Neutral Citation Number: [2007] IEHC 72

THE HIGH COURT

JUDICIAL REVIEW

2005 No. 731 J.R.

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

BETWEEN

U. I.

APPLICANT

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

RESPONDENTS

AND
HUMAN RIGHTS COMMISSION

NOTICE PARTY

Judgment of Mr. Justice Roderick Murphy dated 23rd January, 2007.

1. Background
The applicant, a national of Nigeria and of Igbo ethnicity arrived in Ireland on 7th October, 2002. He applied for asylum and on 23rd December, 2002, just four years ago, he was called for interview by the Office of Refugee Applications Commission but, being ill and having supplied a doctor's letter dated 4th December, did not attend.

He was subsequently interviewed by the Refugee Applications Commissioner. He told them that he had been pressurised on his father's death in February, 2002 to take over his father's kingship of his village. He refused on the basis of necessary rituals involving human sacrifice. He and his family were threatened. On the death of his and his wife's two sons, they fled to his wife's sister's village but were located there by his villagers on 19th August, 2002. His wife was assaulted and in an attempted abduction, miscarried and received injuries to her arms and legs for which she was hospitalised. With the aid of a Catholic priest both fled Nigeria leaving three surviving children in the care of his wife's sister.

By decision dated 18th September, 2003 he was refused asylum status.

The applicant appealed to the Tribunal, the first named respondent, and on 21st June, 2005 the Tribunal decided, having examined the background information, the evidence relating to subjectively and objectively well founded fear of persecution, the evaluation of the applicant's evidence and of persecutory risk to dismiss the appeal.

The Tribunal made six findings adverse to the applicant.

> 1) "The essentially incongruous element which negates the Applicant's well- founded fear in relation to harm being inflicted because of his refusal to comply with local demands for human sacrifice, is the applicant's reaction or inaction to the supposed threat... the Applicant had at least fifteen years notice of the likely hostility of the village elders to his stance... he did not leave the place where he had been threatened" (page 4 of the Decision).
>
> 2) "He did not bring the bodies of his sons to a doctor or to a hospital. It is, in the view of the Tribunal, stretching credibility to its limits to accept that the applicant would not seek to ascertain why his sons died" (top of page 5 of the Decision).
>
> 3) "The Applicant fled to his wife's sister's house in July 2002. He stayed for two months. When the applicant ultimately left the country in October 2002 he left his remaining three children behind in Nigeria. The Tribunal regards this assertion as essentially defeating a well-founded subjective fear, given the Applicant's personal history and his belief that his first two sons were killed" (page 5).
>
> 4) The Applicant's credibility is further undermined when he states that in Oyo State, to which he fled with his family, the Applicant lived in a separate house to his wife and children" (also page 5).
>
> 5) "The remarkable matter about this aspect of the Applicant's account is that he did report an assault which he had not witnessed to the police whereas he did not report the "assault - if such it was - of his sons" (also page 5).
>
> 6) "The account given by the Applicant of a fortuitous meeting through his wife's in-laws with a priest who arranged for his departure from Nigeria tends to be implausible and to lack credibility " (bottom of page 5).

The Tribunal declared:

> "Having considered the evidence of the applicant and having considered the submissions of the applicant's legal representatives and the material submitted on behalf of the applicant and on behalf of the Refugee Applications Commissioner, I am of the view that the applicant does not hold a well founded fear of persecution for a reason set out in section 2 of the Refugee Act, 1996 (as amended). I find the applicant's account unsatisfactory in terms of credibility and substance. Accordingly, I would affirm the findings of the Refugee Applications Commissioner at first instance and dismiss the applicant's appeal."

2. Application for leave for judicial review
The applicant seeks to review and quash that decision and have a *de novo* appeal. He also seeks a declaration that the refusal and affirmation of the recommendation of the Commissioner is *ultra vires*; that the rule of law governing the scope of judicial review

relating to asylum decision set out in *O'Keeffe v. An Bord Pleanála* [1993] 1 I.R. 39 is incompatible with the European Convention on Human Rights; that the Tribunal acted in breach thereof and that the decision was founded on an error of law; did not have regard to the principles of natural and constitutional justice and was irrational and unreasonable.

