

**THE HIGH COURT**

**JUDICIAL REVIEW**

**[2011 No.555 J.R]**

**BETWEEN**

**J. A.**

**APPLICANT**

**AND**

**THE REFUGEE APPEALS TRIBUNAL**

**AND**

**THE MINISTER FOR JUSTICE AND EQUALITY,**

**ATTORNEY GENERAL**

**AND IRELAND**

**RESPONDENTS**

**JUDGMENT of Ms. Justice Faherty delivered on the 19th day of May 2015**

1. This is a telescoped hearing wherein the applicant seeks judicial review of the decision of the first named respondent affirming the recommendation of the Refugee Applications Commissioner not to give him refugee status.

**Background**

2. The applicant is a native of Pakistan. The claimed basis for his application for asylum relates to a land dispute involving the applicant and his cousin. It is claimed by the applicant that after family land was divided between the applicant's father and uncle, the former obtained land with road frontage and the latter got land at the back. The applicant's father's portion was then divided among the applicant and his four brothers and the applicant inherited the portion that was nearest to the road. This was to the displeasure of the applicant's cousin who wanted that portion for business purposes. All the applicant's brothers sold land to this cousin. The cousin then requested that the applicant sell his portion to him so that he could build a plaza or petrol station on it but the applicant refused to sell as he wished to keep the lands in order to provide for his wife and children. According to the applicant his cousin threatened him with harm if he did not sell. On the occasion of that particular threat, the applicant's uncle and older brother were present and they managed to calm things down. At that stage the applicant did not regard the matter as important as he did not think the cousin was serious. However, the subsequent encounter between the applicant and his cousin was more serious. On that occasion, the cousin came armed with a gun and had people to support him. In the course of a struggle his cousin dropped the gun; the applicant took the weapon and discharged a shot hitting his cousin in the leg. According to the applicant, this occurred on the 25th or 26th of July 2010. The applicant then fled the area for fear of being arrested and went to a friend in Islamabad where he stayed for 1 ½ months. One day while the applicant was out, his cousin arrived at his friend's house looking for him. A scuffle ensued between his cousin and his friend. His friend telephoned the applicant and told him not to go back and advised him to leave the country. He introduced the applicant to an agent who, after a month, brought him to Ireland. The applicant claimed that he travelled to Ireland by road and sea and spent the entire journey in trucks or containers. After leaving Pakistan, he travelled through Iran, Turkey and unknown countries (being boarded on a ferry on two occasions).

**Procedural history**

3. The application for refugee status was commenced on the 22nd November 2010. The applicant underwent a section 8 interview on that date and duly completed an ASY1 form. He completed a questionnaire on the 30th November 2010 and he underwent a section 11 interview on the 17th January 2011. In his questionnaire, he claimed refugee status on the basis of a stated fear of persecution on grounds of race, membership of a particular social group and "*family enmity*". The section 13 report issued on the 17th February 2011 and recommended that the applicant not be declared a refugee. While acknowledging that the claim could satisfy the persecution element of the refugee definition, it stated, *inter alia*,:-

*"It is considered that the applicant's fear of the authorities in Pakistan is a fear of prosecution, not persecution."*

4. Furthermore, it was considered "*that it would not be unduly harsh for the applicant to internally relocate within Pakistan to avoid the threat posed by his cousin*".

5. Under the heading "*Nexus to Section 2 grounds*", the report stated:-

*"The applicant's case is based on a stated fear of persecution in Pakistan for reasons of race, membership of particular social group and 'Family enmity' (interview, Q22)*

*The applicant claims that he will be killed by his cousin who wants to take possession of his land. It is clear that this is a criminal issue regarding the illegal seizure of the applicant's land and is not connected to any of the section 2 grounds.*

*Therefore, based on the provisions of section 2 of the 1996 Act and Regulation 10 of the 2006 Regulations, the applicant has not demonstrated he has a fear of persecution on any of the section 2 grounds of race, religion, nationality, political opinion and membership of a particular social group".*

6. A notice of appeal was filed with the Refugee Appeals Tribunal under cover of letter dated 7th March 2011. At para. 3, the

applicant based his well-founded fear of persecution on grounds of "membership of a particular social group" and "political opinion". The accompanying "Grounds of appeal and Submissions" stated, *inter alia*:-

*"1: The decision of the Refugee Applications Commissioner is appealed on the grounds that the Refugee Applications Commissioner erred in fact and/or in law in deciding that the appellant does not meet the criteria as set out in the 1951 UN Convention relating to the status of Refugees as amended by the 1967 protocol and as defined in section 2 of the Refugee Act 1996 (as amended).*

*The RAC erred in fact and in law in failing to apply the criteria for determining the said application in the spirit of justice and understanding as recommended in the UNHCR Handbook at paragraph 202. It is submitted that the RAC similarly erred in fact and law in applying the wrong burden and standard of proof in determining the application of the applicant and that RAC did not fulfil its duty under the Refugee Act 1996 in properly investigating the persecution complained of by the applicant."*

7. Further submissions were set out, namely that the RAC erred in law and/or in fact in assessing the applicant's general credibility and in giving inadequate reasons for doubting his credibility. It was further submitted that the RAC erred in fact and in law by not giving the applicant the benefit of the doubt pursuant to para. 196 of the UNCR Handbook.

8. The appeal before the Refugee Appeals Tribunal took place on the 28th April 2011 and on the 31st May 2011; the Tribunal issued its decision rejecting the appeal.

