THE HIGH COURT

JUDICIAL REVIEW

[2015 No. 125 J.R.]

BETWEEN

A. A.

APPLICANT

AND

MOIRA SHIPSEY SITTING AS THE REFUGEE APPEALS TRIBUNAL

RESPONDENT

JUDGMENT of Ms. Justice Faherty delivered on the 27th day of January, 2017

1. This is an application for judicial review where leave was granted by order of MacEochaidh J. on 9th March, 2015, on a substantial grounds threshold for the applicant to challenge by way of application for an order of *certiorari* to quash the decision of the respondent which affirmed the recommendation of the Refugee Applications Commissioner that the applicant was not eligible for subsidiary protection.

Background

2. The applicant is a Pakistani national who first arrived in the State in August, 2002, on foot of a five year student visa. In the course of a return visit to Pakistan in 2005, he met a woman T.N. and they developed a relationship. However, it had been arranged by T.N.'s family that she was to marry another man and, accordingly, the applicant and T.N. conducted their relationship in secret. In April, 2006, they married in secret in Pakistan and shortly thereafter T.N. became pregnant. The applicant then returned to Ireland to continue his studies. He left money with a friend in Pakistan for the purpose of arranging a visa for T.N., who was to follow him to Ireland. At some point after the applicant left Pakistan, T.N.'s family became aware that she was pregnant and when they discovered that she had married in secret without their permission they abused and beat her. T.N. came to Ireland in or about 2006. Both the applicant and T.N. applied for asylum in the State. Both applications were refused. Their first child was born in Ireland in February, 2007, with a medical condition (frontal plagiocephaly) which may well have been caused by the severe beatings which were inflicted on T.N. by her family in Pakistan. The child continues to require medical treatment for her condition.

3. In 2007, the applicant and T.N. separately made applications for subsidiary protection. The applicant's claim was based on his fear of serious harm in Pakistan "for reasons of … 'death penalty or execution', 'torture or inhuman or degrading treatment or punishment of a person in his or her country of origin'." The basis of his claim was that he could not return to Pakistan "as his wife's family would kill him, his wife and his children". The applicant also claimed that in Pakistan there was a generalised situation of violence and that he would not be safe anywhere in Pakistan. Similarly, the principal basis of T.N.'s application was that she would be at risk of serious harm from her family members in addition to fear of generalised violence in Pakistan.

4. In decision dated 5th February, 2014, the Commissioner found the applicant credible as to his account of events in Pakistan, albeit it was not considered that the applicant's claimed fear from his own family in Pakistan was sufficient to believe that he would be at risk from them.

5. Having established the applicant's credibility vis-à-vis events regarding his wife's family, the Commissioner assessed whether the applicant would be at risk of serious harm for the purposes of the European Union (Subsidiary Protection) Regulations 2013 ("2013 Regulations"). As regards the likelihood of the applicant being at risk from the death penalty or execution, the Commissioner found:

> "Based upon an assessment of all the facts and personal circumstances relating to the applicant, including the [country of origin information]… on honour killings of women in Pakistan, I find that the applicant would not face a real risk of the death penalty or execution if returned to his country of origin".

However, the Commissioner did find that "based upon an assessment of all the facts, including the applicant's credibility and … [country of origin information] … the applicant would be at risk of being attacked by his wife's family and therefore faces a real risk of torture or inhuman or degrading treatment or punishment if returned to his country of origin." It was not found that the applicant would be at risk from indiscriminate violence.

6. The Commissioner, having considered country of origin information, went on to find that state protection would be available to the applicant if he were to return to Pakistan. It was also found that an internal relocation alternative was available to the applicant in that he could reasonably be expected to relocate to Lahore. It was thus concluded that substantial grounds had not been shown by believing that the applicant would face a real risk of suffering serious harm if returned to Pakistan and accordingly he was not found to fall within the definition of a person eligible for subsidiary protection.

7. The Commissioner's decision on T.N.'s application for subsidiary protection (which included the dependant children) issued on 15th April, 2014. As with the applicant, there were no issues as to T.N.'s credibility as to the events which occurred in Pakistan. The Commissioner duly concluded that based upon an assessment of the facts and the personal circumstances of T.N., including country of origin information on honour killings in Pakistan, that she and her dependants would face a real risk of the death penalty or execution if returned to Pakistan and it was also found that T.N. and her dependants would face real risk of torture or inhuman or degrading treatment or punishment if returned to her country of origin. Regarding T.N.'s personal circumstances in light of country of origin information, the Commissioner found that effective state protection would not be available to her in Pakistan. The Commissioner also found that the internal relocation alternative was not available to T.N. The Commissioner's finding in this regard was as follows:

> "During her interview the applicant was asked if she could relocate to a different area within Pakistan such as Lahore. The applicant was asked how her family would be able to trace her (and her dependants) in Lahore considering its population more 12 million people. The applicant replied that it is not difficult to trace someone through police officers. I do not find the applicant's answer acceptable as her family would not know that she has returned to Pakistan unless she told them. And if they knew, I do not find that a family would realistically be able to find the applicant in a different area of Pakistan, considering its population. Therefore, there are safe areas the applicant could relocate to.