3. Grounds upon which the relief is sought
The applicant contends that the Tribunal failed to properly construe the meaning of "fear of persecution"; failed to determine the applicant's application for refugee status in a timely manner; failed to apply the appropriate standard of proof; erred in law in taking into account matters irrelevant to the determination of the appeal and that the decision contained "internal contradictions and errors".

Among other matters, the applicant says that the Tribunal failed to consider the applicant's explanations regarding his failure to report the deaths of his children to the police and the reasons he did not leave his village in earlier years and relied on personal conjecture.

4. Submissions on behalf of the applicant
4.1 The applicant filed submissions on 26th October, 2006 and supplemental submissions subsequently. It is submitted that the Tribunal, in assessing the credibility of the applicant, did not take account of or refer to all of the relevant material placed before it.

There was no indication that two SPIRASI reports, one in relation to the applicant, the other in relation to his wife, which contained material capable of substantiating the applicant's account and other country of origin information including a letter from Sr. Patricia O'Regan of the Diocesan Emigration Services was taken into consideration at all.

The decision recited that the Tribunal had "taken into account the country of origin information submitted by the Refugee Legal Service". The only country of origin information specifically adverted to in the decision is that from www.beaconschool.org. Counsel for the applicant submitted, having regard to the authorities, that it was not sufficient for the Tribunal to recite that it had taken into account such information without showing that it had considered it.

4.2 It was submitted, in addition, that there is an arguable case that the decision is internally flawed.

The Tribunal demonstrated an inconsistency when making what are mutually exclusive statements, in the same paragraph of its decision, as follows:

> "The Applicant clearly stated … in his evidence to the Tribunal that the villagers came to him and threatened him when he was aged 20 or 22."

and

> "The thrust of the Applicant's verbal evidence to the Tribunal is that … the village elders never reverted to him or bothered him in his father's lifetime."

4.3 There is no indication in the body of the decision that any explanation (or indeed any failure to give an explanation) on the part of the applicant in relation to matters that exercised the Tribunal Member's mind when assessing credibility was taken into consideration, by the Member, when making at least six adverse findings of credibility against the applicant.

4.4. In her submission, counsel for the applicant asked the court to consider three questions.

4.4.1 Firstly, if the Tribunal affirms the recommendation of the Commissioner, does it mean that each finding of the Commissioner is also affirmed or does the Tribunal have to deal separately with each finding it wishes to affirm? This point arose in the context of the Commissioner's finding, not explicitly affirmed by the Tribunal, that internal relocation was available to the applicant.

Section 13(1) of the Refugee Act, 1996 provides that where the Commissioner carries out an investigation under s. 11 he or she must prepare a report in writing of the results of the investigation and "such report … shall set out the *findings* of the Commissioner together with his or her *recommendation* whether the applicant concerned should or, as the case may be, should not be declared to be a refugee [italics added]".

Section 16(2) provides that the Tribunal may, on appeal, either (a) affirm a *recommendation* of the Commissioner under section 13, or (b) set aside a *recommendation* of the Commissioner …[italics added]."

The applicant submits that the legislature has made a distinction between the findings to be made by the various investigative bodies and the *recommendations* made by them on foot of those findings. While the Tribunal therefore, on appeal, may affirm or set aside a *recommendation* of the Commissioner, it should, in doing so, make its own *findings*.

In this case the Commissioner made certain findings in relation to the applicant's claim. One of these was a finding that internal relocation was available to the applicant. The Tribunal did not advert to this aspect of the applicant's claim at all and made its findings solely on credibility issues. It is submitted that it is not therefore open to the court to find that in "affirming" the recommendation [incorrectly referred to as the "findings"] of the Commissioner, that the Tribunal was, by implication, also finding that internal relocation would be a viable option for the applicant. It would have been open to the Tribunal to have made a finding along the lines of "even if I am incorrect in relation to the applicant's credibility and if he in fact does have a well-founded fear of persecution then I nonetheless find that internal relocation was an option open to him". It is not possible to know what view the Tribunal Member would have come to in relation to this aspect of the matter as he did not deal with it. In circumstances where the statute permits him to affirm or set aside the only the recommendation of the Commissioner, it is submitted that any actual findings made by the Tribunal would have to be clearly set out in its decision.