9. The Tribunal Member made a number of credibility findings adverse to the applicant. In summary, they were as follows:

With regard to the applicant's travel, the Tribunal Member found, *inter alia*:-

- That the applicant could not have travelled as he alleged.
- That the applicant had not provided a full and true explanation of how he travelled to and arrived in the State and the Tribunal Member "had regard to this, and to section 11(b)(c) of the 1996 Act, as amended, in assessing the applicant's general credibility".
- It was not "possible for the applicant to successfully negotiate security at all the international frontiers using false documents (at all times held by the agent) without detection at any of these posts".
- It was not credible "that [the applicant] would have surrendered his passport to the agent, as he [suggests]."
- It was not accepted that the applicant did not possess a passport by way of identification because he had given that document to the agent.
- It was not accepted that the applicant had provided a reasonable explanation failing to submit his original passport in support of his identity.

10. The Tribunal Member proceeded to make a number of credibility findings in respect of the account given by the applicant of his struggle with his cousin and events subsequent to that encounter. Specifically, the Tribunal Member found:

- That it was not credible that the applicant "could have disarmed and then shot at his cousin with the cousin's own gun - while the cousin's two associates apparently looked on.."
- That it was not credible that the applicant was able to then flee the scene and board a bus and travel to Islamabad.
- That it was implausible that the cousin having gone to Islamabad to seek out the applicant would have chosen an inopportune time to call to the applicant's friend's house - when the applicant had allegedly ventured out.
- That it was not credible that the cousin would simply have beaten up the friend and then have left - without looking any further or waiting for the applicant's return, and also in the process affording the friend the opportunity to forewarn the applicant that he was being pursued.
- It was not credible that the cousin would have pursued the matter himself, rather than informing the police.
- The fact the applicant lived in Model Town without incident belied his claim that he would not be safe anywhere in Pakistan
- It was "bizarre" and "strange (to put it mildly)" that the applicant could claim that his wife and children could remain living safely in Pakistan and that the lands remained vacant as long as the lands remained in the applicant's name, in light of his claim that his cousin was determined to take the lands.
- According to the Tribunal Member, the applicant "gave an incredible account of overcoming his armed cousin, shooting that cousin and then fleeing by bus to Islamabad, without incident."

11. The Tribunal Member made reference to two documents submitted by the applicant in support of his appeal, namely a FIR alleged by the applicant to have been filed with the Pakistani police by his cousin's family and a newspaper report allegedly referring to the incident between the applicant and his cousin and which claimed that the applicant was being sought in connection with a shooting incident. The Tribunal found, *inter alia*:-

*"Overall, having considered the documents submitted by the Applicant, I find that I cannot rely on them as corroborative of the Applicant's account. The authenticity of these documents cannot be verified. They provide facts at variance with the account given by the Applicant. They disclose nothing more than a criminal offence allegedly committed by the Applicant (or at least an incident where the police would have legitimate grounds to ask questions)."*

12. Addressing the issue of state protection, the Tribunal opined:-

*"I do not accept that the Applicant has adduced any evidence to show that the Pakistani state is unwilling or unable to provide protection. I have read and considered the documents submitted on behalf of the Applicant.*

*The general Country of Origin information referring to problems with policing in Pakistan, submitted with the Applicant's notice of appeal, does not constitute evidence that the Applicant, personally, cannot approach the state for protection. The matter at issue is whether the Applicant, personally, has shown that state protection would not be available to him. I find that he has not done so. In any event, I found that the Applicant has not established his general credibility, for the reasons set forth above."*

13. The Tribunal went on to state that:-

*"There has also been nothing in his evidence to support the assertion that he would not be safe anywhere in Pakistan.*

*Given that Pakistan is a country of a large geographical area, and a population of approximately 170 million persons, it is not credible that the Applicant would face danger anywhere in Pakistan. However, as outlined above, I find that the Applicant has not been generally credible."*

14. The Tribunal Member then proceeded to deal with the applicant's claimed fear of persecution on account of his political opinion and membership of a particular social group and found that no Convention nexus was established either under "political opinion" or "membership of a particular social group". These findings are referred to more particularly later in this Judgment.

### **The applicant's submissions**

15. In the course of oral submissions, counsel for the applicant distilled the challenge to the Tribunal decision to the following grounds, taken from the Statement of Grounds:-

*"1. The Tribunal erred in law in failing to have any reasonable regard to case specific documents submitted in support of the Applicant's claim, and including a First Information Report and a newspaper report.*

*2. The Tribunal erred in law in failing to make any determination of the core elements of the Applicant's claim, and instead determined the appeal on the basis of adverse credibility findings on peripheral matters and grounded on conjecture....*

*7. The Tribunal erred in law and acted in breach of fair procedures in failing to consider land feuds as constituting a particular social group for the purposes of the Refugee Act 1996..*

*9. Findings in respect of State protection and internal relocation were unreasoned.."*

16. Essentially, the arguments advanced on behalf of the applicant are as follows:

The credibility findings regarding the applicant's travel were speculative and it was submitted this vitiates the decision. Counsel for the applicant relied on the dictum of MacEochaidh J. in *M.E v. Refugee Appeals Tribunal & Ors* [2014] IEHC 145.

