Neutral Citation: [2015] IEHC 88

THE HIGH COURT

JUDICIAL REVIEW

[2011 No. 193 JR]

BETWEEN

Z. H. AND S. H. AND F. H., T. H., H. H. AND H.H. (FOUR MINORS SUING THROUGH THEIR MOTHER AND NEXT FRIEND S. H.)
APPLICANTS

AND

SEAN BELLEW ACTING AS THE REFUGEE APPEALS TRIBUNAL AND THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM AND IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Mr. Justice Barr delivered on the 30th day of January 2015

1. This is a telescoped application for judicial review seeking, *inter alia*, an order of *certiorari* to quash two decisions of the Refugee Appeals Tribunal, dated 18th January 2011, to refuse the applicants a recommendation of refugee status.

2. The applicants are a family unit comprising a father, mother, and their four children. The first named applicant in these proceedings is the minor applicants' father, and the husband of the second named applicant. The first named applicant made an application for asylum in his own right and it was considered and rejected on this basis. The second named applicant is the minor applicants' mother and next friend. The second named applicant consented to having her four children considered as part of her claim for asylum. It is noted that two of the minor applicants, F. H. and T. H., have now reached their majority.

Extension of time

3. The applicants sought an extension of time of approximately three weeks in which to initiate these proceedings. The respondents did not object to this, save insofar as the affidavits made any attempt to challenge the findings of the RAC in each case.

4. In the affidavit sworn by the first named applicant on 21st February, 2011, he stated that when he received the decision of the first named applicant on 26th January, 2011, he formed the opinion that he wished to bring judicial review proceedings. His former solicitors, the Refugee Legal Service, told him that if he wished to bring judicial review proceedings he would have to contact a private solicitor.

5. It took the first named applicant some time to find a private solicitor who was familiar with asylum law and was willing to take up the case on behalf of the first named applicant and his family. On 1st February, 2011, the first named applicant made contact with his present solicitor, who agreed to take on the case. The proceedings were commenced by Notice of Motion dated 21st February, 2011.

6. In the circumstances, I am satisfied that it is appropriate to extend the time for the bringing of the within proceedings up to and including 21st February, 2011.

Background

7. The applicants are a family from Lahore in Pakistan who arrived in the State on 2nd February 2009. The applicants arrived by air transiting through Abu Dhabi having paid an agent some 4 million Pakistani Rupees (c. €30,000) to arrange their travel. The first named applicant was born on 6th August 1969 and is a Sunni Muslim. His first language is stated to be Punjabi but he can also speak English and he has had the benefit of both second and third level education. He refused to take part in an arranged marriage which his family had organised for him, and instead married the second named applicant on 4th April 1993, despite his family's objections. He claims that his father is a strict Sunni Muslim who preaches in his own mosque and works for a religious organisation called Jamaat-ud-Dawa. The applicant claims that his father runs a madrassa, teaching Islamic theology, giving lessons on the Koran and training young people in jihad. The second named applicant was born on 18th March 1974 and was raised as a Shi'a Muslim. She has also received twelve years formal education and owned and operated her own beauty parlour in Pakistan. She states that she converted to become a Sunni Muslim immediately after her marriage to the first named applicant in 1993. The applicants claim persecution by reason of their religion and owing to membership of a particular social group.

8. The content of the claimed fears of both the first and second named applicant are substantially the same, stemming as they do from the alleged failure of the first named applicant's family to accept the marriage between a Sunni and a Shi'a Muslim. In this regard, the applicants claim that the first named applicant's parents did not accept his new wife, and that tensions began on the birth of their first child on 14th February 1994. After the child's birth the first named applicant's parents requested that he bring his son to see them but they refused to see the applicant's wife. The applicant refused on the basis that he knew that if he abandoned his wife his parents would either kill her, or have her killed, as they did not accept her.

9. On the birth of the applicants' third son in 1998, further trouble was encountered as the first named applicant's family began visiting with the intention of getting their son to return to the family home and abandon his wife. The first named applicant claims that he did maintain contact with his parents but, on receiving an ultimatum from them regarding his wife, he broke off all contact with them. The second named applicant recounts a visit from her mother-in-law in which she was told that she must obey her mother-in-law's wishes and send her children for religious instruction at her father-in-law's mosque.

10. In 2007, when the second named applicant was pregnant with a baby daughter, the first named applicant's family were again in contact and told him that they intended to marry his eldest son off to a cousin who was aged in her early thirties. The family also told the applicants that their daughter was to be married off to a nephew. The applicants objected to both of these proposals for obvious reasons. Further, the applicants claim that they fear their children will be taken by the first named applicant's father and trained in

jihad at his madrassa.

11. The second named applicant recalls how on a visit to her home, in the midst of an argument, her brother-in-law verbally abused her, threw boiling water over her stomach, and stuck a finger in her eye. The second named applicant was pregnant at the time and was taken to a local hospital by neighbours. She claims that she received a Caesarean section and her daughter was born prematurely on 25th December, 2007. The first named applicant claims that he was aggrieved about what had happened, and confronted his family with threats that he would make an official complaint to the courts. At this, the applicant claims that his family physically assaulted him, with his brother beating him on the back with a stick and splitting open his head. The applicant claims that his bothers told him that they would kill him if he threatened them. In November 2008, there was a further incident when one of the first named applicant's brothers tried to abduct three of the children on their way home from school. He approached the rickshaw in which they were travelling and tried to get the children to go with him. However, due to the vigilence of the rickshaw driver, he did not manage to abduct the children.

12. The applicants claim that they then left Lahore for Karachi, where they lived in the months before they fled to Ireland. The first named applicant claims that he was receiving threatening phone calls between the date of the incident surrounding his daughter's birth and the family leaving Pakistan, and that his brothers sought to kidnap one of his sons when he was leaving school in November 2008.

The Mother's Account

13. Before turning to the substantive issues raised in these proceedings, it is worth looking at the account of events as given by the second named applicant. At the time of filling in the Questionnaire, the second named applicant, the mother, gave a very coherent written account of the persecution which she alleged occurred in the years 1994 to 2009. It is worth quoting as it gives a very detailed account of her troubles in Pakistan:-

