Neutral Citation Number: [2008] IEHC 140

THE HIGH COURT
JUDICIAL REVIEW

2005 No. 626 J.R.

BETWEEN

G. N.

APPLICANT

AND
THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM AND OLIVE BRENNAN, REFUGEE APPEALS TRIBUNAL

RESPONDENTS

Judgment delivered by Mr. Justice Herbert delivered the 8th day of May 2008

1. This is an application for leave to seek an Order for *certiorari* and a declaration by way of judicial review. The applicant's country of origin is Burundi. He claimed asylum in this State in March 2004, pursuant to the provisions of s. 8 of the Refugee Act, 1996 (as amended). This State accepted responsibility for examining his asylum application under Council Regulation (EC) No. 343/2003, as adopted into the domestic law of the State by SI 423 of 2003.

2. The applicant claims to have a well-founded fear of being persecuted in Burundi for reasons of race, (mixed ethnic origin: father Hutu, mother Tutsi), and political opinion (his father, his two brothers and himself were all involved in the Hutu political group Frodebu and, his father, two brothers and seven members of his father's family were killed by Tutsi extremists). He also claims to be unwilling to return to Burundi because of this fear. I am satisfied that if established, these alleged grounds would bring the applicant within the definition of "refugee" contained in s. 2 of the Refugee Act 1996, (as amended).

3. The applicant himself, without legal assistance completed the Application Questionnaire on 22nd March, 2004, and indicated that he was satisfied that all the information given was true and accurate. The applicant was interviewed on the 28th October, 2004, by Pauline O'Dwyer, an Authorised Officer on behalf of the Refugee Applications Commissioner. The Report and Recommendation of the Refugee Applications Commissioner made in October, 2004, pursuant to the provisions of s. 13(1) of the Refugee Act 1996, (as amended), concluded that the applicant had failed to establish a well founded fear of persecution as defined by s. 2 of the Act of 1996 and, that he should not be declared a refugee. On the 1st December, 2004, the applicant, through his Solicitors, Daly Lynch Crowe and Morris, appealed to the Refugee Appeals Tribunal from this decision of the Refugee Applications Commissioner.

4. This appeal came on for an oral hearing before Olive Brennan, a Member of the Refugee Appeals Tribunal on the 18th January, 2005. The applicant was represented at the hearing by Mr. Michael Crowe, Solicitor and the Presenting Officer was Mr. Max Factor. In her Decision dated 11th May, 2005, which was notified to the applicant by letter dated 20th May, 2005, the Member of the Refugee Appeals Tribunal held that:-

> "The applicant had not given a truthful account in relation to his case and the Tribunal was therefore satisfied that he had not established a well founded fear of persecution on any s. 2 ground and, was not a refugee.
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> Given the situation which then existed in Burundi there was no reasonable likelihood that the applicant's fears would be realised were he to be returned to that country."

5. The applicant now seeks leave of this Court to apply by way of judicial review for an order of *certiorari* quashing this Decision of the Refugee Appeals Tribunal and for a declaration that it was *ultra vires*, void and of no force or effect. The statement of grounds is dated the 13th June, 2005, and is supported by an affidavit of the applicant dated 13th June, 2005.

6. This application falls within the provisions of s. 5(1)(j) of the Illegal Immigrants (Trafficking) Act 2000. Subsection 2(b) of that section provides that leave shall not be granted to apply for judicial review unless this Court is satisfied that there are substantial grounds for contending that the decision of the Refugee Appeals Tribunal is invalid or ought to be quashed.

7. In giving the decision of the Supreme Court in matter of the reference to it by the President of Ireland of s. 5 and s. 10 of the Illegal Immigrants (Trafficking) Bill 1999, [2000] 2 I.R. 360 at 394/5, Keane C.J. held, following the decision of Carroll J., in *McNamara v. An Bord Pleanála (No. 1)* [1995] 2 I.L.R.M. 125, that, "substantial grounds" meant reasonable arguable and weighty grounds and, not grounds that were trivial or tenuous.

