Neutral Citation: [2014] IEHC 496

THE HIGH COURT

JUDICIAL REVIEW

[2010 No. 312 J.R.]

IN THE MATTER OF THE REFUGEE ACT 1996 (AS AMENDED) AND IN THE MATTER OF THE IMMIGRATION ACT 1999, AND IN THE MATTER OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000 AND IN THE MATTER OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS ACT 2003, SECTION 3(1)

BETWEEN

C. B.

APPLICANT

AND

THE REFUGEE APPEALS TRIBUNAL, THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM, ATTORNEY GENERAL AND IRELAND

RESPONDENTS

JUDGMENT of Mr. Justice Barr delivered on the 2nd day of October 2014

Background

1. The applicant was born on 10th March 1986 in Conakry, Guinea. In 2004, he sat his final school exam. He then went to university. He says that after he had been about one month in the university, he and some other students set up a group to protest against the decision of the President of the college to convert some student accommodation into lecture rooms. The applicant maintains that he was arrested on 21st November 2004. He stated at interview that 20 of the group were sent to prison at this time. A few days later, they were released.

2. The applicant maintains that following this, they decided to put the group on a more formal footing and it was given a name - 'Council for Students'. The applicant said that he was the secretary of this group. There was some divergence as to when the group actually received its name. This will be referred to in more detail later in the judgment.

3. In 2007, there was a national strike. The applicant maintained that his Student Union participated in this strike. From 10th January 2007 until 11th February 2007, the applicant and his group went out each day to protest against Government policy. On 12th February 2007, the President of Guinea declared that if anybody came out after that day, they would be taken to prison. On that same day, the applicant was arrested at his home. He was brought to a prison in the city of Conakry known as Surete Urbaine de Conakry.

4. On 17th June 2008, the applicant says that the prison was attacked by the Military because the Police, who had control of the prison, were agitating for better pay and conditions. Country of origin information (hereinafter COI) submitted by the applicant refers to the fact that a number of police stations were attacked and looted by the Military on that date. The applicant says that all the prisoners managed to escape from the prison that day, and he was one of them.

5. The applicant maintains that he was beaten and tortured while in prison. In particular, he suffered burns to his feet with lighted cigarettes. He also claims that he was put facing the setting sun and made to look at it, which caused damage to his eyesight.

6. When he escaped, the applicant went to his uncle's home in Lambadj. It took him approximately one hour to get there. He only remained there for a number of hours. From there, he went to Nonga, where he stayed with a friend of his uncle. He stayed there for two months. Arrangements were made for his flight to Ireland. He travelled with a businessman. He travelled by air to France, and after a short period, he flew on to Ireland.

7. The applicant claimed asylum in Ireland. He filled out the ASY1 Form and the Questionnaire and attended for interview in the usual way. In the s. 13 Report, the RAC recommended that the applicant not be recognised as a refugee. The applicant appealed to the Refugee Appeals Tribunal (hereinafter RAT). In a decision dated 8th December 2009, the RAT affirmed the recommendation of the RAC. In these proceedings, the applicant seeks an order quashing the decision of the RAT.

Extension of Time

8. The applicant requires a short extension of time in respect of the institution of these proceedings. The relevant dates are as follows: the RAT decision was made on 8th December 2009. The letter notifying the applicant of the decision was dated 25th January 2010. It would have been received by the applicant on or about 28th January 2010. The applicant states that immediately upon receipt of the letter, he made contact with the Refugee Legal Service. Thereafter, there was some delay by the RLS and the applicant was not notified until the end of February 2010 that they would not be taking any judicial review proceedings for him.

9. On 26th February 2010, the applicant consulted his present solicitor. On 1st March 2010, counsel was briefed with papers. On 12th March 2010, counsel returned the papers. The grounding affidavit was sworn on 16th March 2010. On 18th March 2010, the papers were lodged in Court. The 14-day period which ran from 28th January 2010 expired on or about 11th February 2010. In the circumstances, the applicant requires an extension of time of approximately five weeks within which to institute the within proceedings.