17. Counsel submitted that the Tribunal's "generalised" credibility findings – the "alleged struggle" in July 2010, the travel by bus to Islamabad, the failure to explain how the cousin could find the applicant's friend's house, the cousin's attack on the applicant's friend without waiting for or further seeking out the applicant, the fact that the cousin would pursue matters himself rather than inform the police, the situation of the applicant's wife and children – were made without any apparent evidential basis and without reasons being given. In this regard, counsel relies on the decision of Barr J. in *C.C.A v. Minister for Justice Equality and Law Reform* [2014] IEHC 569 where, *inter alia*, it is stated:-

*"I am satisfied that the three findings on credibility at issue in these proceedings were arrived at without adequate reasons being stated. Each of them is discounted with the bald assertion that they are not credible. This was not sufficient. If the Tribunal Member was not going to accept the explanations given, it was necessary to set out in clear terms why this was so.."*

18. Furthermore, the Tribunal Member arrived at some of the "generalised" credibility findings by reference to the contents of the FIR and newspaper report while simultaneously expressing doubts about the authenticity of the documents. Any rejection of the FIR and newspaper should, it was submitted, have a basis in evidence, and, in this regard, counsel relied on the dictum of Cooke J. in *I.R. v. Minister for Justice & Ors* [2009] IEHC 353 where Cooke J. states:-

*"The Tribunal member has erred in law in failing to consider all of the relevant evidence on credibility and adequately and objectively to weigh it in the balance in reaching a conclusion....where, as here, documentary evidence of manifest relevance and of potential probative force is adduced and relied upon, the Tribunal member is under a duty in law to consider it and if it is discounted or rejected as unauthentic or unreliable or otherwise lacking probative value, there is a duty to state the reason for that finding."*

Counsel relied also on the dictum of Clark J. in *E.N (NYA) v. Refugee Appeals Tribunal & Anor* (Unreported, High Court 5th February 2009).

19. It was argued that notwithstanding the proliferation of credibility findings, it remained unclear whether the Tribunal Member accepted the core elements of the applicant's claim, namely that he had inherited land which his cousin then sought and threatened the applicant with death if he refused to cede the land. The applicant's claim was a land issue in the context of the applicant's caste (jatt) where "land is mother". What the Tribunal Member thought of this is not clear as it was not addressed in the decision. The court was referred to the judgment of MacEochaidh J. in *E.P.A v. Refugee Appeals Tribunal* [2013] IEHC 85 where the learned judge referred to the necessity for "a clear and reasoned finding on [the] central issue was required of the Tribunal and a failure by the Tribunal Member to decide this critical part of the applicant's claim in express terms establishes a substantial ground that the decision is unlawful.." Reference was also made to the dictum of Ryan J. in *Voga v. Refugee Appeals Tribunal & Ors* (Unreported, High Court 6th October 2010) in this regard.

20. Insofar as the Tribunal Member made reference to the availability of state protection and internal relocation, given the generality of the references, it was open to question whether actual findings on state protection and/or internal relocation were made or whether in fact the findings made constituted part of the overall credibility assessment. Insofar as there was a purported finding on

the adequacy of state protection, the finding made did not conform to the requirements set down in Clarke J. in *Idiakheua v. The Minister for Justice & Anor* [2005] IEHC 150. Similarly, the purported finding on internal relocation failed to meet the test set down in *K.D. (Nigeria) v. Refugee Appeals Tribunal & Anor* [2013] IEHC 481 or *E.I. v. The Minister for Justice & Anor* [2014] IEHC 27.

On the issue of the Convention nexus, the applicant's written submissions state:

*"The Tribunal failed to perform the initial but vital duty placed upon every Tribunal member, to make an assessment as to whether the Applicant held a subjective fear of persecution for a Convention reason, and only then proceed to consider whether such a fear was objectively well-founded..... The finding made very late in the decision about an absence of a Convention ground does not remedy this central defect...and [the Tribunal Member failed] to consider that the claim of the Applicant clearly falls within membership of a particular social group by reason of his membership of the particular family, engaged in a land feud, he is a member of – see Fornah v. Home Secretary [2006] UKHL 46 2007 AC412 at para. 45 and AVB v. Refugee Appeals Tribunal (Unreported, High Court, Stewart J., 14th January 2015) (Ground 7 refers)".*

In the course of oral submissions, counsel acknowledged that the question of the nexus to the Convention was a primary and significant issue for any claim for refugee status but contended that had the Tribunal Member considered there was a question mark over whether the applicant's claim came within a particular social group, he would have stated as much at the outset. It was, counsel said, extraordinary that the finding came at the end of the decision, after all the other referred to findings had been made. In any event, insofar as no Convention nexus was found, it was argued that the Tribunal Member erred in that he failed to consider the matter in the context of the applicant's membership of a family that fought over land, which, counsel submitted, put the applicant full square within a social group for Convention purposes. The nexus was the applicant's membership of a particular social group—a family engaged in a land feud and in this regard counsel relied on the dictum of Stewart J. in *A.V.B. v. Refugee Appeals Tribunal & Ors.*

21. Counsel referred the court to ground 7 of the statement of grounds (quoted above) and submitted that the land feud upon which the applicant claimed a Convention nexus was among family members and as such, the Tribunal Member erred in failing to make a finding that his circumstances constituted membership of a particular social group for the purposes of the Convention.

22. Counsel did not seek to impugn the Tribunal Member's finding on the "political opinion" ground.

### **The respondent's submissions**

23. It was submitted that the decision of the Refugee Applications Commissioner was entirely subject to legal and factual review by the Tribunal Member and he was not confined to the section 13 findings. At an oral hearing the Tribunal was entitled to draw inferences from the evidence and in respect of its decision it need not debate in advance with the applicant. In this regard, the respondents referred the court to *Nicolai v. Refugee Appeals Tribunal* (Unreported, High Court. O'Neill J., 7th October 2005): *Nasser v. Refugee Appeals Tribunal* (Unreported, High Court, Clark J., 7th October 2009) and *S.Z. v. Refugee Appeals Tribunal* (Unreported, High Court, MacEochaidh J., 10th July 2013).

