

THE HIGH COURT**JUDICIAL REVIEW****Record No. 2012 / 302 J.R.****Between:****S. R. [PAKISTAN]****APPLICANT****- AND -****THE REFUGEE APPEALS TRIBUNAL, THE MINISTER FOR JUSTICE AND EQUALITY, THE ATTORNEY GENERAL AND IRELAND****RESPONDENTS****JUDGMENT OF MS JUSTICE M. H. CLARK, delivered on the 29th day of January 2013.**

1. The applicant is a national of Pakistan whose identity and membership of the Ahmadiyya Muslim faith is not in dispute. He seeks leave to apply for an order of certiorari quashing the decision of the Refugee Appeals Tribunal, notified to him on 26th March 2012, which affirms the recommendation of the Refugee Applications Commissioner that he should not be granted a declaration of refugee status. The application for leave to apply for judicial review was heard on 19th December 2012. Mr Gary O'Halloran B.L. appeared for the applicant and Ms Elizabeth Cogan B.L. appeared for the respondents.

2. In fact, the matter first came before the Court on 22nd November 2012 as an application for an urgent priority hearing. The basis for such priority resembled those applications made in the Court of Criminal Appeal pursuant to Order 86 RSC in instances where a ground likely to succeed is identified and the convict is released on bail while the appeal against conviction is pending. The Court was therefore receptive to the application and directed notification to the respondents. By the time the respondents were notified, events had moved on in that the applicant had unlawfully left the State having travelled as far as Singapore via Frankfurt on someone else's passport. He was detained by the immigration authorities in Singapore and returned to the State and to his direct provision accommodation in Foynes, Co. Limerick. While there, he experienced significant personal difficulties. As soon as the Minister was made aware of those personal difficulties, he arranged for the applicant's transfer to alternative accommodation. The applicant explained that he left Ireland in an act of desperation as he believed that he could apply successfully for asylum in Australia which was his destination.

3. The leave application was listed for hearing on 18th December 2012 and the respondents were asked if they would agree to a telescoped hearing bearing in mind the common ground in the case as the applicant's identity and his membership of the Ahmadi faith was accepted. The respondents would not consent either to a telescoped hearing or to the other option suggested by the Court namely that the leave application would be dealt with by way of written submissions and the hearing date would be reserved for the substantive hearing should that prove necessary. The Court was informed that the application for judicial review would be fully contested on the basis that the applicant had twice returned to Pakistan while he was living in the State on a student visa, that members of his family lived in Pakistan without harm and that he did not claim asylum in Ireland until he had been in the State for four years and that none of these facts were consistent with a fear of persecution.

Background to the claim

4. The applicant first came to Ireland in 2007 on a student visa. His visa was renewed annually and while studying, he worked within the permission of his visa as a security man. While here, he played cricket and travelled as part of the Irish team to the UK. He also visited relatives in the UK, Germany and Sweden. In 2009 he returned to Pakistan to visit his parents and then returned to Ireland to continue his studies. In 2011, having completed his course, he returned to Pakistan with the intention of remaining there for good as his parents were ageing and his mother was not well. However, events in his hometown of Rabwah / Chenab Nagar caused him to leave Pakistan, to return to Ireland on his student visa and to apply for asylum in this State. He already had a valid passport so he applied for a further study visa and travelled here on scheduled flights. On his arrival, he went to the Office of the Refugee Applications Commissioner (ORAC) in Mount Street but it was closed for a bank holiday weekend. He returned at the earliest possible opportunity on the following Tuesday and applied for asylum. He had all his ID documents with him including his passport which states that he is Ahmadi. He also submitted his national ID and university qualifications and his father's identity documents, a newspaper report calling for action to be taken against him, a copy of a *First Information Report* (FIR) registered against his father, medical records relating to an attack on his brother, a letter attesting to his membership of the Ahmadi faith and a copy of a book which mentioned the imprisonment of his father for reciting the call to prayer.

Decision of the ORAC

5. The Commissioner made a negative recommendation in his s. 13 report dated 14th July 2011. In general, it was found that the applicant had not established a well-founded fear of persecution as he was an "unexceptional" Ahmadi and it was therefore "unlikely" that he would be targeted and persecuted if returned to Pakistan. This determination relied heavily on decisions of the UK Immigration Appeals Tribunal of 2005 and 2007 which found that although Ahmadis have been victims, in general victims were few in number relative to the 600,000 Ahmadis in Pakistan, and further that discrimination did not equate to persecution. The applicant's credibility was found to be undermined as he had lived without danger after an alleged attack in 2011. His credibility was also impugned because he had not produced any evidence relating to a 2005 attack and because he failed to apply for asylum until 2011. His return to Pakistan to see his parents in 2011 was held to be inconsistent with a fear of **persecution**.