8. The applicant claims that the process by which the Member of the Refugee Appeals Tribunal assessed his credibility was deficient and, that the process by which she concluded that his fear of persecution would not be realised if he should be returned to Burundi was also deficient so that he was deprived of due process and of fair procedures, (*Bujari v. Minister for Justice, Equality and Law Reform and Others* (Unreported, High Court, 7th May, 2003, Finlay Geoghegan J.)).

9. The grounds advanced by the applicant in support of his application may be summarised as follows:-

> 1. The Member of the Refugee Appeals Tribunal wrongfully failed to attach any probative value to Death Certificates of David and Marc Kana, who he claims were his siblings and, which he asserts are evidence supporting his claim that his family suffered persecution because of their political opinions and mixed ethnicity.
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> 2. The Member of the Refugee Appeals Tribunal relied on part of a United Nations Report which stated that people of Hutu-Tutsi mixed marriages experienced no problems in Burundi for the previous two years and no such problems had been reported by any human rights organisations since May 1999, while disregarding another section of the same text which stated that children of mixed marriages and their parents could have problems with Tutsi or Hutu extremists and that these families risked being harassed and in some cases beaten or killed.
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> 3. The finding by the Member of the Refugee Appeals Tribunal that the applicant's assertion that members of his family had been killed by members of the Sans Defaite, (Tutsi extremist militia), does not accord with the country of origin information as to the situation in Burundi in the period 2000 to 2004 and is erroneous and indicates a disregard of or a misinterpretation of the evidence.
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> 4. The finding by the Member of the Refugee Appeals Tribunal that even though the genocidal killings in Burundi were very well documented, no reference was found to the alleged killing of the members of the applicant's immediate and extended

family was sufficient to undermine the credibility of his story, was irrational and unreasonable, given the country of origin information regarding the scale of the killings in Burundi and, to the lack of international newsworthiness of the death of David Kana.

5. The findings by the Member of the Refugee Appeals Tribunal that the Tribunal was unable to unearth any evidence of the custom, which the applicant asserted existed in Burundi, where some children are given the surname of their father while others are each given a different and separate surname chosen by their mother and that the applicant's evidence in this regard was highly suspect, was in breach of the provisions of s. 16(8) of the Refugee Act 1996 (as amended), because the Member of the Refugee Appeals Tribunal did not disclose to the solicitors for the applicant details of the searches that had been made or of the documents (if any) on which reliance had been placed.

6. The Member of the Refugee Appeals Tribunal had failed to consider the applicant's credibility in the context of the country of origin information.

7. The Member of the Refugee Appeals Tribunal had failed in any sense to give the benefit of the doubt to the applicant, even though his account of events was coherent and plausible and did not contradict generally known country of origin information.

8. The Member of the Refugee Appeals Tribunal failed to apply a "reasonable degree of likelihood" standard of proof.

9. The Member of the Refugee Appeals Tribunal had misdirected herself in Law in concluding that corroboration of the applicant's account of events was necessary.

10. The Member of the Refugee Appeals Tribunal had misdirected herself in fact in finding that the Death Certificates related to one Animana Karim and, acted unreasonably in concluding that the applicant was not credible in asserting that the Death Certificates related to his siblings David and Marc Kana.

11. The Member of the Refugee Appeals Tribunal did not have any or any proper or sufficient regard to the country of origin information submitted by the applicant or to the submissions made on his behalf.

12. The findings by the Member of the Refugee Appeals Tribunal that the applicant was "inconsistent in numerous ways throughout his interview, questionnaire and hearing", is baseless and unreasonable because the Member of the Refugee Appeals Tribunal does not specify in her Decision the alleged ways in which she found him to be inconsistent.

13. The finding by the Member of the Refugee Appeals Tribunal in relation to the "forward looking test", that the applicant would now be safe should he be returned to Burundi is not supported by the country of origin information and, is based on a partial and incorrect analysis of a Danish Fact Finding Mission Report.