24. The Tribunal Member assessed the applicant's credibility in accordance with the established legal principles, as set out in *I.R. v. RAT, R.O. v. Refugee Appeals Tribunal* and *S.Z. v. Refugee Appeals Tribunal* (Unreported, MacEochaidh J. 10 July 2013) In accordance with the relevant principles, the Tribunal Member gave his reasons for not accepting the applicant's account of his travel to Ireland or his failure to present a passport.

Contrary to the applicant's assertions, the Tribunal Member considered in detail the applicant's core claim which was detailed in the section 6 analysis after which he comprehensively assessed the said claim. The applicant's claim was not found to be plausible and credible reasons for these findings were given. As regards credibility, the Tribunal Member did what he was supposed to do; he reviewed all of the evidence and weighed it in the balance. Furthermore, in the context of assessing the applicant's core claim and having considered the documents submitted by the applicant, he was entitled to draw inferences therefrom and weigh their evidential value, as appropriate. The documents were considered in the context of objective evidence of the applicant's claim but were found not to be corroborative of his claim, for the reasons set out in the decision. It was submitted that the applicant's reliance on the dictum of Clarke J. in *E.N. NYA* was misplaced; the Tribunal Member did not say that the FIR or the newspaper were forgeries – he merely stated that they could not be verified or authenticated. He went on to analyse the contradictions between the contents of the documents and the applicant's account, as he was entitled to do. In this regard, counsel relied on the dictum of Clarke J. in *I.T. Nfokor v. Refugee Appeals Tribunal* (Unreported, High Court 13th January 2009).

25. The court was further referred to the decision of DeVelera J. in *Walizada v. The Minister for Justice & Anor* (Unreported, High Court, 2nd July 2010) where, *inter alia*, it is stated:-

*"I accept the respondent's submission that it was open to the Refugee Appeals Tribunal to highlight the inconsistencies or omissions on the face of the arrest document to draw certain inferences and conclusions on the credibility of the applicant in relation to that document.....I accept the respondent's submission that where a document is proffered by an applicant in support of a claim for asylum, a decision-maker acts in accordance with law in questioning such documentation on its face and is not obliged to accept it merely because it has been submitted with an assertion that it cannot be authenticated. Where any evidence, whether or oral or documentary, is proffered by an applicant, it is wholly within the powers of the decision-maker to decide what weight, if any, to attach to such evidence whether to question, accept or reject it if necessary. There was a clear basis for the findings made and inferences drawn against the applicant in this case and I am satisfied that they were made within law."*

26. Insofar as issues of state protection and internal relocation were referred to in the decision, the respondents emphasised that the primary finding by the Tribunal Member was that the applicant was not credible. Insofar as findings on internal relocation were made, there were no grounds to quash those findings, having regard to the principles in *K.D. (Nigeria)* and *E.I.* However, if such findings were found not to be in accordance with the law and principles governing state protection and internal relocation, they could be severed from the findings made on credibility, in accordance with the approach adopted in *I.G. v. Refugee Appeals Tribunal* (MacEochaidh J. Unreported, High Court 11th April 2014).

27. On the question of the nexus to the Convention, insofar as the applicant made the case at para. 12 of his written submissions that the Tribunal Member failed to consider whether the applicant fell within membership of a particular social group by reason of "his membership of the particular family engaged in a land feud", that ground was not pleaded in the statement of grounds. Nor was that argument advanced before the Tribunal as the basis for the applicant's membership of a particular social group. The actual case made was whether being a landowner in Pakistan constituted a particular social group within the meaning of the Refugee Act 1996 and the Convention and the matter was duly assessed on that basis. The applicant was now seeking to rewrite not only the ground initially pleaded in the Statement of Grounds, but also to rewrite the actual submission made to the Tribunal Member at oral hearing.

Counsel noted that the applicant's then counsel did not make a submission in his grounds of appeal to the Tribunal, or at the appeal hearing itself, that persons engaged in land feuds constituted a particular social group for the purposes of s. 2 of the Refugee Act 1996, nor did he argue that the applicant's claim arose because of his membership of a particular family engaged in a land feud.

Insofar as the applicant now sought to rely on the judgment of Stewart J. in *AVB*, in that case the applicants' claim stemmed from a blood feud based on the Kanun Lek, a century's old Albanian law. The facts, as set out in that judgment, differed in numerous respects to the present case. Moreover, country of origin information referred to in that judgment constituted objective evidence of blood feuds in northern Albania from where the applicants originated. Unlike the position in *AVB* or the UK authorities referred to in that case, namely *Fornah v. Secretary of State for the Home Department* [2006] UKHL 46 and *E.H. (blood feuds) Albania CG* [2012] UKUT 00348 (IAC) which applied and interpreted the decision in *Fornah*, the alleged persecution in the present case was not because the applicant was a member of the same family as someone else. In this regard, counsel referred to the following passage from *Fornah* as constituting the basis for the approach adopted in that case:-

"20. A special problem has been thought to arise where a family member attracts the adverse attention of the authorities, whether for non-Convention reasons or reasons unknown, and persecutory treatment is then directed to other family members. *Laws J, sitting at first instance, addressed this problem in obiter observations in R v Immigration Appeal Tribunal, Ex p De Melo* [1997] Imm AR 43, 49-50." (Bingham J., para.20)

Quite simply that was not the reason put forward by the applicant to the Tribunal for the alleged persecution; his claim was of alleged persecution because his cousin wanted him to sell land and he alleged that he was threatened because he refused to sell. Counsel submitted that even if the applicant had made the case that he was claiming persecution as a family member (which was not made), it would still not have succeeded, having regard to the particular facts of the present case.

