**THE HIGH COURT**

**JUDICIAL REVIEW**

**[2013 No. 237 JR]**

**BETWEEN**

**E.K.K. (Democratic Rep. of Congo)**

**APPLICANT**

**AND**

**THE MINISTER FOR JUSTICE AND EQUALITY,**

**THE REFUGEE APPEALS TRIBUNAL,**

**IRELAND AND THE ATTORNEY GENERAL**

**RESPONDENTS**

**JUDGMENT of Ms. Justice Stewart delivered on 29th day of January, 2016**

**Background**

1. This is a telescoped hearing seeking, *inter alia*, an order of *certiorari* in respect of the decision of the Refugee Appeals Tribunal (hereinafter 'the RAT') dated 28th February, 2013 to affirm the decision of the Refugee Applications Commissioner to refuse to grant the applicant refugee status pursuant to a Notice of Motion dated 4th April, 2013.

2. The applicant is a national of the Democratic Republic of the Congo (DRC) who was born in Kinshasa on 21st April, 1979. She married Mr. W.M., a fellow Congolese national on 13th October, 2006 and has two children, but she is not their biological mother. She believed that her husband was in the Czech Rep. as a refugee there; however despite making attempts, she last spoke to him in January, 2007. The applicant who was granted permission to remain in the state on 18th February, 2015 pursuant to an application brought by the applicant's minor child. The applicant claims to have left the DRC on 9th April, 2011 and arrived in Ireland through Dublin airport on 10th April, 2011 on a Belgian passport which her agent had given her. She then applied for asylum on 11th April, 2011. The applicant bases her claim upon a fear of persecution of state agents in the DRC on the ground of political opinion.

3. The applicant claims that she had been working in a clothes shop called in the DRC in 2001 and that she had been promoted to store manager in 2008. This promotion necessitated her to travel for the purchase of fabrics. The applicant states in her questionnaire that she has travelled, with her employer, to the Czech Rep. in 2004, South Africa in 2009 and 2010, Nigeria in 2006 and 2007, Senegal in 2007, Republic of Benin in 2007, Mali in 2005 and 2008 and the UAE in 2011 for business. The applicant claims that she became acquainted with a particular customer of the shop who was a general in the DRC army. She then claims that her employer became the general's mistress. The applicant also attended an English language school with her employer. General M. attempted a *coup d'état* in September, 2010. The applicant was subsequently arrested by a branch of the secret service (DEMIAP) on 7th February, 2011.

4. While she was in custody, the applicant alleges that she was questioned about her employer and her trips abroad and these officers also went through her personal belongings including her personal messages on her mobile phone. She then states that they found a text message from her employer sent in January, 2011 which stated that the applicant was trusted by her employer not to disclose any information about any business deals. It was put to the applicant in questioning that she was using these trips abroad to drum up support for the general in foreign countries.

5. The applicant claims to have been transferred to a military camp where she was detained for thirty-three days. It was put to her, by her detainers, that she had been involved in the *coup d'état* due to the fact that she had travelled with her employer who had relations with the general. The applicant claims that she was raped, sexually abused and intimidated whilst she was being detained. She managed to escape this military camp on 12th March, 2011, with her exit apparently having been arranged by the applicant's sister. The applicant stated in her questionnaire: *"Regarding my travel, I don't know how it was arranged. All I know that my family member "M.K." arranged it with the help of people she knows."*

6. Her escape was made possible by a soldier of the camp who took the applicant and placed her in a jeep and took her to Maloko, from where she was taken to Brazzaville. This soldier then conveyed the applicant to a place where she stayed with two other soldiers of the military camp. These soldiers informed the applicant that the authorities were searching for her and they helped her to get to Brazzaville on 9th April, 2011. In Brazzaville, the applicant met with an agent who brought her to Ireland from Maya-Maya airport in Brazzaville, via Paris, where she spent some fifteen hours before travelling to Dublin. The applicant states, in the s. 11 interview, that her sister paid for her travel from the DRC to Ireland.

