Neutral Citation: [2015] IEHC 586

THE HIGH COURT

[2010 /837/ JR]

I. F. O.

APPLICANT

AND

REFUGEE APPEALS TRIBUNAL,

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM, ATTORNEY- GENERAL,

IRELAND

RESPONDENTS

JUDGMENT of Ms. Justice Faherty delivered on the 22nd day of September 2015

1. This is a telescoped hearing wherein the applicant seeks an order of *certiorari* of the decision of the first named respondent which affirmed the recommendation of the Refugee Appeals Commissioner not to declare him a refugee.

2. **Extension of time**

A short extension of time is required in this case, the Tribunal decision having been received by the applicant on 3 June 2010 and these proceedings having commenced on 21 June 2010. Having regard to the contents of the applicant's affidavit, I am satisfied to extend the time.

Background

3. The applicant is a Nigerian national who claims his date of birth as the 20th of February 1962 and place of birth as Benin City Ido State. He was educated to college level and from December 1983 to September 1993, was employed by the Ministry of Education and resided in Benin City. The applicant claimed to be a married man with four children and that he and his family relocated to Greece in 1998 and remained there until they returned to Nigeria in 2005 after the applicant was subjected to a serious illness in Greece. They went to live in Maidurugi upon return. According to the applicant, out of gratitude to God for saving his life from his illness he became a Pentecostal pastor after a six months training course in theology in 2006. **(PG.18)**. In 2006, the applicant built a church beside his home at 17 Lagos Street, Maidurugi called the Christ Redemption Ministry. The claimed circumstances in which the applicant came to seek asylum in the state were as follows: on the 26th of July 2009 Boko Haram, a terrorist group, attacked Maidurugi. The applicant and his parishioners were finishing a church service when the attacks began. This group came with *"cutlasses, bombs, arrows and entered the compound."* The applicant managed to escape through a fence, leaving his wife and children behind. He ran three kilometres and hid behind a bush. **(PG.89)** Later that night he met a truck driver who brought him to Chad travelling across Lake Chad in a car ferry. He went to a camp in Bokassa which was run by the Red Cross. There, a catholic priest, Fr M, an Irishman, spoke to the applicant who set out his problems. This catholic priest *"felt sorry"* for the applicant. He said he would go off and come back and did return. He took the applicant out of the camp and the applicant followed him. The applicant took an Air France plane from the capital of Chad to Dublin on 12 December 2009 arriving in Dublin on 13 December 2009. Fr M travelled with the applicant and he was holding everything for him and paid the applicant's fare. He gave him the passport to show to the various immigration authorities. On arrival in Dublin, Fr M gave the applicant €20 to get a taxi into the city centre. He never saw Fr M again nor did Fr M try to contact him.

The applicant has a fear of returning to Nigeria as he fears the Boko Haram who wish to kill him because he was preaching Christianity, *"they are everywhere"*

Procedural History

4. The applicant commenced his asylum application on the 14th of December 2009. His ASY1 form was completed on the 15th of December 2009. He completed a questionnaire on the 22nd of December 2009 and claimed to have a fear of persecution on grounds of religion. He underwent a s.11 interview on the 18th of January 2010. The Commissioner's report issued on the 9th of March 2010 and recommended that the applicant not be declared a refugee. The applicant's claim was rejected largely on credibility grounds. The Commissioner held that given the applicant's failure to name the museum and theatre complex and location of the train station in Maiduguri and the fact that Baja Street (a place named by the applicant) was not seen on a map printed out by the Commissioner, *"it (was) not accepted that the applicant lived in Maiduguri."* Furthermore, the Commissioner was critical of the applicant's responses to religious questions, holding that *"it was unaccepted that the applicant was a pastor due to his lack of knowledge of basic biblical scripture and inability to specify the exact denomination of his supposed church"*. The Commissioner acknowledged country reports confirming that Boko Haram attacks as described by the applicant had occurred but considered it *"unusual that the applicant did not know such basic information [as the name of the leader of]the group that attacked and burned his church."* "[It was not] *accepted it that he was in the area or a pastor as claimed, therefore he would not be specifically targeted by the group."* The Commissioner also noted that *"major action has been taken against Boko Haram, many of its members are dead, including its leader."* The report went on to find that *"it did not appear coherent that a father and husband would leave his young family in a dangerous situation…he was unable to furnish a reason as to why he left Nigeria without his family"* and that *"the details of the applicant's escape were vague and lacked plausibility"* The report found that *"the applicant was unable to furnish any of the documents used during his alleged travel route"*. The Commissioner also held that the applicant was unable to give a valid reason for the apparent *"inconsistency"* in Father M having gone to such lengths to pay, to organise and accompany the applicant in illegal travel from Chad to Ireland, yet the priest did not give the applicant any contact number in Ireland and had no contact with the applicant since his arrival in this State. The Commissioner went on to find that *"the lack of credibility in the applicant's testimony as a whole and specifically regarding his travel, coupled with his failure to provide any travel documentation, leads this examiner not to accept his alleged travel route."*

5. It was *"noted that the applicant has stated that he and his family lived in Greece from 1998 to 2005…he asserts that he was given an amnesty in 1998. The applicant claims that he and his family entered there legally but were illegal at the time of the amnesty. He claims that he was unable to apply for citizenship in Greece … the applicant claims that he returned to Nigeria to "settle down" and that his visa for Greece has expired. The applicant was unable to provide any documentation to demonstrate that he and his family returned the Nigeria from Greece. This, along with his consistent lack of credibility, raises doubts as to whether he ever returned from Greece with a possibility that his family will not be in Nigeria, but a European country."*

6. Under the heading of "State Protection", the Commissioner stated that *"the issue of state protection does not arise because it would only need to be considered if there was a reasonable degree of likelihood that the applicant was in danger of being persecuted if he returns home."*

7. A Notice of Appeal was lodged with the Refugee Appeals Tribunal on 29 March 2010. The appeal submissions alleged, inter alia, that the Commissioner erred in law in and fact in failing to consider seriously the position of the applicant in Nigeria after the Boku Haram attack; that the Commissioner was unfair to the applicant in concluding he had not lived in Maiduguri; that he was unfair and unreasonable in concluding that the applicant was not a Christian pastor; that he failed to be rational in undermining the applicant's credibility because of his failure to name the leader of Boku Haram in circumstances where the applicant did not have prior problems from the group; that the Commissioner erred in fact in finding the applicant's account of his escape was vague and lacked plausibility and that he was unable to furnish a reason as to why he left Nigeria without his family; that the Commissioner erred in law and fact in finding the applicant's testimony as a whole and specifically regarding his travel lacked credibility; that he erred in law and fact in concluding that the applicant and his family may not have returned from Greece in 2005; and that he erred in law and fact in failing to consider and correctly assess the subjective fear of the applicant.