## Consideration

### *The credibility findings*

28. I am satisfied to accept the argument advanced by the applicant's counsel that the various findings made regarding the applicant's mode of travel were speculative. In my view, the matters averted to by the Tribunal Member were not based on any factual premise but rather on his perception as to what would happen at the various frontiers the applicant crossed on route to Ireland. The applicant's claim was that he spent the entire journey in trucks or containers. It was not beyond the realm of improbability that he did so. Thus, the Tribunal Member's reliance on a finding that the applicant would have been subject to checks was speculative, as was his surmise that the additional weight of the applicant and the agent in the trucks or containers would be detected. That particular finding appears to be premised on the assumption that the vehicles in which the applicant and the agent travelled were at full legal weight prior to their boarding. Absent such evidence having been available to the Tribunal Member, the finding cannot stand.

29. A further adverse credibility finding was based on the failure to accept that the applicant gave his passport to an agent in circumstances where the Tribunal Member noted that the applicant had gone to the prior trouble of photocopying his passport. The Tribunal Member had regard to the passport issue and to s. 11(B)(a) of the 1996 Act in assessing the general credibility of the applicant and he found that the applicant's failure to submit a passport "*must count against his general credibility.*"

30. I do not find the Tribunal Member's reasons particularly cogent, since it is within the bounds of possibility or probability that the applicant did yield up his passport to the agent given that claimed to have left all travel arrangements to the agent. Moreover, the Tribunal Member's finding on the passport issue appears to be bound up with the finding he made that the applicant would have to present documentation to immigration and security officials in person at security checks, yet the applicant's evidence was that all of these matters were handled by the agent. It is not beyond the bounds of credibility that this was in fact the case given that the applicant claimed to have used an agent. In the circumstances, I find that the Tribunal Member's regard to s. 11 (B) (a) and (c) in assessing the applicant's "general credibility" to be flawed. Accordingly, those flawed findings must have, in the words of MacEochaidh J. in *M.E. v. Refugee Appeals Tribunal & Ors* [2014] IEHC 145, "*infected*" the general credibility finding in the case.

31. Counsel for the applicant also took issue with the manner in which the Tribunal Member dealt with the FIR and the newspaper. While I do not accept the contention that the Tribunal Member categorised the documents as "forgeries" per se it is clear that he questioned their authenticity and expressed "*doubts*" about the authenticity of the FIR. While he did not label the document a forgery, I am nonetheless inclined to the view that the dictum of Clark J. in *E.N. (NYA)* is pertinent in all of the circumstances of this case, especially given the centrality of the FIR document to the applicant's claim. Clark J. stated "*it may well be that the documents are forged. This court cannot tell whether they are genuine or fake but fair procedures require that if the Tribunal Member makes findings pertinent to the authenticity of key documents, that finding should be based on something more than the Tribunal Member's own opinion. If the falsity of the documents was patently obvious he ought at the least to have explained in his decision how and where the documents were found to be falsified fake or contrived.*"

32. I am not satisfied to rely on what was stated by the same judge in *I.T. Nfokor v. Refugee Appeals Tribunal* (Unreported, High Court, Clark J. 13th October 2009) because in the present case, while the applicant was questioned about the circumstances in which the FIR had been sent to him, the authenticity or otherwise does not appear to have been raised with the applicant in the course of the hearing.

33. I am also of the view that the Tribunal Member's reasons for not relying on the substantive content of the FIR document as corroborative of the applicant's claim do not stand the test of rationality. The content of the FIR document was rejected on the basis that it provides "*facts at variance with the account given by the applicant*". To my mind, this finding fails to appreciate, as a matter of reasonable logic, the possibility if not the probability, that the complainant was likely to have given an entirely different version of events to the police, which would account for the *content* of the document not being corroborative of the applicant's version of events. Furthermore, the inconsistency between the date (26th July 2010) on the FIR document and referred to in the body of the document with the applicant's statement that the FIR issued a few days after the gun incident would not of itself be sufficient to discount the applicant's account of the core incident which gave rise to the FIR. The Tribunal Member also made a finding that "*it [was] not credible that the cousin would have pursued the matter himself, rather than inform the police*". However it is acknowledged in the decision itself that the applicant stated that his cousin, or members of his cousin's family, did in fact inform the police. I have difficulty therefore in following the Tribunal Member's logic in this regard.

34. There are credibility findings, however, which in the view of this court cannot be impugned. The finding on the scuffle between the applicant and his cousin withstands scrutiny in terms of rationality and cogency and conforms to the test set out in *R.O v. RAT*. It was a view the Tribunal Member was entitled to take; the test is not whether this court would have come to a different conclusion. Similarly, I find no reason to impugn the Tribunal Member's finding that it was "*bizarre*" and "*strange*" and "*flies in the face of the*

*applicant's claim*" that the lands could remain vacant notwithstanding his claim as to his cousin's determination to take the lands. The premise for that finding is found in the applicant's own account. The finding was rationalised on the basis that up to the point of the applicant's departure, his cousin had been allegedly ruthless enough to threaten him on two occasions, register false charges against him and pursue him to Islamabad. Furthermore, I find no reason to impugn the finding of implausibly made by the Tribunal Member regarding the events in the applicant's friend's house in Islamabad. Reasons were given for the finding and they strike me as both logical and rational. For similar reasons, I find no basis to impugn the conclusions the Tribunal Member reached in relation to the contents of the newspaper which was submitted by the applicant.

35. While this court has impugned findings of sufficient number as could serve to vitiate the decision on the credibility grounds adopting the approach of Barr J. in *CCA v. Minister for Justice & Ors* (Unreported, High Court, 25th November 2014), whether leave should be granted on this basis, to my mind, is necessarily dependent on the court's consideration of the other matters in issue in these proceedings.