10. I find that it was properly open to the Member of the Refugee Appeals Tribunal to hold that the Death Certificates submitted to the Tribunal by the applicant were of no probative value in relation to his application. It was reasonably and rationally open to the Member of the Refugee Appeals Tribunal to conclude that even if these Death Certificates related to the applicant's siblings, they were of no probative value in establishing that they were killed by Government forces or Tutsi extremist militia because of their involvement in the Hutu Frodebu political group or because they were the children of mixed Hutu-Tutsi marriage.

11. The Death Certificates, – only photocopy documents were furnished to the Court and these are almost illegible even in enlargement, – appear to state that Kana Tite [sic] and Nakintite Le'ocadie [sic] are the father and the mother of the named deceased. The Member of the Refugee Appeals Tribunal records in her Decision that in the Identification Card produced by the applicant, (the photocopy document produced to the Court was almost illegible), the father's surname is given as Kana Tite [sic] whereas the name of the holder is given as N. G. I find that even if the Member of the Refugee Appeals Tribunal had misdirected herself as to fact and, erroneously concluded that the surname of the deceased on the Death Certificates was Karim and not Kana, this does not in any way render irrational or unreasonable her conclusion that these Death Certificates refer to people whose names are different from the applicant and, that the applicant's explanation as to why this was so was not capable of being believed.

12. In the Application Questionnaire, which he completed and verified himself, the applicant stated that his father was Kana Tito [sic] and that his mother was Kana Leocadie Ntakininje. He gave the names of his brothers as Nakurunziza Prime and Nkundimfura Justin and, that of his sister as Ntimaragahinda Albertine. In his application of 22nd March, 2004, and in the Questionnaire he gave his family name as N. The Member of the Refugee Appeals Tribunal records in her Decision that the applicant told the Tribunal that in Burundi some children are given their father's surname, while other siblings are given entirely different names chosen by their mother. The Member of the Refugee Appeals Tribunal stated in her Decision that the Tribunal was unable to discover on investigation any evidence of any such custom in Burundi and, that the applicant's account in this regard was therefore highly suspect.

13. The provisions of paras. 195 and 196 of the United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status were considered by the Supreme Court in *"Z" v. Minister for Justice, Equality and Law Reform and Others* [2002] 2 I.L.R.M. 215 at 237/238 per McGuinness J., and, in *Re: Illegal Immigrants (Trafficking) Bill 1999,* [2002] 2 I.R. at 395/396 per Keane C.J. The Court found that the burden of proof of establishing that he personally had a well founded fear of persecution rests on the applicant. Paragraph 196 of that Handbook provides that, "in some cases it may for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application".

14. In the instant case, I find that the Member of the Refugee Appeals Tribunal clearly assumed the burden of endeavouring to establish the existence of this alleged custom in Burundi. She stated in her Decision that the Tribunal was unable to unearth any evidence of any such custom. I am satisfied that in these circumstances her conclusion that the applicant's explanation as to why his alleged parents and each of his alleged siblings had surnames different from his was not capable of being believed, was not *ultra vires* and was neither irrational nor unreasonable.

15. It is alleged on behalf of the applicant that there was a breach of fair procedures in that the Member of the Refugee Appeals Tribunal did not furnish to the applicant or to his Solicitors, particulars of the searches made by the Tribunal and did not include that information in her decision. That, it is said, is a breach of the mandatory provisions of s. 16(8) of the Refugee Act 1996, (as amended), which requires that the Tribunal furnish:-

> "An indication in writing of the nature and source of any other information relating to the appeal which has come to the notice of the Tribunal in the course of an appeal under this section."

16. In my judgment this subsection does not impose on the Member of the Refugee Appeals Tribunal an obligation in her Decision to set out particulars of a search for information where the Decision records that such a search for information was conducted, but that none was forthcoming.

17. I am therefore satisfied that grounds 1, 2, and 10 advanced by the applicant are not substantial grounds for contending that the decision of the Refugee Appeals Tribunal is invalid or ought to be quashed.