8. The oral hearing of the appeal took place on 17 May 2010. The Tribunal's decision (dated 20th of May 2010) issued on the 31st of May 2010.

The Tribunal Member's s. 6 analysis, being relatively succinct, is set out in full hereunder:-

> *"The country of origin information together with the notice of appeal have been studied in depth and considered in the context of the applicant's credibility*
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> *The applicant's legal representatives submitted two redacted decisions both of which have been studied and applied to this decision.*
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> *The Irish Courts have made it clear on a number of occasions that the Tribunal is not bound in any way to follow previous decisions of the Tribunal concerning appeals…..the Tribunal has taken into account the individual facts in the instant appeal and in addition the country of origin information relevant on file, as it is required to do. Given the facts of this particular case and the credibility concerns that arise, the Tribunal finds the previous decisions submitted are not of sufficient relevance to the instant appeal to warrant a conclusion that the current recommendation be overturned.*
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> *"The Tribunal finds it unusual that an Irish catholic priest would enter into the applicant's refugee camp in Chad and offer him passage to Ireland. Apart from the redacted decisions it appears stranger that the catholic priest not only brought the applicant to Ireland but paid for his fare which would have been considerable. In that regard it is noted in a judgment of McGovern J. in the High Court delivered on 23 January 2008 in the case of K v. MJELR & Anor [2008] IEHC 9at para. 13:-*
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> *'One has to ask why would a person who she met while fleeing from the prison act in this fashion even if he was a friend of her father. Why would he travel all the way from Africa through at least two other countries to bring her to Ireland and provide the necessary documentation for her to come here, and not accept any payment for this service. No explanation is given as to why he (the catholic priest) would have gone to all this trouble for nothing. In fact the evidence would suggest that it cost him money because he provided the tickets. On any objective basis, this account is simply not credible'.*
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> *The applicant in running away left his wife and four children behind him and the Tribunal considers that in the circumstances before leaving Nigeria for Chad he might have made inquiries as to the whereabouts if not on the day because of violence, a short time thereafter.*
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> *It is noted at appendix three which states that major action had been taken against the Boko Haram many of whose members are dead including its leader. It appears to the Tribunal that the state of Nigeria was taking action against this group and that he was not himself specifically targeted by them.*
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> *The applicant's credibility to this Tribunal was found wanting and frankly his evidence was lacking in focus.*
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> *It is further the opinion of the Tribunal that the applicant could have relocated to another part of Nigeria more particularly Lagos, or to a southern part, namely the Christian part of Nigeria.*
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> *6.1 Internal Relocation - Internal Flight Alternative*
>
> *(a) The Tribunal refers to para. 91 of the UNHCR Handbook:-*
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> *'The fear of being persecuted need not always extend to the whole territory of the refugee's country of nationality. Thus in ethnic clashes or in cases of grave disturbances involving civil war conditions, persecution of a specific ethnic or national group may occur in only one part of the country. In such situations, a person will not be excluded from refugee status merely because he could have sought refuge in another part of the same country, if under all the circumstances it would not have been reasonable to expect him to do so.'*
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> *b) The Tribunal takes note of the UNCHR Position Paper on "relocating internally as a reasonable alternative to seeking asylum – (the so called "Internal Flight Alternative" or "Relocation Principle") dated February 1999.*
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> *(c) The Tribunal believes that the tests referred to in R. v. Secretary of State for Home Department, Immigration Appeals Tribunal ex parte Anthony Pillai Francis Robinson [1997] EWCA Civ. 2089 11th July 1997, are very helpful in considering whether an applicant (S) has/have an alternative:-*
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> *'In determining whether it would not be reasonable to expect the claimant to relocate internally, a decision-maker will have to consider all the circumstances of the case, against the backcloth that the issue is whether the claimant is entitled to the status of refugee. Various tests have been suggested. For example,*
>
> *(a) if as a practical matter (whether for financial, logistical or other good reason) the 'safe' part of the country is not reasonably accessible;*

(b) if the claimant is required to encounter great physical danger in travelling there or staying there;

(c) if he or she is required to undergo undue hardship in travelling there or staying there;

(d) if the quality of the internal protection fails to meet basic norms of civil, political and socio-economic human rights. So far as the last of these considerations is concerned, the preamble to the Convention shows that the contracting parties were concerned to uphold the principle that human beings should enjoy fundamental rights and freedoms without discrimination.'

The evidence about his fleeing to Chad was also unacceptable to the Tribunal. It seems incredible that he coincidentally got a lift from a truck from 3km, from the place of the violence and fled to Chad, across Lake Chad in a car ferry and arrived at the capital of the country.

The Tribunal also had serious doubts about the evidence of the applicant and his visitation to Greece. No proper explanations were given other than the fact that he had a three month visa and was subsequently given an amnesty. He left Greece on the grounds that he was recovering from an illness and returned to Nigeria. The evidence in this regard is unacceptable to the Tribunal and was not believed."

9. The grounds relied on to challenge to the Tribunal's decision are:

"2. The Tribunal failed to perform its function of assessment of the facts in accordance with the Refugee Act, 1996 or the UNHCR handbook and/or S.I. 518 of 2006 – Council Directive 2004/83 and/or Council Directive 2005/85 EC.

3. The Tribunal erred in law and acted in breach of fair procedures in the manner in which adverse credibility findings were arrived at. Manner of assessment of the credibility of the applicant's claim lacked cogency and the decision failed to state any adequate conclusion in respect of the applicant's exposure to risk of persecution.