10. The applicant relied on the following extract from the judgment of Mac Eochaidh J. in *K.B. v. Minister for Justice, Equality and Law Reform & Anor.* [2013] IEHC 169:

> *"19. To this, I wish merely to add that I would be extremely reluctant to entertain an application to dismiss proceedings four years after the institution of those proceedings where the first indication of a complaint about delay is to be found in the written submissions filed in the days before the hearing. If a State respondent is keen to pursue a genuine delay point, this itself should not be delayed, and I say this having regard to the particular circumstances of failed refugee judicial review applicants who live, generally, in very difficult circumstances on a mere €19 or so a week. It would be unconscionable to permit proceedings to fail on a time point where an applicant might have endured significant hardship over many years waiting for such a simple point to be determined. There would be much merit in such time points being advanced expeditiously and by motions in limine."*

11. The applicant also argued that there was no replying affidavit put in by the respondent, and in the circumstances, it would appear that they were not prejudiced by the extension of time sought.

12. In response, the respondents submitted that if the applicant sought to place the blame for the delay onto his previous solicitors, the said solicitor should be put on notice of the allegation and there should be an affidavit from them. In *J.A. v. Refugee Applications Commissioner* [2008] IEHC 421, Hedigan J. stated as follows:

> *"In the view of this Court, it is a gross injustice to indict a firm of lawyers in open Court without those lawyers being put on notice of the proceedings and given an opportunity to respond to that submission. To act in such a way is unfair as a matter of basic principles. If an applicant intends to put forward as an explanation for his delay the incompetence or inefficiency of his legal representatives, he must afford those representatives the opportunity to swear an affidavit on the subject. In the absence of any such affidavit in the present case, and in the absence of any evidence that the legal representatives whose conduct the applicant seeks to impugn were put on notice of those allegations and given an opportunity to answer them, I consider the explanation proffered by the applicant to be inadmissible."*

13. In *S.M.O. v. Refugee Applications Commissioner & Ors* [2009] IEHC 219, Peart J. set out the factors which must be taken into account:

> *"12. It follows from the case law above that there are a variety of factors which fall to be taken into account in considering whether good and sufficient reason is established for the exercise of the Court's discretion to extend time in any given case. These include, obviously, whether the applicant had formed an intention to challenge the contested decision by judicial review and if so at what point in time by reference to the 14 day limit; whether reasonable diligence is shown to have been exercised in seeking to pursue that remedy; the prima facie strength of the case proposed to be made, whether legal advice and/or representation was available to the applicant and so on.*
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> *13. It is clear, however, that of primary consideration is the length of time elapsed since the expiry of the statutory period of 14 days and the explanation and excuse offered for that delay. Unless evidence is provided on affidavit as to why the application was not made within that 14 day period or very promptly thereafter such as to satisfy the Court that the interests of justice require or justify extending time, the discretion cannot be exercised. As Costello J. said in the case of O'Donnell v. Dun Laoghaire Corporation [1991] in a passage cited with approval in the De Róiste case;*
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>> *'What the plaintiff has to show, (and I think the onus under Order 84 is on the plaintiff) is that there are reasons which both explain the delay and afford a justifiable excuse for that delay'."*

14. In the present case, the period within which the proceedings should have been issued expired on or about 11th February 2010. The proceedings were not instituted until 18th March 2010. I am satisfied that the delay was caused by the fact that there was a change in solicitor on behalf of the applicant. When he did come to instruct his present solicitors on or about 26th February 2010, there was no undue delay on their part in dealing with the matter. They promptly instructed counsel. The counsel selected was a busy junior counsel with a large practice in the Asylum List. That he managed to turn around the papers in a period of ten days was entirely reasonable. One could not realistically expect the papers to be returned any sooner. Thereafter, there was no delay in having the applicant attend at the solicitor's office to swear the grounding affidavit.

15. In the circumstances, while there should have been an affidavit from the RLS dealing with the initial delay from early February until 26th February 2010, I am, nonetheless, of the view that it is fair and reasonable that the applicant should be given this relatively short extension of time to facilitate the institution of these proceedings. I am satisfied that the applicant was not personally to blame for any of the delay in this case. Accordingly, I will extend the time for the institution of these proceedings up to and including 18th March 2010.