**Procedural background**

7. The applicant sought asylum on 11th April, 2011, having arrived in the state on 10th April, 2011. The applicant participated in the 'ASY1 Form' procedure and in the s. 8 questionnaire on 19th April, 2011, which was completed in both English and French, stating that her first language was Lingala, Kikongo, with French being her second language. At Q. 20, the applicant stated that she did not possess her own travel documentation but that she would find a way to have documentation with her during the asylum process. At Qs. 23a and 23b, the applicant states that she and her parents and sister are members of the church called the KCC and that her sister is a member of the opposition political party in the DRC known as the 'MLC' (Movement of the Liberation of the Congo). The applicant also states at Q. 30, in her questionnaire, that she requires *"psychological help as soon as possible*."

8. The applicant's s. 11 interview took place on 1st September, 2011 with the aid of an interpreter. With regard to her travel route to Ireland, she states, at Q. 90, that she did not claim asylum in France on her way to Ireland, as she was *"following the instructions of*

*the person who was taking me."* The applicant stated in her s. 11 interview that she feared her return to the DRC on the basis of the treatment meted to her whilst in prison and that she did not want to experience this again. Such treatment included sexual abuse and rape. The s. 11 interview was dated 1st September, 2011.

**The impugned decision**
9. The Refugee Applications Commissioner's s. 13 report was compiled on 8th September, 2011, with a recommendation issuing on 22nd September, 2011. Under section 3.3 of the s 13 report, the Commissioner outlined the 'well founded fear of persecution as perceived by the applicant. The Commissioner, having considered portions of the country of origin information, believed that "*a person who was involved with General M. may have problems with the authorities in the DRC.*"

10. The Commissioner believed that there was an irreconcilable delay between when the coup was staged and when the applicant was eventually arrested by state authorities, a period of some four months. The s. 13 report found, in respect of this delay that "*…it is difficult to accept that the authorities would wait this long before questioning the applicant if they believed she may have links to the attempted coup d'état in September, 2010 which serves to undermine the credibility of her claim.*"

11. The Commissioner also found difficulty in believing that the applicant was helped by soldiers in escaping her detention in prison on 12th March, 2011. The applicant also stated that the soldier took her to Makolo where she stayed with two other soldiers who had previously worked in the military camp where the applicant was detained. The Commissioner put it to the applicant that it was difficult to believe that a soldier would risk helping the applicant to escape and that it was also difficult to believe that two soldiers would live with her and help her if she remained a person of interest to the authorities in the DRC. The applicant's reply in interview to these assertions was that *"…I don't know. Even myself I am still wondering what had been offered to them or what had been given to them. I am still wondering."* The Commissioner did not accept the credibility of these claims and felt that they ultimately undermined the credibility of the applicant's claim.

12. The Commissioner found that the applicant travelled through France on her way to Ireland and could have applied for asylum in France before travelling to Dublin. The Commissioner summarised the applicant's claim as the following:-

> "*With regard to significant aspects of the applicant's claim, as laid out above, the applicant's statements have been found to be lacking in coherence and plausibility, and her general credibility has not been established. As such, it is not considered that the applicant has credibly established her claim within the meaning of Regulation 5(3) of the European Communities (Eligibility for Protection) Regulations 2006. Having regard to the above analysis of the application, it is considered that the applicant has not demonstrated a well-founded fear of persecution in the DRC."* The s. 13 report is signed and dated 8th September, 2011, with the Commissioner's recommendation being signed and dated on 22nd September, 2011.

13. The RAT hearing was conducted on 18th October, 2012 before a member of the Tribunal.

14. In section three of the Tribunal's decision, the applicant's claim is outlined. The applicant stated to the Tribunal that she "*did not have any particular contact"* with the general but once again acknowledged that her employer was a friend of the general. The applicant also stated that the authorities came to arrest her because they felt that she possessed information about the coup. The authorities took the applicant's phone from her and went through her personal messages on the device. In January, 2011, the applicant's employer had sent her a text message which begged her not to tell the authorities about the employer's relationship with certain people.

15. The applicant states after her escape from detention, she stayed in a local commune with two other soldiers. From this commune, she went to Congo Brazzaville and then onto France with the aid of an agent. She travelled from Brazzaville to France using a passport which was not her own. The applicant went through passport control and remained in the French airport for a number of hours. After entering this state, she was then dropped in the centre of Dublin and was told by her handler to make her way to the justice department. The applicant confirmed to the Tribunal that this was the first time she had heard the word asylum. She also reiterated that returning to the DRC would scare her and that she has flashbacks about the difficulties that she suffered there whilst in custody.

