

THE HIGH COURT

JUDICIAL REVIEW

Record No. 2009/1194JR

Between/

A. O.

Applicant

and

THE REFUGEE APPEALS TRIBUNAL

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM,

ATTORNEY-GENERAL AND IRELAND

Respondents

JUDGMENT of Mr. Justice Barr delivered on the 16th day of June, 2015

1. This is an application by the respondents for a certificate of appeal to the Court of Appeal pursuant to s. 5(3)(a) of the Illegal (Immigrants) Trafficking Act 2000 ("the 2000 Act") in respect of points arising from this court's judgment in *A.O. v. Refugee Appeals Tribunal & Ors.* [2015] IEHC 253, delivered on 17th April, 2015. Section 5(3)(a) of the 2000 Act provides as follows:

"(3) (a) The determination of the High Court of an application for leave to apply for judicial review as aforesaid or of an application for such judicial review shall be final and no appeal shall lie from the decision of the High Court to the Supreme Court in either case except with the leave of the High Court which leave shall only be granted where the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

"(b) This subsection shall not apply to a determination of the High Court in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution."

2. Under Section 75 of the Courts of Appeal Act 2014 this section applies to the Court of Appeal as it has, and still does, to appeals to the Supreme Court.

3. Arising out of the judgment of this court in *A.O. v. Refugee Appeals Tribunal & Ors.* [2015] IEHC 253, the respondents now request that this court certify the following questions as involving a point of law of exceptional public importance such that it is desirable in the public interest that an appeal should lie:

(i) Whether the effect of this court's judgment is to require the Refugee Appeals Tribunal to adopt an investigative role not provided for in the provisions of the Refugee Act, 1996 (as amended)?

(ii) Whether the effect of the court's judgment is to reverse the statutory burden of proof as provided for in section 11A(3) of the Refugee Act, 1996 (as amended)?

(iii) Whether by effectively placing an obligation on the Refugee Appeals Tribunal to contact the creator/author of a document tendered as evidence by the applicant, the court's judgment requires the Refugee Appeals Tribunal to act contrary to the duty of confidentiality imposed on it by section 19(1) of the Refugee Act, 1996 (as amended)?

Principles applicable to an application for a Certificate

4. The test under s. 5 of the 2000 Act for when an appeal will lie is a replica of provisions which previously applied to judicial reviews in the planning and environmental area. As a result, a degree of consensus has emerged from the case law in both the planning and environmental area and the asylum and immigration area. These were summarised by Cooke J. in *I.R. v. Minister for Justice* [2009] IEHC 510 ("*I.R. (No. 2)*"), where he considered the principles established in *Raiu v. Refugee Appeals Tribunal* (Unreported, High Court, Finlay Geoghegan J., February 26, 2003), *Glancre Teoranta v. An Bord Pleanála* [2006] IEHC 250, and *Arklow Holidays Ltd. v. An Bord Pleanála* [2008] IEHC 2. The case of *I.R. (No. 2)* concerned an application for a certificate in relation to Cooke J.'s seminal decision in *I.R. v Minister for Justice, Equality and Law Reform & Ors* [2009] IEHC 353 ("*I.R. (No. 1)*").

5. On the basis of those authorities, Cooke J. stated, at para. 6 of his judgment in *I.R. (No. 2)*, that the relevant principles were as follows:

(i) *"It is not enough that the case raises a point of law: it must be one of exceptional importance;*

(ii) *The jurisdiction to grant a certificate must be exercised sparingly;*

(iii) *The area of law involved must be uncertain such that it is in the common good that the uncertainty be resolved for the benefit of future cases;*

(iv) *The uncertainty as to the point of law must be genuine and not merely a difficulty in predicting the outcome of the proposed appeal or in appraising the strength of the appellant's arguments;*

(v) *The point of law must arise out of the court's decision and not merely out of some discussion at the hearing;*

(vi) *The requirements of exceptional public importance and the desirability of an appeal in the public interest are*

cumulative requirements."