> With this said, I must assess whether internal relocation would be a realistic option for the applicant and her dependants. The applicant has been in Ireland for 7 years and has no significant education or employment history. The applicant's daughter was born with frontal plagiocephaly and requires constant medical attention. The applicant has two more children. The applicant would not be able to rely on the support of her family.
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> Therefore, I find that internal relocation alternative is not available to the applicant in that she could not reasonably be expected to relocate within Pakistan."

Based on the findings made, the Commissioner was of the view that T.N. and her dependents were eligible for subsidiary protection.

8. The applicant appealed the Commissioner's recommendation on his subsidiary protection application to the Refugee Appeals Tribunal. In the course of his appeals submission, he advised, *inter alia*, that his wife T.N. had been granted subsidiary protection.

9. A hearing of the applicant's appeal took place on 4th December, 2014. The decision of the Refugee Appeals Tribunal issued on 6th February, 2015.

10. As the decision makes clear, the Tribunal accepted, on balance of probability, the applicant's claims that his wife's family would seek to kill him if he returned to Pakistan as revenge for marrying their daughter who was promised to another man. As with the Commissioner, the Tribunal did not accept the applicant's claims in regard to his alleged fear of his own family.

11. Having considered country of origin information on honour killings, including information on the killing of men who married women without their families' consent, the Tribunal found that the applicant would be at risk of serious harm by execution in Pakistan, and also upheld the Commissioner's finding that he would be at risk of torture or inhuman or degrading treatment or punishment if returned to his country of origin.

12. Contrary to the Commissioner's finding, the Tribunal Member found that the applicant's individual circumstances were as such that the Pakistani police would not be in a position to offer him effective protection from his in-laws if he was returned to Pakistan.

13. The Tribunal Member next considered the question of whether there was an internal relocation alternative for the applicant. She determined:

> "[T]here are no serious grounds for believing that if the appellant were returned to his country of nationality he would face a real risk of suffering torture or [inhumane] or degrading treatment or punishment in Lahore that location is practical, safely, and legally accessible to the appellant."

She so found on the basis that freedom of movement was provided for by law in Pakistan and that, given Pakistan's size and diversity, internal relocation offered a degree of anonymity and the opportunity for the applicant to seek refuge from discrimination or violence. This was determined by the Tribunal Member having regard to available country of origin information. Reference was made to Pakistan's population of approximately 196 million and the estimated populations of major urban areas including Islamabad, Rawalpindi, Karachi, and Lahore which has a population of 7.5 million.

14. The decision-maker went on to state:

> "The appellant fears retaliation at the hands of his in-laws who live in [ ]. The appellant has never met his in-laws and he was uncertain as to the composition of their family, although he believes his wife may have had 3 brothers and two sisters. He was never threatened by them and neither he nor his wife has been in Pakistan since 2006 nor have they had any contact with her family.
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> The Tribunal finds that the threat to the appellant is localised and that should he return to another part of Pakistan such as Lahore in his home province Punjab, a city of 7.5 million people, there is not a real risk of that his in-laws would become aware of his presence there and/or be able to locate him and thereby cause him harm."

15. As to the reasonableness of the protection alternative, the Tribunal Member stated:

> "Having found that there are no serious grounds for believing if the appellant were returned to his country of nationality he would face a real risk of suffering serious harm in Lahore, the issue then becomes whether it would be unreasonable for the appellant to seek refuge there. Having considered the conditions in Lahore and all the circumstances of this case, including those particular to the appellant, I find that it is not unreasonable for him to seek refuge in Lahore for the following reasons:
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> The appellant is a healthy, educated, 33 year old man. He is not a member of a minority or vulnerable group in Pakistan. The appellant stated at interview that he could not relocate to Lahore as there were high unemployment and crime rates as well as corruption there; however the Tribunal finds given the individual circumstances of the appellant, it would not be unreasonable for him to relocate in Lahore."

16. The grounds of challenge are as follows:

> (i) In circumstances where the applicant's wife and children had been granted subsidiary protection arising out of the exact same circumstances and where the Tribunal was on notice of this fact, it was incumbent on the Tribunal to give particular consideration to this and to state why the applicant's case was to be treated differently. In failing to explain why the applicant's case was to be treated differently, the respondent offended the doctrine of equality before the law and breached the constitutional imperative that same circumstances should be dealt with in essentially the same manner.
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> (ii) The respondent erred in law and acted unreasonably and/or irrationally in deciding the appeal on the issue of internal relocation in circumstances where the applicant's wife and children were granted subsidiary protection in the State and therefore will not and cannot follow the applicant to Lahore. The respondent acted irrationally and/or unreasonably in failing to afford any consideration to these matters (which were the very core of the applicant's circumstances) when considering the reasonableness or undue harshness of the applicant relocating internally within Pakistan.
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> (iii) The respondent erred in law and acted unreasonably and/or irrationally in the manner in which she considered the internal relocation alternative. She was required to consider both the general conditions prevailing in Lahore and the

applicant's personal circumstances. The applicant stated that internal relocation would not be possible due to high crime rates in Pakistan and high unemployment, matters which were not considered. There was no consideration of where the applicant might reside in Lahore or the general conditions he might experience. Such a consideration was essential in order, inter alia, to assess the likelihood of the applicant contacting friends or family in the relocation site and consequently being located in Lahore and potentially experiencing serious harm there.