16. When the applicant was questioned by the Tribunal about her travel arrangements to the Czech Rep. in 2010, there was no mention of this 2010 visa for the Czech Rep. in the applicant's questionnaire and the applicant stated that she did not mention this occurrence as she had not travelled on this particular visa. The applicant did confirm, however, that her DRC passport remains in the DRC and that she did not use this document for her recent travel. The applicant also confirmed to the Tribunal that she has recently had a child with her husband and that they had got back into touch with each other in September, 2011, with the child being born in May, 2012.

17. The applicant's husband does possess refugee status in the Czech Rep. but has been in Ireland since 2007 as he was getting into conflict with the Czech authorities due to his defence of refugees. The applicant's daughter lives in the DRC with her sister and this daughter was born on 22nd May, 2001 in the DRC.

18. The Tribunal put it to the applicant that her husband went through the asylum process in 1998 and that therefore he would be familiar with the asylum procedures. The applicant answered these claims with the assertion that she and her husband had not spoken about the asylum process and that her husband had not explained to the applicant what the asylum process entailed.

19. It was also put to the applicant, by the Tribunal, that country of origin information suggested that peripheral sympathisers of the opposition parties in the DRC were not at risk in that country. To this, the applicant replied that people around the general had been arrested. The Tribunal also inquired as to why soldiers would put themselves at risk in concealing her existence at the commune to which the applicant replied that "*she also asked this question*" to herself.

20. Regarding her destination of Ireland, it was put by the Tribunal that it was a rather large coincidence that she travelled to the one country in Europe where her husband was living since 2007. The applicant responded by stating that she had not known that she was heading to Ireland when she left Brazzaville, neither did she know that her husband was living in Ireland as she believed him to be still living in the Czech Republic.

21. The applicant then went on to state that she received the text message from her employer which stated "*I trust you, If [sic] you are asked about contact with the people, say nothing, even if they threaten you.*" The applicant maintains that she did not understand the meaning of this text message and she confirmed that she had received it at the end of January. The applicant believed that this text message was sent to her by her employer due to the fact that the applicant and her employer worked closely

together and that they confided information to one another.

22. The applicant confirmed to the Tribunal that she did not know to which city in France she flew as she was stressed. Further, the applicant confirmed that she did not hear any announcements on the airplane as everything was noisy.

23. The Tribunal analysed the applicant's claim and found that it was not credible that soldiers would risk their positions to help the applicant escape and would then live with her for over a month if she was still of interest to the authorities.

24. The Tribunal did not believe the applicant's story that the authorities felt that the applicant was involved in the *coup d'état* but waited until February, 2011 to actually arrest her, despite the *coup* having taken place in September, 2010.

25. The Tribunal had serious difficulty in understanding why the applicant did not seek asylum in France as she is a fluent French speaker and has travelled in the past. The Tribunal stated that *"[t]he applicant's onward illegal travel to Ireland, rather than seeking asylum in France, is not indicative of a person fleeing persecution and Section 11B (b) of the Refugee Act, 1996, is relevant to this claim."*

26. The Tribunal did not believe the applicant's account of her travel route through France particularly the fact that she did not know to which French city she travelled and the assertion that she did not hear any announcements on the plane or at the airport. The applicant did not possess any information regarding her assumed identity.

27. The Tribunal also found difficulty with the applicant's claim that she did not speak to her husband about asylum, or the asylum process, as he had managed to obtain refugee status in the Czech Rep. Furthermore, the applicant had travelled for business purposes in the past and would have known that there is usually a police/immigration presence at airports upon entering a state.

28. The Tribunal believed that the applicant knew that she was leaving the DRC to seek asylum and that it would have been reasonable to expect that she would have sought asylum at Dublin airport instead of booking into a B & B for a night's sleep before seeking asylum the next day. As a result, s. 11 B (d) of the 1996 Act was deemed to be relevant by the Tribunal.

29. The Tribunal member concluded their analysis of the applicant's case by referring to the judgment of Peart J. in *Imafu v MJELR* [2005] IEHC 416 where it was stated that:-

> *"Once such a fundamental lack of credibility is found, the Tribunal is not obliged to refer to country of origin information to see whether her story could be true. The first and essential matter for determination is whether the story can be believed. It is only when that hurdle has been successfully overcome that country of origin information can assist in the assessment of whether the alleged fear of persecution is subjectively and objectively justified."*

**The applicant's submissions**

30. Mr. O'Shea, B.L. for the applicant, referred to the decision of Humphreys J. in *G.I. v Minister for Justice* [2015] IEHC 682 which was delivered on 6th November, 2015. The applicant submits that this decision obliges the Tribunal member to consider objective country of origin information before reaching reasoned conclusions as regards the applicant's general credibility.