The Appeal to the Tribunal

6. A large number of country of origin information (COI) reports were furnished to the Refugee Appeals Tribunal in advance of the oral hearing took which place on 11th October and 5th December 2011 and 31st January 2012. Translations of documents were furnished, including a police FIR arising from a complaint made by the outraged brother of a university friend who expressed an interest in joining

the Ahmadiyya faith following conversations with the applicant. The findings made by the Commissioner were specifically disputed at the oral hearing and the Tribunal Member was directed to COI which contested the Commissioner's finding that only high profile Ahmadis are targeted.

The Tribunal decision

7. In the determination which is challenged in these proceedings, the Tribunal Member recorded the facts given by the applicant at his oral appeal hearing. His narrative was essentially as follows. He was born in December 1985 into a prominent Ahmadi family. His great grandfather was closely associated with the founding member of the Ahmadi faith at the end of the 19th century. His grandfather, uncles and father were prominent members in the high echelons of the Ahmadiyya community and at different stages each had endured arrest and detention for practicing their faith. His father was well known as a preacher and received many threats because of his position. When in 1998 his grandfather died and his father was elected as President of the Ahmadi Jamaat (assembly) to succeed his father and grandfather, their family became targeted for increased harassment at the hands of Khatme-e-Nabuwaat (KN) who are extreme Sunni Muslims formed specifically as an anti-Ahmadiyya religious clerical group.¹ The applicant described a severe attack on his older brother² when he and his mother were pulled off a train and pushed to the ground. The brother was subjected to a sustained attack with sticks and knives in the presence of many other passengers and the railway police who all stood by and watched without coming to their aid. The local police took no action on his father's complaint and simply told him to leave the city. Later that year, 1999, the family abandoned their life in Baddomalhi where they had lived for ten generations and moved to Rabwah where a large number of Ahmadis live and in fact form 95% of the residents there. They are now obliged to call Rabwah "Chenab Nagar" and even there, in their own enclave, they face systemic discrimination and lead lives of danger from various extremist political / religious organisations such as the KN who have an office there.

8. Following his secondary education in Chenab Nagar, he commenced his third level education in 2004 in the G.C. University of Faisalabad where it became known that he was an Ahmadi. Even though a talented cricket player, he was not included in any teams and was prevented from playing cricket because of his religion. When he made a written complaint to the university authorities no action was taken. He was attacked shortly afterwards in the university canteen and beaten with wooden clubs suffering a severe fracture of his right leg as a result. A medical report from a doctor in Ireland was furnished. This report confirms scarring at the fracture site consistent with the applicant's description of a fracture secured with a plate and screws. His parents made a complaint to the police but no action was taken as it was claimed that the suspects could not be found. When he eventually recovered from his injuries and returned to Faisalabad, he saw that his attackers were still attending the University. They continued to harass him because he was Ahmadi. His parents advised him to study from home and arrangements were made with the university authorities for him to continue as an external student. He graduated after two years. His father later met another Ahmadi family whose son was studying in Ireland and decided that his son should follow the same course. The applicant then obtained a student visa for Ireland and attended courses in economics for four years before returning to Rabwah in January 2011. He did not even think of applying for asylum during his stay in Ireland as he believed that conditions for Ahmadis in Pakistan would improve.

9. The applicant said he had no problems when he visited Pakistan for three weeks in 2009 because he mostly stayed at home. In relation to life in Chenab Nagar (Rabwah) he said, *"The majority of the people there are Ahmadi so we didn't suffer any problems. But we would have fear of the anti Ahmadi groups in the area like Khatam e-Nabuwaat."*