6. In its judgment in *A.O. v. Refugee Appeals Tribunal & Ors.* [2015] IEHC 253, this court held as follows at paras. 29-30:

"29. In relation to the questioned authenticity of the AREF documents, being the letter and the identification card, there was a duty on the decision maker to take steps to investigate the authenticity of the documents. They could have telephoned the numbers given in the letter itself, or as found on the website, and tried to ascertain whether the letter was genuine. Neither of these steps were taken. In the Australian case, Sun Zhan Qui v. Minister for Immigration and Ethnic Affairs [1997] FCA 1488, the following was stated in relation to the duty on a decision maker to carry out investigations in relation to questioned documents before the hearing:-

"In my opinion these omissions [referring to investigations which could have been carried out] rendered her decision manifestly unreasonable, within the principle explained by Lord Greene MR in Associated Provincial Picture Houses v Wednesbury Corporation [1948] 1 KB 223. It is now established that a failure by a decision maker to obtain important information, on a central issue for determination, that the decision maker knows to be readily available may result in the decision being branded an exercise of power so unreasonable that no reasonable person could so exercise the power..."

30. In the circumstances, I am satisfied that the Tribunal did not carry out sufficient investigation of the letter and ID card. The discrepancies identified in the letter certainly raised serious questions in relation to its authenticity. It was up to the Tribunal to take active steps to ascertain the authenticity of the documents. As already noted, the Tribunal could have tried to make contact with the Federation to see if the documents were genuine. They could have sent copies of the documents to the Federation and asked them to verify whether the documents were genuine. In the circumstances, it is appropriate to quash the decision of the RAT dated 28th September, 2009, on this ground."

7. It is on foot of this part of the court's judgment that the present application for a certificate arises.

8. Counsel for the applicant did not disagree with the respondents' recitation of the law governing an application for a certificate. In particular, the applicant agreed that the key authority upon which this court should determine the respondents' application is the decision of *Cooke J. I.R. (No. 2)*.

9. In relation to the respondents' submissions that a certificate should be granted, counsel for the applicant stated that he did not regard the questions which the respondents wish to refer to the Court of Appeal as being ones of exceptional public importance such that it is necessary to refer them to the Court of Appeal in the public interest.

10. I now turn to consider the three questions which the respondent has asked this court to certify.

The First Question – an investigative role for the RAT?

11. The first question which the respondent has asked the court to certify is whether the effect of this court's judgment is to require the Refugee Appeals Tribunal to adopt an investigative role not provided for by the Refugee Act, 1996 (as amended) (hereinafter "the 1996 Act").

12. Section 8(1)(a) of the 1996 Act provides that:

"A person who arrives at the frontiers of the State seeking asylum in the State or seeking the protection of the State against persecution or requesting not to be returned or removed to a particular country or otherwise indicating an unwillingness to leave the State for fear of persecution –

(i) Shall be interviewed by an immigration officer as soon as practicable after such arrival, and

(ii) May apply to the Minister for a declaration."

13. The said application is dealt with at first instance by the Refugee Applications Commissioner and s. 11(1) of the 1996 Act provides that:-

"Where an application is received by the Commissioner under section 8 and the application is not withdrawn, or deemed to be withdrawn pursuant to this section or to section 9 or 22, it shall be the function of the Commissioner to investigate the application for the purposes of ascertaining whether the applicant is a person in respect of whom a declaration should be given."

14. Section 15(1) of the 1996 Act provides that:-

"On the establishment day there will stand established a Tribunal to be known as the Refugee Appeals Tribunal (in this Act referred to as "the Tribunal") to consider and decide appeals under section 16 of this Act."

15. Section 16 of the Act sets out the provisions in relation to an appeal, including the mandatory and discretionary functions of the Tribunal. Section 16(6) gives the Tribunal a discretionary power as follows:-

"The Tribunal may, for the purposes of its functions under this Act, request the Commissioner to make such further enquiries and to furnish the Tribunal with such further information as the Tribunal considers necessary within such period as may be specified by the Tribunal"

16. The respondents submitted that the provisions of the Act therefore appear to provide that any investigative function in the course of an application for a declaration of refugee status rests with the Refugee Applications Commissioner.

17. The respondents submitted that the judgment of this court raises a very important point of law which does not appear to have been considered previously by an appellate court: whether a Tribunal decision can be vitiated because the Tribunal did not carry out an investigation of the type envisaged by this court.