> *"My name is Sumbul Hassan. I am a resident of District Lahore, Pakistan. I belonged to Shia sect before my marriage. I belonged to a religious Shia family and I had my own beauty parlour. I used to help my family with this extra income. My elder brother Farrukh was Zammir's colleague in his office and Zammir often used to come to our house with my brother. Therefore, we often met face to face with each other. Due to these meetings, we started liking each other. Zammir would often bring a gift for me and quietly leave it in our house. We had started liking each other and we could not live without each other. When my parents learned about it, they scolded me but my parents then realised that Zammir was sincere in his love. So they said to me that they would fix my marriage with Zammir if he could bring his parents to our house and they would not go into the details of Sunni and Shia sects. I talked to Zammir and he said he would talk to his parents on that very day. When Zammir talked to his parents, they said they would never accept a Shia girl as their daughter in law. Zammir's father is an ardent member of the Jamaat-ud-Dawa and his family is very religious.*
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> *When Zammir talked to his family, they flew into a rage and beat Zammir. Dejected, he left home and moved to a rented house. After moving there, Zammir contacted my parents and said he wanted to marry Sumbul if they could arrange our Nikah with simplicity. (Translators note Nikah or Nikkah is the contract between a bride and bridegroom and part of an Islamic marriage). My parents did not agree at first but then considering my feelings and obstinacy they sent me with Zammir as his bride with simplicity on 4th April, 1993. I felt sorry because I was not sent as my parents had always thought (i.e. my marriage was not conducted with pop and circumstance) but I was satisfied after having Zammir. We started our life in the rented house and we were very happy with each other. We did not have any contact with our parents.*
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> *My eldest son was born on 14th February, 1994. I was alone at the time of my child's birth. I was badly in need of someone's company at that time. My mother forgave me and gave me company. My father, brothers and sisters were still angry.*
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> *I was very disappointed when Zammir's parents did not come to see my son. We had thought they might patch things up with us at the time of the child's birth but it did not happen. With the passage of time, my family started paying us visits and my father also forgave me when my second son was born and he accepted Zammir as my husband from the bottom of his heart. I was very happy to have my parents' back, but on the other hand I was sad and wished Zammir's parents could also forgive him so that our family could become complete. But Zammir was happy that my parents had patched up with us. My parents were distressed at the fact that my in-laws had still not accepted me and our circumstances were still the same. Zammir's business and job were going on very well. We had no grief. We only wished Zammir could have his parents' back.*
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> *In the meantime, my third son was born on 1st January, 1998. My in-laws came to our house for the first time to see him. They contacted us but only to somehow separate Zammir from me because they believed I still belonged to the Shia sect. But I had in fact started following Ehl-e-Sunnat sect like my husband immediately after my marriage. In our society, obeying husband's orders is akin to worship. As my husband belongs to Ehl-e-Sunnat Jamatt (sect or organisation), how could I follow the rules of another sect when living with him under one roof? My parents are still Ehl-e-Tashi but I perform all my religious rights, say prayers and recite holy creeds according to the Ehl-e-Sunnat sect. But my in-laws still do not believe that I am converted to Sunni. They used my children as a shield. They would go to my children's school to see them. It was my husband who gave them permission. But they were taking unfair advantage of this. In Pakistan, children cannot seek help from the police against their parents. That is why we could not take such a serious step. My in-laws perverted the minds of my children by inculcating various immoral things against me. My children did not know that I belonged to some other sect before my marriage. I got extremely worried when I heard my children making rude and indecent remarks against Ehl-e-Tashi and learnt about the negative thoughts that they had about me in their minds. My children, for whom I tolerated so many things, were going away from me. I did not want my children to go away from me at any cost. So I strictly advised the school administration that nobody except me and my husband should be allowed to see my children and made clear that nobody except us would drop or pick them from the school. My father in-law stubbornly insisted that we should send our son to his Madrasah for religious education. We very well knew about the religious education, its background and what would happen next. We condemned his opinion because of which they once again went away from us. Zammir's parents once again severed all contact with us.*
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> *Time wore on. In 2007, when my in-laws learnt that I was pregnant again and this time a daughter's birth was expected, they gradually started coming close to us. I was not aware of their dangerous intentions. My mother in-law and brother in-law started paying us visits and at last we also got permission to visit them once a week. We both were happy thinking they probably had forgotten everything but it was only a misconception.*

One day my father in-law spoke to me and Zammir and said he would forgive us only on one condition: if we fixed my 15 year old eldest son, Fahad's marriage with Zammir's cousin, Shazia, 32, and my one year old daughter, Hania's marriage with my 17 year old nephew (my sister in-law's son) but it was totally unacceptable to me. My husband and I had an argument with them over this and we left their house in a state of anger.

After a few days, my mother in-law and brother in-law came to my house on 23rd December, 2007, and started shouting at me. I was alone at home. When this argument intensified my brother in-law went into the kitchen, brought out the boiling water from the kettle placed on the stove for making tea and threw it on me, as a result of which the right side of my belly and a leg scorched. During this scuffle, my brother in-law's hand hit my left eye and it got severely injured from inside. My eyesight is still poor. (By doing so they in fact wanted to kill me and my yet to be born child). Both my mother in-law and brother in-law ran away. My neighbours gathered there after hearing my cries. Somebody rang Zammir and then I was taken to a hospital.

The doctor said that my baby's life was in danger and they would have to conduct a premature operation. My daughter was born on 25th December subsequent to an operation but her condition was very critical. She was kept in an incubator for about 28 days. Only god knows how painful those days were for me. I can never forget that time. I forgot all about my sufferings and was praying for my daughter's life, who was fighting for her life. After this incident, it was quite difficult for us to live in Pakistan. We put everything at stake because my in-laws planned to kidnap my children and also made an attempt but luckily my children escaped.

Then we contacted an agent. My husband has related in detail in his story about the troubles, problems and sufferings we went through to come here. I am not in a position to write more at this time because my eye is sore. I want to write about my condition with my own hand because I want you to feel the same pain that I felt again while writing about the bitter memories and experiences of my life. It was my offence that I had a love marriage and loved my husband sincerely. But as a punishment, I saw such a dark side of my life that if my neighbours had not taken me to the hospital on that day, my daughter and I might have sobbed to death."

Tribunal Decisions

14. The decisions of the Refugee Appeals Tribunal both begin with an extensive recitation of the claims made by the applicants in the case before proceeding to an in-depth analysis of their claims. It is of note that both decisions each run to some thirty five pages in length. The same decision maker rejected both appeals overwhelmingly on the basis of a lack of credibility.

15. In summary, the Tribunal Member found:

(i) In the first instance the Tribunal Member questioned the lack of any passports in the supporting documentation supplied by the applicants and does not find credible the applicants' account of how they managed to cross three international frontiers with the attendant border and immigration controls in the manner in which they allege.

(ii) The Tribunal does not find it credible that their agent accompanied the applicants all the way to Dublin before collecting the false passports and disappearing. Regard was had to the provisions of s. 11B(a) Refugee Act 1996 in reaching this finding.

(iii) Further the Tribunal found that the applicants failed to provide a full and true explanation of how they travelled to and arrived in the State and had regard to s. 11B(c) Refugee Act 1996 in assessing their credibility.

(iv) The Tribunal Member notes that the applicants failed to apply for asylum at the frontiers of the State and, as such, he finds it lacks credibility that the applicants would travel to the State having paid a sum of 4 million Rupees (c. €30,000) to an agent without knowing what would happen when they left Pakistan.

(v) The Tribunal Member finds it is not indicative of a person fleeing their country of origin with a well-founded fear of persecution that they would not apply for asylum at the earliest possible opportunity on leaving Pakistan. In this regard, the Tribunal considers s. 11B(d) Refugee Act 1996 in assessing the applicants' credibility.

(vi) The Tribunal does not find it plausible that in circumstances where the first named applicant's father was alleged to be a religious zealot, that he would fail to do anything about his son's marriage to the second named applicant over the course of some 15 years of apparent inactivity.