10. He described a further attack of a far less serious nature when he was last in Rabwah in 2011. His family had links to the current leader of the Ahmadi faith. When he visited Ireland a photograph was taken of the applicant with the Ahmadi leader for whom the applicant provided security. This photograph was on the wall of his home in Rabwah. A university friend who was visiting asked about the photograph. This led to a discussion of his faith. The friend subsequently expressed an interest in joining. His family strongly disapproved and beat the friend whose brother then told the local mullah that the applicant had tried to convert him. A newspaper article was published which called for action to be taken against the applicant.³ The police then came to the applicant's home but his father was able to deflect them from arresting the applicant by bribing them. His friend's brother then made a complaint to the KN who organised an attack on the applicant on 17th April 2011. He was attacked with sticks by three motorcyclists who fled when they saw others coming. The applicant reported this to the police who said they would take action but the next day when the applicant came to register a First Information Report (FIR) the police were disinterested and asked him and his father to leave the police station. The applicant's parents became very worried for his safety and decided that he should return to Ireland. He remained indoors without harm until it was time to leave for Ireland. His friend's brother made an FIR to the police and then, dissatisfied with the actions of the police, brought legal action against the applicant under the blasphemy laws of Pakistan. Those documents were before the Tribunal.

11. The applicant said more generally that flyers were openly distributed saying his family should be killed and their shop burned. The police were afraid of the radical clerics. These problems were experienced by Ahmadis throughout Pakistan. His religion was very important to him and that he would like to practice his religion openly but could not do so anywhere in Pakistan. No Ahmadi is safe from the anti-Ahmadi groups though they tended to seek out the more enthusiastic people who were more involved in preaching. His parents were now old and his father was no longer involved in the administrative positions of the Ahmadiyya community nor did he now preach. His parents mainly stayed at home and no longer went to Friday prayers preferring to attend small gatherings in houses. His brother who remained in Pakistan was also trying to leave. Finally, the applicant explained that he did not apply for asylum earlier because he wished to live in Pakistan and hoped things would improve but the cumulative impact of all the instances of persecution after his return made him believe that he could no longer risk his life there.

The Tribunal findings

12. The applicant was notified by letter dated 23rd March 2012 that the Tribunal had made a negative decision. The Tribunal findings indicate unequivocally that the applicant's account of persecution was found to be neither plausible nor credible. The first finding was that *"the documentation produced by the Applicant would tend to suggest that the Applicant was a person who had influence with the police. Any fair reading of the document runs counter to the Applicant's contentions."* The Tribunal Member found that returning to Pakistan in 2009 and 2011 was not indicative of a person fleeing persecution. Similarly, being able to attend university and actively pursue educational studies was not indicative of persecution. He further found that the applicant's high profile father continues to live in Pakistan and his brother and sisters also live there. As the applicant had a lower status in the Ahmadi community than his father, it was neither plausible nor credible that he would be in any danger if his father and brother lived in Pakistan without harm. The claim that his brother was injured in 1998 and yet continues to live in Pakistan undermined the applicant's credibility. While it was not accepted that the applicant had a well founded fear of persecution the Tribunal was *"not satisfied that the applicant had shown a failure of state protection or that he had made any efforts to consider relocating to avoid persecution which he claims to suffer and that Country of Origin Information indicates that there is ample protection available for the applicant to relocate."* In particular it was found that the applicant could reasonably be expected to relocate to Rabwah. No weight was attached to the medical report furnished by the applicant as the term *"the injuries [are] consistent with his history"* was deemed to be no more than the high point

of the examining doctor's evidence.

Submissions

13. Ms. Cogan B.L. accepted on behalf of the respondents that there is a background of discrimination in Pakistan but she argued that in this case there were many reasons why the applicant was not personally found to be credible. The main focus of her position was the fact that the applicant travelled back to Pakistan in 2011 which, she argued, is inconsistent with fear of persecution. She did not seek to defend the finding on internal relocation but submitted that it was capable of severance from the decision as a whole which was based on a negative credibility assessment. The Court was referred to one of its own decisions in *S.I.A. [Sudan]* [2012] IEHC 488 (10th October 2012). The same argument was made with respect to the severability of the Tribunal Member's passing comments on state protection.

DECISION

14. Following the pre-leave hearing, the Court indicated its strong opinion that the Tribunal decision should be quashed without proceeding to a substantive hearing, not least because the finding on the availability of State protection to Ahmadis runs contrary to all country of origin information including the UK Tribunal determinations relied upon in the s. 13 report. The finding that the applicant failed to seek state protection or that it would be available to him because he was a man with influence is irrational on the facts of this case. The finding on internal relocation is also deeply puzzling as the applicant has lived in the designated location Rabwah, since his whole family internally relocated there in 1999.