Objection to the Applicant running 'New' Grounds

16. The respondents submitted in argument that the applicant had tried to introduce new material into the case by virtue of an affidavit sworn by the applicant's present solicitor on 8th July 2014. In that affidavit, there was exhibited a large amount of documentation. I am satisfied that, with the exception of the solicitor's handwritten note of the hearing before the RAT, there was not an attempt to introduce new material into the case. This is clear from the letter dated 10th November 2009 from Ms. Yvonne G. Eames to the RAT, which enclosed the COI material, which was exhibited in Ms. Trayers' affidavit of 8th July 2014. In essence, therefore, all Ms. Trayers was doing was to put before the Court documentation which had been submitted by the applicant to the RAT at the time of the hearing and subsequent thereto.

17. More fundamentally, the respondent also takes issue with what it perceives as an attempt by the applicant to run new grounds of challenge to the decision of the RAT; in particular, a challenge to the assessment of the medical report provided by the applicant's GP, and a complaint that the Tribunal made no specific finding on the applicant's alleged nationality and ethnicity.

18. The respondents submit that the complaint about the assessment of the medical report cannot be construed within the existing grounds of challenge because it was not exhibited to the proceedings when they were instituted in 2010, from which it may be inferred that his legal representatives had not seen it when they were drafting the statement of grounds.

19. Secondly, the respondent submits that none of the grounds in the Statement of Grounds makes any complaint about the assessment of the case by reference to the applicant's nationality or ethnicity.

20. The respondents submitted that these new grounds of challenge should not be allowed at this late stage, particularly where no motion had issued on behalf of the applicant to do so, and where admitting these new grounds would prejudice the respondents.

21. The respondents cited the following passage from the judgment of McDermott J. *in S.J. v. RAT* [2014] IEHC 108:

> *"An applicant is obliged to initiate any proposed amendment at the earliest possible opportunity having regard to the strict time limits that apply in respect of judicial review, and that the nature of such proceedings requires a clear and focused statement of grounds relevant to the facts of the case to be advanced at the earliest possible opportunity.*
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> *29. To allow an amendment in this case would, in effect, allow the applicant to advance an entirely new cause of action. It clearly entails a significant enlargement of the applicant's case. Although the nature of the relief sought remains unchanged by the proposed amendment, it completely transforms the nature of the challenge to a substantive attack on the subsidiary protection decision. To do so at this stage would be unfair to the respondent.*
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> *30. I am not satisfied to extend the time for the bringing of this application or to permit the amendment of grounds requested for the reasons set out above and because it is not, in the circumstances, in the interests of justice to do so. I am satisfied that this application is opportunistic in nature and of the type referred to by Herbert J. in Guo which would encourage applicants to seek amendments every time leave was granted in some other application on some other consideration which could be claimed to be applicable to the instant case."*

22. The respondent also referred to the decision in *Guo v. Minister for Justice* (Unreported, High Court, 28th April 2010), where Herbert J. refused to permit an attempt to rely on a new substantive ground of challenge 19 months after the institution of proceedings. He stated as follows at pp. 20 to 21 of his judgment:

> *"In my judgment, to permit the proposed amendment would be to defeat and circumvent the clear legislative policy expressed in s. 5(2)(a) of the Illegal Immigrants (Trafficking) Act 2000. It would also be a breach of the principle that there should be an end to litigation. If an amendment of the type sought were to be permitted every time leave was granted in some other application on some consideration which it could be claimed was also applicable to the instant case, judicial review applications would be come interminable and the great remedy for an alleged abuse of due process would itself become such an abuse."*

23. I am of the view that the respondent's submissions in this regard are correct. The applicant cannot seek to rely on new grounds not contained in the Statement of Grounds without bringing a motion to amend his Statement of Grounds. This was not done. Accordingly, the applicant cannot now make the case that the RAT failed to take into account the content of the medical report, as submitted by the applicant's GP, and/or the failure to make any finding on the applicant's nationality or ethnicity.

24. The medical report from Dr. O'Donovan dated 2nd July 2009, noted on examination "*a 25mm x 18mm scar on the anterolateral aspect of the left foot, consistent with a cigarette burn*". Dr. O'Donovan also noted the history of abuse in prison, as recounted to him by the applicant, and his account of left eye damage from being positioned facing the setting sun for long periods. He found the visual acuity in the left eye reduced to 6/12.

25. The applicant submitted that the cigarette burn residual scar on the foot was an unusual injury of a type that would not occur accidentally, and was supportive of the applicant's consistent evidence, and was not such as could be discounted summarily in the manner adopted by the respondent, without regard to the applicant's evidence and the COI taken as a whole.