(vii) The Tribunal finds it implausible that objections to the marriage on religious grounds would persist for over a decade in circumstances where the wife converted to become a Sunni Muslim immediately after their marriage.

(viii) The Tribunal Member does not find it credible that the first named applicant's family would have allowed the applicants to live in the same locality from December 2007 until November 2008 unhindered (aside from telephoned threats) if they were as ruthless as alleged.

(ix) The Tribunal finds it is not credible that if an abduction attempt was made on the applicants' son, that they would not have reported the matter to the authorities.

(x) The Tribunal finds it is wholly incredible that the applicants failed to approach the authorities in circumstances where the organisation which it is claimed the first named applicant's father belongs to is considered a terrorist organisation by the Pakistani authorities who have been involved in its suppression.

(xi) The Tribunal found that the applicants have not adduced any evidence to show that the Pakistani state is unwilling or unable to provide them with state protection.

(xii) The Tribunal found it utterly incredible that the first named applicant's family would pursue and locate the applicants when they relocated to Karachi within the short period claimed, or that they were being followed and that it was unsafe for them to stay there. In this regard, the Tribunal found that without prejudice to the credibility findings made, the applicants could safely relocate to Karachi.

(xiii) The Tribunal Member expresses doubts as to the provenance and authenticity of some of the documents produced by the

applicants but does not consider that they assist their claim in any event.

(xiv) The Medical reports produced by the applicants are considered by the Tribunal Member but both are rejected as failing to corroborate that the injuries noted in these reports were sustained in the persecutory attacks as claimed by the applicants.

Applicants' Submissions
16. Counsel for the applicants set out a resume of the grounds of challenge and has furnished detailed submissions in these proceedings. In the first instance, it is submitted that the Tribunal Member has erred by failing to make an assessment of the four minor applicant's claims which were to be considered as part of their mother's claim. It is said that such error occurred despite the first and second named applicants giving evidence on the minors' behalf of the threats made against them. Further, it is claimed that the Tribunal erred in failing to give the three eldest children an opportunity to be heard or seen before it and failed to consider the evidence of their attempted abduction or the attempts to bring them to the madrassa and train them in jihad.

17. Counsel contends that the Tribunal failed to make an assessment on the intended forced marriages of the applicants' children despite the Commissioner's s. 13 report addressing this issue, referring to country of origin information and noting that such a problem exists in Pakistan. In this regard the applicants' claim that the Tribunal further erred by considering that protection would be available to them if they had reported matters to the authorities. Such a finding is said to disregard the Commissioner's s. 13 report and the country of origin information which casts doubt on the effectiveness of the police from district to district.

18. The applicants submit that the Tribunal Member's failure to take into account the minor applicants' claims means that he could not have had regard to the "individual and personal circumstances of the protection applicants" in breach of the provisions of Reg. 5(1) and 5(2) of the EC (Eligibility for Protection) Regulations 2006. In this regard, it is also submitted that the Tribunal Member has failed to make the best interests of the child the primary consideration in reaching his decision. Counsel submits that this is contrary to the UN Convention on the Rights of the Child 1989 as interpreted by Mac Eochaidh J. in the decision of *Dos Santos v. Minister for Justice & Equality* [2013] IEHC 237. Further the applicants make reference to the UNHCR Guidelines on International Protection relating to Child Asylum Claims 2009 and Art. 70 thereof which states:

> *"The right of children to express their views and to participate in a meaningful way is also important in the context of asylum procedures. A child's own account of his/her experience is often essential for the identification of his/her individual protection requirements…"*

19. Counsel referred to the dicta of Finlay Geoghegan J. in *M.N. v. R.N.* [2008] IEHC 382 in this regard.

20. While it is accepted by the applicants that dependent minor children's claims for asylum can be joined with their parent, it is submitted that the UN Convention and the 'best interests of the child' has application in these proceedings. It is submitted that the Tribunal purported to apply adverse credibility findings made in respect of the first and second named applicants to the minor children, without adjudicating separately in relation to their personal experience and circumstances and thus failing to act in their best interests. Further counsel refers to the decision of Fennelly J. in *A.N. v. Minister for Justice Equality & Law Reform* [2007] IESC 44 wherein he comments:

> *"35. There is no question but that asylum seekers arrive in the State as family groups. There is equally no question but that the principle of family unity is central to asylum and immigration practices and policies. The most obvious consequence is that, where an asylum seeker is accompanied by his or her children of tender years and such a person is accorded refugee status, it quite obviously enures to the benefit of the children. Paragraph 184 of the same Handbook states: "If the head of the family meets the criteria his dependants are normally granted refugee status according to the principle of family unity." It would be simply inhuman to permit a person to remain in the State and to expel or deport his children. Clearly, that is the principle underlying the Minister's policy. As described, it is a proper and reasonable policy.*
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> *36. The Minister's difficulty is that he has assumed that the converse is true. He extrapolates from the principle that a favourable asylum decision benefits other family members the further untenable proposition that a decision which is unfavourable to one is unfavourable to all.*
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> *37. Paragraph 185 of the Handbook states that "the principle of family unity operates in favour of dependents and not against them."*

21. Similarly, it is submitted that in this case the Tribunal Member erred in law by implying in his decision in respect of the second named applicant that it applied to the four minors without considering their particular circumstances and adjudicating separately in relation to their personal experience and circumstances.

22. The applicants contend that the Tribunal Member erred in failing to make any determination with regard to the failure of the Refugee Applications Commissioner to supply the applicants with written documentation in a language they would reasonably be able to understand contrary to the provisions of Article 5 of Directive 2003/9/EC, the 'Reception Conditions Directive'.

23. Counsel submits that the Tribunal Member erred in making adverse credibility findings pursuant to s. 11B (a),(c) and (d) Refugee Act 1996 in circumstances where the Commissioner had made no adverse findings in relation to the applicants' identity and nationality. It is submitted that the Tribunal Member erred in questioning the applicants' identity and nationality by reason of their failure to produce passports to establish same. The applicants furnished birth certificates to the Commissioner in this regard and counsel referred to the decision of Gibson J. in *Chidambaram v. Canada (Minister for Citizenship and Immigration)* 2003 FCT 66 in relation to the proposition that a presumption of validity is applicable in respect of birth certificates issued by foreign governments.

24. Further, the applicants contend that none of the purported s. 11B findings went to the core of the applicants' fears of persecution and, as such, should not have been the basis for adverse credibility findings. Reference was made to the decision of Mac Eochaidh J. in *M.E. v. Refugee Appeals Tribunal* [2014] IEHC 145 in this regard. It is submitted that the findings of the Tribunal Member were flawed being based on conjecture, the Member's own personal experience of transiting through Abu Dhabi airport and on errors of fact. In particular it is stated that the first named applicant could give little information about the passport used, however counsel notes that in his questionnaire in response to Q. 51 the applicant stated that "They were British passports." It is submitted that the Tribunal Member overlooked or disregarded this particular evidence, which would also support the applicants' evidence as to how they got through passport control on entering the State.

