhibited foreign travel, emigration, and repatriation; the government limited these rights in practice…The government cooperated with the UNHCR and other humanitarian organizations in providing protection and assistance to IDPs, refugees, returning refugees, asylum seekers, and other persons of concern. However, the government's restrictions on access to certain areas … often due to security concerns, hindered the ability of humanitarian assistance providers to deliver aid to vulnerable populations".

The decision-maker determined that "aside from certain types of foreign travel, as well as travel to insecure areas in the country,

internal relocation within Pakistan would be a viable option for the applicant, were he to seek to avail of same."

19. With regard to the fears expressed by the applicant in relation to the general security situation in Pakistan, the decision maker made reference to information provided by "International Crisis Group Crisis Watch Database – Pakistan" (1st March, 2012) stating:

> "It is noted that the preceding item of country of origin information sets out, *inter alia*, a deterioration in relations between Pakistan and the United States of America, as well as a number of sectarian Flashpoints in the country, nevertheless, it should be noted that on the 17th February 2009, the European Court of Justice (ECJ) issued a [judgment] in the case of *Elgafaji v. N L*. .. which clarifies the test for whether Article 15 (c) [of the Qualifications Directive] applies in particular cases…
>
> In *Elgafaji*, the ECJ emphasised that in order for someone to qualify for protection on the basis of indiscriminate violence without needing to show why they individually would be at risk, the level of violence would need to be so high that anyone, irrespective of his or her personal circumstance, returned to the country or part of the country in question, would be at risk *'solely on account of his presence in the territory of that country or region'*. The ECJ recognised that such a high level of indiscriminate violence will be 'exceptional'. The [judgment] as to whether levels of indiscriminate violence in a particular country or part of a country reach such a high level, is one for the authorities and the courts of the Member States to consider and assess. Based on the most up to date country of origin information referred to above on the current situation there, the evidence does not support a conclusion that levels of indiscriminate violence are so high in many parts of Pakistan, that anyone returned to many parts of that country would be at risk from indiscriminate violence. It is necessary, therefore, to consider in each case the circumstances of the individual applicant to ascertain whether he personally would be at real risk from indiscriminate violence in all the circumstances of the case.
>
> It should be noted that, as set out earlier in this submission, the options of State protection and internal relocation within Pakistan, would be viable for the applicant, were he to seek either remedy there."

Considerations

Preliminary issue

20. A preliminary issue which arises in this case is whether the Court ought to exercise a higher standard of judicial review of the first named respondent's decision in circumstances where the applicant's fear of refoulement was not considered in any substantive regard at the asylum stage. It is common case that the applicant did not attend his s.11 interview with ORAC and that his asylum application was deemed withdrawn, as provided for in s.11 (10) of the 1996 Act.

21. On the applicant's behalf, it is submitted that this is an important consideration which, his counsel submits, has potential implications for any reliance the first named respondent places on the decision of Clarke J. in *Kouaype v. Minister for Justice, Equality and Law Reform* [2005] IEHC 380. In Kouaype, Clarke J. stated:

> *"5.1 For all of the above reasons it seems to me that the grounds upon which a decision by the Minister to make a deportation order in the case of a failed asylum seeker, can be challenged are necessarily limited. Without being exhaustive it seems to me that it would require very special circumstances for such a review to be possible unless it can be shown that:*
>
> *(a) the Minister did not consider whether the provisions of s. 5 applied. Where the Minister says that he did so consider and in the absence of any evidence to the contrary this will be established;*
>
> *(b) the Minister could not reasonably have come to the view which he did. It is unlikely that such circumstances could arise in practice in most cases of failed asylum seekers given that there will already be a determination after a quasi judicial process which will in substance amount to a finding that the prohibition contained in s. 5 does not arise. However it should be noted that it is incumbent on the Minister to consider any matters which have come to his attention (whether by way of submissions or representations on behalf of the applicant or otherwise) which would tend to show a change in circumstance from the position which obtained at the time the original decision to refuse refugee status was made;*
>
> *(c) the Minister did not afford the applicant a statutory entitlement to make representations on the so called "humanitarian grounds"; or*
>
> *(d) the Minister did not consider any such representations made within the terms of the statute, or the factors set out in s. 3(6) of the 1999 Act, or (possibly) the Minister could not reasonably have come to the conclusion which he did in relation to those factors."*

22. Counsel for the applicant argues that, notwithstanding the limitations to a challenge to a deportation order as expressed in *Kouaype*, the applicant has met the requisite threshold for a challenge to the decision not only on the basis that the first named respondent's conclusion that the applicant's fear of forced marriage could be dealt with by divorce is irrational, but also on the basis that the first named respondent when considering the applicant's fear of refoulement, was obliged to have a heighted regard to the fact that he did not have theretofore the benefit of any substantive consideration of this issue. Counsel submits that the *dictum* of Clarke J. in *Kouaype* was predicated on an assumption that the first named respondent, in making a decision to deport, would have the benefit of a determination emanating from a quasi judicial process (the asylum process), which would in substance amount to a finding that the prohibition expressed in s. 5 of the 1996 Act did not arise.