31. The applicant submits that this obligation is grounded upon the wording and interpretation of Article 4 of the Qualification Directive as transposed into domestic law by S.I. 518/2006 entitled the European Communities (Eligibility for Protection) Regulations 2006. The applicant submits that given the decision in G.I., and the contrary decision of Eagar J. in *M.M.S. (Sri Lanka) v Minister for Justice* [2015] IEHC 659, and the practice purportedly adopted both in the United Kingdom and in Austria; a proper question of EU law interpretation arises.

32. The applicant relies upon the United Kingdom Home Office publication entitled "Asylum Policy Instruction- Assessing credibility and refugee status" which was published on 6th January, 2015. This document purports to provide guidance to caseworkers whose responsibility it is to assess asylum claims. In consultation with this document, and the decision in *M.M.S. (Sri Lanka),* it is submitted by counsel, that that decision represents the correct interpretation of the interpretation of EU law which has been adopted in the United Kingdom.

33. The applicant also relies upon the decision in *S v Federal Asylum Review Board, Higher Administrative Court of Austria (Verwaltungsgerichtshof),* 2003/20/0389, 26.11.03. The judgment in this case states, *inter alia*:-

> *"Although a part of them does seem to be inappropriate to account for a solution, they themselves, alone, without consideration of the complainant's statements' overall context, without evaluation of his personal credibility and without consideration of the current country of origin information regarding incidents as the ones claimed by the complainant, cannot be sufficient to found the decision in a comprehensive way."* The applicant also referred to chapters 17-19 (inclusive) of the "Best Practice Guide to Asylum and Human Rights Appeals".

34. It is submitted, by the applicant, that having regard to the above references that there is evidence of a risk of a divergent approach to the interpretation of European Union law upon the *'Imafu'* point.

35. The applicant maintains that the RAT decision should be quashed for failure to comply with minimum standards as mandated by European law under the Qualification Directive, and, if a doubt as to this is entertained by this Court; then the correct interpretation should be sought from the Court of Justice of the European Union by way of a preliminary reference pursuant to Article 267 of the Treaty on the Functioning of the European Union.

36. The applicant also contends that there are specific flaws in the decision-making process as applied by the Tribunal, and the decision itself, and would entitle the applicant to *certiorari.* These perceived flaws are, *inter alia*, as follows:-

> a. The failure to utilise a forward-looking test, particularly in light of the submission by the applicant of extensive country of origin information including the 'Unsafe Return' report;
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> b. Country of origin information was submitted that was supportive of the applicant's claim and no reason was provided by the Tribunal in rejecting this information or not considering it of appropriate weight to prove the applicant's claim;
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> c. The danger to which the applicant might be exposed was not addressed by the Tribunal;

d. It is submitted by the applicant that it is unsafe to rely on a conclusion based on the perceived behaviour of the soldiers in risking letting the applicant live with them in all the circumstances as such behaviour could have many logical explanations which the Tribunal failed to entertain;

e. It was irrational, according to the applicant, for the Tribunal to rely upon the delay in the DRC authorities approaching the applicant in finding adversely upon her credibility, particularly in the absence of any background information which could have justified such a conclusion;

f. The applicant's failure to apply for asylum in France and her subsequent journey to Ireland did not go to the core of the applicant's claim and, as a result, should not have been afforded the weight that it appears to have been; the applicant, in this respect, relies upon *J.K. (Kenya) v Refugee Appeals Tribunal* [2015] IEHC 21;

g. No reason is furnished for the Tribunal's conclusion that it was credible that the applicant had not spoken to her husband relating to asylum; and

h. It was irrelevant that "*low level members of opposition parties are not at real risk*" as the applicant's claim was not based on such an assertion.

**The respondent's submissions**

37. Mr. Moore, B.L. for the respondents, argued, in both oral and written submissions, that the Rules of the Superior Courts (Affidavits) 2012 (S.I. 487 of 2012) were in operation on the date on which these proceedings were filed.