The submissions advanced on behalf of the applicant

17. Counsel submits that in order to put the applicant's case in context the starting point has to be the Tribunal's finding that there were substantial grounds for the belief that, if returned to Pakistan, he may face a real risk of suffering serious harm and that state protection would not be available to him, a finding which was also made by the Commissioner in respect of T.N.

18. Subsequently however, the Tribunal decision veered away from the positive subsidiary protection decision which issued from the Commissioner in respect of T.N. and the dependent children and made a finding that internal relocation was available for the applicant. In doing so, the Tribunal Member erred.

19. In the first instance, the finding was entirely unreasonable given that the applicant's subsidiary protection claim was based on an identical factual matrix to that of T.N. Thus, the Tribunal's inconsistent decision was a breach of fair procedures in circumstances where, for the most part, the Tribunal's earlier findings were very similar to the positive decision from the Commissioner in the case of T.N., and in circumstances where the credibility of both had been accepted.

20. Counsel points to the reference in the Tribunal decision to the fact that the applicant's wife had been granted subsidiary protection after applying for it on the "same grounds" as the applicant. However, that is where the consideration that the applicant's wife had been granted subsidiary protection ended, as to no further consideration was given to this issue by the decision-maker. Yet, at the date of the hearing of the applicant's appeal, less than six months had elapsed since the applicant's wife had been granted subsidiary protection, thus meaning that the Commissioner's positive decision was very recent and had been made with regard to the situation in Pakistan, which was closely related to the situation applicable at the time the applicant's appeal was being determined by the Tribunal. It is submitted that, fundamentally, the Tribunal Member was obliged to consider the fact that applicant's wife had been granted subsidiary protection and to expressly deal with the question of what weight was to be given to this factor. Furthermore, if a different decision was to be reached in the case of the applicant, it was incumbent on the Tribunal to state why this was so. In this regard, counsel relies on the decision of Hedigan J. in *E.G. and D.G. v. Refugee Appeals Tribunal & Ors* [2008] IEHC 400 and that of Clark J. in *M.M.F. v. Refugee Appeals Tribunal & Ors* [2010] IEHC 134.

21. Counsel contends that the applicant's case is such as to be identical to the jurisprudence cited above and that the approach of Hedigan J. should be followed by the court.

22. In its decision on the applicant's appeal, the Tribunal devoted only five words to T.N.'s positive subsidiary protection decision. That, counsel submits, cannot be correct. While there remains a possibility that the Commissioner's decision was not before the Tribunal Member, that is unlikely given that the latter records in the decision that T.N. was granted subsidiary protection in April 2014. Counsel contends there is no logic or fairness in the Tribunal's rejection of the applicant's appeal.

23. It is submitted that the case law is clear that consistency in decision-making is a matter of fair procedures, albeit, counsel acknowledges, a decision-maker is not necessarily bound by prior decisions. Counsel contends, however, that in the context of an internal relocation assessment, consistency must be a key factor where the same factual matrix applies. The applicant further relies upon the decision of the European Court of Human Rights ("EctHR") in (Case C-2964/12) *I.K. v. Austria*.

24. It is submitted that the decision arrived at by the Tribunal Member in the instant case is such as to be contrary to general principles of family unity in international protection law.

25. Where a positive finding has been arrived at in the applicant's wife's case, which arose out of identical circumstances, regard should have been had by the Tribunal Member to this factor and reasons provided for why the applicant's case merited a different result.

26. Counsel submits that, contrary to the requirements of Reg. 7 (1) of the European Communities (Eligibility for Protection) Regulation 2006 ("2006 Regulations") and the principles set out in *K.D. (Nigeria) v. Refugee Appeals Tribunal & Ors* [2013] IEHC 481, the Tribunal Member erred in the manner of the assessment of the risk for the applicant on relocating to Lahore.

27. This is particularly so in circumstances where the Tribunal had previously found that state protection would not be available for the applicant in Pakistan. Yet despite this finding the decision-maker concluded that his claim for subsidiary protection failed because of the availability of the internal relocation option within Pakistan. What is of note concerning the internal finding is that there was no proviso therein that the applicant would get state protection if he relocated internally within Pakistan.

28. Counsel contends that even if the frailties inherent in the internal relocation risk assessment are not accepted by the court, the assessment nevertheless still falls foul of the applicable standards for assessment of the relocation option.