25. The applicants claim that the Tribunal Member's finding that their 'delay' in claiming asylum was not indicative of a person fleeing

their country of origin is irrational and disproportionate insofar as their application for asylum was made one day after their arrival in the State and the fact that the applicants consistently asserted that they were following an agent.

26. It is claimed that the Tribunal Member erred in failing to make a finding with regard to the religion of the first and second named applicants, in the context of their claimed fear of persecution for religious reasons. Further, the applicants contend that the Tribunal failed to carry out a rational analysis of the country of origin information supplied, particularly with regard to religious extremism in Pakistan, contrary to the standard applied by Edwards J. in *D.V.T. S. v. Refugee Appeals Tribunal* [2007] IEHC 305. In the alternative it is submitted that if the Tribunal did consider and rejected the country of origin information in favour of another source, that the reasons for such rejection are not apparent from the decision.

27. Counsel for the applicants submits that the Tribunal Member failed to give any reasons as to why he rejected the medical reports proffered by the applicants in this case as being diagnostic or corroborative of the applicants' accounts. Further, it is claimed that the Tribunal erred in raising credibility issues with regard to the authenticity of a Medical Report from a particular hospital which was produced by the first named applicant having regard to the fact that the Commissioner had accepted it as "a genuine document".

28. With regard to the Tribunal Member's finding in respect of the possible internal relocation of the applicants within Pakistan, counsel submits that the finding does not comply with the provisions of Art. 8 of Directive 2004/83/EC or the decision of Clark J. in *K.D. (Nigeria) v. Refugee Appeals Tribunal* [2013] IEHC 481.

29. Finally, with regard to the Tribunal Member's findings on the availability of state protection, the applicants claim he has erred in failing to consider whether the state protection was adequate in light of the country of origin information. The applicants also contend that the Tribunal Member fails to have regard to the explanations given by the first named applicant for the failure to seek state protection and fails to provide reasons for his rejection of such explanation. Counsel relies on the dicta of O'Keeffe J. in *J.N.A. v. Refugee Appeals Tribunal* [2012] IEHC 480 and of the Supreme Court in *Meadows v. Minister for Justice* [2010] IESC 3 in this regard. Counsel further relies on the decision of La Forest J. in *Canada (Attorney General) v. Ward* [1993] 2 S.C.R. 689 to the effect that "only in situations in which state protection 'might reasonably be forthcoming' will the claimant's failure to approach the state for protection defeat his claim."

Respondents' Submissions

30. Counsel for the respondents opened her submissions by noting that the Tribunal Member had recorded at length the second named applicant's evidence with regard to the efforts made by her father-in-law to have her children educated at the madrassa, her fears for them, their attempted abduction and the demands by her in-laws that marriages be arranged for two of the children. It was submitted that the Tribunal Member made specific findings in respect of this evidence wherein he noted that the minor applicants' parents were opposed to the proposed arranged marriages and to their recruitment to extremist causes. It was noted that the Tribunal Member specifically made adverse credibility findings with regard to the failure of the applicants to seek state protection in light of such evidence.

31. It was submitted that at no stage did the applicants identify any matter in respect of which they wished their children to give evidence of their fear of persecution, separately to that evidence which the parents were in a position to give. In this regard, it was also noted that the second named applicant confirmed that she wished to have her children's claims to be considered as part of her application. As a result, the second named applicant was specifically informed of the importance of bringing any fears she had for her children to the attention of the s. 11 interviewer. Without prejudice to the above submissions, the respondents claim that the failure to interview the applicants' children was not raised in the Notice of Appeal or the submissions contained therein. Nor did the applicants identify any witnesses that they wished to give evidence, but only referred to each other.

32. The respondents submit that the applicants are seeking to raise a matter that was never raised before the Commissioner or the Tribunal in respect of the minor applicants' claims and refer to the judgment of Mac Eochaidh J. in *R.K.K. v. Refugee Appeals Tribunal and Clark J. in I(P) v. Minister for Justice, Equality and Law Reform* [2010] IEHC 368.

33. It was refuted that the Tribunal Member failed to consider the evidence of the attempted abduction of the minor applicants, rather the respondents' note that the evidence was recorded in the Tribunal decision and is referred to in the Tribunal Member's analysis. In this regard, the Tribunal made reference to country of origin information to remark that arranged marriages do occur in Pakistan and that marriage below a certain age is illegal. It is submitted that the Tribunal clearly assessed these complaints and reached the finding that it was extraordinary that the applicants failed to approach the authorities in relation to these matters.

34. Counsel submitted that if it is claimed that the Tribunal failed to have regard to some aspects of the applicants' claims, the applicants must be able to point to evidence to support such a contention. Counsel referred to the dicta of Hardiman J. in *G.K. v. Minister for Justice* [2002] 2 I.R. 418 where he held as follows:

> *"A person claiming that a decision making authority has, contrary to its express statement, ignored representations which it has received must produce evidence, direct or inferential, of that proposition before he can be said to have an arguable case." Without prejudice to that submission, counsel submits that the Tribunal Member cannot be said to have failed to consider the four minor applicant claims and the relevant materials when he has rehearsed all of the second named applicant's fears for her children over the course of several pages of analysis."*

35. It was contended that insofar as the applicants claim that the Tribunal disregarded the findings of the Commissioner's s. 13 report, the complaint is misguided in circumstances where the applications were subject to a full reconsideration at appeal stage. It is submitted that the Tribunal was entitled to consider and make an assessment of the country of origin information which was before him at that particular stage.

36. With regard to the applicants' claim that the Commissioner failed to supply them with written documentation in a language they would reasonably be able to understand contrary to the provisions of Article 5 of Directive 2003/9/EC, the respondent was of the view that the facts surrounding such claim are not clear from the proceedings or the affidavits or evidence furnished by the applicants. In this regard it is stated that such complaint appears in reality to take issue with the procedures of the Refugee Applications Commissioner who is not a respondent to the proceedings. Further, it is submitted that the applicants are out of time within which to challenge such matters and are unable to now open matters concerned with the first instance determination of their appeal. In any event, without prejudice to the above, the respondent submits that the applicants received the legal advice of the Refugee Legal Service and had an urdu interpreter present at the initial s. 8 interview. The respondent contends that where the applicants now seek to undermine the Tribunal's decision by virtue of this supposed omission that the matter should have been raised earlier at the appeal stage.

37. The respondent claimed that the applicants' submission with regard to their failure to produce passports misunderstands the contents of the Tribunal decision. In this regard it is submitted that the Tribunal Member comments that no passport is among the documents produced in support of their claim by the applicants but the issue related to the credibility of the applicants' account of their travel to the State. Counsel submits that the Tribunal did not accept the applicants' explanation for not having a passport by way of identification in the context of their travel from Lahore, through Abu Dhabi to Ireland and the attendant security and immigration checks they would have passed through *en route*. Further, it is submitted that the Tribunal was entitled to consider whether the applicants possessed identity documents or had a reasonable explanation for not having such documents in assessing credibility pursuant to s. 11B(a) of the Refugee Act 1996. The respondent submits that the Tribunal Member was not bound by the findings in the Commissioner's report, nor was he obliged to notify the applicant's solicitor that he would be challenging the applicants' nationality and identity at the appeal hearing.