38. The respondents submit that Order 40, rule 13A and rule 14 of the Rules of the Superior Courts, require that when an intending deponent is not capable of making an affidavit in one of the official languages of the state, they must swear an affidavit in another language which they understand. This foreign language affidavit must then be translated into one of the official languages of the state by a suitably qualified translator. Where a foreign language affidavit is to be finalised in court, an affidavit of the translator which sets out certain specified information must also be filed.

39. Rule 14(2) of Order 40 of the Rules of the Superior Courts states:-

> *"(2) A person taking an affidavit shall, where it appears to him that the affidavit is to be sworn by any person who appears to be illiterate or blind— (a) ensure that the affidavit is read in his presence to the deponent and that the deponent has fully understood it, (b) in any case where the deponent appears not to be capable of understanding one of the official languages of the State, ensure that the affidavit is made as a foreign language affidavit in accordance with rule 13A and is read to the deponent by a suitably qualified interpreter in the presence of the person taking the affidavit, and that the deponent has fully understood it, and (c) certify in the jurat that the affidavit was read in his presence to the deponent (in a case to which paragraph (b) refers, by a suitably qualified interpreter), that the deponent fully understood it and that the deponent made his signature or mark in his presence.*
>
> *(3) Where a foreign language affidavit is to be filed or lodged in court in a case to which paragraph (b) of sub-rule (2) refers, in addition to the translator's affidavit referred to in rule 13A(3) an affidavit of the interpreter shall (as the case may be) be filed or lodged at the same time in which the interpreter sets out his qualifications as an interpreter, exhibits a copy of the foreign language affidavit and confirms that he read accurately to the deponent the contents of the foreign language affidavit, provided that where the translator and interpreter are one and the same person, a single affidavit may be sworn by that person for the purposes of rule 13A(3) and this sub-rule.*
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> *(4) In this rule "relevant document" has the same meaning as in section 2 of the Statutory Declarations Act 1938."*

39. Rule 14A (2) of Order 40 provides that no affidavit referred to in rule 14(2) will be used in evidence in the absence of the certificate referred to in rule 14(2)(c) and, where applicable, in default of filing of the interpreter's affidavit referred to in rule 14(3), unless the court is otherwise satisfied that the affidavit was read over to and fully understood by the deponent.

40. The respondents submit that having regard to the fact that the applicant required the assistance of an interpreter during her asylum application, there is no authoritative basis to believe that she understood the English language sufficiently well-enough to be able to swear a grounding affidavit in the English language and, accordingly, the grounding affidavit sworn by the applicant ought to have complied with the Rules of the Superior Courts (Affidavits) 2012 (S.I. No. 487 of 2012). The respondents also rely on the decision of Cooke J. in *Saleem v Minister for Justice* [2011] IEHC 49; (Unreported, High Court, Cooke J., 2nd June, 2011) which, the respondents argue, was the precursor to S.I. 487.

41. The respondents submit that ground of appeal (a) fails due to the fact the applicant failed to make and substantiate a claim that she would be at risk of persecution in the DRC as a failed asylum seeker, not meeting the burden on her under s. 11A(3) of the Refugee Act, 1996.

42. The respondents argue that none of the evidence submitted by the applicant surmounts the necessary threshold to show that she would be at risk of persecution in the DRC on the basis of being a failed asylum seeker. The document submitted by the applicant which is entitled 'Unsafe Return', concerning a number of DRC nationals from the United Kingdom to the DRC. This document was found, as submitted by the respondents, not to be objective by Clark J. in *PBN v Minister for Justice* [2013] IEHC 435. Clark J. stating at para. 39 of the judgment that the report:-

> *" [was] confusingly presented and persistently confounds the legal concepts of refoulement and involuntary return. Further, it clearly is a vehicle for a particular point of view…The report displays neither objectivity nor neutrality. The author does not allow for the possibility of innocent explanations for any situation."*

43. The respondent also submits that Barr J. in *PBN v Minister for Justice* [2015] IEHC 124, which was a judgment in a leave application, at para. 80 thereof, rejected the argument that by being a failed asylum seeker, an applicant was a member of a "particular social group" in the DRC. Barr J. stated:-

> *"…the applicant has not submitted any cogent grounds for arguing that the applicant was a member of a 'particular social group' as described in the Directive. The applicant has not established substantial grounds for challenging the*

*decision under this heading."*

44. In *Vignon v Refugee Appeals Tribunal* [2009] IEHC 268, Irvine J. rejected the applicant's argument that he would be at risk of persecution in Togo as a failed asylum seeker.