4.4.2 The second question is: does the case law support the contention that a lengthy "sifting process" in relation to each factual finding or claim should take place and be set out in the decision?

It is accepted on behalf of the applicant that an administrative Tribunal does not have to set out the pro and anti "arguments" in relation to each individual element of its decision. The applicant submits that it is well established that when conclusions adverse to an applicant for asylum are being made it is essential that in order to comply with principles of natural justice, the applicant would have been given an opportunity to comment on or explain matters exercising the mind of the Tribunal Member before such adverse conclusions are reached. See *Idiakheua v Minister for Justice Equality and Law Reform et ors* (unreported, Clarke J. 10 May 2005) in which it is stated:

> "In *Nguedjdo v. Refugee Applications Commissioner* (unreported *ex tempore* judgment of White J., 23rd July, 2003) this court made an order of *certiorari* quashing the decision of the Refugee Appeals Commissioner on the basis that same was made in breach of constitutional and natural justice by virtue of the failure to give the applicant the opportunity to deal with matters which would appear to have been crucial to the determination made in the case then under consideration."

And later:

> "If a matter is likely to be important to the determination of the RAT then that matter must be fairly put to the applicant so that the applicant will have an opportunity to answer it."

And:

> "In setting out the above I would wish to make clear that the obligation to fairly draw the attention of the applicant or the applicant's advisors to issues which may be of concern to the Tribunal arises only in respect of matters which are of substance and significance in relation to the Tribunal' s determination."

In *Da Silveira v. RAT & Others* (unreported, High Court 9th July 2004) Peart J. outlined the importance of the assessment of an applicant's credibility. He emphasised that the assessment of the credibility of the applicant is a matter for the Commissioner at first instance or on appeal by the Member of the Tribunal and that the High Court is merely concerned with the process by which such credibility is assessed. However, Peart J also states, at page 27, that "the assessment of credibility is one of the most difficult tasks facing the Commissioner and the Tribunal Member. It is an unenviable task and one that is fraught with possible danger".

The applicant submitted, and the Court agrees, that the six findings adverse to the applicant of his lack of credibility were obviously crucial to the Tribunal's determination. The applicant complains that there is nothing in the body of the decision to indicate that the applicant was given an opportunity to comment on or explain matters that the Tribunal regarded as incongruous or ambiguous. Nor, more importantly, is anything set out in the decision that would reassure the applicant or, indeed, enable this Court to conclude, that the Tribunal took any such explanation (or indeed failure to give an explanation) into account when making such adverse findings. Had the Tribunal indicated in relation to some of these adverse findings that it had engaged in such a weighting exercise, then the applicant's argument might not be as strong. However, where an applicant for judicial review can point to a Tribunal's having made six adverse credibility findings against him without at the same time giving an indication that any explanations given by him had been taken into consideration by the Tribunal then it is submitted that he has made out a substantial ground and should be given leave to challenge that decision by way of judicial review.

4.7 The third question is how the onus on an applicant at leave stage differs from the onus on such applicant when seeking to establish a substantive entitlement to have a decision of an administrative tribunal reviewed.

The applicant's first submissions of 26th October, 2006 referred to the O'Keeffe test of unreasonableness and irrationality as applying and that, accordingly, the decision should be quashed. Alternatively, the decision should be subject to greater judicial scrutiny arising out of the provision of the European Convention on Human Rights and *A.O. and D.L. v. Minister for Justice* [2003] 1 I.R. 1.

Section 5 of the Illegal Immigrants (Trafficking) Act, 2000 provides that the validity of a Tribunal decision may only be challenged by way of judicial review. At sub-section (2)(b) it is provided that "such leave shall not be granted unless the High Court is satisfied that there are substantial grounds for contending that the decision, ... is invalid or ought to be quashed".