4. The Tribunal failed to consider evidence of past persecution.

5. The Tribunal erred in law in taking into account matters irrelevant to its determinations and/or failed to take into account relevant considerations.

6. The Tribunal made a finding in respect of internal relocation without regard to the 2003 UNCHR Guidelines and without regard to the acceleration of the applicant's asylum application.

7. The Tribunal failed to have any adequate regard to the previous redacted decisions submitted in support of the applicant's claim.

8. The Tribunal in failing to speculate on the likelihood of exposure of the applicant to persecutory risk on refoulement to Nigeria."

The applicant's submissions

10. Counsel for the applicant submitted that there were a number of fundamental difficulties with the decision. The credibility findings made by the Tribunal Member were not sufficiently reasoned and related in any event to peripheral matters. The assessment of the applicant's credibility did not comply with the principles set out in *I.R. v. Minister for Justice Equality and Law Reform* [2009] IEHC 353. The Tribunal Member failed to have regard to the *"full picture"* as required by principle 4 of I.R. The analysis did not conform to the necessity for cogency as required by principle 5.

11. With regard to the assistance rendered to the applicant by the priest, save for finding it *"unusual"* , it was not clear whether the Tribunal Member believed the applicant or not on this issue. The fact that something was unusual did not mean that it was cogent and logical to say that the applicant's credibility should be impugned. In any event, the Tribunal Member's finding such as it was concerned a peripheral matter and did not relate to the core of the inquiry as to whether the applicant had a well-founded fear of persecution. Moreover, it was entirely logical that a Roman Catholic priest would assist another human being irrespective of his or her fate: this was the very essence of Christianity. The applicant was a Christian and a Minister and therefore had something in common with a Roman Catholic priest. With regard to the Tribunal Member's approach to the applicant leaving his wife and children behind, counsel argued that the fundamental question for the Tribunal Member was whether the applicant was a refugee or not, not whether he should have inquired after his wife and children. The subtext of the Tribunal Member's finding was that the applicant was perceived to have acted in a selfish way by not making inquiries. Whether the applicant acted in a selfish manner did not go to whether he was a refugee. In any event, the Tribunal Member's observation amounted to at best a criticism of the applicant as opposed to a credibility finding. Insofar as the Tribunal Member appears to criticise the applicant's inaction vis a vis his family, the context of the applicant's evidence to the Tribunal was that when the attack happened he escaped through a fence and ran 3km and hid behind a small bush: he was terrified of the carnage and it is unclear whether he had an opportunity to make inquiries.

12. The Tribunal Member did not set out how the applicant's evidence was found *"wanting"* or *"lacking in focus"*. While the Tribunal Member had 'doubts', a clear basis for his rejection of the applicant's account was not set out. Furthermore, as referred to in Hathaway & Foster *"any proposed adverse assessment of credibility must be specifically justified. Personal conjecture on the part of the decision-maker is clearly insufficient".* Counsel argued that the Tribunal Member's approach to the applicant's account of how he travelled to Chad was not conducted in the spirit of *"real humility"*, in the words of Hathaway and Foster. Insofar as the applicant stated he got a lift to Chad, presumably the truck was going in that direction. In any event, the Tribunal Member's finding was peripheral in circumstances where he avoided making a finding as to whether he accepted that the applicant was who he said he was and whether he had a fear of persecution as explained by him for the reasons he set out in evidence. The *"doubts"* expressed by the Tribunal Member about the applicant having left Greece and returned to Nigeria was not an unequivocal finding and insofar as it was a finding, same was peripheral. Counsel argued that it was open to the applicant not to have ever mentioned Greece at all as it was merely part of his background history.

13. The Tribunal Member did not deal with the applicant's life as a Minister in his church and in this regard, counsel relied on the dictum of Eagar J. in *B.A. (Nigeria) v.RAT* [2015] IEHC 76. Counsel argued that the spectre of *"a quest to disbelieve"*, as referred to in Hathaway and Foster, could not be discounted given that the Tribunal Member appeared to accept that there was an attack on Maiduguri on the 26th July 2009. However, it was not clear, given the outcome of the appeal, whether the Tribunal Member accepted

the applicant's account of what had happened to him in Maiduguri. Such a finding, being core to the applicant's claim, was a necessary part of the Tribunal Member's function, as set out by MacEochaidh J. in *B.O.B v. Refugee Appeals Tribunal* [2013] IEHC 187.

14. Two previous Tribunal decisions which had been referred to the Tribunal Member recognised that Boko Haram was a problem and refugee status was granted in both instances on that basis. While counsel acknowledged that those decisions were not on all fours with the applicant's case, the Tribunal Member was required to set out the reasons he found them not relevant to the applicant's case. Furthermore, the Tribunal Member appeared to state that he was not obliged to have regard to country of origin information, yet he was obliged to consider the whole picture, part of which was the country of origin information.

15. A departure from the requirement to consider country information was mandated only in exceptional cases, as recognised by Peart J. in *Imafu v. Minister for Justice* [2005] IEHC 416. The account given by the applicant regarding the events of 26th July 2009 was backed up by country of origin information which the Tribunal Member was mandated to take account of pursuant to Regulation 5(1)(a) of the 2006 Regulations. While he recorded that he considered country of origin information, there was no reasoning in the decision as to its significance or lack of significance, as the case may be.

16. Counsel argued that the fact that the applicant's church and compound was attacked was of itself a threat of persecution and thus was something to which the Tribunal Member was mandated to have regard pursuant to Regulation 5 (2) of the 2006 Regulations.