18. As regards the fifth ground advanced by the applicant: in her Decision the Member of the Refugee Appeals Tribunal held that:-

> "Country of origin information available to the Tribunal from the United Nations indicates that from May, 1999, no sources, including those from human rights organisations, had identified persons in ethnically-mixed marriages being at particular risk. The same report claims people of ethnically-mixed marriages had not had problems for the last two years. The last mission was undertaken by the Security Council in September, 1999. One could move around freely in Bujumbora, irrespective of one's ethnic identity, and people of ethnically-mixed marriages lived relatively anonymously there without problems. This was at a time when the applicant claimed to experience ethnic difficulties which ultimately resulted in the alleged killing of his two brothers and the slaughter of 7 of his father's relatives who had come visiting for Christmas and the New Year".

19. I find that the reference by the Member of the Refugee Appeals Tribunal is to an extract from a Report published in January, 2000, by a Danish Fact-Finding Mission to Burundi in September, 1999. The particular Section of the Report is headed: "The Situation for Ethnically mixed married/co-habiting couples". The paragraph relied on by the applicant, which it is claimed was ignored by the Member of the Refugee Appeals Tribunal is the fifth paragraph in that Section. It records that a political observer in Bujumbura, who wished to remain anonymous stated that the children of ethnically mixed marriages and the couples themselves, could have problems with Tutsi or Hutu extremists and that these families risked being harassed and in some cases beaten or killed. However, four paragraphs later, in the same Section of the Report, the other informant, whose name is stated, advised that people in ethnically-mixed marriages did not have problems for that reason in the previous two years. He accepted that the issue might suddenly arise again if tension in Bujumbura were to increase. He stated that it was not a problem at the moment and, explained that both ITEKA and the Government were actively attempting to prevent the revival of ethnic tension in Bujumbura. He stated that generally one could move around freely in Bujumbura irrespective of one's ethnic identity, and he considered that reasonable peace and order still prevailed in that city. He stated that people in ethnically-mixed marriages lived relatively anonymously in central Bujumbura without problems. The authors of the Report concluded the Section by stating that it should be noted that during the recent mission no source raised ethnically-mixed marriages as a particular problem. During the mission to Bujumbura in April/May 1999, the delegation had asked several sources, including human rights organisations, to identify possible risk groups in the capital, but persons of ethnically-mixed marriages were not mentioned in that context.

20. The paragraph relied on by the applicant, must be read in its proper order and context. Both the unnamed and the named informant agreed that the partners in and the offspring of ethnically mixed marriages *could* or *might* (the emphasis is mine), have problems with Tutsi or Hutu extremists. The named informant pointed out that this might arise if there was a recurrence of increased tension in Bujumbura. However, the named informant pointed out that there had been no such problems since April/May 1997, and, in April/May 1999, sources (not identified), but which was stated to have included Human Rights Organisations, had not identified persons in ethnically-mixed marriages as being at risk in Bujumbura.

21. In the absence of country of origin information evidencing a resurgence after January, 2000, of this form of ethnic violence in Burundi and, this Court was not pointed to any such evidence, – I find that it was therefore open to the Member of the Refugee Appeals Tribunal to conclude that it was improbable and therefore not credible that the alleged killing on the 20th January, 2004, of David Kana and Marc Kana, whom the applicant, despite his surname, alleges were his brothers and, the alleged killing on the 30th [sic] February, 2004, of 7 of his alleged father's relatives by Tutsi extremist militia calling themselves Sans Defaite, could not have been due to attacks on persons because of their involvement in ethnically-mixed marriages. I find that it was open to the Member of the Refugee Appeals Tribunal to conclude, that this country of origin information entirely eliminated any objective basis for the applicant's alleged subjective fear of persecution on the grounds of race (ethnicity), even if he was the issue of the ethnically-mixed marriage which he claims to be.

22. I am therefore satisfied, that this is not a substantial ground for contending that the Decision of the Refugee Appeals Tribunal is invalid or ought to be quashed.

23. The third and fourth grounds advanced by the applicant allege that the Member of the Refugee Appeals Tribunal either disregarded or misinterpreted the country of origin information before her in concluding that his story was not credible.