29. Specifically, when it came to considering the applicant's personal circumstances, the Tribunal Member erred in failing to apply the principles set out in the decision of Clark J. in *K.D. (Nigeria)* as to how an internal relocation assessment should be conducted, and/or erred in failing to have regard to the factors set out in Reg. 7 of the 2006 Regulations. In particular, the Tribunal Member failed to address the concept of family unity and/or respect for family life in deciding that the applicant could relocate to Lahore in circumstances where the factual backdrop was that his wife and children were resident in Ireland and where the family were considered to be at risk in Pakistan. In the present case, the applicant was the father of small children, including being the parent of a child who had special medical requirements and who was in need of constant medical attention. This was specifically taken account of by the Commissioner when considering whether internal relocation was a viable option for T.N. and the dependent children. It is submitted that it was no less a relevant consideration in the applicant's case given that he is a father of a child with medical needs. In this regard, the applicant had referred specifically to the medical condition of his child in his subsidiary protection application. Equally, the length of time the applicant was in Ireland (since 2002), a factor considered by the Commissioner in the context of T.N's internal relocation assessment, applied equally to the applicant's circumstances, given his long term residence in Ireland.

30. It is submitted that it would be undue hardship for him to move around Pakistan with his wife and children, one of whom had a medical condition. However, the wider question is whether it can be said that it is undue hardship for the applicant to relocate in

Pakistan, thereby leading to the splitting up of his family given that his wife and children were granted subsidiary protection in this State on the basis that they would be subject to serious harm in Pakistan and where state protection and internal relocation were considered not to be available to them. It was thus remiss of the Tribunal Member to look at the applicant's situation in a complete vacuum and to fail to consider at all his personal circumstances upon relocation which would, as a matter of fact, have to take place without the applicant's wife and children. This, counsel submits, was a matter which went to the very heart of any examination of "personal circumstances" as provided for in Reg. 7(2) of the 2006 Regulations. To complete the internal relocation assessment without examining if such a separation would be "unduly harsh" was irrational and in breach of fair procedures. It is submitted that the Tribunal Member effectively detached her consideration of the matters of relevance from the facts of the case. In this regard, the applicant relies upon the judgments of this court in *Q.S.A. v. Refugee Appeals Tribunal & Ors* [2015] IEHC 238 and *O.B.H. v. Refugee Appeals Tribunal & Ors* (unreported, Faherty J., 6th May, 2015). In *Q.S.A.* the court found that an internal relocation assessment was invalid because of a failure to consider adequately an applicant's age. It is submitted that similar invalidity pertains to the decision here by reason of the failure to consider the applicant's family circumstances. No reason at all was given to why internal relocation would not be unduly harsh for the applicant in light of his family circumstances. Moreover, in *O.B.H.,* it was found by the court that no "*careful*" inquiry had been conducted, as required by the principles set out in *K.D. (Nigeria).*

31. It is further submitted that insofar as the Tribunal Member determined Lahore as a viable relocation option for the applicant, the entire analysis in the decision comprised merely two short paragraphs which is not the type of analysis advocated by Clark J. in *K.D. (Nigeria)* or by this court in O.B.H.

The respondent's submissions
32. On behalf of the respondent, it is submitted that it is an error of logic for the applicant to contend that the Commissioner's decision in respect of T.N. must be decisive in respect of his case, or that it was an error in law or unreasonable for the Tribunal Member to have come to a different decision on the question of internal relocation in the applicant's case. The contentions put forward on behalf of the applicant suggest that the applicant and his spouse should have been considered as a family unit and not as individuals. However, that was not the basis of the required consideration, nor was a joint consideration carried out in this case.

33. While the provisions of Reg. 8 (19) of the 2013 Regulations provide that a joint hearing in respect of matters that share a common matter or in respect of family members may be directed, the fact of the matter was that the applicant's subsidiary protection application was made separately to that of his wife and children. It is apparent that the individual personal circumstances of an adult male, as opposed to a woman with dependent children, are radically different in terms of the freedom and ability to relocate inside Pakistan, and, as such, it was the applicant's own circumstances which fell to be considered in coming to any decision on his application for subsidiary protection. Thus, the applicant's contention that the grant of subsidiary protection to his spouse and children was on foot of "the exact same circumstances" is erroneous. While the factual nexus and background which gave rise to the respective subsidiary protection applications may have been the same, the personal circumstances which fell to be considered *vis-à-vis* the applicant's position arising from that factual nexus were different and, in light the prevailing conditions in Pakistan, could only reasonably be regarded by the decision-maker as being different.

34. Counsel submits that the confusion of background factual nexus and individual personal circumstances is not an error committed by the decision-maker but rather an error in reasoning at the core of the applicant's submissions.

35. The question is whether it was irrational for the decision-maker to conclude that the options for a man may not always be the same as those for a woman with young children. That question, counsel submits, has to be answered in the negative.

36. It is submitted that it is entirely rational that the applicant's personal circumstances, as assessed by the Tribunal Member, would be different to T.N.'s personal circumstances as found by the Commissioner. The applicant was found by the Tribunal Member to be an educated, healthy male, whereas T.N. was found by the Commissioner to be an uneducated woman with small children for whom there would not be family support on relocation within Pakistan. Thus, the factual matrix which pertained to their respective personal circumstances was not the same.

37. Furthermore, there is no merit in the applicant's contention that his application had to be determined by the fact of a grant of subsidiary protection to his wife and children.