The phrase used in Section 5 of the Act of 2000 is identical to that which has been used in the statutory scheme applicable to planning cases and the classic judicial formulation of what is meant by "substantial grounds" is that adopted by Carroll J in *McNamara v. An Bord Pleanála* [1995] 2 ILRM 125 in which she stated that at p. 130 "In order for a ground to be substantial it must be reasonable, it must be arguable, it must be weighty. It must not be trivial or tenuous." She goes on to state however:

> "However, I am not concerned in trying to ascertain what the eventual result would be. I believe I should go no further than satisfying myself that the grounds are 'substantial'. A ground that does not stand any chance of being sustained (for example, where the point has been decided in another case) could not be said to be substantial. I draw a distinction between the grounds and the arguments put forward in support of those grounds. I do not think I should evaluate each argument and say whether I consider it sound or not. If I consider a ground, as such, to be substantial, I do not also have to say that the Applicant is confined in this argument at the next stage to those which I believe may have some merit.

This formulation was adopted and approved by the Supreme Court in the Article 26 reference of the *Illegal Immigrants Tracking Bill*, 1999 [2000] 2 IR 360 where it stated under the heading "Substantial Grounds', and at page 394:

> "The court does not consider that this conclusion is affected by the argument by counsel assigned by the court to the effect that s. 5(2)(b) in requiring an applicant to satisfy the High Court that there are 'substantial grounds' for contesting the validity of the matter in question imposes a burden which, taken with the fourteen day limitation, unreasonably restricts access to the courts. The Oireachtas has imposed the 'substantial grounds' requirement in other legislation including the Planning Acts, ... In *McNamara v. An Bord Pleanála* (No. 1) [1995] 2 IL.R.M 125, Carroll J. interpreted the phrase 'substantial grounds' in the provisions of the Planning Act of 1992 as being equivalent to 'reasonable', 'arguable' and 'weighty' and held that such grounds must not be 'trivial or tenuous'. Although the meaning of the words 'substantial grounds' may be expressed in various ways, the interpretation of them by Carroll J. is appropriate.

The court had earlier stated, under the heading "Arguments on behalf of the Attorney General`, at page 380:

> "As regards the requirement that an applicant for leave to issue judicial review proceedings establish 'substantial grounds' that an administrative decision is invalid or ought to be quashed, this is not an unduly onerous requirement since the High Court must decline leave only where it is satisfied that the application could not succeed or where the grounds relied on are not reasonable or are 'trivial or tenuous'. This follows from a number of authorities where a similar requirement, as regards the Planning Acts, has been judicially considered. Counsel for the Attorney General referred in particular to the judgment of Egan J. in *Scott v. An Bord Pleanála* [1995] 1 I.L.R.M. 424 at p. 428, Carroll J. in *McNamara v. An Bord Pleanála (No. 2)* [1995] 2 I.L.R.M. 125, and Morris P. in *Lancefort Ltd. v. An Bord Pleanála* [1997] 2 I.L.R.M. 508 at p. 516"

To put the matter another way and as Peart J stated in the case of *Imafu v. Minister for Justice, Equality Law Reform et ors* (unreported 9 December 2005):

> While I respectfully agree with Clarke J. that the applicant had raised a ground in this respect which was a substantial ground, there must be a meaningful distinction between the hearing before him at leave stage, and the case before me at the substantive hearing. That distinction in my view can be related to the extent to which this Court as opposed to that at leave stage can look to the reality of the relevance of the country of origin information to the assessment of credibility in the case of this applicant. The Court can go further than at leave stage in examining to what extent the country of origin information has or has not the capacity to have influenced the decision made as to credibility in this particular case. Such an examination would not be as appropriate at leave stage, because there would be a danger that in so dong, the Court would be in effect deciding the substantive issue at leave stage, rather than at the substantive hearing after leave was granted."

It is submitted that the grounds in the instant case meet the leave "standard" in that they are reasonable, arguable and weighty and not "trivial or tenuous".

5. Respondent's submissions
The respondent's submit that the net issue is whether it is necessary for the Tribunal to consider each and every document put before it in an appeal. In *Victor Muia v. Michelle O'Gorman sitting as the Refugee Appeals Tribunal*' Clarke J. (Unreported High Court 11th November 2005) stated:

> "I would wish to make clear that it is not necessary for the decision maker to indicate a view in respect of each and every issue of fact."

It is submitted that it is clear from the foregoing that it is not necessary to exhaustively determine each issue put before the Tribunal provided that the reasons given are rational and adequate. It is further submitted that it must follow from that that it is unnecessary for each document submitted to be separately considered.