24. The Member of the Refugee Appeals Tribunal found that the genocidal killings in Burundi were well documented. No challenge is made to this finding. The Member of the Refugee Appeals Tribunal found that the killing of seven members of a family or an extended family, in a single incident by Sans Defaite at the end of February, 2004, was not documented. Despite the applicant's persistence in insisting that this occurred on the 30th February, 2004, the Member of the Refugee Appeals Tribunal still carried out a search covering February, 2004, and some later dates.

25. A Report from the United Nations Office for the Coordination of Humanitarian Affairs for the period 8th March to the 15th March, 2004, recorded the killing of a policeman guarding the Director General of PAFU or PAFE. A Report from the same Organisation for the period 1st January to 20th January, 2004, contained no reference to the killing of a driver of the Director General of the PAFU or PAFE, even though the applicant stated that his "big brother", David Kano, was the driver for the Director General of PAFU or PAFE and had been killed on the 20th January, 2004. The applicant stated that he did not know what the letters PAFU or PAFE stood for but that the Director General was a member of the Frodebu Party responsible for goods entering Burundi from Tanzania.

26. It was submitted on behalf of the applicant that the Member of the Refugee Appeals Tribunal in relying on these findings to conclude that the applicant's story was not credible and his account of events was not truthful, failed to have any or any proper regard to the country of origin information before her, which illustrated the shocking scale of the genocide in Burundi. I assume, that the inference which the applicant wishes this Court to draw from this submission, is that with such a scale of killing, even the slaughter of seven members of the same family by Sans Defaite on the 30th [sic] February, 2004, could readily have been overlooked and gone undocumented. In relation to David Kano, it was submitted on behalf of the applicant, that while the killing of the police guard of an important Frodebu party member might be considered newsworthy by the international news media, the killing of a party member who acted as a driver for the same person would not have the same interest for the international news media and would go unnoticed by them.

27. In my judgment, these are arguments and suggestions as to facts and, to inferences to be drawn from facts, and relate only to the issue of whether the conclusion reached by the Member of the Refugee Appeals Tribunal was appropriate or inappropriate on the evidence before her. The conclusion of the Member of the Refugee Appeals Tribunal is based on her assessment of the evidence and does not involve any failure on her part to have regard to material evidence. In the very apposite and much quoted phrase of O'Leary J. in *Kayode v. The Refugee Appeals Tribunal* (Unreported, High Court, 25th April, 2005,), these points are, by and large, matters relating to the quality of the decision rather than the defective application of legal principles.

28. In my judgment, these are not substantial grounds for contending that the decision of the Refugee Appeals Tribunal is invalid or ought to be quashed.

29. As regards the sixth and eleventh grounds advanced by the applicant, I am quite satisfied that the Member of the Refugee Appeals Tribunal clearly and carefully, as appears on the face of her Decision, assessed the applicant's credibility in the context of the country of origin information before the Tribunal. For example, as regards the alleged killing by Sans Defaite of seven members of his alleged father's family, the applicant stated that this had occurred on the 30th February, 2004. The Member of the Refugee Appeals Tribunal in her Decision records that the applicant, "repeated this date persistently throughout his hearing". It would have been open to the Member of the Refugee Appeals Tribunal, in the face of this persistence, to conclude that his story was not credible. However, she did not do so. She decided that this testimony was not credible solely by reference to the country of origin information. Having regard to this country of origin information, she found that the Sans Defaite extremist militia had been brought under control in July, 1999. Similarly, she found that while genocidal killings in Burundi were well documented, no reference could be found to this alleged killing, even in "a trawl made in relation to other dates subsequent to the alleged incident on '30th February, 2004"'.