15. The Court expressed its view that the negative tone of the Tribunal decision, the disregard of extensive evidence of well documented, State sponsored anti-Ahmadi legislation and the poor record of the police in either investigating or prosecuting individual acts of violence and property damage directed at Ahmadis were indicative of a decision so lacking in fairness as to be a nullity in law. The decision quotes extensively from legislative guidance found in the Refugee Act 1996, the *ECs (Eligibility for Protection) Regulations 2006* (S.I. No. 518 of 2006) ("the Protection Regulations") and Directive 2004/83/EC ("the Qualification Directive") with respect to the assessment of credibility and of facts and circumstances, but seems not to have applied those guidelines. There is no reference of any kind to COI or to several highly relevant reports furnished by the applicant which were capable of supporting the applicant's assertions of persecution and discrimination against Ahmadis in general and the applicant's family in particular. Similarly, a medical report capable of confirming old fractures of the lower bones of the right leg was found to be of no evidential value, without adequate reasons being given for that conclusion. Moreover there is nothing in the decision which attempts to view the subjective elements of the applicant's claim in the light of what is objectively known of conditions in Pakistan for Ahmadis.

16. When the Court indicates that a decision is so lacking in basic fairness, so infected by errors of law and fact that it should be quashed without further argument, it is highly unusual that the respondents should insist on a full further hearing. That is the situation in this case. For this reason the Court delivers this detailed judgment in the expectation that the continuation of the matter to a substantive hearing may be reconsidered.

17. While a Court must approach judicial review of the decision of an administrative authority with care and avoid the temptation to replace its own view for that of the decision maker, the Court is obliged to determine whether or not the decision is sound in law and, in particular, whether the conclusions reached on credibility are legally sound. While it is the function of the Tribunal Member to evaluate credibility and come to a view on the validity of the claim made, he / she is not at large to arrive at such decision on the basis of instinct, pre-conceived ideas or gut feeling. The decision must be based on evidence, on an evaluation of the documents put before the decision maker including the notice of appeal, and on consideration of objective country of origin information. The decision maker at first instance and on appeal is obliged to seek out and consult relevant, up to date objective information. Regrettably, this procedure is not apparent in this case.

18. The correct approach to the evaluation of a refugee claim is set down in many well established sources. This Court cannot improve on the guidelines provided by the UNHCR on the evaluation of a refugee claim in its *Note on Burden and Standard of Proof in Refugee Claims* (1998) at paragraph 11:-

"In assessing the overall credibility of the applicant's claim, the adjudicator should take into account such factors as the reasonableness of the facts alleged, the overall consistency and coherence of the applicant's story, corroborative evidence adduced by the applicant in support of his/her statements, consistency with common knowledge or generally known facts, and the known situation in the country of origin. Credibility is established where the applicant has presented a claim which is coherent and plausible, not contradicting generally known facts, and therefore is, on balance, capable of being believed."

19. It is pertinent to note the following guidance offered by the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status at paragraph 202:

"Since the examiner's conclusion on the facts of the case and his personal impression of the applicant will lead to a decision that affects human lives, he must apply the criteria in a spirit of justice and understanding".

20. Section 11B of the Refugee Act 1996 as amended also provides an extensive checklist of factors to be taken into account when evaluating credibility.

21. Article 4 of Directive 2004/83/EC (the Qualification Directive or QD) provides:

"1. Member States may consider it the duty of the applicant to submit as soon as possible all elements needed to substantiate the application for international protection. In cooperation with the applicant it is the duty of the Member State to assess the relevant elements of the application.

2. The elements referred to in of paragraph 1 consist of the applicant's statements and all documentation at the applicants disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, identity and travel documents and the reasons for applying for international protection.

3. The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:

(a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application;

including laws and regulations of the country of origin and the manner in which they are applied;

(b) the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;

(c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious."

22. Regulation 5 of the *ECs (Eligibility for Protection) Regulations 2006* (S.I. No. 518 of 2006) essentially replicates Article 4 of the Qualification Directive. Regulation 5(1) requires a protection decision-maker to take into account, for the purposes of making a protection decision, the matters referred to in Article 3(a)-(c) of the Directive, above. These guidelines which were quoted extensively by the Tribunal were simply not applied.

23. Finally, the Court refers to the important decision of Cooke J. in *Radzuik (I.R.) v. The Refugee Appeals Tribunal* [2009] IEHC 353, where he found that the following ten principles emerge from an analysis of case law as a guide to the manner in which evidence going to credibility ought to be treated and how the review of conclusions on credibility ought to be carried out by the courts. Those identified principles are:-

"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.