45. The respondents submit that there is nothing within the jurisprudence of this area of law to suggest that there is a conflict between divisions of the High Court on whether or not a body like the Tribunal is obliged to consider country of origin information in order to make adverse findings on the applicant's credibility. It is also submitted, by counsel, that there is nothing to suggest that certain credibility findings made in respect of the applicant's case would have been different if country of origin information had been consulted by the Tribunal. There was also no country of origin evidence proffered by the applicant to the Tribunal to suggest that soldiers in the DRC would risk military discipline in concealing fugitives, nor was there any information to suggest that the DRC authorities would have been so inefficient as to have waited to arrest the applicant for some five months after the alleged *coup d'état* had occurred.

46. The respondent's highlight the decision of the Supreme Court in *Aderibigbe v Refugee Appeals Tribunal* (Unreported, Supreme Court, Hardiman, Fennelly, O'Donnell, Clarke and MacMenamin JJ., 16th January, 2013), where Hardiman J. held that there was no obligation on the Tribunal to consider objective country of origin information about, in that case, the prevalence of FGM in Nigeria, in circumstances where the Tribunal had held that the applicant's subjective fear of being subject to FGM lacked credibility.

47. The authority on the *Imafu* point rests with the decision of the Supreme Court in *Aderibigbe,* with the judgment of Eagar J. in *M.M.S. v Minister for Justice* [2015] IEHC 659 being treated as an outlier in essence. Humphreys J. in *R.A. v Refugee Appeals Tribunal* [2015] IEHC 686 distinguished the decision in *M.M.S.* from that of the abundance of authority on this point, stating:-

*"45. It seems to me abundantly clear that Eagar J. was only in a position to arrive at the conclusion that the Imafu decision was not applicable because a great deal of the previous case law had not been opened to him, particularly the analysis of Clark J. in V.O. [where she had upheld the Imafu principle by pointing to the specific wording of the Regulations of 2006]."*

**Decision**

48. The court would like to address what could be termed the procedural issue that arises in this case pursuant to Order 40, rule 14 of the Rules of the Superior Courts, 1986 (as amended) first. Rule 14 (2)(b) of Order 40 requires that a person who is taking an affidavit must *"(b) in any case where the deponent appears not to be capable of understanding one of the official languages of the State, ensure that the affidavit is made as a foreign language affidavit in accordance with rule 13A and is read to the deponent by a suitably qualified interpreter in the presence of the person taking the affidavit, and that the deponent has fully understood it, and (c) certify in the jurat that the affidavit was read in his presence to the deponent (in a case to which paragraph (b) refers, by a suitably qualified interpreter), that the deponent fully understood it and that the deponent made his signature or mark in his presence."*

49. Rule 14A (2) provides that no affidavit referred to in rule 14 (2) shall be used in evidence in the absence of the certificate referred to in rule 14(2)(c), and where applicable, in default of filing of the interpreter's affidavit referred to in rule 14(3), unless the court is otherwise satisfied that the affidavit was read over to and fully understood by the deponent.

50. Taking these stipulations to be applied under the rules of the superior courts, it is arguable whether the applicant's affidavit was filed in accordance with the applicable rules of court. This is not a mere semantic point, but is a fundamental flaw in the progression of the case by the applicant and her legal advisors. The Court is of the opinion that more could have been done to ensure that the applicant's level of comprehension of the English language (being one of the official languages of the State) was correctly ascertained and brought in evidence to the Court. This was not done as acknowledged by the applicant's counsel, Mr. O'Shea, B.L.

51. Under these circumstances, the court has a grave doubt whether this application can proceed successfully. It is the court's opinion that the application fails on this procedural issue. However, the Court will continue to deal with the issue which is colloquially known as the *'Imafu'* point, i.e. whether having found the applicant's story to be wholly unbelievable, is the Tribunal obliged to consider country of origin information before refusing refugee status.