38. It is acknowledged that it would be unreasonable had the applicant been found to be able to go to Pakistan without his wife and children if, in the course of a joint hearing, it was concluded that his family could not go back to Pakistan. Here, however, there was no joint hearing of a family application by the Commissioner. Both applications for subsidiary protection were submitted and considered separately, as is clear from the Commissioner's respective subsidiary protection decisions. A joint consideration of their applications was not sought from the Commissioner. Thus, individual applications for subsidiary protection must be considered on their merit rather than one being necessarily determinative of the other. What the applicant's counsel considers a "personal circumstance" is, rather, the outcome of a particular decision.

39. While there was consistency in the Commissioner's and the Tribunal's respective decisions on the issue of the threat to the applicant and T.N. from T.N.'s family, the absence of state protection for both and indeed in the respective findings of the Commissioner of the absence of any risk to either the applicant or T.N. upon relocating internally, there the consistency ended, given the contrast evident (from a reading of both decisions) in the applicant's and T.N.'s personal circumstances. While the Commissioner's finding that T.N.'s personal circumstances were such as not to make it realistic for her to relocate within Pakistan given her lack of education as a mother of children one of whom had medical needs, and given the absence of familial support was a reasonable and sensible one, it did not follow that a different internal relocation decision in respect of the applicant was either irrational or unreasonable, given his personal circumstances as a healthy, educated male (and where the applicant had no innate characteristics such as might put him at risk in Lahore). Thus, the Tribunal's reasoning as to why internal relocation was an option for him cannot be faulted. It was not unreasonable or irrational for the Tribunal Member to find that internal relocation would not be unduly harsh. It is submitted that the decision-maker carried out the necessary "*full blooded*" assessment (as required by MacEochaidh J. in *E.I. v. Min. for Justice* [2014] IEHC 27), including having regard to available country of origin information. She gave the applicant individual consideration, as required by law. She conducted a logical analysis and reached a logical and reasoned conclusion. It is submitted that for this reason, there is no basis to quash the decision. Counsel also points to the fact that there was no reference to the applicant in the Commissioner's assessment of whether internal relocation is a viable option for T.N.

40. In all the circumstances the Tribunal's finding that the applicant could relocate within Pakistan having regard to his personal circumstances is not an inconsistency in the manner contemplated at Clark J. in *M.M.F.* or by Geoghegan J. in *Atanasov v. refugee Appeals Tribunal* [2006] IESC 52.

41. Insofar as the applicant places reliance on the decision of the Ect.HR in *I.K.*, such reliance is misconceived. In the Tribunal's

decision, no separation of a family unit is mooted. All the Tribunal Member was required to consider were the applicant's personal circumstances, albeit she noted in the decision that his wife and children had been granted subsidiary protection.

Considerations
42. In aid of ground (i), the applicant's principal submission is that the finding that he was not in need of protection was erroneous in view of the fact that his subsidiary protection claim was based on an identical factual matrix to that of T.N. Thus, counsel for the applicant contends that the Tribunal's inconsistent decision was a breach of fair procedures in circumstances where, for the most part, the Tribunal's findings were very similar to the positive decision from the Commissioner in the case of T.N., and in circumstances where the credibility of both had been accepted. Counsel queries how it can be logical or rational that T.N. was the beneficiary of a subsidiary protection when the applicant was not. The applicant also contends that while it is not suggested that the Tribunal Member was obliged to reach the same decision as the Commissioner in T.N.'s case, she was however obliged to give reasons as to why she was reaching a different result in circumstances where the applicants were husband and wife and their claims interlinked to a substantial degree.

43. The applicant cites a number of decisions in support of his arguments in this regard, namely, *E.G. and D.G., M.M.F*. and the judgment of the Ect.HR in *I.K. v. Austria*.

44. In *I.K.*, the Court addressed the question of consistency in decision making. The Court stated:

> *"74. Furthermore, the Court notes that the Government has not brought forward any argument in their submissions to the Court as regards the discrepancy between the assessment of the applicant's subsequent asylum request and his mother's status as a recognised refugee. The Government asserted that the applicant's claims had been thoroughly examined in the first asylum proceedings conducted by the Federal Asylum Office and found unconvincing. The Court finds however that that argument does not take into account that the first asylum decision rendered in respect of the applicant's mother had been overturned by the Asylum Court, and that her story, which is the same as the applicant's, was found not only convincing, but credible after an oral hearing and witness statements.*
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> *75. Having regard to the foregoing, the Court is not persuaded that the applicant's grievance was thoroughly examined by the domestic authorities, and has accordingly to assess whether there exists a real risk that the applicant would be subjected to treatment contrary to Article 3 if expelled to Russia.*

I am not persuaded that decision in *I.K.* has a direct bearing on the present case given the nature of the error identified by the Ect.HR, which to my mind is not analogous to the errors said to have been committed in the present case.

I turn now to whether the legal principles espoused in *E.G and D.G.* (a leave decision) and *M.M.F*. were breached by the Tribunal Member in the present case.