17. The Tribunal decision contained a section entitled *"Internal relocation-internal flight alternative"* and quoted from the UNHCR Handbook and from a 1999 UNCHR Position Paper on internal relocation and from a test set out by the UK Court of Appeal. However, there was no determination made by the Tribunal Member of the applicant's circumstances under any of these headings. The reliance on the 1999 UNHCR Position Paper was erroneous since this had been superseded by the 2003 UNHCR Guidelines, themselves quoted by Clarke J. in *K.D. (Nigeria) v. RAT*. [2013] IEHC 481. Insofar as a test for internal relocation was cited in the decision, no attempt was made to ascertain whether even this test was satisfied having regard to the applicant's particular circumstances, as the Tribunal Member was obliged to do. It was argued that with regard to the finding on internal relocation, such as it was, the Tribunal Member failed to apply the reasonableness analysis mandated by the UNHCR Guidelines 2003. Most particularly, the Tribunal Member failed to note the shared burden of proof mandated by the Guidelines. In summary, the finding on the internal relocation option for the applicant was not made in accordance with the principles set out by Clarke J. in *K.D. (Nigeria) v. Refugee Appeals Tribunal or E.I. v. Minister for Justice.*

18. While there was some discussion in the decision regarding the availability of state protection, the Tribunal Member failed to adequately engage with the country of origin information which supported the applicant's evidence that Boko Haram was active in the part of Nigeria from whence the applicant fled. The Tribunal Member erred in law in rejecting the applicant's claim on the basis that *"he was not himself specifically targeted"* by Boko Haram. As stated by Hathaway & Foster "there is no legal basis for a particularised evidence rule". There was no such requirement in refugee law and counsel referred to Symes and Jorro's Asylum Law and Practice. Insofar as it was noted that *"major action had been taken against Boko Haram many of whose members are dead including its leader"*, and that it appeared to the Tribunal that *"the state of Nigeria was taking action against this group"*, counsel referred to the dictum of Clarke J. in Idiakheua v. Minister for Justice Equality and Law Reform [2005] IEHC 150. where the test on the efficacy of state protection was stated to be *"reasonable protection in practical terms"*.

19. Counsel submitted that the approach adopted in *Idiakheua* is akin to that considered in Hathaway and Foster (2nd Edition) were the authors opine, *inter alia*, as to the inappropriateness of a "due diligence" standard vis-à-vis state protection. They state:-

> *First and most fundamentally, it is a standard derived from various subsets of international law concerned with ascertaining states responsibility, and for this reason is at odds with the conceptual basis of a palliative regime designed to protect individuals prospectively from a well founded risk of harm. …. the ultimate question in refugee law is not whether the home state has satisfied any particular standard – the home state's responsibility not being the subject of the enquiry – further it is in fact able to protect against a risk of serious harm.*
>
> *Second, though some maintain that the due diligence standard is helpful in providing guidance as to the kinds of measures and safeguards that might be considered in an assessment of refugee state protection, the due diligence test is simply not designed to accommodate the particular challenges of refugee law both because it is ultimately a duty of process, not of result, and because it is largely retrospective. It is therefore not designed to equip refugee decision-makers with the tools necessary to undertake the injunctive function of assessing prospectively whether state protection is likely to be available – in the evaluation of what is likely to be the result on return.*
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> *Third, leaving aside these matters of principle, in practice it is still not possible to describe with precision the meaning of due diligence."*

20. The applicant had testified that the local police station had been attacked as well as his church and his account of events was backed up by country of origin information. The Tribunal Member did not avert to the required test, as articulated by Clarke J. in *Idiakheua*, nor did he state whether that test had been met. The Tribunal Member's did not engage with this information in any meaningful way. His reliance on the State of Nigeria *"taking major action"* or *"taking action"* against Boko Haram was, counsel submitted, an implicit misstatement of the appropriate test for state protection. The real question for the decision maker was whether the crackdown made the place safe or not but this was not addressed at all in the decision.

The respondents' submissions

21. Counsel contended that grounds 2,5,6 and 10 in the statement of grounds did not set out a discernable basis for the grant of the relief sought. In particular, grounds 2, 5 and 6 failed to state how it is alleged that the Tribunal did not comply with specified legislation or the UNHCR Handbook and counsel noted that ground 5 simply constituted a bald assertion that was innocent of detail and akin to a type of *"forensic hoopla"* as referred to by Cooke J. in *L & Ors v. Minister for Justice Equality and Law Reform* [2011] IEHC 38. While the applicant challenged the Tribunal Member's decision as formulaic, the same could be said at grounds 2, 5 and 6 of the statement of grounds. The only substantive grounds set out were those in grounds 3, 7 and 8 which stand or fall with the court's assessment of the manner in which credibility was assessed by the Tribunal Member. The respondents contended that there was no requirement on the Tribunal Member to refer to previous decisions and submitted the applicant's arguments with regard to country of origin information were purely formulistic, as the issue boiled down solely to the applicant's credibility. There was authority to support the argument that where there was a finding of incredibility, the Tribunal did not have to consider country of origin information in any detail. In the present case, the Tribunal Member did not take issue with country of origin information as he did not deny that there was an attack in Maiduguri on the 26th July 2009. Counsel referred to the judgment of Peart J. in *Ojelabi v. Refugee Appeals Tribunal*

[2005] IEHC 42 (High Court, 28th February 2005) where the court stated:-

> *"The lack of credibility fundamentally infects the subjective element of a well-founded fear of persecution. The applicant was simply not believed, as I have said. In such a situation, the objective element of the well-founded fear assessment does not require to be made, since without a credible subjective element, the objective element does not become relevant."*

22. This approach was adopted by Feeney J. in *Boten v. Refugee Appeals Tribunal & Ors* [2006] IEHC 237(High Court, 30th June 2006). Thus, a consideration of country of origin information was not relevant to the issue of the applicant's credibility.

23. The present case revolved around the Tribunal's assessment of the applicant's credibility. The question was whether the court should entertain the challenge on the basis of arguments about form, as contended for by the applicant's counsel, or whether the court should review the matter in the context of the substantive basis upon which the applicant's claim was found to be not credible by the decision-maker, as advocated by the respondents.