#### *State protection*

36. Counsel for the applicant acknowledged that the assessment on state protection could be seen in the context of general credibility. However, he argued that insofar as it purported to be a finding on the availability of such protection, it did not meet the test set out in *Idiakheua v. Minister for Justice* [2005] IEHC 150 as to the requirement on a decision-maker for a "*sufficient, rational basis for reaching a conclusion that state protection was adequate*" "*in practical terms*". Given the numerous credibility findings which preceded the Tribunal Member's consideration of the applicant's claim that state protection was not available to him, I am of the view ( and noting that the applicant's counsel also acknowledged that the consideration could be seen in the context of credibility) that the matter was considered in that context.

37. The applicant's explanation for not reporting the matter was that his cousin had "*influence*" with the police and on account of the fact that he claimed to have shot his cousin. The Tribunal Member referred to "*general country of origin information referring to problems with policing in Pakistan*" but found that it did not "*constitute evidence that the applicant, personally, cannot approach the state for protection*". According to the applicant, he shot his cousin in self defence and he had a potential witness in his wife. In circumstances where he "*never went forward, to put his side of the story*" and allowing for the reasons he advanced for not so doing, the applicant has not persuaded this court that the Tribunal Member's conclusion, namely that the applicant could not credibly maintain in those circumstances that there was a lack of state protection, was flawed.

#### *Internal Relocation*

38. Again, counsel for the applicant acknowledged that the relocation finding could be construed as something that was alluded to in the context the applicant's general credibility and it seems to this court that this could well be the case, having regard to the manner in which it was addressed in the decision. In any event, I do not find it necessary to embark on a consideration of the arguments advanced on the issue for reasons which will become clear later in this judgment.

#### *The Convention nexus*

39. The Tribunal Member's assessment of whether the applicant's well founded fear of persecution (if such were established) arose "*for reasons of race, religion, nationality membership of a particular social group or political opinion*" was addressed only at the end of the decision. That being said, I am not persuaded by the applicant's counsel's tentative argument that in dealing with it in such manner, the Tribunal Member did not intend the finding he made on the issue of the Convention nexus to be determinative of the applicant's claim.

It seems to me that this court's consideration of the Tribunal Member's finding on the issue of the Convention nexus will necessarily be determinative of the matters before this court, irrespective of any findings this court has made on the credibility assessment or other matters.

40. I turn now to the arguments advanced on the question of the Convention nexus. The first thing to be said is that I agree with the respondents' counsel's contention that what was argued on behalf of the applicant before this court was not the case that was made to the Tribunal Member in the course of the appeal. The submission made on the applicant's behalf, when the Tribunal Member asked his legal representative to state the alleged Convention nexus, was that the applicant was a member of a social group, namely a landowner in Pakistan. Under "*Submissions*", the decision records as follows:-

*"The Tribunal Member then asked the Applicant's counsel what was the Convention nexus to the Applicant's claim, particularly in light of the fact that the section 13 report found that there was no Convention nexus.*

*Counsel submitted that the Applicant was a member of a particular social group, namely a landowner in Pakistan. It was submitted that Landowners in Pakistan are a particular social group because they have money and power, and represent a select few in that country.*

*The Presenting Officer submitted that the argument advanced on behalf of the Applicant in this respect was circular. Outside of the ownership of the land, there was nothing to cause any problem. By calling the Applicant in the instant case a member of a particular social group was an attempt to extend the Convention beyond what was intended. There was nothing to suggest that the Applicant was a member of a particular social group.*

*Counsel for the Applicant submitted that the Applicant was a landowner, and that he was threatened because of this."*

In the s. 6 Analysis, the issue was addressed by the Tribunal Member as follows:

*"The Notice of Appeal stated that the Applicant feared persecution on account of his political opinion and membership of a particular social group. There was no evidence provided at any stage, to show how political opinion was related to the Applicant's alleged problems in Pakistan. I specifically asked the Applicant whether he had any involvement in politics, and he said that he had not. I find that there is no Convention nexus, insofar as political opinion is concerned.*

*At the appeal stage, counsel referred to membership of a particular social group, particularly names as 'landowners in Pakistan', as the basis on which asylum was claimed.*

*I have carefully considered all papers submitted in connection with this appeal. I also have had regard to the UNHCR*

*Guidelines on International Protection number 2: 'Membership of a Particular Social Group' within the context of Article 1A (2) of the 1951 Convention and/or its 1967 protocol relating to the Status of Refugees (HCR/GIP/02/02) of 7 May 2002. I have also considered an (sic) had regard to the decision of the Court of Appeal in Montoya v. SSHD [2002] EWCA Civ. 620, and also to the decision of the House of Lords in Shah and Islam [1999] UKHL 20.*

*If the Applicant's account is to be believed, he is being targeted because a relation wishes to buy his lands. His cousin, also a landowner, wants to buy the Applicant's land for his own (personal and/or financial) motives. If the Applicant faces any difficulties in Pakistan, such difficulties are caused by the cousin's own motives – not because of the Applicant's race, religion, nationality, political opinion or membership of any particular social group. The Applicant's alleged problems are not caused because of any innate, immutable characteristic he possesses. He is not a member of a high profile family with any distinctive features or characteristics such as would set them apart from society at large. The ownership of land in Pakistan is not an innate, immutable characteristic. Land may be bought and sold. Land, or its ownership, is not something that is immutable or innate in a person. Indeed his cousin is also a landowner in Pakistan. Further, there is nothing to stop the Applicant changing his identity as a perceived landowner. He could change from being a landowner without having a fundamental impact on his identity or conscience.*