30. On a careful perusal of the material before the Member of the Refugee Appeals Tribunal and, in particular the voluminous and often complex country of origin information furnished to the Tribunal, I am satisfied that the Member of the Refugee Appeals Tribunal had careful regard to all this country of origin information and to the applicant's submissions. This is stated by the Member of the Refugee Appeals Tribunal in her Decision. This Court should accept that the Member of the Refugee Appeals Tribunal complied with the mandatory provisions of s. 16(16) of the Refugee Act 1996, (as amended), unless the contrary is demonstrated and, in this respect, the onus, which is a heavy one, lies on the applicant who contends otherwise. A mere assertion is altogether insufficient and when unsupported by specific instances is inappropriate and an abuse of the process of the court.

31. I find that these are not substantial grounds for contending that the decision of the Refugee Appeals Tribunal is invalid or ought to be quashed.

32. As regards the seventh ground relied upon by the applicant, it was pointed out in *Pasic v. The Minister for Justice, Equality and Law Reform* (Unreported, High Court, Peart J., 23rd February, 2005), that:-

> " … the more the case by the applicant is made in a way which is detailed, cogent, and is rationally based, and not mere supposition or conjecture, then the greater the burden or onus which shifts to the host authority not to reject what is put forward without having good reason based upon country of origin material and information of substance and beyond real doubt. The benefit of any real doubt must always be given to the applicant."

33. In para. 196 of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, it is stated, that even where the examiner has carried out independent research in an effort to confirm the story told by an asylum seeker, and has not been successful, "if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt".

34. In the instant case, no such considerations arose. The applicant's story was detailed, but the Member of the Refugee Appeals Tribunal found and, I am satisfied that on the evidence before her it was neither unreasonable or irrational for her to have so found, that it was neither cogent, credible nor rational by reference to the country of origin information and independent research and, was replete with inconsistencies which the applicant was given every opportunity of explaining before the Tribunal and which he was unable to do. Giving the benefit of the doubt to the applicant, does not mean and, could not mean, disregarding all of this and accepting the applicant's account as valid because some incidents of the type related in that account had occurred in his country of origin.

35. I am satisfied that this is not a substantial ground for contending that the decision of the Refugee Appeals Tribunal is invalid or ought to be quashed.

36. As regards the eighth ground advanced by the applicant, in her Decision the Member of the Refugee Appeals Tribunal, though not legally obliged to do so, expressly adopted the "reasonable degree of likelihood" standard of proof. She cites from the decision *in Ex Parte Sivakumaran* (1988) House of Lords, where this standard of proof was adopted and, also refers to the decision *in Ex Parte Fernandez* [1971]. In considering the "forward looking test", the Member of the Refugee Appeals Tribunal states that:-

> "Given that this is the situation that now exists [in Burundi] the Tribunal is of the view that there is no reasonable likelihood that the applicant's fears would be realised were he to be returned to his country of origin."

37. No reasoned argument, supported by specific references to relevant parts of the Decision of the Member of the Refugee Appeals Tribunal, has been advanced in support of this contention that the Member of the Refugee Appeals Tribunal did not apply this particular standard of proof.

38. I am satisfied that this is not a substantial ground for contending that the decision of the Refugee Appeals Tribunal is invalid or ought to be quashed.

39. The ninth ground advanced by the applicant, is clearly based upon the following passage from Decision of the Member of the Refugee Appeals Tribunal:-

> "In relation to the massacre of the seven family members, again on 30th February, 2004, there is no independent corroboration of this event other than the applicant's own testimony. Genocidal killings in Burundi are well documented, however, there is no reference at all to this alleged killing at this time."

40. "Corroboration" is an ordinary noun meaning "to give support to or confirm" (see Concise Oxford Dictionary, 10th Ed. (Revised) 2001). It is undoubtedly a word frequently employed by lawyers in a particular sense. However, there is nothing in the manner in

which it is used by the Member of the Refugee Appeals Tribunal or from the immediate context or in the context of the Decision read as a whole, to suggest that the Member of the Refugee Appeals Tribunal was deciding that corroborative evidence was required, as a matter of Law or as a matter of long established and judicially approved practice or, because she herself considered that it was necessary, before this or any other aspect of the applicant's account could be accepted.