26. The respondent noted, without prejudice to their argument, that the applicant should not be allowed to rely on this ground of challenge to the RAT decision, that the report in question ran to two paragraphs on one single page. It was dependent on the applicant's account of events and, quite properly, the GP made no attempt to assess the credibility of those matters. The report noted that there was a small scar on the applicant's left foot which was considered to be "*consistent with*" a cigarette burn. Under the Istanbul Protocol, the phrase "*consistent with*" constitutes the lowest level of diagnosis and means "*the lesion could have been caused by the trauma described, but it is non-specific and there are many other possible causes*". The applicant was also found to have impaired vision in his left eye, and it was noted that he claimed to have been positioned facing the setting sun for long periods.

27. The respondent submitted that as can be seen from the decision, the Tribunal had regard to the medical evidence but, having regard to the case in the round, including the inconsistencies and credibility issues arising, it was unable to accept that he had been ill-treated for the reasons alleged. In these circumstances, case law shows that there was no overriding reason for the Tribunal to banish from its mind the credibility issues that had arisen during its appraisal of the evidence, particularly as the nature of the findings in the medical evidence warranted the exercise of caution. As Birmingham J. explained in *Vignon v. Refugee Appeals Tribunal* (Unreported, High Court, 21st January 2009):

> *"The most that any physical examination can do is to record what was observable and comment on whether their physical signs are consistent with the account put forward. As we know, in commenting on the significance of medical evidence, a practice is to do so by reference to a scale that is set out in the Istanbul Protocol.*
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> *However, what a medical report cannot do is offer any assistance as to the circumstances in which the applicant has come by his injuries. So, marks on feet can be consistent with cigarette burns, but there is no assistance to be obtained a to whether those burns were inflicted in prison during the course of torture or whether they were caused to be inflicted for the purpose of bolstering the applicant's account."*

28. The respondents noted that in this case, the applicant had told the Commissioner that the scars caused by cigarette burns had cleared up, and it therefore seems somewhat unusual that one remained when he underwent examination by his GP.

29. In the circumstances, the medical report does not add significantly to the applicant's case, even if it were allowed as a ground of challenge to the decision of the RAT.

30. As regards the contention that the Tribunal did not make any finding concerning the applicant's nationality and ethnicity, even if this were allowed as a ground of challenge, it would not assist the applicant's case. The question of the applicant's nationality was not in issue. At the beginning of the RAT decision, the nationality of the applicant was given as 'Guinea'. In relation to his ethnicity, the Tribunal was not obliged to make any finding on the applicant's alleged ethnicity because it was not part of the basis upon which his asylum claim was made. He never claimed that he had a well-founded fear of persecution on the basis of his ethnicity.