*Having had regard to the matters required under the legislation, and all documentation supplied in connection with this appeal, I do not consider that the applicant has a well-founded fear of persecution in his country of origin for a Convention reason."*

At page 30 of the decision, with reference to the FIR, the following was stated:-

*"There is no way of verifying the FIR. However, nothing in it discloses anything other than an allegation of a criminal offence having been committed. The reason given for the hostility between the parties is a dispute over land. The matter at issue is a domestic matter, with no nexus to the Convention."*

41. The applicant's counsel referred the court to *AVB & Ors. v. RAT & Ors.* [2015] IEHC 13, where Stewart J. quoted from the decision of the House of Lords in *Fornah v. Secretary of State for the Home Department* 2006 UKHL 46, (Lord Hope of Craighead at para. 45), as follows:

*"It is universally accepted that the family is a socially cognisable group in society: UNHCR position on claims for refugee status under the 1951 Convention relating to the Status of Refugees based on a fear of persecution due to an individual's membership of a family or clan engaged in a blood feud, 17 March 2006, p.5. Article 23(1) of the Covenant on Civil and Political Rights states that the 'family is the natural and fundamental group unit of society and is entitled to protection by society and the State.' The ties that bind members of a family together, whether by blood or by marriage, define the group. It is those ties that set it apart from the rest of society. Persecution of a person simply because he is a member of the same family as someone else is as arbitrary and capricious, and just as pernicious, as persecution for reasons of race or religion. As a social group the family falls naturally into the category of cases to which the Refugee Convention extends its protection."*

42. In *AVB* reference was also made to the decision of the Upper Tribunal (Immigration and Asylum Chamber), *EH (blood feuds) Albania* CG [2012] UKUT 00348 (IAC) where under the heading "*Family as particular social group*", the following was stated:

*"In the respondent's December 2010 submissions, she argued that following the decision of the Asylum and Immigration Tribunal in SB, the Upper Tribunal should find that members of families or clans involved in blood feuds or vendettas were not capable of constituting a particular social group.*

*That position is inconsistent with the judgment of the House of Lords in 2006 in Secretary of State for the Home Department v. K, Fornah v Secretary of State for the Home Department [2006] UKHL 46 (K and Fornah), in which the respondent accepted that a family can constitute a particular social group for the purposes of Article 1A of the Refugee Convention. "*

43. The following statement in the *EH (blood feuds) Albania*, was also quoted by Stewart J.:-

*"It is settled therefore, that members of families or clans are capable of constituting a particular social group and that the Refugee Convention would be engaged where there existed a reasonable degree of likelihood that members of a particular family would be at risk of serious harm on return, subject of course to whether internal relocation was available, or whether the state provided sufficient protection against such risk."*

Stewart J. went on to find that the tribunal member:-

*"fell into error in law in finding that feuds among family members did not have a convention nexus and that the decision in Fornah was incorrectly applied"*

and that:-

*"[t]he tribunal member further erred in law and in fact in finding that the applicants did not constitute members of a particular social group, i.e. being part of a family which was involved in a blood feud with the family of AVB's brother-in-law."*

I agree with the approach adopted by my learned colleague in *AVB*. However, I am satisfied that the circumstances under consideration in *AVB* were entirely different to the arguments that were put before the Tribunal Member in the present case. The claim that was actually considered by the Tribunal Member was whether by virtue of his status as a landowner in Pakistan, the applicant was a member of a particular social group. In these proceedings, the applicant did not advance any argument as to how the Tribunal Member erred in rejecting landowners in Pakistan as a particular social group, rather the argument centred on the claim that as a member of a family engaged in a land feud, a nexus was established for the applicant and the Tribunal Member was in error in not so holding. I am satisfied that the case was never made to the Tribunal Member that the claimed persecution of the applicant was because "*he is a member of the same family as someone else*", in the sense referred in *Fornah* and *AVB*.

In *Fornah*, Bingham J. made reference to the leading case of *Shah and Islam* and summed up the import of that case, in the following terms:

*"The meaning of "a particular social group"*

11. The four Convention grounds most commonly relied on (race, religion, nationality and political opinion), whatever the difficulty of applying them in a given case, leave little room for doubt about their meaning. By contrast, the meaning of "a particular social group", for all the apparent simplicity and intelligibility of that expression, has been the subject of much consideration and analysis.

12. The leading domestic authority is the decision of the House in *R v Immigration Appeal Tribunal, Ex p Shah and Islam* [1999] 2 AC 629. The appellants were married Pakistani women who had been forced to leave their homes and feared that, if they were returned to Pakistan, they would be at risk of being falsely accused of adultery, which could lead to extreme social and penal consequences against which the state would offer no effective protection. Their claim for asylum was based on the "membership of a particular social group" ground, but different definitions were advanced at different stages of the social group in question: pp 632, 644, 649-650. By differing majorities the House accepted, on the evidence adduced in the case, that the appellants' claim should succeed, either on the basis of their membership of a wider social group, that of women in Pakistan (pp 645, 652, 655, 658), or of a narrower social group, that of women who had offended against social mores or against whom there were imputations of sexual misconduct (pp 645, 655, 658-659). Lord Millett dissented, not as I understand because he did not consider the appellants to be members of a particular social group, but because he did not consider that the feared persecution would be for reasons of such membership (pp 664-665).