2) On judicial review the function and jurisdiction of the High Court is confined to ensuring that the process by which the determination is made is legally sound and is not vitiated by any material error of law, infringement of any applicable statutory provision or of any principle of natural or constitutional justice.

3) There are two facets to the issue of credibility, one subjective and the other objective. An applicant must first show that he or she has a genuine fear of persecution for a Convention reason. The second element involves assessing whether that subjective fear is objectively justified or reasonable and thus well founded.

4) The assessment of credibility must be made by reference to the full picture that emerges from the available evidence and information taken as a whole, when rationally analysed and fairly weighed. It must not be based on a perceived, correct instinct or gut feeling as to whether the truth is or is not being told.

5) A finding of lack of credibility must be based on correct facts, untainted by conjecture or speculation and the reasons drawn from such facts must be cogent and bear a legitimate connection to the adverse finding.

6) The reasons must relate to the substantive basis of the claim made and not to minor matters or to facts which are merely incidental in the account given.

7) A mistake as to one or even more facts will not necessarily vitiate a conclusion as to lack of credibility provided the conclusion is tenably sustained by other correct facts. Nevertheless, an adverse finding based on a single fact will not necessarily justify a denial of credibility generally to the claim.

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.

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.

10) Nevertheless, there is no general obligation in all cases to refer in a decision on credibility to every item of evidence and to every argument advanced, provided the reasons stated enable the applicant as addressee, and the Court in exercise of its judicial review function, to understand the substantive basis for the conclusion on credibility and the process of analysis or evaluation by which it has been reached."

24. Applying those principles to the facts of this case, objective information before this Court, which was also before the Tribunal, indicates that Ahmadi Muslims in Pakistan are only safe if they conceal their religion. The situation has been worsening recently, probably because international criticism on the treatment of religious minorities had led to discussion on reform which is unacceptable to the KN and other radical clerics. Every attempt by the Pakistani government to remove or lessen the impact of the blasphemy laws contained in the penal code has been met by waves of anti-government demonstrations and further attacks on Ahmadi homes, places of worship and commercial properties. Two reforming public figures were murdered in 2010 because of their known opposition to the blasphemy laws. An attack with grenades and guns during Friday prayers at two Ahmadi places of worship in Lahore in May 2010 left 86 dead and 120 injured and led to increased attacks on Ahmadis. Thousands have been forced to leave Pakistan and those who remain live in fear of attack from extremist groups. Newspapers publish anti-Ahmadi propaganda which aggravates and provokes the civilian population to attack Ahmadis who have been declared to be non-believers and "deserving of death". The recent increasing radicalisation of Islam has given rise to Mullahs visiting schools to propagate hatred against Ahmadis. There are problems even in Rabwah - where the name was changed by the Punjabi Assembly because the name 'Rabwah' comes from the Koran - which consists of 1000 acres of desert purchased from the government by Ahmadis fleeing Islamic persecution by Hindus in India following partition and is a purpose built town and where 95% of the population is Ahmadi. Ahmadis are prevented by a militant branch of KN from gathering or convening in public in Rabwah to such an extent that Ahmadi sporting competitions have been prohibited whereas anti-Ahmadi gatherings go ahead. Recently, the entire population of Rabwah was indicted for celebrating a significant date in their religion and for using the traditional Muslim greeting. None of this information was considered by the Tribunal Member. It cannot therefore be said that an assessment of the applicant's credibility was made taking account of the whole picture. In the view of the Court, had the whole picture been considered, it is probable that the applicant's belief that the situation for Ahmadis would improve when he first came to Ireland in 2007 would have been considered reasonable as there were hopes for reform in 2008 / 2010. Similarly, such a belief would not have been unreasonable when he returned in 2009 for three weeks. The escalation in violence against Ahmadis came after the May 2010 attacks in Lahore.

25. Any Tribunal decision must of course be based on correct facts. This brings the Court to a disturbing aspect of this case. Two UK Immigration Appeals Tribunal determinations on which the Commissioner relied so heavily do not, on examination, actually support the description of the 'unexceptional' Ahmadi as found by the authorised officer. *KK (Ahmadi, unexceptional, risk on return) Pakistan 2005 UKIAT 00033* (4th February 2005), relied on in the s. 13 report, deals with a claimant who was a member of the Ahmadi faith, whose home was in Rabwah, but there were no additional risk factors specific to him beyond the mere fact that he was a member of the Ahmadi faith from Rabwah. He therefore fell into the description as an "unexceptional" Ahmadi in that he was of the Ahmadi faith but he:

- had no record of active preaching and was not a person in respect of whom any finding had been made that there was a real risk that he would preach on return,
- had no particular profile in the Ahmadi faith,
- had no history of persecution or other ill-treatment in Pakistan related to his Ahmadi faith, and
- had no other particular features to give any potential added risk to him (example, by being a convert to the Ahmadi faith).