The Findings adverse to the Applicant's Credibility

31. The Tribunal made adverse credibility findings against the applicant on the following basis:

> (i) Date of commencement in college - the Tribunal noted that the applicant gave differing accounts as when he started in university. In his Questionnaire, he stated that he had started college on 10th October 2004, and he was only in college a little over a month when he was arrested for the first time. In his evidence to the RAT, he stated that he started college in August 2004. When this discrepancy was put to the applicant, he stated that the date given in the Questionnaire could have been a mistake. He said he got his Leaving Certificate in August 2004, and that was the time that he went to college. When questioned further about the discrepancy, he stated that he got his Leaving Certificate before August 2004.
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> (ii) The second discrepancy involved when the student group got its name. The applicant claimed that there were 20 leaders of the group arrested in November 2004. When it was put to the applicant that in his Questionnaire he said that the group was created in 2005, he said that the group had existed informally in 2004 and that after the arrests in November 2004, they decided to make the group official and it received its name in 2005. It was then put to the applicant that in the interview, he had stated "*the group was initiated in 2004 but officially came to be in 2005, but if you search by the 2004 strike, you should find the group by name*". When this was put to the applicant, he replied that "*actually, in 2004, we were there, if you look at what was going on in the university, but we were not an official group, it was only in 2005 that we were officialised*".
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> The RAT held that this was not a consistent or credible explanation, and in the circumstances, the applicant was considered to have presented an inconsistent account between his Questionnaire, the interview and on appeal in relation to his account of the emergence of this group. The inconsistencies in the applicant's account were such that the RAT did not believe he was ever a member of any such group.
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> (iii) There was also an inconsistency in the accounts given by the applicant as regard the numbers in the group. He stated that there were 100 members in the group. He said he read this in a newspaper after his arrest in 2007. He said that all 100 members were arrested in 2007. At interview, when asked how many were in the group, he said it was difficult for him to tell even an approximate number, but he estimated it at between 50 to 100 members. He was asked why he had not told the interviewer about reading in the newspaper that there were 100 members. The applicant claims that at the interview, he was asked two questions: how many were in the demonstration in 2007 and how many were in the group. He said that there could have been a misunderstanding when he was asked about that. He said that he had explained that the numbers increased to 100.
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> The RAT found that the applicant was considered to have presented an inconsistent account, such that the Tribunal Member did not believe that he experienced any such difficulties with any such group.
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> (iv) In his evidence, he claimed that a national strike in 2007 had been started by two unions. In his interview, when asked who had started the strike, he replied "*no, what I told you is that it was the whole population. It was not just one union. It was all around the country*". It was put to the applicant that he only remembered the two unions when their names were put to him in the course of the interview. He said that it was a very large strike with the whole country involved. He had forgotten that the idea for the strike came from the two unions, but when the interviewer gave the names of the unions, he remembered these unions had started the strike, and at that stage, he could even give the names of the two leaders of the trade unions and the name of the Prime Minister. He said that he was not asked at the interview for the names of the union leaders, so he had not given the names.

32. The RAT did not consider the applicant's explanation as credible. It considered that if the applicant was in any way involved in this strike, as he claimed, whereby he was Secretary of the Student Council that participated in the strike, the applicant would have been able, at interview, to state that the strike was initiated by the two trade unions prior to this information being put to him by the interviewer.

33. The applicant did not challenge these credibility findings. However, he submitted that the findings were peripheral to his core claim of being arrested during the strike in 2007, and being held in prison from that time until his escape on 17th June 2008. It was also part of his claim that he had suffered beatings and torture while in custody.

The COI before the Tribunal

34. An important part of the adverse credibility findings in the s. 13 Report was that the Commissioner could not find any COI relating to the escape of prisoners from Surete Urbaine de Conakry Prison, nor that the prison was manned by the Police and that military action against the Police had led to the prisoner escapes.

35. The applicant submitted that his account of his incarceration and escape from prison was central to his claim. The applicant dealt with this lack of evidence by submitting relevant COI reports in relation to the attack by the Military on various police stations. In particular, he submitted two articles dated 17th June 2008, from a French website, one of which referred to the escape of prisoners from the Surete Urbaine de Conakry Prison. The relevant part of the second article stated as follows:

> *"Reliable sources said soldiers attacked and vandalised Conakry's Urban Security Station. Several detainees managed to escape. According to Inspector Soriba Conte, the Duty Officer at Conakry's Maison Centrale, 'between 11 o'clock and 11.30, soldiers came into the station and vandalised all the offices. They then stole motorcycles, computers, cars and money'.*

36. The applicant submitted English translations of the articles and an Opinion from the Refugee Documentation Centre, which confirmed that in the opinion of the Centre, the two articles could be deemed a reliable source of COI.

37. The applicant submits that these two documents were significant pieces of COI which should have been expressly dealt with by the Tribunal. The applicant submitted that all the evidence that he had given during the asylum process was consistent with this COI. The applicant relied on the decision of Finlay Geoghegan J. in *Nadejda Kramarenko v. Refugee Appeals Tribunal & Ors*. (Unreported, High Court 2nd November 2001), where it was held that the respondent was obliged to assess the credibility of the applicant in the context of the available COI. In the course of her judgment, the judge stated as follows:

> *"Secondly, it is submitted that the second named respondent was obliged to assess the credibility of the applicant in the context of the available country of origin information and that he failed to do so. The second named respondent refers, at the end of the decision, to the fact that he had regard to country of origin information. However, this bald statement is arguably different to the principle relied upon by the applicant as determined in Milan Horvath v. Secretary of State for the Home Department (United Nations High Commissioner for Refugees Intervening) [1999] INLR 7, and as explained with*

its appropriate subtleties by David Pannick Q.C. (sitting as a Deputy Judge of the High Court) in R. v. Immigration Appeals Tribunal, ex parte Sardar Ahmed [1999] INLR 473. Horvath is a decision of the Immigration Appeal Tribunal presided over by His Honour Judge Pearl. At p. 17E of the report, judge Pearl stated:

> *'[21] . . . it is our view that credibility findings can only really be made on the basis of a complete understanding of the entire picture. It is our view that one cannot assess a claim without placing the claim into the context of the background information of the country of origin. In other words, the probative value of the evidence must be evaluated in the light of what is know about the conditions in the claimant's country of origin'.*

In R. v. IAT exp Ahmed, David Pannick Q.C. stated at p. 477:

> *'Applying the principle in Horvath, which in my judgment is a correct principle which has application in relevant cases, this special adjudicator, by considering credibility in complete isolation from the general picture, has erred in law. I emphasise that I do not find that it is incumbent on all special adjudicators to make detailed, or indeed, any findings on a general position where they consider that an applicant lacks credibility. I find that in the circumstances of this case, given the nature of the applicant's complaints, it was, in my judgment, incumbent on this adjudicator, if she was properly to assess the applicant's credibility, at least to make some findings about the general position and to assess the credibility of the applicant's concern in that context'.*

I have concluded that there are substantial grounds for asserting the principles relied upon by the applicant and, as set out by David Pannick Q.C. in the above decision, properly form part of the correct legal approach to the assessment of the credibility of this applicant's claim to refugee status in this jurisdiction."

38. The applicant submitted that in the circumstances, the RAT should have looked at the applicant's core story in the context of the available COI which supported his claim. The applicant submitted that this was not done. He further submitted that the decision could not stand on this account.

39. The respondent submitted that on the authority of *Imafu v. Minister for Justice, Equality and Law Reform* [2005] IEHC 416, it was not always necessary to look at an applicant's claim in the context of COI. If the applicant was found to be totally lacking in credibility, then it was not necessary to go on to look at the COI.

40. The respondent relied on the following extracts from the judgment of Peart J. in the *Imafu* case:

> *"[The Tribunal Member] is dealing with a lady who says she was trafficked to Italy for prostitution and that she will be persecuted as such a person should she be returned to Nigeria. The Tribunal Member does not need to resort to country of origin information to know that trafficking for prostitution takes place, and if for other reasons (and again it is noteworthy that leave was not allowed in this respect) the applicant is simply not believable as to her tale of being so trafficked and working as a prostitute in Italy, and the threats to her family and so on if returned, then there can be no importance attaching to whether there is or is not country of origin information which says the obvious, namely that women are trafficked from Nigeria to Italy and that on their return to Nigeria they may become the object of attention by the authorities in relation to a possible offence. . . . The Tribunal Member in the present case . . . could have gained no further assistance in the specific circumstances of this case, from any country of origin information she may have been able to consider."*

Peart J. then turned to the argument that the Tribunal erred in law by considering the applicant's credibility in isolation from the general picture as to the practice of human trafficking and enforced prostitution in Nigeria. He said as follows:

> *"It would be no mystery or surprise to the Tribunal to know that women are trafficked from Nigeria to Italy for the purposes of prostitution. One must ask what would have been added to the sum of knowledge of the Tribunal Member by referring to such information as may be available on the subject of trafficking of women from that country to Italy, and what might happen to them if returned to Nigeria by way of prosecution. The reality, and reality must enter into these matters at this stage, is that the Tribunal Member while disbelieving the applicant completely as to her own particular story, would have seen that something like what the applicant has said about her life, if true, could potentially happen, because what she says happened is documented in a general way. To that extent any lingering doubt the Member may have had could be corroborated by the country of origin information, and could assist the assessment of credibility. But in the present case the applicant was not believed as to her personal tale, and it is reasonable to conclude therefore that no matter how much evidence or material may have been available as to the state of things in Nigeria from an objective viewpoint, this could not have persuaded the Member to believe the personal story. In this way the case is different from many other cases where the country of origin information may have the capacity to corroborate the actual story of the applicant."*