The SPIRASI report was not relevant to the issue on which the core finding of credibility was based, which was that country of origin information did not support the claim being made by the Applicant. It would have been superfluous to recite the receipt of the report and that it was not necessary to recite it.

Furthermore, it is accepted as a general principle of judicial review that a statement that documents have been considered will be accepted in the absence of proof to the contrary or indeed proof of bad faith, the onus in respect of either matter being on the applicant. See *Carlow Kilkenny Radio Limited v. Broadcasting Commissiion* [2003] 3 I.R. 528. This principle has been accepted into the field of asylum and immigration law: see the Supreme Court decision in *G.K v. Minister for Justice* [2002] 2 I.R. 418, where it was held that a statement by the Minister that representations had been considered was sufficient in the absence of positive proof that they had not been considered. It should be noted that it was confirmed that the onus was on the applicant to show this, even in the absence of an affidavit from the Minister.

As the Tribunal repeatedly stated in the decision that the material submitted by the applicant had been considered, in the absence of proof from the applicant that the material has not been considered, the applicant must fail. Such proof might arise where it was clear from the text of the decision that a document had not been considered.

Finally, insofar as the Tribunal made any minor slip, such would not invalidate the decision. In *Pop v. Minister for Justice, Equality and Law Reform* (Unreported, High Court, Peart J., 2nd November, 2004) it was held that:

> "… even if a close parsing and analysis of the Decision is undertaken and some minor flaws are exposed such as the use of the word `convinced' or the fact that the precise nature of country information is not set out, these are trivial matters. I am not satisfied that any of the matters raised are substantial, when the application documentation and evidence is taken as a whole. It is stated in the Decision that all the evidence and material has been considered, and there is nothing on the face of the decision to indicate that this is not the case."

5.3 In conclusion the respondent submits that:

> - the three references to the fact that all material had been considered must be accepted unless there is something in the decision expressly negativing it;
>
> - the slip is, at most, a trivial error and could not constitute "substantial grounds" for the decision; and
>
> - there is no obligation to list each document and/or issue and deal with it expressly.

In the circumstances, counsel for the respondent submits that no substantial grounds have been advanced and the application for leave should be refused.

6. Decision of the Court
The decisions of the Refugee Appeals Tribunal, as, indeed, all decisions in relation to refugee status are of critical importance to each applicant.

Over the past ten years the Refugee Act, 1996 has been amended and supplemented with the Illegal Immigrants (Trafficking) Act of 2000. The European Convention on Human Rights Act, 2003 has further developed the statutory scheme in relation to applications for refugee status.

Over the same period the decisions of the courts further amplified the procedures, protections and jurisprudence in relation to such applications.

Indeed, the vast majority of cases are resolved by the Refugee Applications Commissioners and, on appeal, by the Refugee Appeal Tribunal. The expertise of these bodies has, too, developed. So too has the expertise and diligence of counsel acting for applications before these bodies.

The provision of facilities to judicially review the decision of these bodies arises only in a small minority of cases. The judicial review is not, of course, an appeal but rather an assessment of process. The application for leave to pursue such remedies had in the past been a short filtering process usually dealt with on a Monday morning. The threshold was that of an arguable case, not of a full hearing. If, in such *ex parte* applications, counsel could satisfy the court that there was an arguable case then leave would be

granted.

Where applications had to be made on notice, submissions, even at the leave stage, became more comprehensive. Applications for leave became matters for listing not just for hours but for days of hearing. Where leave was granted, a second hearing of at least the same duration is also processed through a listing system. Inevitably there are additional affidavits, submissions and costs incurred.

It is not clear whether such complexity is necessary. It is less clear that it involves an economical use of legal resources.

The objective is, of course, to do justice to both parties within the law as enacted by the Oireachtas.

In reviewing a decision of the Tribunal the courts do not seek to impose its own decision but, as has already be stated, to review the process by which a decision was arrived at.

In the present case, counsel for the respondents submit that the references in the decision to all material having been considered must be accepted unless there is something in the decision expressly negativing that reference. It is submitted that there is no application to list and deal expressly with each document and issue arising.