52. In dealing with this issue, I refer, in particular, to the judgment of Humphreys J. in *R.A. v Refugee Appeals Tribunal* (Unreported, High Court, Humphreys J., 4th November, 2015) in which this precise issue was once again analysed by the High Court. Humphreys J. begins to deal with this point at para. 22 of that judgment, stating:-

> *"I now turn to the country of origin information issue which was the central issue argued at the hearing. That issue seems to me to break down into a number of subsidiary questions. Firstly, is the tribunal member required to conduct any assessment of the country of origin information where the applicant's basic credibility is found wanting. This in turn depends on a more basic question as to what the tribunal needs to assess in the first place. A second question is, where the tribunal member is not explicitly disagreeing with the country of origin information, but merely that it is not sufficient to outweigh other elements which militate against an applicant, is the member required to address the information or engage in a narrative discussion…*
>
> > *31. A tribunal member's rejection of an application, or indeed any administrative decision-maker's rejection of any application, is valid if the decision maker gives one valid independent and free-standing decision in relation to the applicant's failure to meet any essential condition of obtaining relief. Where the decision maker has given such a valid decision in relation to one such condition, there is no obligation to go on to consider other conditions, because these would make no difference to the result."*

53. The decision reached in *R.A.* by Humphreys J. is consistent with that decided by Peart J. in *Imafu v Minister for Justice, Equality and Law Reform* [2005] IEHC 416. The decision in *Imafu,* in turn, has been consistently followed in a number of subsequent decisions such as *G.O. v Refugee Appeals Tribunal* [2013] IEHC 89 and in the judgment of this Court in *H.J.E. (Nigeria) v Minister for Justice, Equality and Law Reform* [2015] IEHC 189 and in *B.U. (Nigeria) v Minister for Justice and Law Reform* [2015] IEHC 431, along with the decision of MacEochaidh J. in *P.D. v Minister for Justice and Law Reform* [2015] IEHC 111.

54. This Court also notes that in the judgment delivered by Humphreys J. in *R.A.*, reference is paid to another decision of MacEochaidh J. in *G.A.A. v Minister for Justice, Equality and Law Reform* [2015] IEHC 519, in which the court held that no provision of both Irish or European law requires that there be an "assessment" of country of origin information in every case.

55. In the decision of *M.M.S. v Minister for Justice and Equality* [2015] IEHC 659, a judgment delivered by Eagar J., it is clear that the

court supported the viewpoint that the country of origin information must always be considered. In this respect, Eagar J. relied upon the decision reached in the *Horvath v Secretary of State for the Home Department* [1999] I.N.L.R. 7. Eagar J., in M.M.S., stated at para. 56:-

> *"In Horvath v The Secretary of State for the Home Department [2000] UKHL 37 Pearl J. stated "It is argued that credibility findings can only really be made on the basis of a complete understanding of the entire picture. It is argued that one can not assess a claim without placing that claim in the context of background information of the country of origin. In other words the probative value of evidence must be elevated in the light of what is known about the conditions in the claimant's country of origin"…*
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> *57. The Horvath principal has been cited with authority in a number of Irish cases including Imafu v Minister for Justice, Equality and Law Reform [2005] IEHC 416. In that case Peart J. qualifies the principle in holding that the extent (if any) to which it may be necessary for the Tribunal to refer to country of origin information as part of a credibility assessment is dependent on the facts of the individual case…*
>
> *58. …protection decision-makers must take into account "all relevant facts as they relate to the country of origin at the time of taking a decision on the application for protection, including laws and regulations of the country of origin and the manner in which they are applied and the relevant statements and documentation presented by the protection applicant.""*

56. Eagar J. went on to find that a departure from the principles enunciated in the *Imafu* decision was the most appropriate recourse that he had on that occasion. This Court will not follow that departure. Humphreys J. in *R.A. v Refugee Appeals Tribunal* (Unreported judgment, High Court, Humphreys J., 4th November, 2015) contextualised the *M.M.S.* decision at para. 45:

> *"It seems to me abundantly clear that Eagar J. was only in a position to arrive at the conclusion that the Imafu decision was not applicable because a great deal of the previous case law had not been opened to him, particularly the analysis of Clark J. in V.O."*

I concur with that summation of the *M.M.S.* decision.

57. For this Court to depart from the long line of authorities which have followed the *Imafu* principles, as formulated by that learned court, would be a misconceived venture. Further, I am of the view that the law in this area is clear and established in this jurisdiction and that the question of a reference to the Court of Justice of the European Union does not arise. In summary, the application will be refused on both the technical issue which arose in this case, and also on the issue concerning the methods employed by the Tribunal in reaching its decision in the applicant's case. For these reasons the relief is refused. The Court will hear counsel on the issue of costs.