13. Certain important points of principle relevant to these appeals are to be derived from the opinions of the House. First, the Convention is concerned not with all cases of persecution but with persecution which is based on discrimination, the making of distinctions which principles of fundamental human rights regard as inconsistent with the right of every human being: pp 651, 656. Secondly, to identify a social group one must first identify the society of which it forms part; a particular social group may be recognisable as such in one country but not in another: pp 652, 657. Thirdly, a social group need not be cohesive to be recognised as such: pp 643, 651, 657. Fourthly, applying *Applicant A v Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225, 263, there can only be a particular social group if it exists independently of the persecution to which it is subject: pp 639-640, 656-657, 658.

At paragraph 17 of his judgment in *Fornah*, Bingham J. referred to the necessity for the persecutory treatment to be "causally linked" with the Convention ground relied on by a claimant, in the following terms:

*"The meaning of "for reasons of"*

*The text of article 1A(2) of the Convention makes plain that a person is entitled to claim recognition as a refugee only where the persecutory treatment of which the claimant has a well-founded fear is causally linked with the Convention ground on which the claimant relies. The ground on which the claimant relies need not be the only or even the primary reason for the apprehended persecution. It is enough that the ground relied on is an effective reason. The persecutory treatment need not be motivated by enmity, malignity or animus on the part of the persecutor, whose professed or apparent motives may or may not be the real reason for the persecution. What matters is the real reason. In deciding whether the causal link is established, a simple "but for" test of causation is inappropriate: the Convention calls for a more sophisticated approach, appropriate to the context and taking account of all the facts and circumstances relevant to the particular case."*

In light of the requirement for "a causal link", I am not satisfied that a sustainable challenge to the premise upon which the applicant was found by the Tribunal Member not to have established a Convention nexus has been made out. While the Tribunal Member's finding has been challenged on the failure to find a Convention nexus based on family members engaged in a land feud (an argument not accepted by this court because that claim was never advanced on behalf of the applicant before the Tribunal as the basis of the Convention nexus), the applicant has not expressly challenged the Tribunal Member's conclusion that the applicant's cousin's motives for the alleged persecution were personal to the cousin.

44. In the course of her oral submissions counsel for the respondent referred to the Tribunal Member having had regard, inter alia, to the decision of the English Court of Appeal in *Montoya v. SSHD* [2002] EWCA Civ 620. In that case

Schiemann J. stated:

*"25. The applicant here is, and is perceived as to be, a member of the rich land-owning class. The persecutors seek out members of that class and hunt them down in order to obtain their land or money. The essence of the Tribunal's decision is (1) that this class can not qualify as a PSG for the purposes of the Convention because each member of it can dispose of his land or wealth and (2) that in any event any persecution would not be because the immigrant is a member of the group but rather because the persecutors wished to have his money.*

*26. A possible approach to the present case is to assume two matters in Mr Montoya's favour: 1. that he is a member of a PSG, and 2. that he has a well-founded fear of being persecuted.*

*27. It is common ground that, even if those matters are assumed in his favour, he must still show that he has a well founded fear of being persecuted for reasons of membership of a particular social group or political opinion. This brings us to the question whether the Tribunal was entitled on the evidence before it to conclude, as they did in paragraphs 12,13 and 50, that he was being persecuted not because he was a private landowner or because of his political beliefs, but because the persecutors wished to extract extortion money for their own use.....*

*32. However, the task before the Tribunal in the present case was to decide whether Mr Montoya had a well-founded fear of being persecuted for the reason that he was a member of a land-owning family. Mr Gill submitted that, judging by the material in front of us, had Mr Montoya's family not been possessed of land they would not have been wealthy and thus would not have been the targets of persecution. Had the family not inherited or purchased the land they would not have been persecuted; had the family given all their land away they would not have been persecuted. There are a number of factors which have combined to produce the situation in which the family had at the relevant moment and apparently still has enough wealth to be a fruitful target for extortion. All this we would accept.*

*33. The jurisdiction of this court is designed to enable it to set aside conclusions reached by the Tribunal which are erroneous in law – Immigration and Asylum Act 1999, Schedule 4, Paragraph 23. We see no legal error in the Tribunal's conclusion in the present case that Mr Montoya had a well-founded fear that he would be persecuted by reason of the*



*fact that the persecutors wanted his money and that accordingly he would not be persecuted for a Convention reason."*

In the present case, the applicant's evidence to the Tribunal was that his cousin's pursuit of the land was motivated by his own business interests, namely his desire to build a plaza or petrol station on the land. To this end he had purchased the applicant's brothers' lands and pursued the applicant for his portion.

It seems to me (taking the applicant's claim at its height and giving him the benefit of the doubt that his fears of persecution were well founded), having regard to the approach of the UK Court of Appeal in *Montoya* (which I find persuasive) and having regard to what was stated in *Fornah* as to the necessity for a "*causal link*" for the persecutory treatment, that the Tribunal Member's conclusion on the question of the Convention nexus was open to him on the basis of the relevant facts and circumstances before him. I do not perceive any need to offer an opinion on the Tribunal Member's more general finding regarding the position of landowners in Pakistan *per se* and the Convention nexus.

The applicant's challenge to the Tribunal Member's ruling on the issue of the Convention nexus has not been made out. Additionally, nowhere was it suggested on behalf of the applicant in the course of his appeal before the Tribunal that state protection was not available because he was a landowner or indeed a member of a particular family, such as might have necessitated consideration of such a claim by the Tribunal Member for the purpose of ascertaining whether the criteria for a particular social group were established.

In summary therefore, notwithstanding that some of the credibility findings have been found by this court not to have been lawfully arrived at, this is not sufficient to render the decision unlawful, since this court has found no basis on which to impugn the finding that the applicant failed to establish membership of a particular social group. Accordingly, the credibility findings are capable of being severed from the lawful decision on the Convention nexus issue.