23. Counsel for the respondents disputes the applicant's contention that greater scrutiny of the decision is warranted given the absence of any substantive decision on the refoulement issue at the asylum stage; the fact of the matter is that the applicant was afforded a s. 11 interview but failed to attend for same. It is submitted that there is no duty or burden on the first named respondent to give any deeper consideration to the applicant's case than that which was afforded to it simply because the applicant did not show up at the s. 11 interview stage. Counsel contends that the applicant was afforded his statutory entitlements under the 1999 Act to make representations. It is also submitted that, in accordance with the criteria set out by Clarke J. in *Kouaype*, the first named respondent considered whether s. 5 of the 1996 Act applied. Moreover, while the absence of any *quasi*-judicial determination at the asylum stage may be a relevant factor, in the instant case, at the leave to remain stage the applicant was represented by his solicitor and representations were made on his behalf. All of the representations were given due consideration, in accordance with the

obligation on the first named respondent pursuant to s.5 of the 1996 Act. It is submitted that there is no evidence that there was any change in the applicant's circumstances from the time of the leave to remain application until the decision made by the first named respondent. Furthermore, there is no evidence before the Court that representations were not considered. On the contrary, the examination of file evidences the consideration given to the representations as were made on the applicant's behalf.

24. The respondents' counsel also submits that the applicant's representations themselves should be a starting point for the Court. It is asserted that, as is evident from the representations filed on 20th July 2011, there was merely a casual reference by the applicant that he "does not want to be forced into an arranged marriage" It is contended that, despite this level of casualness, the first named respondent carefully scrutinised this asserted fear.

Conclusions on the preliminary issue

25. To paraphrase Clarke J. in *Kouaype*, in general terms there are two statutory requirements to the making of a deportation order. First, the first named respondent is required to be satisfied that none of the conditions set out in s.5 of the 1996 Act are present. Secondly, the first named respondent is also required to consider the humanitarian and other factors as set out in s.3(6) of the 1999 Act insofar as these are known to him. In the within application, no issue is taken to the manner in which the first named respondent addressed the factors set out in s.3(6) of the 1999 Act.

26. With regard to the applicant's counsel's submission that the first named respondent was obliged to apply a higher standard of scrutiny to the applicant's circumstances given the absence of any substantive decision in the asylum process, it seems to me that that argument is somewhat superfluous in light of the mandatory requirement that is on the first named respondent to consider whether the conditions set out in s.5 of the 1996 Act are present. Moreover, even if there had been a substantive decision on the applicant's application for refugee status, that of itself would not have absolved the first named respondent of his statutory duty to comply with s.5 of the 1996 Act. It is also a relevant factor that, at all stages of the leave to remain process, the applicant had legal representation.

27. The salient question in the present case is whether due and proper consideration was afforded to the applicant's asserted fear of being refouled to Pakistan. Having regard to the contents of the examination of file and the representations which the applicant made, I am satisfied that the first named respondent complied with the statutory requirement to consider whether there were conditions which would mandate that he would not deport the applicant to Pakistan. It is evident that the decision-maker was cognisant of the fears expressed by the applicant. In addressing the fear of forced marriage, regard was had to country of origin information, including the US State Department Report issued on 8th April, 2011, and information obtained by the Irish Refugee Board (IRB) on foot of a "Response to Information Request on the issue of single women living alone" in Pakistan. Regard was also had to relevant country of origin information when addressing the applicant's asserted fear based on conditions prevailing in Pakistan. All in all, no persuasive case has been advanced to suggest that the first named respondent disregarded his statutory obligations pursuant to s.5 of the 1996 Act.

28. The next question to be addressed is whether the first named respondent's conclusion that repatriating the applicant to Pakistan was not contrary to s. 5 of the 1996 Act is irrational, as alleged on behalf of the applicant.