45. In *E.G. and D.G.*, Hedigan J. quashed a decision of the RAT because of the failure of the decision-maker to give reasons for the decision to decide the first named applicant's appeal in a manner inconsistent with the manner in which her son's appeal had been decided by another Tribunal Member in circumstances where both claims had been grounded on an almost identical or analogous fear of persecution supported by identical or analogous medical evidence.

46. In *M.M.F.*, Clark J. likewise had occasion to address the requirement for consistency in decision-making. She stated:

> *"43. The rationale underlying Tribunal Members' obligation to consider previous decisions of their colleagues furnished to them by an applicant is to promote consistency in decision-making and to avoid contradictory decisions on the law and on similar objective facts. Undoubtedly, the interests of justice and legal certainty would not be served were two or more Tribunal Members to interpret and apply the law in a different manner in cases involving the same objective facts. This is clear from Atanasov where Geoghegan J. held:-*
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> *"[] it is blindingly obvious, in my view, that fair procedures require some reasonable mechanisms for achieving consistency in both the interpretation and the application of the law in cases like this of a similar category. Yet, if relevant previous decisions are not available to an appellant, he or she has no way of knowing whether there is such consistency. It is not that a member of a tribunal is actually bound by a previous decision but consistency of decisions based on the same objective facts may, in appropriate circumstances, be a significant element in ensuring that a decision is objectively fair rather than arbitrary."*
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> *44. As was noted in Gavran, the desirability of consistency in decision-making follows from the doctrine of equality before the law and the constitutional imperative that that people who appear before the Courts in essentially the same circumstances should be dealt with in essentially the same manner (see The State (Keegan & Lysaght) v Stardust Victims Compensation Tribunal [1986] I.R. 642, at p. 658). The obligation to treat like cases alike does not mean that Tribunal Members are obliged to reach identical conclusions on credibility. In Gavran Hedigan J. held:-*
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> *"the obligation to treat like cases alike requires that the conclusions reached by one Tribunal Member as to the objective situation in an individual's country of origin should accord with the conclusions reached as to that same objective situation by other decision-makers in other cases. That principle does not apply, however, to conclusions reached as to the subjective impact of a particular experience on an individual applicant; Tribunal Members must measure that subjective impact on a case-by-case basis and may justifiably reach different conclusions from one case to case."*

47. I note that the thrust of Clark J.'s approach in *M.M.F*. (following Hedigan J. in *E.G and D.G.*) concerns the necessity, for the purposes of ensuring equality and fairness, of treating like cases alike where they involved the same objective facts. As the learned Judge stated, an assessment of subjective factors may justifiably lead to different conclusions on a case by case basis.

48. Applying the said principles to the applicant's case, it is evident that, to a large extent, the Tribunal Member's findings (objective and subjective) on the applicant's application for subsidiary protection were similar to those of the Commissioner in respect of T.N. and the children. As evident from the Tribunal decision, the Tribunal's divergence from the Commissioner's decision in respect of T.N and the children became manifest in the consideration afforded by the Tribunal to the internal relocation option for the applicant. To a point however, in the context of the internal relocation option, the Commissioner's findings in respect of T.N. and those of the Tribunal in respect of the applicant did align in that the respective decision-makers found that there were risk-free areas with Pakistan to which T.N. and the applicant respectively could relocate. The divergence between the respective decisions effectively relates to the respective considerations afforded to their individual "personal circumstances" in the context of assessing the

reasonableness of the relocation option. It seems to me that given that Reg. 7 of the 2006 Regulations provides for, *inter alia*, a consideration of a protection applicant's "personal circumstances" in assessing the reasonableness of internal relocation, (such consideration by its nature involving an analysis, inter alia, of a subjective factual matrix), it does not necessarily follow that the Tribunal, by arriving at a different outcome in respect of the applicant's subsidiary protection application to that of the Commissioner in T.N.'s case, can be said to have infringed the principles of equality and fairness in decision-making. Thus, I am not persuaded that the applicant had made out the challenge to the decision as set out in ground (i). The court's conclusion in this regard is however not dispositive of the within proceedings as the applicant also asserts that the Tribunal Member erred in law resulting in an unfair and irrational decision in the manner in which she assessed the reasonableness of the internal relocation option for the applicant, in light of the provisions of Reg. 7 of the 2006 Regulations (grounds (ii) and (iii)).

49. I turn now to the challenge to the decision as per grounds (ii) and (iii).

What the court must first address is whether the decision-maker erred in determining that there was no risk of the applicant suffering harm if he relocated to Lahore.

Reg. 7(1) of the 2006 Regulations provides:

> "As part of the assessment of protection needs, a protection decision maker may determine that a protection applicant is not in need of protection if the applicant can reasonably be expected to stay in a part of his or her country of origin where there is no well-founded fear of being persecuted or real risk of suffering serious harm."