24. The sources of evidence and information before the Tribunal Member was articulated in the decision as follows:-

> *"The applicant's claim is based on the grounds including his religious beliefs together with all relevant documentation in connection with this appeal including the notice of appeal, country of origin information, the applicant's asylum questionnaire and the replies given in response to questions by or on behalf of the Commissioner on the report made pursuant to s. 13 of the Act."*

25. As described by Cooke J. in *I.R. v. Minister for Justice Equality and Law Reform* [2009] IEHC 353:

> *"it is not the function of the High Court in judicial review to reassess credibility and to substitute its own view for that of the decision-maker. Its role is confined when a finding of lack of credibility is attacked, to ensuring that the process by which that conclusion has been reached is legally sound and not vitiated by any material error of law."*

26. This approach was adopted by Eagar J. in *S.F. (Afghanistan) v. Refugee Appeals Tribunal*. (4 February 2015)

Counsel argued that the key question was whether the applicant discharged the onus on him pursuant to s. 11A(3) of the Refugee Act 1996 (as amended) which provides:-

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

27. The Refugee Applications Commissioner made detailed findings on foot of the applicant's questionnaire and his s. 11 interview, as set out in the s. 13 report. For all intents and purposes, the s. 13 findings were tantamount to an advice on proofs for the applicant in the context of any appeal to the Tribunal, as observed by Birmingham J. in *Chukwuemeka v. Minister for Justice Equality and Law Reform* (Unreported, High Court, 2nd October 2007). Birmingham J. put it thus:-

> *"I have no doubt that at the appeal stage the applicant and his legal advisors in this present case will be considerably advantaged by having had the ORAC report, highlighting as it does perceived weaknesses and inconsistencies and thereby providing an opportunity for those issues to be addressed. In effect, the applicant has had his proofs advised."*

28. However, the applicant's Notice of Appeal and appeal submissions contained an implicit acceptance of the centrality of the Commissioner's credibility findings and did not appear to rebut what was set out in the s. 13 report other than to take issue therewith.

29. Counsel noted that while the applicant's address was given as Maiduguri in the questionnaire, his s. 8/ASY1 form cited his address as Benin City. While acknowledging that no issue was taken on that particular point by the Commissioner or the Tribunal, there were other concerns regarding the veracity or credibility of the applicant's account of having resided in Maiduguri as a pastor which were highlighted in the s. 13 report. Counsel contended that it was manifestly obvious that the credibility of the applicant was a matter of central concern both to the Refugee Applications Commissioner and the Tribunal. Any attempt to categorise the credibility findings in the applicant's case as peripheral flew in the face of the established jurisprudence of this court and of common sense.

30. Notwithstanding the fact that there was an opportunity to address the credibility concerns expressed in the s. 13 report by way of appeal to the Tribunal, the applicant's evidence, given in the context of the oral hearing, manifestly failed to resolve the credibility issues arising. It was striking that in the present proceedings, the applicant's submissions did not assert that the applicant's evidence was in any way capable of addressing the numerous credibility issues which were identified in the s. 13 report. Nor was it asserted that the Tribunal Member's approach was unfair. Instead, the applicant sought to minimise the importance of the numerous and serious credibility concerns arising and to parse the Tribunal Member's decision in an attempt to undermine its fundamental findings, contrary to the jurisprudence of this court.

31. Counsel contended that the arguments now being made to this court were more properly for the Tribunal. The applicant was engaging in "procedural gambling" of the type referred to by Clarke J. in *Odulana v. Minister for Justice Equality and Law Reform* (High Court, Unreported, 25th June 2009). Counsel relied on the dictum of MacEochaidh J. in R.O.:-

> *"The complaint in this case is not about the absence of reasons. The focus of these proceedings was on the adequacy of the reasons for rejecting credibility. Seven aspects of the infant applicant's mother's story were found wanting in credibility and, in my opinion, a reason was stated or was patent in respect of each finding. (I need hardly add that the duty to give reasons on credibility findings is not automatically breached where the reason for the incredulity is patent and is therefore not expressly stated.."*

Thus, the fundamental issue for this court was whether the reasons for the decision were apparent in the body of the decision and was in accordance with principles 8 and 10, as articulated by Cooke J. in *I.R.*

Therefore, if the court is in a position to understand the substantive basis for and the process of evaluation undertaken by the Tribunal Member, then the Tribunal decision should stand.

32. Counsel contended that the Tribunal Member's finding regarding the applicant's alleged engagement with an Irish Catholic priest

was entirely a matter for the Tribunal Member to take a view on and not for the applicant's counsel or this court to substitute its view, in accordance with the principles set out in I.R. Likewise, it was for the Tribunal Member to determine that the applicant's failure to enquire after his family was a matter of substance and the Tribunal Member in so doing committed no error. The applicant had five months to make enquiries and in those circumstances the Tribunal was entitled to make the finding it made.

33. The finding that the applicant's credibility was found *"wanting"* and *"lacking in focus"* arose because the applicant had not convinced the Tribunal Member of his credibility, and insofar as the applicant's counsel took issue with the lack of specifics, such approach was tantamount to parsing and analysing the Tribunal Member's decision in disregard of the approach advocated by Cooke J. in *I.R.* Insofar as the Tribunal Member found the manner of the applicant's travel to Chad *"unacceptable"* and that it *"seems incredible"* that he got a lift to Chad in a truck, this was the type of finding, based on the applicant's evidence, which was entirely within the remit of the decision maker and which Hathaway & Foster have described as being built *"entirely upon a series of coincidences and chance too implausible on accumulative basis to be believed"*.

34. With regard to the internal relocation issue, counsel contended that as the applicant was found not to be credible to the extent that the incredibility infected the entirety of his claim, the issue of internal relocation was not relevant. On the issue of state protection, it was argued that the Tribunal Member's acknowledgment that *"major action had been taken against the Boko Haram"* was an implicit acceptance that there was trouble in Maiduguri on the 26th July 2009. This was a fundamental issue in this case and in this regard counsel relied on the dictum of McDermott J. *S.K. v. Refugee Appeals Tribunal & Ors* [2014] IEHC 520.

Considerations
35. The applicant's counsel submitted that the Tribunal Member appeared to state that because of credibility issues that arose he did not need to have regard to country of origin information. I am not satisfied that there is merit in the argument that this was the approach of the decision make, given that he did refer to the country of information that attached to the s.13 report. The nature of that consideration is considered elsewhere in this judgment.

The credibility assessment
36. The credibility assessment falls to be reviewed in light of the principles articulated by Cooke J. in *I.R.*:

> *11. …it seems to the Court that the following principles might be said to emerge from that case law as a guide to the manner in which evidence going to credibility ought to be treated and the review of conclusions on credibility to be carried out:-*
>
> *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."*

37. The essential question is whether this court understands from the Tribunal decision the basis upon which it was reached and whether that basis was lawful. For it to be lawful it must be fairly arrived at, clear, understandable and rational.