41. Peart J. continued in the judgment:

> *"In my view [the principle relied on by the applicant], could not be extended to mean that in every case no matter how unbelievable the applicant is found to be on the 'pure credibility' issue, the Tribunal Member must indulge in a pointless exercise, namely looking at amounts of country of origin information to the effect that women are trafficked abroad from Nigeria and that if they return they may be prosecuted for an offence. Such information, especially given the finding in respect of which leave was refused as to credibility, could not add anything of real relevance with a capacity to influence the assessment of overall credibility in the present case." (Emphasis added)*

42. The respondents also relied on the following *dictum* of Mac Eochaidh J. in *A.B. v. Refugee Appeals Tribunal* [2013] IEHC 46, where he said:

> *". . . it is well settled law that where an applicant fails to establish subjective credibility, there is no requirement on an assessor to consult objective country of origin information. This principle is apparent from the decision of Peart J. in Imafu v. RAT (Unreported, High Court, 9th December 2005) and it has been confirmed in subsequent cases."*

43. Mac Eochaidh J. continued:

> *"On the face of the decision, the Tribunal Member acknowledges the legal requirement for a finding of subjective*

credibility before progressing to analyse country of origin information. It is clear that the Tribunal Member understands that if an applicant for international protection is not believable, not credible or in the words of this Tribunal Member, not personally believable, there is no requirement to proceed with a detailed analysis of country of origin information and in this, he is correct. In these circumstances, I reject this complaint made by the applicant."

44. The respondent also referred to the decision in *N.T.M.O. v. Refugee Appeals Tribunal* [2013] IEHC 563, where Clark J. stated:

> *"As Peart J. held in the case of Imafu v. Minister for Justice, Equality and Law Reform and the Refugee Appeals Tribunal [2005] IEHC 416, if the applicant's core claim is disbelieved there is no need to carry out an artificial assessment of COI to see whether the applicant would be at risk if his claim had been believed. The situation which prevailed here is that the applicant's essential claim to have been persecuted was rejected in total but no other fear was expressed. It has to follow that he can safely return to Sudan."*

45. The respondents also referred to the decision in *I.D.E. v. Garvey & Minister for Justice, Equality and Law Reform* [2010] IEHC 139, where it was held that the mere consistency of a story told by an applicant with known COI does not make the story true. A carefully crafted personal history, which is largely invented, can always be made consistent with known COI. That is the classic dilemma faced by decision makers in making an appraisal of an applicant for asylum. In cases which were entirely dependent upon the believability of the applicant, COI can assist the decision maker if it indicates conditions in the country of origin, inconsistent with the events described, in which case the account will not be believed. The corollary, however, does not follow, namely, that events not inconsistent with COI must be believed.

46. I am satisfied that the two articles submitted dated 17th June 2008 were very significant pieces of evidence. They would appear to be reliable accounts, this having been found by the Refugee Documentation Centre. They supported the applicant's core story in an important respect. They should have been given individual assessment by the Tribunal. If the RAT was not going to give them much weight or credibility, this should have been expressly stated.

47. There does not appear to have been any appraisal by the Tribunal of these important documents. There is no reference to them in the RAT decision. There is just the omnibus statement "*I have considered all of the documentation, country of origin information, grounds of appeal, submissions and case law relied on in support of the applicant's claim*". In failing to deal with these articles in a clear and cogent fashion, the RAT fell into error, and on this account, the decision cannot stand.

48. There are two further findings which the RAT reached which are the subject of challenge by the applicant. In the decision, it is stated that if the applicant had the fears that he alleged he had, he would have claimed asylum in the first safe country that he came to, which, in this instance, was France. The applicant stated that he was only in France for a short period while he changed planes. I am satisfied that there is no obligation on a person seeking asylum to do so in the first safe country they come to. If they are in transit and in the company of a trafficker, it is entirely believable they would travel to their ultimate destination before claiming asylum.

49. Finally, there is the finding by the Tribunal that the applicant was vague and evasive in the giving of his evidence. This is a finding which the respondent can make as he is the person before whom the evidence is given. However, the Tribunal should be careful that in making such a finding, they should not confuse a lack of understanding on the part of the applicant with an attempt by him to be vague or evasive. This is all the more important where evidence is given with the assistance of an interpreter. However, in the circumstances, this was a finding which the respondent was entitled to make.

Conclusion

50. As the decision of the RAT did not refer explicitly to the COI in the form of the two internet articles dated 17th June 2008, the decision will be quashed and the matter remitted to the RAT for reconsideration before a different Tribunal Member.