Alleged irrationality in the decision

The parties' submissions

29. At the outset, counsel for the applicant submitted that the contents of the examination of file document suggest that the applicant's fear of being forced into an arranged marriage upon return to Pakistan was accepted as credible. It is accepted, however, that there was no evidence before the decision maker (or before the Court) of the applicant actually being forced into an arranged marriage.

30. Counsel submits that, while the reasoning in the decision concerning the applicant can be deduced, same is not rational as the conclusions drawn do not flow from their premise. In particular, counsel contends that, while appearing to accept the applicant's asserted fear of forced marriage, the first named respondent has constructed an irrational solution to the said fear.

31. It is further submitted that the first named respondent failed to appreciate that, if the applicant can be forced into an arranged marriage, equally he may be forced to remain in the marriage and thus be prevented from divorcing his wife. In that circumstance, the practice within Islam of a man being able to divorce his wife does not necessarily mean that it would be practicable or possible for the applicant to do so. Hence, the irrationality of the first named respondent's decision.

32. It is submitted that the first named respondent's only answer to the applicant's fear is that as a Muslim, he could, if forced into marriage, divorce his wife. Counsel submits that this conclusion, in particular, does not flow from its premise, contrary to the principles enunciated in *O'Keeffe v. An Bord Pleanala* [1993] 1 I.R. 39 as endorsed in *Meadows v. Minister for Justice, Equality and Law Reform* [2010] 2 I.R. 701.

33. It is further submitted that the country of origin information which was referred to in the decision belies the decision-maker's conclusions on the availability of State protection. The US State Department report stated, *inter alia*, that "the government also failed to prosecute cases in which families punished members … for marrying or seeking a divorce against the wishes of other family members." It is submitted that, clearly, this is not evidence of the availability of State protection for the applicant. The duty of the first named respondent was to consider the adequacy, in practical terms, of the protection available. In this regard, counsel cites *Idiakheua v. Minister for Justice, Equality and Law Reform* [2005] IEHC 150. It is submitted that, in particular, the contents of the US State Department report were not taken account of by the first named respondent in assessing whether or not adequate State protection would be available to the applicant. The said report acknowledges that forced marriages remain a problem in Pakistan notwithstanding that forced marriage was made a criminal offence in 2007. Counsel asserts that there is no evidence in the decision of the State protection invoked by the decision-maker being available to the applicant. It is also submitted that the first named respondent placed selective reliance on particular aspects of the available country of origin information, contrary to the manner in which such information should be treated as set out by Edwards J. in *D.V.T.S. v. Minister for Justice* [2008] 3 I.R. 476.

34. On behalf of the respondents, it is submitted that, having considered the applicant's asserted fear in the context of available country of origin information, the first named respondent lawfully and rationally had regard to the fact that it was women who are generally the victims of forced marriage and, moreover, concluded that even if the applicant were to enter an arranged marriage in Pakistan, he would be able to dissolve the said marriage unilaterally on the basis of his Muslim faith. Counsel submits that the applicable standard for granting review based on alleged irrationality is that the relevant decision must be so irrational that no reasonable decision-maker, properly instructed, could have come to it. It is contended that the applicant has failed to establish that the first named respondent could not reasonably have concluded as he did.

35. Insofar as the applicant alleges that if he is forced into marriage he could equally be forced to remain in the marriage, it is submitted that the applicant has not adduced evidence by way of country of origin information or otherwise to back up that assertion, in accordance with the burden that is on him. While counsel for the applicant submits that the first named respondent did not address any civil right of divorce the applicant may have, the best information available to the first named respondent was that the applicant's rights as a Muslim man included a right to divorce. Accordingly, the first named respondent's conclusion that the applicant, if forced into marriage, could divorce his spouse was a rational inference which the first named respondent was entitled to draw.

36. While the applicant advances the proposition that forced marriage in Pakistan shows an equal likelihood of the non availability of divorce for the applicant, no authority was cited by counsel for the applicant in this regard.

37. It is further submitted that there is no merit to the applicant's contention that the first named respondent wrongfully concluded that the applicant could avail of State protection.

38. In essence, the decision-maker lawfully concluded that the applicant could avoid forced marriage on the basis of the regard paid by the decision-maker to the fact that the problem in and around forced marriage in Pakistan applied to women. Secondly, it was lawfully concluded that the applicant had a remedy (divorce) even if he was forced into an arranged marriage. Accordingly, it is submitted that the first named respondent's logic meets the rationality test in *O'Keeffe*, as endorsed by *Meadows*.