In *K.D. (Nigeria)*, Clark J. addressed the obligation on a decision-maker to identify a risk-free area in the following terms at para. 28:

> *"(4) Localised risk: where it is accepted that an applicant has a well-founded fear of persecution for Convention reasons but that fear is localised and confined to a particular area, it is relevant to consider the possibility of internal relocation as an alternative to refugee status. In such cases, reg. 7(1) of the Protection Regulations requires the protection decision maker to identify (if only in general terms) a place or area within the country of origin where the risk of persecution does not exist and where the applicant might reasonably be expected to stay. Security from persecution or serious harm and meaningful state protection in the proposed area of relocation are key."*

50. At para. 26 she states:

> *"There is no doubt that persons acknowledged to be at risk in one locality of a country may lawfully be refused refugee status on the grounds that protection is available elsewhere inside the state of origin (see e.g. The Michigan Guidelines on the Internal Protection Alternative (First Colloquium on Challenges in International Refugee Law, University of Michigan, 1999). If, following a careful inquiry, it is established that a claimant could reasonably be expected to stay in another part of his or her own country where there is no risk of persecution for a reason under the United Nations Convention relating to the Status of Refugees 1951 ("the Convention") or where meaningful protection from such persecution is available, that claimant can lawfully be refused recognition of refugee status".*

51. In the instant case, the Tribunal Member concluded that the risk posed to the applicant was a localised one. As regards this particular conclusion, I can find no fault with the decision-maker's reasoning. It was not unreasonable for the Tribunal Member to conclude, in circumstances where the proposed relocation site is a city of some 7.5 million, that there was no real risk that the applicant's in-laws would become aware of his presence there, particularly given that the applicant had never met his in-laws and length of time that had elapsed since either he or T.N. had been in Pakistan.

52. Counsel for the applicant, in taking issue with the finding that there was no risk of harm to the applicant in Lahore, contended that this finding was made in circumstances where the Tribunal had previously found that state protection would not be available for the applicant in Pakistan. He submits that what is of note concerning this aspect of the internal relocation finding is that there was no proviso therein that the applicant would get state protection if he relocated internally within Pakistan. Accordingly, he argues that there is an inconsistency between the earlier state protection finding and the finding that the applicant would not be at risk in Lahore.

53. In the particular circumstances of this case, I find that the Tribunal Member is not necessarily inconsistent. She found that there was no risk to the applicant in relocating to Lahore given that the threat posed to him was localised. In such circumstance, the question of a consideration of the availability of state protection did not necessarily arise where the risk was reasonably regarded as a localised one. I find therefore that no irrationality attaches to the Tribunal's finding that the applicant would not face a real risk of serious harm in Lahore.

54. As recognised by Clark J. in *K.D. (Nigeria),* it is not sufficient for a subsidiary protection decision-maker to identify an area where there is no "real risk of suffering serious harm". Reg. 7(2) provides that:

> "In examining whether a part of the country of origin accords with paragraph (1), the protection decision-maker shall have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant."

55. In *K.D. (Nigeria),* Clark J. sets out the test on reasonableness as follows:

> *"(8) Reasonableness: It is not enough for the protection decision maker to determine that the risk of persecution is absent from the proposed area of relocation. He or she must go on to consider whether it would be reasonable to expect the applicant to stay in that place, having regard to his or her personal circumstances and the general conditions prevailing on the ground, in accordance with Regulation 7(2) of the Protection Regulations. The reasonableness assessment is not concerned with assertions such as "I won't know any one", but rather with matters of substance such as whether the applicant is old, infirm, ill, has many small children or is without family support and other real issues."*

56. In assessing the reasonableness of the internal relocation option the Tribunal Member was obliged by law to have "regard to the general circumstances prevailing" in Lahore and to the applicant's "personal circumstances". I note that the decision-maker records the applicant's specific contentions made as to conditions prevailing in Lahore, namely high unemployment, corruption and crime rates. The decision-maker states that she considered "the conditions in Lahore". Although those conditions are not set out in the decision in any detailed narrative (save the reference to the applicant's arguments and a reference to Lahore's population and that Lahore was "practically, safely and legally accessible to the applicant", the applicant's counsel has not brought to the court's attention any

particular factor referable to the general circumstances prevailing in Lahore which should have been alluded to by the decision-maker but was not. Thus, insofar as the applicant seeks to impugn the decision on the basis that there was evidence before the Tribunal Member that the general circumstances prevailing in Lahore were such that it would be unreasonable for him to relocate there, I am not persuaded that any challenge has been made out in this regard, either on the basis of a want of fairness or rationality on the part of the decision-maker.

57. As stated already, Reg. 7(2) also mandates a decision-maker to have regard to a protection applicant's "personal circumstances". Counsel for the respondent appeared to suggest, in the course of his written and oral submissions, that the applicant's personal circumstances fell to be assessed, *inter alia*, "in light of prevailing conditions in Pakistan" I am satisfied however that Reg. 7(2) has a considerably broader spectrum than that contended for by the respondent. Both the prevailing conditions in the proposed relocation site *and* the protection applicant's personal circumstances must be considered. That is not to say however that the personal circumstances consideration must be assessed in isolation from the prevailing circumstances in the proposed relocation area, given the overarching requirement on a decision-maker to determine the reasonableness of the relocation option. I merely wish to make the point that the assessment of personal circumstances is an independent assessment which must be carried out by the decision-maker, in addition to looking at the circumstances on the ground in the proposed area of relocation.