38. Counsel for the respondent submits that the Tribunal Member's adverse credibility findings with regard to the applicants' travel to the State made under s. 11B(a), (c) and (d) Refugee Act 1996 did go to a 'core aspect' of the applicants' claim. It is submitted that the Tribunal Member was of the view that the applicants had failed to provide a full and true explanation of how they travelled to and arrived in the State; that it was not credible that they would pay a vast sum of money without knowing what would happen to them outside Pakistan or be unaware of asylum; and that the failure to apply for asylum at the first opportunity was not indicative of a person genuinely fleeing persecution.

39. It is asserted that the Tribunal Member's assessment of the applicant's evidence regarding the passports was not unfair and that the Tribunal was entitled to take into account the evidence given by the first named applicant to the effect that "[The agent] never showed us anything" in finding that it undermined the applicants' claim. In any event, it is submitted that the Tribunal Member's decision rests on a series of numerous matters giving rise to concerns in relation to the applicants' credibility and that it cannot be said that the core claim was not addressed. In this regard, counsel cites the decision of Cooke J. in *I.R. v. Minister for Justice* [2009] IEHC 353 highlighting that:

> *"1) The determination as to whether a claim to a well founded fear of persecution is credible falls to be made under the Refugee Act 1996 by the administrative decision-maker and not by the Court. The High Court on judicial review must not succumb to the temptation or fall into the trap of substituting its own view for that of the primary decision-makers.*
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> *…*
>
> *8) When subjected to judicial review, a decision on credibility must be read as a whole and the Court should be wary of attempts to deconstruct an overall conclusion by subjecting its individual parts to isolated examination in disregard of the cumulative impression made upon the decision-maker especially where the conclusion takes particular account of the demeanour and reaction of an applicant when testifying in person."*

40. The respondent refutes the applicants' complaint that the Tribunal failed to make an assessment of the applicants' claimed religious differences. Rather it is submitted that the Tribunal decision clearly recounts the facts of the applicants' claim which was relevant to the background to their claims to a well founded fear of persecution. Counsel notes that the Tribunal Member was clearly aware that the applicants' claims involved an account of persecution by Sunni Muslim in-laws. Without prejudice to the above, the respondents submit that it is not clear from the applicants' case how the absence of an express finding on this matter undermines the decision. In this regard, it is submitted that the applicants cannot be in any doubt as to the reasons for the rejection of their claims and that the Tribunal is not obliged to expressly refer to every aspect of the claims, as he is entitled to refer to matters particular to his findings in his analysis of a claim. The respondent submits that where the Tribunal Member states that he considered all of the material and evidence, it is not open to the court, in the absence of evidence that something has been overlooked, to quash the decision.

41. In this vein, it is contended that the applicants do not state how the Tribunal erred in failing to assess their claims in accordance with UNHCR Guidelines on Religious Persecution or the credibility of such claims. It is also contended that it is clear that the Tribunal Member did have regard to the country of origin information produced by the applicants in their submissions and that annexed to the s. 13 report from the statements made by the Tribunal Member in the course of his decisions. In particular, with regard to the first named applicant father's terrorist connections, counsel notes that the Tribunal Member remarked, *"It is clear from country of origin information submitted in connection with this case that Jamaat-ud-dawa/Lashkar-e-Taiba is considered by the Pakistani authorities to be a terrorist organisation…"* It was submitted that the Tribunal rejected the applicants' claims by reference to the country of origin information submitted which he was entitled to weigh up in the context of the applicants' accounts. Counsel refers to the decision of Dunne J. in *A.W.S. v. Refugee Appeals Tribunal* [2007] IEHC 276 in this regard.

42. Counsel submits that it is evident from the Tribunal decision that while the Tribunal Member considered the applicants' medical reports, he did not view them to have the same probative value as the applicants. In this regard it is submitted that the Tribunal Member was not required to record particular details of the reports in his decision. It is noted that the Tribunal Member referred to the report from Sir Ganga Ram Hospital in Lahore in respect of the second named applicant's injuries to her abdomen, lower leg and thigh, however the Tribunal Member found that such reports *"do not corroborate that the Applicant sustained these injuries in a persecutory attack carried out for a convention reason."* The respondent relied on the dicta of Hedigan J. in *J.A. v. Refugee Appeals Tribunal* [2008] IEHC 310 where the learned judge stated:

> *"It is of course necessary for a Tribunal Member to take account of all relevant statements and documentation presented by an applicant. This obligation is now set out in Regulation 5(1) of the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006). It does not follow, however, from the absence of an express reference in a decision to a document that account was not taken of that document. It is for the Tribunal Member to decide whether or not a document merits specific reference, depending on his or her assessment of its probative or corroborative value."*

43. The respondent also notes that the Tribunal Member expressed doubts as to the provenance of the documentation submitted by the applicant from Sir Ganga Ram Hospital and that such concerns arose in relation to the first named applicant's inability to explain unusual features of the document such as the stamps apparent thereon. In this regard it is submitted by the respondent that the Tribunal Member was not bound to follow the findings of the Commissioner nor was he obliged to give prior notice of his intention to challenge the authenticity of the document. Counsel notes that the document was relied on by the applicants who had the benefit of legal advice.

44. It is submitted that insofar as the Tribunal Member comments on the possibility of internal relocation to a heavily populated city such as Karachi for the applicants, the Tribunal clearly stated that it was without prejudice to the many negative credibility findings

already made against the applicants. As such it is submitted that the decisions do not fall foul of the principles of internal relocation as enunciated by Clark J. in *K.D. (Nigeria) v. Refugee Appeals Tribunal* [2013] IEHC 481.

45. With regard to the applicants' complaint in respect of the Tribunal Member's findings on the availability of state protection, the respondents submit that it is apparent from the decisions that the Tribunal Member was not satisfied that the applicants' could not avail of state protection. In this regard, it is asserted that the Tribunal Member clearly took account of the relevant country of origin information regarding the effectiveness of the police, the laws in Pakistan in respect of terrorist organisations and illegal forced marriages. It is noted that in the Tribunal Member's views, given the seriousness of their claims, the applicants should have reported matters to the police. It is submitted that such conclusion could not be considered unlawful.

46. Notwithstanding such submission, the respondents noted that a system of state protection in order to be considered effective is not required to guarantee redress, but rather that it would be reasonable for the applicant to seek to avail of such protection before seeking international protection. Counsel relies on the dicta of Clarke J. in *Evuarherhe v. Refugee Appeals Tribunal* [2006] IEHC 23 in this regard. Further it is submitted that evidence of the inability of a state to protect its citizens must be posited before a conclusion may be reached that state protection is not available. Counsel relies of the decisions of Canada *(AG) v. Ward* [1993] 2 SCR 689 and *G.O.B. v. Minister for Justice, Equality and Law Reform* [2008] IEHC 229 in support of this proposition.

The Substantive Issues

47. A core complaint on behalf of the applicants was that the Tribunal did not hear evidence from any of the four children and did not give their position any separate consideration. The respondents do not accept this criticism. They point out that the second named applicant had specifically requested that her children's applications should be taken as part of her asylum application. When the matter came before the RAT, the applicants were represented by solicitor and counsel. No application was made by the applicants to have the children give evidence before the Tribunal. They simply noted that the father and mother would give evidence in each other's appeal.