The Court's conclusions on the irrationality argument
In a review of any administrative decision, the starting point has to be whether the decision discloses its essential rationale. In *B.O.B. v. the Refugee Appeals Tribunal & Ors.* [2013] IEHC 187, Mac Eochaidh J. put it as follows:

> *"8. Reference is also made to Voga v. The Refugee Appeals Tribunal (Unreported, High Court, Ryan J. 3rd October, 2010), and S.R. [Pakistan] v. The Refugee Appeals Tribunal (Unreported, High Court, Clark J. 29th January, 2013, at paragraphs 18 to 23). In Meadows v. The Minister for Justice, Equality and Law Reform, Murray J. said as follows:*
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> *'An administrative decision affecting the rights and obligations of persons should at least disclose the essential rationale on foot of which the decision is taken. That rationale should be patent from the terms of the decision or capable of being inferred from its terms and its context.*
>
> *Unless that is so then the constitutional right of access to the Courts to have the legality of an administrative decision judicially reviewed could be rendered either pointless or so circumscribed as to be unacceptably ineffective. In my view the decision of the Minister in the terms couched is so vague and indeed opaque that its underlying rationale cannot be properly or reasonably deduced.'"*

39. Whilst the decision in issue here cannot be described as a model of clarity, the Court is nevertheless satisfied that the essential rationale for the conclusion that repatriating the applicant to Pakistan would not breach s. 5 of the 1996 Act can be reasonably deduced.

40. I turn, therefore, to the first named respondent's reasoning. The applicant's principal asserted fear is that of being forced into an arranged marriage. The first observation that has to be made is that the first named respondent looked at this assertion in the context of country of origin information and saw that the information on file described the problem of forced marriages in Pakistan as one generally encountered by woman. Clearly, the applicant does not fit that profile. It seems to me, therefore, that the decision-maker's first conclusion, namely that it is women generally who are the victims of forced marriage, cannot be faulted for its rationality, based as it was on an analysis of country of origin information.

41. Furthermore, the applicant has not put before the court any information which states that men generally were the victims of forced or arranged marriages, to which the decision-maker failed to have regard. In those circumstances, I do not perceive any irrationality in the first named respondent's primary conclusion that the problem of forced marriages generally impacted on women in Pakistan. That being the case, I do not accept the applicant's counsel's submissions that the accepted deficiencies of the Pakistani State, in failing to protect women from arranged or forced marriages or in failing to prosecute family members who punished women for marrying or seeking a divorce against the wishes of the family members (as is evident from the country of origin information quoted in the decision), can assist the applicant's contention that the decision was irrational by reason of the alleged failure to acknowledge the deficiencies in State protection in Pakistan. For this reason also, I reject the submission that the decision-maker selectively relied on country of origin information.

42. All in all, I am not persuaded that the applicant has established, to the requisite threshold, that the respondent erred in finding that there was no real or significant risk of the applicant being forced into marriage in Pakistan.

43. Separately, the first named respondent went on to conclude that there was a solution for the applicant if he found himself the subject of a forced marriage, namely that as a Muslim man he could divorce his spouse unilaterally, as evidenced by the contents of country of origin information before the first named respondent. This conclusion was arrived at by reference to a report which outlined that "Muslim family laws in Pakistan" provided for the "unilateral right" of a Muslim man to divorce his spouse. It was considered by the decision-maker that the availability of this remedy afforded "protection", as defined by Regulation 2(1) of the European Communities (Eligibility for Protection) Regulations 2006 ("the 2006 Regulations"), for the applicant. It seems to me that this conclusion falls within the bounds of rationality on the basis of the applicant's stated religion (Islam) and on the basis of the availability to the applicant of the said remedy.

44. The test on judicial review is not what this Court might conclude, but rather what is set out by Finlay C.J. in O'Keeffe, quoting, at p. 70, *The State (Keegan) v. Stardust Compensation Tribunal* [1986] I.R. 642:

> *"In dealing with the circumstances under which the [Court] could intervene to quash the decision of an administrative officer or tribunal on grounds of unreasonableness or irrationality, Henchy J.in that judgment set out a number of such circumstances in different terms.*
>
> *They are:*
>
> *1. It is fundamentally at variance with reason and common sense.*
>
> *2. It is indefensible for being in the teeth of plain reason and common sense.*

3. Because the court is satisfied that the decision-maker has breached his obligation whereby he 'must not flagrantly reject or disregard fundamental reason or common sense in reaching his decision.'".