58. At the heart of the within proceedings is the applicant's complaint that not all of the circumstances personal to him were considered by the decision-maker. I find substance in this complaint. Having regard to the parties' respective submissions, it seems to me that the issue is not so much whether the Commissioner's finding that the applicant's wife and children were found not to be able to relocate internally in Pakistan ought to have mitigated against an internal relocation finding in respect of the applicant, but rather whether the Tribunal Member gave due regard to the fact that the applicant was a man who had a wife and children in respect of whom it had been determined that internal relocation for them was not an option. I find that this question must be answered in the negative. The logical consequence of the Commissioner's finding that T.N. and the dependent children were in need of subsidiary protection in this State meant that they could not return to Pakistan. If Lahore was therefore to be considered a place to which the applicant could be expected to stay, it would be in circumstances where it had been found by the Commissioner that T.N. and the children could not reasonably relocate within Pakistan. As is clear from the impugned decision, this was known to the Tribunal Member. Thus, the applicant stood before the Tribunal as someone in respect of whose close family members a discrete protection decision had been made. The grant of subsidiary protection to T.N. and the children did not sunder the family unit. The applicant remained a married man with children. The fact that the applicant was a married man with children comprised part of his personal circumstances. Thus, the decision-maker was required to take account of this in considering the reasonableness of the internal relocation proposal for the applicant himself. Moreover, the happenstance that the children's circumstances were covered by T.N.'s subsidiary protection application did not mean that the fact that the applicant was a father of four children was to be excluded from a consideration of his personal circumstances. To my mind, it is striking that when it came to considering the applicant's "individual circumstances" for the purposes of the internal relocation assessment and the reasonableness of such a proposal, the Tribunal Member made no specific reference to his marital status or to his children. Nor did she weigh this factor against the other factors being assessed in the context of the reasonableness of the internal relocation option. Yet it appears to be accepted that he was a married man with four children. Thus, there was more to the applicant's individual circumstances than being "a healthy, educated, 33 year old man". The Tribunal Member was not entitled to proceed as if the applicant were a single man, which to my mind was the effect of the Tribunal's approach. I accept that had he been so, the applicant may well (absent other countervailing personal circumstances) be in difficulty in seeking to challenge the relocation finding. However, his circumstances included the fact that he was part of a family unit to which he was interconnected to an unusually high degree. In my view, his marital status and family circumstances were required to be weighed by the decision-maker in considering the reasonableness of the internal relocation option.

59. I am also satisfied that the Tribunal Member should have had regard to the length of time the applicant had spent in the State as part of the personal circumstances consideration (a factor that was considered by the Commissioner in T.N.'s subsidiary protection application). While this of itself would not be determinative of the reasonableness of the relocation option, it should have been considered in the round and the decision-maker should have set out the weight, if any, to be given to this factor.

60. The failure of the Tribunal Member to consider the foregoing factors was effectively a denial of fair procedures to the applicant, over and above the irrationality inherent in the decision by reason of the absence of due consideration of the applicant's family circumstances, particularly when it was known to the decision-maker that the applicant was a married man with children and where it was known to the Tribunal Member that his wife and children could not return to Pakistan by dint of their status as persons in need of the protection of this State.

61. As part of his submissions, counsel for the respondent made the case that as a matter of law the applicant was someone in respect of whom T.N. can apply for family reunification pursuant to Reg. 25 of the 2013 Regulations and that in this regard the principle of family unity, as relied on by the applicant in these proceedings, could be respected. Counsel for the applicant submits that the fact that T.N. may make an application for family reunification in respect of the applicant (which application has in fact been submitted) is of no relevance in the within proceedings. I agree with counsel for the applicant. Whether or which such a course was open to T.N. or indeed availed of by her is not a matter for this court to comment on. The court's function, *inter alia*, is to determine if the applicant's arguments that the decision-maker erred in failing to give proper regard to his personal circumstances when considering internal relocation as an option for him. The court has upheld this argument.

62. The respondent also submitted that were the personal circumstances of the applicant's wife as someone who was granted subsidiary protection to be determinative of the option of internal relocation for the applicant, this would render any application in cases of persons to whom the family reunification provisions in the 2013 Regulations apply entirely moot. Counsel submits that the contention put forward by the applicant cannot be a proper reading of the 2013 Regulations and argues that if same are to be accepted, the provisions of Reg. 8(19) which permit, *inter alia*, applications for family reunification, would be rendered redundant. Again, I do not find merit in this argument. The court is not addressing the question of the applicant's wife's personal circumstances. The issue is whether the applicant's personal circumstances, for the purposes of compliance with Reg. 7 of the 2006 Regulations, were properly considered by the Tribunal Member. The court has found this not to be the case, for the reasons stated.

Summary

63. For the reasons set out above, I will grant an order of *certiorari* quashing the decision and make an order remitting the matter to the first named respondent for a *de novo* hearing before a different Tribunal Member.