48. At the time of the hearing before the RAT, the children were aged approximately 15, 14, 11 and 3. It was a matter for the adult applicants and their advisers whether they wanted the older children to give evidence in relation to the abduction attempt in November 2008 and/or in relation to receipt of threats over the telephone from the father's family. In these circumstances, it is not possible to criticise the Tribunal for the fact that the children were not called to give evidence before it.

49. The second area of complaint is that the Tribunal failed to give any or any adequate consideration to the position of the children. The Tribunal Member had regard to the evidence that the father-in-law had tried to have the children educated at his Madrasah. He also had regard to the evidence in relation to the abduction attempt in November 2008 and to the fact that the father's family wanted two of the children to be given for arranged marriages to members of the father's family. The Tribunal Member noted that the parents were opposed to sending the children to the Madrasah as they did not agree with the training of young men for Jihad. They were also vehemently opposed to arranged marriages.

50. The applicants contended that the first named respondent further erred in fact and in law in stating and implying that protection would have been available to the applicants if they had reported matters to the authorities. The applicants contended that the respondent failed to have regard to the further findings of the applicants' s. 13 report supported by COI, to the effect that *"the effectiveness of the police in the country varied greatly by district, ranging from reasonably good to ineffective with police corruption certainly a problem"*. In this regard, it was alleged that the first named respondent erred in fact and in law in failing to examine the level of protection available to the applicants in their native district of Lahore.

51. The applicants argued that the failure of the first named respondent to make an assessment of the four children's claims, meant that he could not, under Regulation 5(1) of the EC (Eligibility for Protection) Regulations 2006, have taken into account all relevant evidence and materials as they related to the four minor applicants, including *"the individual position and personal circumstances of the protection applicants, including factors such as background, gender and age"*, so as to assess whether on the basis of the applicants' personal circumstances the acts to which the applicants *"have been or could be exposed would amount to persecution or serious harm"*. Equally, it meant that the Tribunal could not and did not, consider under Regulation 5(2) whether the four minor applicants had already been subjected to persecution or the threat of persecution which of itself could have entitled him to refugee status.

52. The applicants referred to the 1989 UN Convention on the Rights of the Child as interpreted by Mac Eochaidh J. in *Dos Santos v. Minister for Justice and Equality* [2013] IEHC 237. The applicants argued that the Tribunal did not have regard to the best interests of the child when making its decision. The applicants submitted that the UN Guidelines on International Protection relating to Child Asylum Claims 2009, endorse and expand on the *"best interests of the child"* theme in the context of asylum claims. The guidelines note that the threshold for persecution may be lower than for an adult (Article 15) and note the relevance of psychological harm in the case of children (Article 16) and their sensitivity to targeting of a close relative (Article 70). Article 70 emphasises:-

> *"the right of children to express their views and to participate in a meaningful way is also important in the context of asylum procedures. A child's own account of his/her experience is often essential for the identification of his/her individual protection requirements"*

53. The applicants submitted that in relation to Article 70, in the case of M.N. v. R.N. [2008] IEHC 382, which was a family law case, Finlay Geoghegan J. held:-

> *"(i) In accordance with Article 24 (3) of the EU Charter of Fundamental Rights, the child's best interests must be a primary consideration in the judicial determination;*
>
> *(ii) the weight to be attached to views expressed by a six year old as to the country in which he would like to live will be less than that to be attached to the views of say a fifteen year old; and*
>
> *(iii) On the facts of this application, the child is aged six years and appeared from the affidavit evidence of the parents to be of a maturity at least consistent with his chronological age."*

54. The court went on to find as follows:-

> *"I do not find that prima facie he is a child not capable of forming his own views in the sense I have outlined above. It appears to me unavoidable that a judge making such a decision must rely on his or her own general experience and common sense. Anyone who has had contact with normal six year olds knows that they are capable of forming their own*

views about many matters of direct relevance to them in their ordinary everyday life."

55. In this regard, the applicants submitted that the older children were almost 15 years, almost 14 years and almost 11 years at the time of the family's appeal before the first named respondent. All were going to school and had been the subject of an attempted kidnap coming from school and could have testified in that regard as well as to the threats and attempts made by the family to join the Madrasah and train in Jihad, but none of them were seen or heard by either the Commissioner or the first named respondent.

56. The applicants accepted that while the claims of dependent minor children can be joined with their parent, it was submitted that the Convention and *"best interests of the child"* has application to the present case. Here, the appeals were processed under post-1996 legislation and the Tribunal purported to apply adverse credibility findings in respect of Z.H. and S.H. to the four remaining minor children, without adjudicating separately in relation to their personal experience and circumstances and thus failing to act in their best interests.

57. The applicant referred to the case of *A.N. and five minors suing by their mother and next friend, A.N. v. Minister for Justice, Equality and Law Reform* (Unreported, Supreme Court, 18th October, 2007) where Fennelly J. alluded at para. 33 of his decision to the provisions of para. 213 of the UNHCR Handbook, which states:-

> *"If a minor is accompanied by one (or both) of his parents, or another family member on whom he is dependent, who requests refugee status, the minor's own refugee status will be determined according to the principle of family unity."*

58. Fennelly J. went on to hold at para. 35:-

> *"There is no question but that asylum seekers arrive in the State as family groups. There is equally no question but that the principle of family unity is central to asylum and immigration practices and policies. The most obvious consequence is that, where an asylum seeker is accompanied by his or her children of tender years and such a person is accorded refugee status, it quite obviously inures to the benefit of the children. Paragraph 184 of the same Handbook states: 'If the head of a family meets the criteria of the definition, his dependants are normally granted refugee status according to the principle of family unity'. It would be simply inhuman to permit a person to remain in the State and to expel or deport his children. Clearly, that is the principle underlying the first respondent's policy. As described, it is a proper and reasonable policy.*
>
> *The Minister's difficulty is that he has assumed that the converse is true. He extrapolates from the principle that a favourable asylum decision benefits other family members the further untenable proposition that a decision which is unfavourable to one is unfavourable to all."*

59. At para. 37 of the decision, Fennelly J. highlighted the provisions of para. 185 of the Handbook which states: *"the principle of family unity operates in favour of dependents and not against them."*

60. The applicants submitted that in the present cases, the first named respondent erred in law in implying in his decision in respect of the mother that it applied to the four minors without considering their particular circumstances, or having heard evidence in respect of the four minor applicants.

61. The respondent noted that at no stage did either of the applicants identify any matter in respect of which they wanted their children to give evidence, separately to the evidence that they were in a position to give concerning the four minor applicants' claimed fears of persecution.

62. The second named applicant had confirmed at interview, that she wished to have her children's claims considered as part of her application. She was informed that it was important that she bring to the interviewer's attention any fears that she had for her children. These matters concerning her fears for her children's education in Jihad at the Madrasah run by her father in-law and the demands by her in-laws for arranged marriages for two of the children, were covered in her s. 11 interview. She was asked was there anything else of relevance that she wished included and she said no.