18. One of the bases upon which a point of law can be held to be exceptional is that the law is in a state of uncertainty sometimes because the issue has not previously been determined or because there are conflicting judgments on the point. The respondent

submitted that in the instant case the conflict is between the law set out in legislation in relation to the role of the Tribunal and the law as determined by this court which, in the respondents' submission, essentially assigns an investigative function to the Tribunal.

19. The respondents submitted that this issue arises directly from the decision of this court and has serious implications beyond the facts of this particular case, given the potential consequences for the conduct of its appellate functions by the Tribunal and its interaction with the Refugee Applications Commissioner. The respondents stated that it is of considerable significance for future cases involving the Tribunal brought before the High Court; and that it is in the interest of justice that clarity and certainty should be brought to the role of the Tribunal both for appellants and for the appellate body itself.

20. The applicant submitted that the respondent is mistaken insofar as it suggests that the Tribunal does not have an investigative role. In this regard, the applicant made reference to the decision of Clarke J. in *Idiakheua v RAT* [2005] IEHC 150 where he stated:

"It should be recalled that the process before the RAT is an inquisitorial one in which a joint obligation is placed on the applicant and the decision maker to discover the true facts"

21. The applicant also referred the court to the decision of Cooke J. in *H.I.D. and B.A. v. Refugee Appeals Tribunal* [2011] IEHC 33 where the learned judge held as follows, at para. 50:

"It is also to be observed that the power of the Tribunal under s. 16(6) of the 1996 Act to require further information or enquiries from the ORAC meets the objectives envisaged in paragraphs 2(b) and 3 of Article 8 of the Directive. Contrary to the suggestion made in argument, the Court does not consider that this in some way compromises the RAT as an independent tribunal. The ORAC is responsible for the first stage examination of the asylum application and is equipped with the specialist resources and facilities required for that purpose. It is represented at Tribunal hearings by a "presenting officer" to assist in the re-examination of its report and act so far as necessary as a legitimus contradictor in respect of matters put in issue by an appellant. Where, in order to reach a conclusion on a disputed issue or a matter of doubt, the Tribunal member directs that the ORAC conduct further enquiries or obtain further information, the RAT is doing no more than ensuring that the full examination of the asylum application is thorough and complete. The objective of the Procedures Directive is to ensure that the examination of applications culminating in the "final decision" is carried out according to the prescribed principles and standards and the investigative or inquisitorial obligation is not exclusive to the first instance stage. It is perhaps a failing of the common law mindset that conceives any remedy before a "court or tribunal" as necessarily one of an exclusively adversarial character by way of de novo rehearing".

22. The applicant submitted that there needs to be an investigation of some kind when the matter comes before the Tribunal. Whether the Tribunal carries it out itself or delegates it to ORAC under 16(6) does not matter to an applicant. The point is that an investigation should take place at Tribunal stage.

23. The Tribunal Member is required to assess the claim. In this regard the applicant referred to Regulation 5 of the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006) ("the Protection Regulations"). Part of any such assessment, it was submitted, would necessarily involve establishing whether an important document is authentic. In this regard, the applicant made reference to the discussion of the "assessment" of asylum applications in *M.M. v Minister for Justice, Equality and Law Reform* C-277/11.

24. The applicant contended that, in light of *M.M.*, the duty of assessment under the Protection Regulations applies to both the ORAC and RAT stages of the procedure.

25. The applicant therefore submitted that this court was correct in its judgment and that it acted in accordance with normal standards in making its decision. The applicant stated that there is no real suggestion that the court decided to depart from established principles or if there is such a suggestion it has no merit. In this regard, the applicant pointed out that the respondent did not refer to any conflicting decisions.

The Second Question – reversal of the statutory burden of proof?

26. The second question which the respondent has asked this court to certify is whether the effect of the court's judgment is to reverse the statutory burden of proof as provided for in section 11A(3) of the Refugee Act, 1996 (as amended).

27. Section 11A(3) of the Act provides as follows:

"Where an applicant appeals against a recommendation of the Commissioner under section 13, it shall be for him or her to show that he or she is a refugee."

28. The respondent submitted that while it is accepted that a decision-maker such as the Tribunal must consider documentation provided to it by an applicant which has potential probative value in relation to the applicant's claim and if rejecting the said documentation for probative value must provide reasons for so doing, the decision of this court would appear to require the Tribunal to provide proof that the documentation provided is not genuine, essentially disproving the applicant's claim. In essence the requirement appears to reverse the burden of proof in relation to an appeal against a decision of the Commissioner.