Counsel for the applicant says that there is no indication that material had been considered and that there are inconsistencies in the decision. It is submitted that issues should be dealt with and, where credibility is in issue, the applicant should be given an opportunity to respond.

6.2 Twenty years ago Costello J. in *Pok Sun Shun v. Ireland* [1986] I.L.R.M. 593 held that not alone must a decision maker's statutory discretion be exercised in accordance with the powers granted by the Oireachtas, it must, in addition, be exercised fairly and in accordance with the principles of natural justice. The decision continued at p. 596:

> "If it can be shown that the Minister in exercising his discretion in some way failed to carry out the legal requirements laid down by the section, or failed to act fairly then, of course, the court has power to review his decision."

While decisions involving asylum matters may not "necessitate the full application by [the] decision maker of the full panoply of procedural rights" in *Re Haughey (Orierakhi v. Minister for Justice)* (ref.?) fair procedures are clearly required in circumstances where the consequences of any particular determination may be grave. It is clear that the decisions in relation to asylum fall into this category.

There is a requirement that the applicant be provided with all relevant information. In *Moyosola v. Refugee Applications Commissioner*, (Unreported, High Court, Clarke J., 23rd June, 2005), the Commissioner had found that the applicants had shown little or no basis for the contention that they were refugees and held that the matter would be determined without an oral hearing. The respondent had made a number of adverse findings as to the applicant's credibility by reference to inconsistencies in the country of origin information. The applicants argued that they had not been supplied with all country of origin information relied upon by the respondent. The court held, in quashing the respondent's decision, that the procedures it followed were in breach of the fundamental principle that a person was entitled to know the case against them. The failure to provide the applicants with the relevant country of origin information deprived them of the opportunity of an oral hearing on appeal which would have allowed them to deal with any matters which may have influenced the decision maker regarding their lack of credibility.

Duty to investigate the facts of the case
The Supreme Court in *Re The Illegal Immigrants (Trafficking) Bill, 1999* [2000] 2 I.R. 360 at 395 stated:

> "First, it must be observed that a person seeking asylum or refugee status is the applicant for that status. There is an administrative procedure in place to carry out and assist him or her in the processing of that application. He or she is not a passive participant in that process. … In availing of such procedures and in exercising any discretion in relying on such procedures the State is bound to act with due respect to the constitutional right to access to the courts and the right of fair procedures of the persons concerned."

In *Ogunlade v. Refugee Appeals Tribunal* (Unreported, High Court, Gilligan J., 29th July, 2005) the applicants had argued that they had a well-founded fear of persecution based on ethnicity and objection to female genital mutilation. The applicants asserted that the respondent had failed to objectively assess prevailing conditions in their country and that this failure constituted a breach of fair procedures in the manner in which it had assessed credibility. The court held that the applicants had an arguable case that their initial interview was not sufficient in supporting the granting or refusal of refugee status. The court was satisfied that there was an obligation on the respondent to carry out an oral hearing where a conflict of facts existed.

Duty to give reasons
In *Zhuchkova v. Refugee Appeals Tribunal* (Unreported, High Court, Clarke J., 26th November, 2004) the Tribunal had rejected claims of acts of anti-Semitism committed against the applicants while in Russia had not been given by the husband as he claimed the interviewer had hurried him through the evidence and, while given by the wife, were deemed to be not relevant by the Tribunal. It concluded that the applicants' evidence in general was not credible. In granting leave, Clarke J. held that the Tribunal must give a rational basis for any adverse findings and credibility. Where it rejected an applicant's explanation on an issue that touched on credibility, reasons must be given. Conclusions must be based on correct findings of fact.

In *Idiakheua v. Refugee Appeals Tribunal* (Unreported, High Court, Clarke J., 10th May, 2005) Clarke J. concluded that:

> "If, however, the Tribunal is not satisfied as to the veracity of any or all of the evidence given by or on behalf of the applicant then that fact should be set out together with the reasoning of the Tribunal as to why that evidence is not accepted."

It is clear that where adverse findings are pivotal to the Tribunal's final determination, the duty to give reasons is even more compelling.

Duty to take into account all relevant information
6.3 It is of credibility or, of course, fundamental to a finding in relation to the facts relied upon by an applicant.