45. In *O'Keeffe*, with regard to the aforesaid quotations, Finlay C.J. went on to observe, at p. 71:

> *"It is clear from these quotations that the circumstances under which the court can intervene on the basis on the basis of irrationality with the decision-maker involved in an administrative function are limited and rare."*

He also stated, at p. 71:

> *"The court cannot interfere with the decision of an administrative decision- making authority merely on the grounds that: (a) it is satisfied that on the facts as found it would have raised different inferences and conclusions, or (b) it is satisfied that the case against the decision made by the authority was much stronger than the case for it."*

At p. 72 of the decision, he opined:

> *"I am satisfied that in order for an applicant for judicial review to satisfy a court that the decision-making authority has acted irrationally in the sense which I have outlined above so that the court can intervene and quash its decision, it is necessary that the applicant should establish to the satisfaction of the court that the decision-making authority had before it no relevant material which would support its decision."*

46. The *O'Keeffe* rationale was approved in *Meadows* where it was held, *inter alia*, that the correct test to be applied in reviewing the rationality or unreasonableness of an administrative decision which affected constitutional or fundamental rights was as stated by Henchy J. in *Keegan* and re-stated in *O'Keeffe*. It was also reiterated (Denham J. and Fennelly J.) that the burden of proof always lies on the applicant for judicial review.

47. As held in *Meadows*, where an applicant relies on factual material expressly relevant to the prohibition on refoulement, the decision-maker is required to consider it and specifically address whether there were grounds which would prevent him or her making a deportation order. In the present case, the applicant himself did not expressly rely on any specific material relevant to the prohibition on refoulement, rather he made his case in his written representations. Nothing turns on this in any event, given the obligation on the first named respondent pursuant to s. 5 of the 1996 Act. The fact of the matter is that the first named respondent did consider the applicant's representations and arrived at a decision on the issue of refoulement. As I have said, the Court is satisfied that the underlying rationale for the decision to repatriate the applicant to Pakistan is sufficiently clear and/or patent from the decision so as to allow the Court to scrutinise whether the rationale accords with the (*O'Keeffe*) principles of reasonableness and rationality. For the reasons set out above, the Court finds no basis upon which to uphold the applicant's contention that the decision is irrational.

The alleged unlawful internal relocation finding

48. It is also argued on the applicant's behalf that, insofar as the first named respondent addressed the applicant's fears by concluding that he could relocate within Pakistan, that conclusion was not lawfully arrived at in that no specific area within Pakistan was identified to which the applicant could relocate. It is submitted that, in respect of this conclusion generally, there was no careful inquiry carried out by the decision-maker as mandated by the principles set out by Clarke J. in *K.D. (Nigeria) v. Refugee Appeals Tribunal* [2013] I.R. 448. In particular, counsel relies on paras. 28 – 29 of that judgment.

49. Counsel for the respondents contends that there is no merit to the challenge sought to be advanced to the first named respondent's finding that internal relocation was available to the applicant. While the applicant cites the *dictum* of Clarke J. in *K.D. (Nigeria)* and the provisions of the 2006 Regulations, it is submitted that in deportation cases there is no commensurate statutory duty on the first named respondent to that which is on a protection decision-maker in the asylum process pursuant to the 2006 Regulations.

The Court's conclusion on the internal relocation issue

50. What was required of the first named respondent in the context of his refoulement analysis was to give due consideration to the question of whether the applicant could be returned to Pakistan without threat to his life or freedom. As is clear from the decision, consideration was given to whether internal relocation would be an option for him. It was found that that option would be available given that the law provided for freedom of movement within Pakistan. In the course of the consideration, and in response to the applicant's fears concerning the security situation in Pakistan, including that Pakistan was a "powder keg", and in accordance with his obligations pursuant to s. 5 of the 1996 Act, the decision-maker consulted country of origin information on the question of the security situation within that State. The decision-maker duly noted a number of "sectarian flashpoints in the country", but concluded that the applicant's asserted fears did not meet the test set by the European Court of Justice in *Elgafaji v. NL* (Case C-465/07), as set out in the decision. I find no basis on which to impugn the conclusion arrived at, either for want of fair procedures or lack of reasonableness or rationality.

Summary

51. In all the circumstances of the present case, I am satisfied that the first named respondent's decision has not been vitiated by any error of law or error of as to require the intervention of this Court. Accordingly, the relief sought in the Notice of Motion is denied.