29. The respondent submitted that this issue arises directly from the decision of this court. The respondent argued that there is again a conflict as between the law as set out in the legislation and the law as determined by this court and as with the first issue the point of law is of exceptional public importance, affecting as it does the many asylum seekers seeking a declaration of refugee status who choose to appeal a recommendation by the Commissioner that they not be given such a declaration. The respondent stated that it is also of significant importance for future cases seeking to challenge the decisions of the Refugee Appeals Tribunal. The interests of justice demand that clarity in relation to such an important issue as the burden of proof should be available to appellants and to the appellate body.

30. The applicant submitted that, in effect, what is in question here is the application of a principle outlined in *I.R. (No. 1)*. The applicant took the view that the court applied that principle correctly and in a standard way. The applicant argued that if *I.R. (No. 1)* itself was not suitable for a reference (as Cooke J. held in *I.R. (No. 2)*), it was difficult to see how this case could be suitable for a reference.

31. The applicant submitted that all that was happening in this case was the application of standard administrative law principles, including the principle that if a document before a decision maker is discounted as not being authentic, reasonable attempts should be made to establish it is authentic. In that regard, the applicant referred to the ninth principle set out by Cooke J. at para. 11 of his

judgment in *I.R. (No 1)* where the learned judge stated:

"9) Where an adverse finding involves discounting or rejecting documentary evidence or information relied upon in support of a claim and which is prima facie relevant to a fact or event pertinent to a material aspect of the credibility issue, the reasons for that rejection should be stated."

32. The applicant submitted that it would also appear to follow that those reasons must be acceptable. The applicant pointed out that the court cited the Australian authority, *Sun Zhan Qui v. Minister for Immigration and Ethnic Affairs* [1997] FCA 1488, for its conclusion and that no conflicting authority was referred to on behalf of the respondents.

The Third Question – the Tribunal's duty to ensure confidentiality

33. The third question which the respondents have asked this court to certify is whether by effectively placing an obligation on the Refugee Appeals Tribunal to contact the creator/author of a document tendered as evidence by the applicant, the Court's judgment requires the Refugee Appeals Tribunal to act contrary to the duty of confidentiality imposed on it by s. 19(1) of the Refugee Act, 1996 (as amended).

34. Section 19(1) of the 1996 Act provides that:

"The Commissioner, the Board, the Tribunal, the Minister, the Minister for foreign Affairs and their respective officers shall take all practicable steps to ensure that the identity of applicants is kept confidential."

35. The respondents submitted that an inquiry of the type envisaged in this court's judgment has the potential to identify an applicant for refugee status to unknown third parties possibly with connections to the country of origin of the applicant and as such would appear to conflict with the duty imposed on the Tribunal to ensure that the identity of an applicant is kept confidential.

36. The resolution of the conflict between the duty placed on the Tribunal by legislation and that imposed on it by this court is of exceptional public importance as it may adversely affect the safety and security of asylum seekers. In looking at the public interest the court may take into account the broader context as well as the circumstances of the parties to the case themselves and this issue does not affect only this particular applicant but many others as well.

37. The respondents' request is that the three questions set out above should be certified as involving points of law of exceptional public importance such that it is desirable in the public interest that an appeal would lie against the judgment of this court in *A.O. v. Refugee Appeals Tribunal & Ors.* [2015] IEHC 253. It was submitted that the criteria in *I.R.* are clearly met, and that given the importance of the issue legally and practically, it is desirable that the issue would be resolved at the highest possible level. This is not least because any determination of the legal issues would probably require application of those principles to the facts of the case, including the facts of the asylum applications and the reasons given by the Refugee Appeals Tribunal for the refusal of their appeals.

38. The applicant disagreed with this submission and submitted that it was not clear that confidentiality must be breached in order to carry out investigations. Moreover, the applicant submitted that the right to confidentiality is that of the applicant asylum seeker and the applicant asylum seeker or her legal advisers may be asked if he or she has any objection to any particular inquiry being carried out. The applicant pointed out that again no conflicting authority was cited.