26. It can immediately be seen that the applicant in this case falls into an entirely different category to KK. The applicant herein introduced an ordinary Muslim to his faith; he was attacked because of this; he was the subject of an FIR and court process; a newspaper article was written about this event and leaflets were issued against him. He comes from a prominent Ahmadi family. Arising from persecution on the basis of their religion, his family members were driven from their home town of ten generations to relocate in Rabwah. His father, grandfather and uncles were imprisoned for their beliefs; his older brother was the victim of a serious and violent attack with knives; and the applicant himself was attacked on two occasions and his leg was broken. By no stretch of imagination could he be equated to KK – the only points of comparison were that they are both members of the Ahmadi faith whose home was in Rabwah. Indeed, the distinction between their situations was at the very core of the appeal before the Tribunal Member.

27. The second case relied on by the Commissioner was *A & Ors. (Ahmadis; Rabwah) Pakistan CG [2007] UK AIT (23rd October 2007)*. That case dealt specifically with Rabwah as a safe haven for Ahmadis. It is instructive to consider the following passages:-

"21. Nevertheless, Rabwah's status as an Ahmadi stronghold has given rise to the view expressed sometimes by the Secretary of State, particularly in letters of refusal, and sometimes by the Tribunal, whether in reliance of country guidance or otherwise, that a person at risk elsewhere and so in need of a place to which to relocate internally could reasonably be expected to go to Rabwah where he would obtain protection because of the Ahmadis there. We are satisfied that this is wrong. The situation for Ahmadis in Rabwah is capable of examination in a way that is perhaps not so easy elsewhere because of the numbers. To the extent also that there is a large Ahmadi population in Rabwah, there may be some safety in numbers but it may also be the case that a member of the KN who is intent merely on pursuing the KN's agenda in a generalised fashion, is less likely to target any identified individual in Rabwah simply because there are so many Ahmadis there. That is the difference from a person who seeks to do the same thing in a small village where there are few Ahmadis, each of whom would therefore be at proportionately greater risk.

22. But although there is safety in numbers, and there is a possibility of informal community support amongst Ahmadis, the advantages of Rabwah stop there, even for an Ahmadi who lives in Rabwah. Such a person cannot expect in Rabwah any more than anywhere else to obtain protection from the police, (there are few or no Ahmadi policemen) or from other officials, because despite being the majority population of Rabwah, Ahmadis are not represented in government. So there is no greater protection available for local Ahmadis in Rabwah than there is for Ahmadis elsewhere in Pakistan. [...]

25. It seems therefore to us that despite Rabwah's special profile in the Ahmadi religion, it has no special status in the refugee related discourse relating to Pakistani Ahmadis. It is simply wrong to say in general that a person who has established a history of persecution or a fear of persecution as an Ahmadi in some other part of Pakistan can reasonably be expected to relocate to Rabwah. It may be that he can go to Rabwah for a short time. It may be that for that short time he will be safe. But, save in exceptional circumstances, for example if he has family or relatives in Rabwah, despite the majority of inhabitants there, he may not in fact be reasonably practicably able to live there and, if he does, he will be no safer than anywhere else because the governmental, official structure and seat of power is the same as elsewhere in Pakistan and the fundamental anti-Ahmadi religious group, the KM, is as active there as elsewhere, if not more so. [...]

28. It is wrong to assume that Rabwah, because it has a majority Ahmadi population, is either accessible or safe for those who on the evidence, need a place of safety. Each case will depend on its facts and in no way can the existence of Rabwah be regarded generally as a reason for dismissing an appeal that would otherwise be allowed." (Emphasis added).

28. As with the *KK* decision, the *A & Ors* decision does not support in any way the findings made by the authorised officer of the ORAC although it is little consolation to the applicant for the Court to find at this stage that the findings of the Commissioner were reached in error of fact and of law.

Treatment of Supporting Documents

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. 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)).