41. I find that this is not a substantial ground for contending that the decision of the Refugee Appeals Tribunal is invalid or ought to be quashed.

42. As to the twelfth ground advanced by the applicant, I am satisfied that the statement of the Member of the Refugee Appeals Tribunal that the applicant was inconsistent in numerous ways throughout his Interview, Questionnaire and at the hearing before the Refugee Appeals Tribunal, does not require further elaboration. Reference to the Section 11 Interview record, to the Application Questionnaire and to the s. 13(1) Report and Recommendation of the Refugee Applications Commissioner, all documents which the Member of the Refugee Appeals Tribunal is mandated to consider before deciding the appeal, (s. 16(16) of the Refugee Act 1996, (as amended)), clearly identify significant numbers of material inconsistencies. In her Decision, the Member of the Refugee Appeals Tribunal sets out how she found various elements of the applicant's story inconsistent with the country of origin information before her. To repeat and to separately set out all of these matters again in her Decision would be otiose. I am satisfied that there was no breach on the part of the Member of the Refugee Appeals Tribunal of the principles stated in *"FP" and "AL" v. The Minister for Justice, Equality and Law Reform* [2002] 1 I.R. 164 at 172 per. Hardiman J., Supreme Court.

43. I am therefore satisfied that this is not a substantial ground for contending that the Decision of the Refugee Appeals Tribunal is invalid or ought to be quashed.

44. As regards the thirteenth ground advanced by the applicant, though not in any way obliged to so do, having regard to her finding that the applicant's story was not plausible, that he had not given a truthful account and, that his testimony was not credible (see *Botan v. The Refugee Appeals Tribunal and The Minister for Justice, Equality and Law Reform* (Unreported, High Court, Feeney J., 30th June, 2006,)), the Member of the Refugee Appeals Tribunal still applied the "Forward Looking Test". She stated her conclusion as follows:-

> "The Convention is forward-looking. Country of origin information indicates that since 1997 people of ethnically-mixed marriages have not had problems in Burundi and these people lived relatively anonymously without problems. The Security Council Reports indicate that those who flee Burundi in current times have to be seen as economic migrants. Given that this is the situation that now exists, the Tribunal is of the view that there is no reasonable likelihood that the applicant's fears would be realised were he to be returned to his country of origin".

45. A United Kingdom Home Office Report on Burundi dated April, 2004, records that:-

> "4.52. The UN Secretary-General reported to the Security Council on the 16th March, 2004:
>
> > 'as a result of the recent political and military developments in Burundi, the security situation has dramatically improved and calm has returned to most provinces. This is a major change from the volatile situation experienced until recently, when daily attacks were still the norm'.

46. He continued:-

> > 'While hostilities have generally eased, criminality appears to have increased, aided by the thousands of weapons in circulation.'"

47. The Danish Fact Finding Mission Report of January, 2000, to which reference has already been made in this judgment, quotes the named informant as stating that those who fled Burundi "nowadays", (he was speaking in September, 1999) had to be seen as economic refugees. He pointed to the fact that there was not a civil war, "in the whole country" and he believed that it was safer to live in Bujumbura than in Nairobi. He said that there had been several cases of students in Bujumbura leaving the country with the aim of studying abroad rather than in Burundi.

48. While the country of origin information disclosed in documents such as: Human Rights Watch Briefing Papers of April 30th 2003, December 2003 and June 2004; International Crisis Group Africa Briefing of 9th December, 2004, and Global (I.D.P.) Project Report of March 2004, showed ongoing political difficulties and tensions in Burundi, including scattered outbreaks of violence involving rebel groups, even these matters had improved significantly since the end of 2003.

49. In my judgment it was open to the Member of the Refugee Appeals Tribunal reasonably and rationally to conclude, as she did, that there was no objective basis for any subjective fear of returning to Burundi held by the applicant. I find that this is not a substantial ground for contending that the decision of the Refugee Appeals Tribunal is invalid or ought to be quashed.

50. Having regard to the foregoing, the court will refuse leave to seek judicial review and will dismiss the application.