63. The respondent pointed out that the failure to interview the children was not raised in the notice of appeal or in the submissions submitted therewith. Neither the first, nor the second named applicant sought to have the children give evidence before the RAT. The applicants had full opportunity to recite in their evidence the nature of their claimed fear of persecution including concerns in respect of their children. They cannot now make the case that the children should have been interviewed or called to give evidence before the Tribunal.

64. The court is satisfied that the Tribunal Member considered the evidence in relation to the attempt to arrange forced marriages for two of her children. The Tribunal noted that in COI, it was stated that such marriages do occur in Pakistan and that marriage under a certain age was illegal. He noted that both parents were vehemently opposed to arranged marriages. The Tribunal Member noted that COI indicated that police protection varied from area to area. Nevertheless, he was of the view that given the nature of the allegations, the matters could have been reported to the authorities.

65. The respondent submitted that the Tribunal Member considered the fears expressed by the second named applicant in respect of her children over a number of pages in the analysis section. The Tribunal cannot be said to have failed to consider the four minor applicants' claims and the relevant evidence or material in respect thereof. The Tribunal was entitled to consider and make an assessment of the country of origin information and weigh the evidence before him at that stage.

66. The Tribunal looked at the evidence in relation to the forced marriages and the alleged abduction attempt in 2008. It found it incredible that the applicants did not report these matters to the authorities. In circumstances where both parents were opposed to any alleged arranged marriage, it was not credible that they did not seek State protection, or that such protection would not be available to the applicant's children.

67. The Tribunal noted that there was a fear that children would be indoctrinated into a terrorist organisation by the father-in-law. Reference was made to the alleged kidnapping attempt in November 2008. The second named applicant had given evidence that the motivation behind this alleged kidnapping was a desire by her in-laws to bring the children to the applicant's father in-law for indoctrination and recruitment to Jihad in his Madrasah. The Tribunal noted further that both parents opposed any such indoctrination. The parents could have brought these fears to the authorities, particularly after the attempted abduction in November 2008. The Tribunal found that the logical step to have taken would have been to bring this complaint to the authorities.

68. In these circumstances, I am satisfied that the Tribunal did have adequate regard to the matters concerning the children. The Tribunal's findings were not vitiated by virtue of the fact that the children did not give evidence before it. The Tribunal had regard to the relevant evidence concerning the credibility of the story told by the first and second named applicants and found that they did not have a well founded fear of persecution in their country of origin for a Convention reason. It was open to the Tribunal to make the finding that the children similarly did not have a well founded fear of persecution for a Convention reason.

69. The applicant also complained that the first named respondent erred in law and breached natural and constitutional justice requirements in failing to make any determination in relation to the failure of the RAC to supply them with written documentation in a language they may reasonably be supposed to understand in relation to obtaining legal advice, which had the effect that they did not have legal advice at the initial stage of the application procedure. The respondents stated that this allegation appeared to encompass a complaint regarding procedures before the RAC, who was not a respondent in the proceedings and the applicants were out of time to challenge such matters.

70. I am of opinion that the respondents' submissions in this regard are well made. It is too late for the applicants to attempt to open matters concerning the procedures before the RAC.

71. The applicants also complained about the findings made by the Tribunal in relation to establishing the identity of the applicants and the use of forged passports by them. They argue that where the RAC had accepted them as being Pakistani nationals, that it was reasonable for the applicants to assume that this question of their nationality was established. In the circumstances, it was submitted that it was invalid and unfair to draw any adverse credibility conclusions of general application under s. 11B(a) of the Refugee Act 1996, as amended.

72. The applicants further submitted that the findings in the decision in relation to the absence of passports and the evidence given by the applicants in relation to holding and showing the passports at Border Controls were flawed and based on conjecture on the part of the Tribunal Member in relation to his personal experience of travelling through Abu Dhabi Airport.

73. The applicant submitted that the respondent was in error in holding that the first named applicant could give little information in relation to the passports other than to say that they were red in colour. He later said that they were British passports. The first named applicant said that the agent had given the passports to him to show at Immigration Control. The second named applicant said that she had never handled the passports in the course of the journey.

74. The respondents submitted that the issue raised in respect of the failure to produce passports related to the applicants' account of travel to the State and their credibility or lack of credibility in relation to that aspect of their account. The respondent submitted that the Tribunal was entitled to have regard to s. 11B(a) of the 1996 Act, as amended, which provides that in assessing credibility *"the Tribunal may have regard to whether the applicant possess identity documents or whether they have a reasonable explanation for not having such documents"*. A passport is such a document and the Tribunal was entitled to consider the reasonableness of the explanation given, which was to the effect that the agent had arranged for six forged passports and had retained them except for when they were presented at Immigration Controls at the points of arrival and departure. The agent took back the passports on arrival in Dublin Airport. The respondent submitted that it was not unfair to draw adverse credibility findings under s. 11(B)(a) particularly in circumstances where the findings had a rational basis and a basis in law.

75. I am satisfied that the findings made by the Tribunal in relation to how the applicants travelled to Ireland and in particular the findings made concerning the production of passports at border controls were reasonable and based on the evidence. The Tribunal Member was entitled to have regard to the general procedures used for checking passports when arriving in or departing from international airports. He was entitled, based on his general knowledge, to make the finding that he did not believe the account given by the applicants concerning their obtaining and using false passports in the course of their journey. The evidence that the father handed in the six passports all at once at border controls was not credible. This was a finding that the Tribunal Member was entitled to make.

76. The complaint of the applicants that the adverse credibility finding under s. 11B(d) and the finding that *"it is not indicative of a person fleeing their country of origin with a well founded fear of persecution that he would not apply for asylum at the earliest possible opportunity"*, was irrational or unreasonable and disproportionate insofar as the application for asylum was made only one day after they arrived in the State and when the applicants consistently asserted that they were simply following the agent. I am of opinion that this criticism is well made. The applicants were following the agent and on this basis it was reasonable that they would apply for asylum when directed by the agent to do so. This happened on the day following their arrival in the State.

77. The applicants submitted that the Tribunal decision did not address the question of the applicant's religion and in particular the fact that the second named applicant converted to the Sunni sect shortly after her marriage. It was further submitted that the Tribunal failed to have regard to the COI in relation to inter-religious tensions.

78. This criticism of the decision is not well founded. It is clear that the respondent took account of the religious issues concerning the second named applicant as being of the Shia sect at the time of her marriage and her subsequent conversion to the Sunni sect. The Tribunal referred in its analysis to the fact that the first named applicant's father was connected to a terrorist organisation. The Tribunal Member also referred (in the context of State protection findings) to information submitted involving policing problems. The respondent submitted that these statements indicate that the Tribunal had regard to the prevalence of security issues, including concerning extremist groups in Pakistan and, in particular, to the existence of the group Jamaat-ud-Dawa. It was submitted that the Tribunal Member rejected the applicant's claims by reference to the information submitted to which he was entitled to weigh up in the context of the applicant's accounts.