38. The Tribunal Member found it *"quite unusual"* that a Catholic priest would enter into the applicant's refugee camp and offer him passage to Ireland and found it "stranger" that he would have paid for the applicant's fare *"which would be considerable"*.

39. The language used by the Tribunal Member, of itself, would not convince this court that he had formed an unequivocal view of the applicant's account of the assistance rendered to him by the priest. However, I take the view that by quoting the words of Peart J. in K.v. *MJELR*, the Tribunal Member was effectively making an adverse credibility finding in unequivocal terms and therefore I am not

persuaded by the argument that a definite finding on this issue was not made. The finding was within jurisdiction. That being said, it was somewhat peripheral to the core issue of whether the applicant had a well founded fear of persecution. Of course, albeit peripheral, it is a matter for the decision maker to take account of in the round in assessing the applicant's claim for protection. The extent to which the aforesaid finding can be relied on to sustain the rejection of the applicant's credibility depends on the finding having been made as part of the assessment of the *"full picture"*, as required by *IR*.

40. Regarding the Tribunal Member's observations on the applicant's account of having run away leaving his wife and children behind, it is difficult to fathom to what extent the criticism expressed by the Tribunal Member, in effect that the applicant *"might have made enquiries"*, was pivotal to the rejection of the applicant's appeal, given the terms in which it is couched. Thus, the observation, given its equivocal nature, does not assist the applicant, as the addressee, or this court in its judicial review function in determining the part it played in framing the Tribunal Member's view on the applicant's overall credibility with regard to what he says took place on 26 July 2009.

41. The Tribunal Member found the applicant's evidence of fleeing to Chad *"unacceptable"*, and stated that *"it seems incredible that he coincidentally got a lift from a truck some 3km from the place of violence and fled to Chad, across Lake Chad in a car ferry.."*. The question that arises is whether this finding can withstand the scrutiny from the perspective of the *IR* principles or indeed the test set out in *R.O. v. Minister for Justice* [2012] IEHC 573. To my mind, there is no cogent or logical rationale set out in the decision for the rejection of the applicant's account of how he got to Chad. In that circumstance, I cannot accept the respondents' argument that the finding falls into the category recognised by Hathaway as being built "entirely upon a series of coincidences and chance too implausible on accumulative basis to be believed". The absence of any reason for the finding means it cannot stand. In this regard, I adopt the approach of Barr J. in *C.C.A. v. Minister for Justice* [2014] IEHC 569.

42. The Tribunal Member had *"serious doubts"* about the applicant's visit to Greece and his subsequent return to Nigeria and found his evidence *"unacceptable."* Again, this finding is not sufficient, in the absence of any reason or evidential basis proffered by the Tribunal Member. Furthermore, I agree with counsel for the applicant that this finding was peripheral to the issue of whether the applicant had a well founded fear of persecution for the reasons he claimed.

43. In the course of his analysis, the Tribunal Member stated: *"The Applicant's credibility to this Tribunal was found wanting and frankly his evidence was lacking in focus."*

Save the findings to which I have already referred, the Tribunal Member does not elaborate on what aspect of the applicant's credibility was found "wanting". The addressee of the decision, and this court on judicial review, are left in the position of not knowing whether it was those aspects of the applicant's evidence as constituted the afore discussed credibility findings that were found "wanting", or whether it was intended to include other aspects of his evidence in this category. The manner in which the rejection is framed suggests the latter. I agree with counsel for the applicant that a clear basis for rejecting the applicant's credibility was required and I find that the absence of a clear and cogent rationale for the comprehensive credibility rejection offends against the principles articulated in *IR* and in particular cannot be said to pass the test set out in *R.O. v. Minister for Justice*:

> *'(i) Were reasons given or discernible for the credibility findings?*
>
> *(ii) If so, were the reasons intelligible in the sense that the reader/addressee could understand why the finding was made?*
>
> *(iii) Were the reasons specific, cogent and substantial?*
>
> *(iv) Were they based on correct facts?*
>
> *(v) Were they rational?"*

44. I also find it difficult to fathom the rationale for the finding that the applicant's evidence was *"lacking in focus"*, in the absence of any example provided by the Tribunal Member. The applicant was entitled to know the basis upon which this conclusion was arrived but such is absent from the decision. Whether credible or otherwise (and that is a matter entirely for the decision maker), insofar as it is recorded in the decision, the applicant would appear to have given focused evidence about his claimed ministry in Maiduguri and the alleged events of 26 July 2009 in his church compound and his actions in the immediate aftermath and beyond.

45. I turn now to the question of whether the applicant's core claim was addressed. I am satisfied that it was not. The decision does not yield a clear understanding as to whether the core claim was accepted or rejected. There was no finding made as to whether an attack on his church took place in the manner described by the applicant or if he ran away, as he described. There is no finding on the question of his ministry.

46. The necessity of dealing with a protection applicant's core claim was expressed by MacEochaidh J. in *B.O.B. v. Refugee Appeals Tribunal & Ors* [2013] IEHC 187:-

> *"7. Having set out how the Tribunal Member approached the claim, I now examine the first complaint in respect thereof. Was the applicant's core claim actually decided by the Tribunal Member? A number of authorities are cited by the applicant in support of the proposition that a core claim should be decided (see E.P.A. v. The Refugee Appeals Tribunal, (Unreported, Mac Eochaidh J., 27th February 2013) [2013] IEHC 85), where the court said, as to the core claim:*
>
> *"A clear and reasoned finding on this central issue was required of the Tribunal and a failure by the Tribunal Member to decide this critical part of the applicant's claim in express terms establishes a substantial ground that the decision is unlawful ... (see paragraph 9 of the decision)."*
>
> *8. Reference is also made to Voga v. The Refugee Appeals Tribunal (Unreported, High Court, Ryan J. 3rd October, 2010), and S.R. [Pakistan] v. The Refugee Appeals Tribunal (Unreported, High Court, Clark J. 29th January, 2013, at paragraphs 18 to 23). In Meadows v. The Minister for Justice, Equality and Law Reform, Murray J. said as follows:*
>
> *"An administrative decision affecting the rights and obligations of persons should at least disclose the essential rationale on foot of which the decision is taken. That rationale should be patent from the terms of the decision or capable of being inferred from its terms and its context.*
>
> *Unless that is so then the constitutional right of access to the Courts to have the legality of an administrative decision*

judicially reviewed could be rendered either pointless or so circumscribed as to be unacceptably ineffective. In my view the decision of the Minister in the terms couched is so vague and indeed opaque that its underlying rationale cannot be properly or reasonably deduced."