30. It is disturbing to read in the analysis of the applicant's claim the Tribunal Member's statement that *"the documentation produced by the Applicant would tend to suggest that the Applicant was a person who had influence with the police. Any fair reading of the document runs counter to the Applicant's contentions."* The documents which tend towards that conclusion were not identified by

the Tribunal Member and none could be found by this Court in the large bundle of personal documents or COI furnished. The FIR made to the Court of the Resident Magistrate, which might possibly be the source, emanates from a man describing himself as a labourer and a fervent follower of Khatam e Nabuwat. He says that he went "to the Sadar Police Station, Chiniot, with witnesses and lodged a complaint against the defendant's unlawful act but the police kept circling around the police station due to the defendant's being influential and failed to take action against him." When one considers that the applicant described his father as a mill owner it is conceivable that the difference in social status may have been part of the reason for the complaint of influence. The Tribunal Member's reliance on the complaint, which coincides to some extent with what the applicant said about the police being bribed not to arrest him, surely cannot form the foundation of a finding that "the documentation produced by the Applicant would tend to suggest that the Applicant was a person who had influence with the police." It is simply not appropriate to selectively refer to an assertion made by a fervent, extremist anti-Ahmadi complainant and to make it the principal finding against the applicant. It is not appropriate or fair to ignore the main content of the FIR in question, which is highly consistent with the applicant's claim. It is not appropriate to ignore the applicant's narrative and explanations when making a significant finding of fact and credibility.

31. Read as a whole, the Tribunal decision appears far from an independent assessment of the applicant's oral evidence and of the documents supporting his claim. The overall impression is that the Tribunal Member gave undue deference to an apparently hostile Presenting Officer set on defending the s. 13 report. The Tribunal adopted her submissions on certain aspects of the applicant's claim including some unusual inferences from documents. A negative interpretation was taken of every piece of supporting documentation including the Irish medical report. The credibility of the severe attack on the applicant by students at the University of Faisalabad was rejected because the applicant produced no medical reports or FIR supporting the incident, while reports which were produced relating other incidents were ignored. His exclusion from the University cricket team was dismissed as a minor complaint rather than another indication of severe, systemic and effective discrimination which might in accordance with Article 9 of the Protection Regulations "be sufficiently serious by their nature or repetition as to constitute a severe violation of basis human rights or an accumulation of various measures". The final FIR sworn by one of the alleged persecutors confirms every aspect of the applicant's narrative, but it too was ignored apart from the allegation that the applicant had influence with the police. The court proceedings against him under Ordinance XX – the blasphemy law – which was the immediate reason for leaving Pakistan, was simply not mentioned.

32. In those circumstances, the Court cannot accept that *any fair reading of these documents* could lead to the inference or conclusion that the applicant was a person who had influence with the police. The only document which contains any reference to influence with the police is the FIR complaint made by a person who refers to Ahmadi and to the applicant in very pejorative language. The FIR was sworn by the brother of the applicant's university friend which, in its intemperate tone, faithfully depicts all which the applicant feared and repeats everything which the applicant asserted of the events which led to his determination to leave Pakistan.

33. Finally there is the treatment of the medical report from Dr. Eileen Cassidy. While the report on its own may not be of particular evidential value, it nonetheless forms part of the jigsaw of corroborative documents furnished by the applicant. It seems to the Court that it was too easily dismissed.

Internal Relocation

34. A significant flaw in the Tribunal decision is the conclusion that the applicant could safely "relocate" to Rabwah. It should be noted that the respondents did not seek to stand over this finding. Their preferred approach would be for the Court to sever the finding from the decision leaving what they submit is a coherent and rational assessment of credibility. The Court is not prepared to support this approach as all the findings are interwoven and part of a holistic assessment of the claim. The credibility findings, the failure to seek available state protection and the option of "relocating" to Rabwah all fuelled the negative recommendation. The Tribunal determination on internal relocation was arrived at following recitation of well known authorities on the subject. Those decisions deal with internal relocation as an alternative to international protection where a well-founded fear of persecution is found to be confined to a certain area in the applicant's country of origin. The Tribunal stated that he had reached his conclusion having had regard to the general circumstances prevailing in Pakistan and the personal circumstances of the applicant. He found that the applicant had not made any efforts to consider relocating to avoid the persecution feared and he said COI (not identified) indicates that there is ample protection available for the applicant to relocate. In particular he found that:-