Decision

39. As regards the respondents' suggestion that the effect of this court's judgment is to require the Refugee Appeals Tribunal to adopt an investigative role not provided for by the Refugee Act, 1996 (as amended), the court would observe that its findings at paras. 29-30 of its judgment, as set out above, do not mean that the Tribunal must personally undertake the investigative steps which the court has suggested, as the respondents appear to believe. It seems to the court to be clear that it is open to the Tribunal to carry out further inquiries or obtain further information by way of a request to ORAC pursuant to s. 16(6) of the Refugee Act 1996.

40. That the RAT has an investigative role does not appear to be in doubt. In *F.K.S. v. The Refugee Appeals Tribunal & Anor* [2010] I.E.H.C. 137, Cooke J. considered the roles played by the Commissioner and the Tribunal under the scheme of the 1996 Act and pointed out that the Tribunal member:

"retains a continuing investigative role in that the member is entitled and even obliged to take the initiative where necessary to research appropriate country of origin information or to request the Commissioner to make further inquiries or obtain additional information which the Tribunal considers necessary. The Tribunal member is, in effect, carrying out a review of the basis upon which a negative recommendation has been given by the Commissioner and doing so at the request of the applicant and in the light of the challenges to the report put forward in the notice of appeal as grounds as to why it should be reversed."

41. In *X.L.C. v. The Minister for Justice, Equality and Law Reform & Anor* [2010] I.E.H.C. 148. Cooke J. further clarified the function of the Tribunal and the statutory appeals process as follows:

"22. [...] although the remedy provided for before the Tribunal is phrased in terms of an appeal proceeding, with an onus of proof placed upon the appellant, the function discharged by the Tribunal remains part of the composite process of examination of the asylum application. Thus, the Tribunal member has a continuing investigative role and especially since the commencement of the European Communities (Eligibility for Protection) Regulations 2006 on 10th October, 2006, the Tribunal member is also a "protection decision-maker" and required to comply with the terms of Regulation 5 including, for example, the obligation to consult relevant information relating to the country of origin and to do so whether or not it has been put forward as part of the appeal. The Tribunal member is also equipped with the power under s. 16 (6) of the Act to request the Commissioner to conduct further inquiries and to attain for the tribunal such further information as it may consider necessary."

42. Cooke J. again pointed out in *H.I.D. and B.A. v. Refugee Appeals Tribunal* [2011] IEHC 33, the investigative or inquisitorial obligation in the determination of applications for refugee status is not exclusive to the first instance stage; in this regard he observed that the power of the Tribunal under s. 16(6) of the 1996 Act to require further information or inquiries from ORAC meets the objectives envisaged in paragraphs 2(b) and 3 of Article 8 of the Procedures Directive. Cooke J. further held that:-

"Where, in order to reach a conclusion on a disputed issue or a matter of doubt, the Tribunal member directs that the ORAC conduct further enquiries or obtain further information, the RAT is doing no more than ensuring that the full examination of the asylum application is thorough and complete."

43. Similarly in *Idiakheua v. Refugee Appeals Tribunal* [2005] IEHC 150, Clarke J. stated that "the process before the RAT is an inquisitorial one in which a joint obligation is placed on the applicant and the decision maker to discover the true facts."

44. The court also draws support for this view from the decision of Clark J. in *S.R. [Pakistan] v. Refugee Appeals Tribunal & Ors.* [2013] IEHC 26, where it was stated at para. 29:

"29. The applicant submitted a large number of documents to corroborate his identity and his narrative. These documents were capable of significant probative value. If their authenticity had been verified, they were capable of supporting his account of the persecution, stigmatisation, harassment and discrimination that he and his family have experienced in the past and which he fears in the future. The Commissioner stated that he was unable to verify their authenticity without detailing what, if any, efforts were made to authenticate the documents. They were simply not mentioned by the Tribunal."

45. Clark J. then proceeded to state:

*"The European Court of Human Rights has criticised the practice of rejecting potentially significant documents produced in support of an asylum application without carrying out sufficient and appropriate investigation. It found the consideration of documents undertaken without close and rigorous scrutiny to be in breach of the right to an effective remedy guaranteed by Article 13 of the ECHR taken together with Article 3 (see *Singh & Others v. Belgium* (App. No. 33210/11, 2nd October 2012))."*

46. While it is clear that the RAT has an investigative function, the Tribunal does not have to carry out such investigations itself: s. 16(6) of the 1996 Act makes adequate provision for the Tribunal to request ORAC "to make such further enquiries and to furnish the Tribunal with such further information as the Tribunal considers necessary..."