9. In view of that statement, it seems to me that a Tribunal Member should express conclusions on an applicant's claim clearly. In this case, for instance, it was open to the Tribunal Member to accept that the applicant had converted to Christianity but to reject the assertion that his father was persecuting him. No finding is made as to whether the applicant had converted to Christianity. This of itself is not fatal to the Tribunal's decision. The Tribunal might make multiple credibility findings in relation to a part of an applicant's account, which, read cumulatively, might adequately express rejection of that part of the claim. The fact that no express finding is made on a separate part of the same claim might not vitiate the decision.

10. In this case, it seems to me that the Tribunal Member may well have accepted that the applicant converted to Christianity. But if the reason for the rejection of the applicant's claim was difficulty believing the tale of persecution by the father, this should have been stated in terms. The standard required of a decision maker on an asylum claim as to the expression of a rejection of a claim and the statement of reasons therefor has been elaborately addressed by Irish courts, not only in the passage quoted from Meadows above but also in I.R. v. The Refugee Appeals Tribunal [2009] IEHC 353 and in R.O. v. The Refugee Appeals Tribunal [2012] IEHC 573. Having regard to these requirements I find as follows."

47. Adopting the approach in *B.O.B*, a clear and reasoned finding on the applicant's account of his compound having been subject to attack and his having to run for his life was required of the decision maker and the failure to do so affects the lawfulness of the credibility assessment. This was part of the full picture as presented by the applicant and it was required to be dealt with. In the absence of the consideration of the claim made by the applicant, the court cannot discern a rational basis for the Tribunal's disbelief (if it was disbelieved) of the claimed events of 26 July 2009 insofar as they related to the applicant. The absence of such consideration breached the IR guidelines.

48. In the course of his submissions, counsel for the respondents forcefully cited the various credibility factors which informed the s.13 report. However, the court's function is to review the Tribunal's assessment of the applicant's credibility. It is not the function of the court to inject into the Tribunal decision a contrary rationale, whether by way of upholding the Commissioner's recommendation or otherwise, to that evident on the face of the decision or patent from the findings in the decision.

For all of the reasons set out above, I am satisfied that insofar as the applicant's claim for protection was rejected on the basis that his credibility was found wanting, the Tribunal's decision in that regard cannot stand. This court has upheld only one of the credibility findings. I adopt the approach of Barr J. in *C.C.A v. the Minister for Justice Equality and Law Reform & Ors* [2014] IEHC 569:-

"25. I am satisfied that the three findings on credibility at issue in these proceedings were arrived at without adequate reasons being stated. Each of them is discounted with the bald assertion that they are not credible. This was not sufficient. If the Tribunal Member was not going to accept the explanations given, it was necessary to set out in clear terms why this was so. This was not done in this case. As the three impugned findings were part of a wider set of credibility findings which had a cumulative effect in the decision, it is not possible to say whether these were major or minor credibility findings."

Internal relocation

49. I am equally satisfied that the decision to reject the applicant's protection application cannot be saved by the finding that internal relocation was an option for the applicant, in the absence of any assessment having been carried out in accordance with the principles set out in *KD(Nigeria)* and *EI v. Minister for Justice*. I note that while Lagos, Ibadan and southern Nigeria as places of relocation were canvassed with the applicant in the course of the s.11 interview, there was no analysis of the responses the applicant gave to those suggestions or to the responses he gave at the hearing, from the perspective of the absence of risk and the reasonableness of the move to any of the proposed areas. The weight to be given to the applicant's arguments, in the context of the applicable guidelines, was of course a matter for the decision maker but it should be evident on the face of the decision. However, as I have said, there is no indication from the summary of the evidence, as recorded in the decision, of the extent to which the issue of internal relocation was canvassed with the applicant at the hearing. The decision records only that *"the applicant was asked about relocation and he stated the Boko Harems are everywhere, He would be at greater risk if he was to return."* Once the Tribunal Member purported to set out the basis of the necessary enquiry in the decision, albeit in reliance on UNHCR guidelines that had been superseded and by reference to UK case law, he was obliged to carry out an assessment of the applicant's individual circumstances, in accordance with the guidelines and case law he himself quoted. This was not done. Thus, even if the impugned credibility findings were severed from the decision, the finding that the "Applicant could have relocated to another part of Nigeria more particularly Lagos or to a southern part namely the Christian part of Nigeria" cannot save the decision, given the incomplete nature of the internal relocation assessment.

State protection

50. Regarding the state response to the Boko Haram attack, the Tribunal Member opined:

"It is noted at appendix three which states that major action had been taken against the Boko Haram many of whose members are dead including its leader. It appears to the Tribunal that the state of Nigeria was taking action against this group and that he was not himself specifically targeted by them."

51. The law on the issue of state protection was set out by McDermott J. *S.K. v. Refugee Appeals Tribunal & Ors* [2014] IEHC 520 where he stated:

"The test to be applied in respect of the adequacy of state protection was considered in E.A.E v. Refugee Appeals Tribunal (Unreported, High Court, 13th November, 2009) in which Clark J. upheld the entitlement of the Tribunal to apply a presumption of state protection and held that the onus was on an applicant to demonstrate ineffective state protection..".

In that case, McDermott J. referred to the dictum of Birmingham J. in *B. v. Minister for Justice Equality and Law Reform* [2008] IEHC 229:-

"28. I feel I must also have regard to the principle accepted both domestically and internationally, that absent clear and convincing proof to the contrary, a state is to presumed capable of protecting its citizens. This was established in the

seminal case of Canada (Attorney General) v. Ward [1993] 2 RCS, which has been approved in a number of Irish cases including the judgments of Hedigan J. in P.L.O. v. Refugee Appeals Tribunal & Anor [2007] IEHC 299 and Feeney J. in O.A.A. v. The Minister for Justice, Equality and Law Reform [2007] IEHC 169. There must be few police forces in the world against which some criticism could not be laid in respect of which a trawl through the internet would fail to produce documents critical of their effectiveness and sceptical of their capacity to respond."