*"Rabwah does not present a distinct risk of generalised serious harm, and the Appellant did not identify any risk attached to relocation. Having considered the Applicant's circumstances and the documentation on file it is in my view reasonable to conclude that relocation in [sic] a viable option. I believe that relocation would not only provide the Applicant with protection against the risk of persecution, but also access to better public services, employment and other social right."*⁴

35. The Court considers this conclusion to be unsustainable in light of the information which was before the Tribunal, which was that in 1999 the applicant's family had relocated from their home town, where they had lived for ten generations, to Rabwah where Ahmadi are in the majority and have their headquarters, in order to avoid further persecution. Thus the Tribunal Member erred in fact insofar as he said no attempt to relocate had been made. The evidence and the ID documents establish that the applicant lived in Rabwah and his evidence was that Rabwah was not safe. His case was that when in returned there in 2011, a simple conversation about his faith with a university friend caused him to be identified as a proselytiser, targeted in newspaper articles and subjected to a beating by eight men. The decision in *A & others* described at paragraph 27 above refers. Additionally, it is not apparent that the Tribunal had regard to any of the many consistent COI reports furnished by the applicant in relation to the prevailing conditions in Pakistan and in Rabwah. The conclusion that a "relocation" to Rabwah would provide the applicant with protection and access to better public services, employment and other social rights is wholly unsupported by evidence and runs contrary to the COI furnished by the applicant.

State Protection

36. The Tribunal Member found without elaboration that the applicant had not shown a failure of state protection. All information before him shows that Ahmadi in Pakistan are persecuted at the hands of both State actors and non-State actors. UNHCR reports, US State Department Country Reports, and UK Home Office Reports, to name a small few, all inform that in Pakistan, persecution of Ahmadi is condoned and tolerated by the State. The finding on state protection is therefore unsound.

Conclusion

37. Ultimately, the Court is satisfied that there are substantial grounds for the contention that the Tribunal Member's decision on credibility ought to be quashed by reason of errors of law and of fact. Moreover the conclusions on relocation and state protection are not rationally based. The process by which the decision was made did not accord with procedures mandated by the Qualification

38. Pursuant to the Court's jurisdiction under Order 84, rule 20(4) (as amended by S.I. 691 of 2011), leave will be granted for the applicant's statement of grounds to be amended to include the following grounds, on which leave to apply for judicial review will be granted:-

- 1. The Tribunal Member erred in law and in fact in finding that it would be reasonable to expect the applicant to "relocate" to Rabwah, thereby disregarding the applicant's evidence that he and his family were living in Rabwah since 1999, and he failed to identify any rational basis for his conclusion that the applicant would have "access to better public services, employment and other social rights" in Rabwah.*
- 2. Insofar as his finding on state protection is concerned, the Tribunal Member erred in law and in fact in disregarding extensive evidence of State sponsored anti-Ahmadi legislation and the poor record of the police in providing protection to Ahmadis who are victims of such persecution.*
- 3. The Tribunal Member erred in fact in finding that the applicant "was not a high profile member" of the Ahmadiyya faith community when in fact he came from a prominent Ahmadi family with a history of persecution.*
- 4. The Tribunal Member acted in breach of statutory duty and natural and constitutional justice insofar as he failed to assess the probative value of documents furnished by the applicant including identity documents, documents relating to the persecution of his family members, and medical reports.*
- 5. The Tribunal Member selectively relied on a short extract from the F.I.R. sworn by one of the applicant's attackers and failed to assess its corroborative potential and erred in fact insofar as he found that the F.I.R. indicates that the applicant has influence with the police.*
- 6. The Tribunal Member disregarded relevant, up to date country of origin information which was furnished by the applicant and which was capable of supporting the applicant's assertions of persecution and discrimination against Ahmadis in general and the applicant's family in particular.*
- 7. The Tribunal Member's assessment of credibility lacked basic fairness and failed to balance the applicant's subjective evidence with country of origin information furnished by the applicant in arriving at his credibility assessment.*

1. Country of origin information from very many sources confirms that religious intolerance of minority religious groups is widespread and that the Ahmadis are targeted more than any other religious group. They are declared by law to be non-Muslims and infidels in 1974 and were deprived of voting rights in 1984. There is a specific anti-Ahmadi Ordinance XX which impose the death penalty and / or life imprisonment on Ahmadis for insulting the Prophet Mohammed.
2. The applicant submitted extensive hospital notes on this very serious assault.
3. Preaching or proselytising by Ahmadis is a criminal offence in Pakistan.
4. This identical sentence has been seen in other cases which do not involve Rabwah or Pakistan.