79. The respondent referred to the decision in *AWS v. RAT* (Unreported, High Court, 12th June, 2007), where Dunne J. held that a general statement by the Tribunal Member that all relevant facts and documents had been considered was such that it was not open to the court to reach a conclusion that the Tribunal had failed to consider and evaluate all material evidence, papers, documents and submissions. She stated:-

> *"The function of this court is not to engage in an exercise which involves a minute analysis of the Tribunal decision to ascertain if each and every part of evidence given has been expressly referred to and dealt with. It is not necessary for the Tribunal to refer to all of the evidence in the course of its written decision."*

80. The respondent also referred to the dictum of Hardiman J. in *G.K. v. Minister for Justice, Equality and Law Reform* [2002] 2 I.R. 418, which established as a matter of law:-

> *"That a person claiming that a decision making authority had, contrary to its express statement, ignored representations which it had received needed to produce some evidence, either direct or inferential, of that proposition before he could be said to have an arguable case."*

81. The court is satisfied that the Tribunal Member had sufficient regard to the religious issues which formed the core of the applicants' claims.

82. In relation to the medical reports submitted, the applicants stated that the Tribunal Member failed to give any reasons as to why he rejected the medical reports proffered by the applicants as being diagnostic or corroborative of the applicants' accounts. Further, it was claimed that the Tribunal erred in raising credibility issues with regard to the medical report from Sir Ganga Ram Hospital, in particular in relation to the stamps thereon. The applicants claimed that it was not open to the Tribunal to question the document as it had been deemed *"a genuine document"* by the RAC.

83. The respondents noted that the Tribunal Member had regard to the medical reports and found that such reports were not corroborative that the applicant sustained the injuries in a persecutory attack carried out for a convention reason.

84. In this instance, the Tribunal Member had regard to the medical reports; he was entitled to come to the conclusion that while they did refer to injuries as stated by the applicants, the reports themselves could not establish how the applicants came to have these injuries. In particular, they could not establish that the injuries were as a result of assaults by the father's family. This was a reasonable conclusion which was open to the Tribunal on the evidence.

85. In relation to the medical report from Sir Ganga Ram Hospital, the Tribunal was not bound to accept the finding of the RAC that this was a genuine document. The Tribunal was entitled to make inquiry of the applicants as to the provenance of the markings thereon. These were unusual features to which the Tribunal was entitled to have regard. I can finding nothing wrong with the treatment of the medical reports by the Tribunal.

86. The Tribunal Member made a finding that the applicants could relocate to a city such as Karachi which was 1,000km from their home city of Lahore. It has a population in excess of ten million. The Tribunal Member did not accept that the in-laws could have located the family within such a short period of time unless, they were tipped off by someone who knew where the family were in that city.

87. The applicants had said that they could not stay in Karachi as they had already been found there by the father's family. The Tribunal Member did not accept the credibility of these accounts. The applicants claimed that insofar as the Tribunal Member made a finding of relocation, this did not comply with the provisions of Article 8 of Council Directive 2004/83/EC, nor with the principles laid down by Clark J. in *K.D. (Nigeria) v. RAT* [2013] IEHC 481.

88. The respondent submitted that insofar as the Tribunal Member comments (very briefly) on the possibility of internal relocation to a heavily populated city such as Karachi, he clearly stated that this was without prejudice to the many negative credibility findings already made against the applicants. The respondents submitted that in these circumstances, the decisions did not fall foul of the analysis and tests set out in K.D. (Nigeria) v. RAT (supra).

89. The court is satisfied that it was open to the Tribunal Member to make the findings that he did in relation to internal relocation. This was not a core finding in the decision and was very much a sort of add-on to the main findings which rejected the credibility of the applicants' account of persecution at the hands of the father's family in Pakistan.

90. In relation to the non-availability of State protection, the applicant stated that the Tribunal Member failed to consider this issue in light of the applicant's case that:-

> *"things would have been made worse for them if they had reported these matters to the police; and that having regard to the power and influence wielded by the first named applicant's father, the police would not have acted in this case."*

91. The Tribunal Member made it clear that he did not accept the explanation put forward by the applicants. Having regard to the COI on police effectiveness, he was satisfied that in the light of the serious assaults on both of the applicants and to the attempted abduction of the children, they should have gone to the police. The respondent argued that the conclusions in this regard, when the information and decisions are read as a whole, are not unlawful.

92. The respondents submitted that for the system of State protection to be considered effective, it is not required to be a guarantee of protection or redress, but rather that it would be reasonable for the applicants to seek to avail of that protection, before seeking protection elsewhere. The respondent referred to the judgment of Clarke J. in *Evuarherhe v. Refugee Appeals Tribunal* (Unreported, High Court, 26th January, 2006), where it was stated as follows:-

> *"There is no doubt but that the Tribunal Member concerned accurately stated the law, which is to the effect that a person is not entitled to refugee status if there could be said to be adequate State protection available in respect of the type of persecution feared and in the absence of there being any good reason why it would be reasonable for the person concerned not to avail of that State protection.*
>
> *It has often been pointed out that State protection does not mean a State guarantee. No State is in a position, in practice, to guarantee the complete safety of its citizens. The test is as to whether the State, in practical terms, provides adequate protection, in general, in relation to the type of persecution feared. Just as the fact that a State will not be absolved from its obligation to provide such practical protection by having laws which, for whatever reason, are not enforced in practice, similarly a State will not be found to have failed to provide adequate protection because it can be shown that some incidences of the violation concerned have occurred. This latter will be particularly so where it would appear that adequate and appropriate State measures have been taken to deal with such situations or instances as arise."*

93. The respondent further submitted that there was a presumption that a State could protect its citizens. Evidence of a State's inability to protect, must be provided before a conclusion may be reached that such protection is not available. The respondent referred to the decisions of *Canada (A.G.) v. Ward* [1993] 2 SCR 689, and *GOB v. Minister for Justice, Equality and Law Reform* [2008] IEHC 229, in this regard.

94. The respondents also referred to the decision of Hedigan J. in *NFM v. Refugee Appeals Tribunal* (Unreported, 21st November,

2008), where it was stated:-

> *"In the case of Canada (AG) v Ward [1993] 2 SCR 689, the Supreme Court of Canada held that in the absence of clear and convincing proof that a State is unable to protect its citizens and absent a complete breakdown of State apparatus, it is to be presumed that State protection is available. This principle has been cited with approval in a number of Irish decisions (see e.g. G.O.B. v The Minister for Justice, Equality and Law Reform [2008] IEHC 229)."*

95. The court is satisfied that there was a basis for the Tribunal Member to reach the conclusion that State protection would be available to the applicants. It was not a case of the applicants having made complaints to the police, and nothing being done about them. Here the applicants had complaints stretching back a number of years, but, for various reasons, they did not report these issues to the police. Having regard to the fact that COI suggested that the State was coming down heavily on the terrorist organisation to which the applicant's father belonged, it was reasonable for the Tribunal Member to make a finding that State protection would have been forthcoming had the applicants sought it. This finding was open to the Tribunal on the evidence before it.

96. For the reasons set out herein, the court refuses to quash the decisions of the first named respondent both dated 18th January, 2011.