Authorities relied upon
In the case of *Imoh v. Refugee Appeals Tribunal et ors*. (unreported, 24th June, 2005) at p. 10 Clarke J. expressed the view:

> "It therefore follows that the assessment of the credibility of an applicant (which for the reasons set out above must include an assessment by reference to such information)should be conducted on the basis of all relevant country of origin information."

In a subsequent case, Clarke J. refered to the importance of carrying out a full analysis of such information (*Muia v. Michelle O'Gorman sitting as the Refugee Appeals Tribunal et ors*.) (unreported, 11th November, 2005). In that case, where State protection was in issue, the court held that:

> "it is necessary, in each case, to form a judgment on the basis of relevant country of origin information as to whether the degree of protection provided by the State is, in all the circumstances, sufficient to warrant a finding that the applicant concerned does not qualify for refugee status."

In relation to the particular decision with which he was concerned, Clarke J. goes on to state:

> "While the decision does state that the decision maker has taken into account the submissions made on behalf of the applicant there is nothing in the body of the decision that shows that the decision maker addressed, to any extent, the country of origin information put forward on behalf of and favourable to the applicant. If the decision demonstrated that due consideration had been given to that information but that, in the light of the alternative information available (which, in fact, is referred to in the decision), and following a rational analysis of the totality of the evidence, a conclusion was reached that State protection was adequate then it might very well be difficult to seek to go behind that.
>
> Where, however, as here, there is no evidence to be found in the decision that the country of origin information favourable to the applicant's case was considered and, equally, as a consequence, no rational explanation as to why it was rejected, it seems to me that there are at least arguable grounds for the applicant's contention that the decision maker did not take into account relevant considerations.

The applicant raises a number of substantial and ancillary points in relation to the refusal of the first named respondent, the Refugee Appeals Tribunal, in relation to his appeal.

As noted above the Tribunal made six adverse findings which went to the credibility of the appellant. Following on that the Tribunal came to the conclusion that the applicant had not held a well founded fear of persecution for reasons set out in s. 2 of the Refugee Act, 1996, as amended. His account was unsatisfactory in terms of credibility and substance.

The Court will deal with the submissions made on his behalf in the two written

6.3 It seems that an assessment of credibility must, accordingly, include an assessment of all relevant country of origin information. An assessment is more than an omnibus listing. A mere reference to taking into account the country of origin information submitted by the Refugee Legal Service would not appear to be an assessment let alone a rational analysis of the totality of the evidence.

It seems to the Court that there are at least arguable grounds for the applicant's contention that the decision maker did not take into account relevant considerations.

Moreover, while it is less clear, there would appear to be an inconsistency in relation to the threat of the villagers or the village elders to the applicant during his father's lifetime.

Thirdly, the six adverse findings to the applicant contained in the decision at pp. 4 and 5 may not have been put to the applicant. There is an arguable case that issues of fair procedures and Convention rights apply in this regard.

Fourthly, there is an issue relating to the affirmation of the findings of the Commissioner by the Tribunal. While the latter's decision may, having considered the findings of the Commissioner and the applicable law may simply affirm the decision assuming that no further arguments were made. In the present case the finding that internal relocation was available to the applicant in the Commissioner's decision was not adverted by the Tribunal. It is not clear whether this, accordingly, was accepted or rejected.

It does seem to this Court that while a lengthy sifting process in relation to each factual finding need not take place, due consideration has to take place before any determination can be made. A Tribunal should deal with each issue of substance raised.

It would seem to follow that the Tribunal should consider the substantial findings in the Commissioner's report before it affirms or sets aside a recommendation of the Commissioner.

The application for a declaration pursuant to s. 5(1) of the European Convention on Human Rights Act, 2003 was not proceeded with. In any event, it is not necessary for the court to decide this issue in relation to the leave application.

For the reasons stated the court will grant leave to seek the following relief by way of judicial review:

> 1. An order of *certiorari* by way of an application for judicial review quashing the decision of the first named respondent communicated by letter dated 27th June, 2005 to affirm the recommendation of the Refugee Applications Commissioner, and
>
> 2. An order of *mandamus* by way of an application for judicial review directing the first named respondent to remit the appeal of the applicant for nearing *de novo* before a separate member of the Refugee Appeals Tribunal.