52. The above test is not incompatible with the approach of Clarke J. in *Idiakheua v. Minister for Justice Equality and Law Reform* [2005] IEHC 150. There, Clarke J. (quoting *Noone v. Secretary of State for the Home Department* (Unreported CA 6December, 2000)) formulated the test on the efficacy of state protection in the following terms:-

"It is at least arguable that reference to an isolated example of state protection is insufficient to justify a finding of adequate state action in just the same way that the establishment of an isolated incident where state protection failed maybe insufficient to establish its inadequacy. It would appear that the true test is as to whether the country concerned provides reasonable protection in practical terms …. While the existence of a law outlawing the activity which amounts to persecution is a factor the true question is as to whether that law coupled with its enforcement affords 'reasonable protection in practical terms'"

53. The information before the Tribunal Member comprised the applicant's testimony and the country of origin information, which was attached to the s.13 report. The applicant's account, as recorded in the decision, was that *"[h]e did not go to the police at the time of the conflagration because they were being attacked at the time. The station in which the police were was being attacked 'that very day'"*.

54. The country information comprised a number of media reports which documented the Boko Haram attacks, including that on Maiduguri. Among the media reports were the following:

A July 2009 IRIN news report stated:

"Maiduguri, 31st July, 2009 ...

Security forces have killed innocent civilians and unarmed men in a crack down on the racial religious group known as Boko Haram, which reportedly left several hundred people dead in Maiduguri, northeastern Nigeria, residents and human rights activists told IRIN.

'It is unbelievable the way the security forces went about indiscriminately shooting and killing innocent residents of Maiduguri, and members of Boko Haram,' Shamaki Gad Peter, head of Jos-based League for Human Rights tolr IRIN.

Peter said he has received reports from Maiduguri residents that they witnessed street vendors and passers-by killed in crossfire during fighting between security forces and Boko Haram members being shot dead. Peter said security forces have not made enough effort to identify the targets of their crackdown-Boko Haram supporters wear no uniform and do not carry identity cards.

Over the past week Boko Haram, a radical group calling for strict Islamist rule, has attacked police headquarters in five states, as well as prisons, government buildings and churches, according to observers.

Following clashes between the group and security forces some 4,000 city residents fled to army barracks outside Maiduguri where they are receiving food, water and medicine from the International Committee of the Red Cross…."

55. A July 2009 Reuters news report stated, inter alia, :

"Lagos, July 30, …

Security forces in Northern Nigeria battled the remnants of an Islamic sect loosely modelled on Afghanistan's Taliban movement, following days of unrest which have killed more than 180 people.

Members of the group- known as Boko Haram - have attacked police stations and government buildings as well as rampaging through residential areas armed with home made guns, petrol bombs, machetes and knives in four states in Northern Nigeria..."

The same report made reference to Boko Haram being *"based in Maiduguri".*

56. A July 2009 Daily Trust news article stated, inter alia,:-

"The battle between security forces and followers of Boko Haram sect appeared to have come to an end with the killing yesterday of the leader of the group few hours after he was captured in Maiduguri…"

57. While the Tribunal Member, with reference to the country of origin information before him, noted *"major action"* taken by Nigeria against Boko Haram, and referred to the death of its leader, in my view, notwithstanding that the burden is on the applicant to rebut the presumption that a state can protect its citizens, the Tribunal Member's cursory treatment of the issue did not satisfy the requirement on the decision maker to set out a basis for the conclusion that the state protection was adequate, as required by *Idiakheua*. There was a lot more to the contents of the country information than that noted by the decision maker. The media reports documented a myriad of matters, including reports of attacks on police stations, Maiduguri residents being killed in crossfire and insufficient efforts to identify members of Boko Haram. These issues required to be weighed by the decision maker in the course of his analysis to comply with the *Idiakheua* test of the adequacy of state protection in *"practical terms"*. The weight to be given to such matters was of course a matter for the decision maker. In my view, there was no reasoned view expressed by the decision maker as to whether there was reasonable state protection in practical terms. This was required to be clearly articulated in the decision so that the rationale for the finding could be considered by the addressee of the decision and this court, so as to be in a position to exercise its judicial review function. All in all, in the absence of a view expressed about the adequacy of state protection in practical terms, I do not find that the global reference to Nigeria having taken *"major action"* against Boko Haram was an adequate consideration of the issue in all the circumstances. As the state protection assessment did not comply with the guidelines set out in *Idiakheua*, there is no basis upon which this finding can uphold the decision.

58. The Tribunal Member's found that the applicant was not *"specifically targeted"* by Boko Haram. I accept the applicant's counsel's submission that there is no such requirement in refugee law. The inclusion of this factor, given the nature of the claimed attacks that triggered the applicant's claim for protection, in my view further dilutes the effectiveness of the state protection assessment. In circumstances where the Tribunal Member made no clear finding on the applicant's claim that his church compound and home was attacked on 26 July 2009, it is difficult to deduce what the Tribunal Member meant when he stated that the applicant was not *"specifically targeted"* by the group. One could read it as the Tribunal Member essentially finding that the specific attack on his church never occurred at all or alternatively that it did occur but that the applicant was not specifically targeted. Either way, this conclusion appears to have been arrived at in a vacuum, absent any clear finding on the applicant's core claim.

Previous Tribunal decisions

59. The decision maker stated that he did not find prior decisions of the Tribunal, which the applicant submitted, of sufficient relevance because of *"credibility concerns that arise."* Issue was taken by the applicant's counsel with the failure to provide reasons for this finding. I decline to adjudicate on this aspect of the applicant's challenge given that that the decision maker's finding that they were of no relevance to the applicant's case was predicated, in part at least, on the applicant's credibility, an assessment which this court has impugned for the reasons set out in the judgment.

Summary

60. In the context of the findings as set out in the course of this judgment, the court is satisfied that substantial grounds have been made out to grant leave in this case and this being a telescoped hearing, I propose to make an order of *certiorari* and remit the matter for *de novo* consideration before a different Tribunal Member.