47. It may have been prudent for this court to have explicitly stated in its judgment that the investigations which it considered the Tribunal ought to have undertaken could have been carried out by way a s. 16(6) request to ORAC, rather than the RAT being under an obligation to carry out such investigations itself. In the circumstances, I am satisfied that the respondent has raised a point of law of exceptional public importance such that it is desirable in the public interest that an appeal should be brought. I will therefore certify the following question for the consideration of the Court of Appeal:

Whether the effect of this court's judgment is to require the Refugee Appeals Tribunal to adopt an investigative role not provided for in the provisions of the Refugee Act, 1996 (as amended)?

48. The second issue arising is whether the judgment of this court reverses the statutory burden of proof as provided for in s. 11A(3) of the Refugee Act, 1996 (as amended). In this regard the respondent has suggested that the court's judgment would appear to require the Tribunal to provide proof that the documentation provided is not genuine, essentially disproving the applicant's claim.

49. This is not in fact the case. The court held as follows at para. 30 of its judgment:

"I am satisfied that the Tribunal did not carry out sufficient investigation of the letter and ID card. The discrepancies identified in the letter certainly raised serious questions in relation to its authenticity. It was up to the Tribunal to take active steps to ascertain the authenticity of the documents."

50. It can be seen from this passage that the court was simply of the view that it was incumbent on the RAT to take active steps to ascertain the authenticity of the documents submitted by the applicant. This can be done by way of a s. 16(6) request to ORAC. Once these reasonable investigations had been carried out, even if it proved impossible to authenticate the documents, then the RAT would, it seems to me, have discharged its obligations.

51. At no point did this court state that a failure to disprove the authenticity of the documents meant that they had to be accepted as genuine, and indeed the court noted that the letter submitted by the applicant contained discrepancies which raised serious questions about its authenticity. There is, accordingly, no question of the judgment of this court purporting to reverse the statutory burden of proof laid down in s. 11A(3) of the Refugee Act, 1996 (as amended), as has been contended on behalf of the respondents. Accordingly, I refuse to certify the question proposed by the respondent on this issue.

52. The final issue raised by the respondent is as to whether by effectively placing an obligation on the Refugee Appeals Tribunal to contact, or cause to be contacted, the creator or author of a document tendered as evidence by the applicant, the court's judgment requires the Refugee Appeals Tribunal to act contrary to the duty of confidentiality imposed on it by s. 19(1) of the Refugee Act, 1996 (as amended). The applicant submits that the right to confidentiality is that of the applicant asylum seeker and the applicant asylum seeker or her legal advisers may be asked if he or she has any objection to any particular inquiry being undertaken. Such a step, it seems to me, would fall within the duty of the RAT to cooperate with an applicant in the assessment of an asylum claim and does not go beyond the provisions of the Refugee Act 1996 and Article 4(1) of Council Directive 2004/83/EC (the Qualification Directive).

53. However, the statutory obligation in relation to preserving the confidentiality of the identity of the asylum seeker is an important obligation placed on the RAT. I am satisfied that the respondent has made out sufficient grounds for certifying a question of law of exceptional public importance under this heading and that it is desirable in the public interest that an appeal be brought in respect of this issue. Accordingly, I will certify the following question for the determination of the Court of Appeal:

Whether by effectively placing an obligation on the Refugee Appeals Tribunal to contact the creator/author of a document tendered as evidence by the applicant, the court's judgment requires the Refugee Appeals Tribunal to act contrary to the duty of confidentiality imposed on it by section 19(1) of the Refugee Act, 1996 (as amended)?

Conclusion

54. For the reasons set out above, the court will certify the following two questions as ones involving points of law of exceptional public importance:

(i) Whether the effect of this court's judgment is to require the Refugee Appeals Tribunal to adopt an investigative role not provided for in the provisions of the Refugee Act, 1996 (as amended)?

(ii) Whether by effectively placing an obligation on the Refugee Appeals Tribunal to contact the creator/author of a document tendered as evidence by the applicant, the court's judgment requires the Refugee Appeals Tribunal to act contrary to the duty of confidentiality imposed on it by section 19(1) of the Refugee Act, 1996 (as amended)?