

THE HIGH COURT

JUDICIAL REVIEW

2007 1206 JR

BETWEEN

F. U. R.

APPLICANT

AND

**THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM AND
ELIZABETH O'BRIEN SITTING AS THE REFUGEE APPEALS TRIBUNAL**

RESPONDENTS

Judgment of Ms. Justice Mary Irvine, dated the 20th day of July, 2009

1. This is an application for leave to apply by way of judicial review seeking, *inter alia*, an order of *certiorari* of the decision of Elizabeth O'Brien sitting as the Refugee Appeals Tribunal dated 27th August, 2007 to the effect that the applicant should not be declared a refugee.

2. The applicant herein is a 47 year old national of Pakistan who arrived in Ireland in or around 7th December, 2005 and applied for asylum on 12th December, 2005. He completed a Questionnaire and was duly interviewed by an authorised officer of the Refugee Applications Commissioner (ORAC) on 23rd January, 2006. On 27th March, 2006, the ORAC authorised officer recommended that the applicant be refused a declaration of refugee status in a report prepared under s. 13(1) of the Refugee Act 1996 (as amended). The decision of the Commissioner was appealed to the Tribunal and an oral hearing was held by Ms. Elizabeth O'Brien, member of the Tribunal, on 18th July, 2007. The Tribunal member affirmed the recommendation of the Refugee Appeals Commissioner in a decision dated 27th August, 2007.

Background facts

3. The applicant is Punjabi and by birth is a member of the minority Ahmadiyya Movement (an Islamic religious movement founded towards the end of 19th century). The applicant's claim for refugee status is based on fears that should he return to Pakistan he will face persecution based on his membership of the minority Ahmadiyya Movement. There are numerous discriminatory laws and practices in existence in Pakistan restricting the practice of the applicant's religion and discriminating against members of the applicant's community.

4. The salient facts of the applicant's claim were set out in s. 3 of the Tribunal Member's report as follows:-

"The applicant explains that the group Khatem-e-Nabuwat lodged an F.I.R. against him on 15th December 2003; he claims that they thought he was preaching his faith, someone had asked him a question about his faith and he converted him to the Ahmadiyya Muslim faith. The applicant explained that he

would answer questions about his faith when people asked; he claims that when he was dealing with people selling rice he would also talk to them about his faith. He claims that Khatem-e-Nabuwat came to learn about his activities.

The applicant explains that on 25th March 2005 Mullah Abdul Haq arrived with some extremist Mullahs, they overheard his conversation and beat him up. He claims that some friends intervened, he went to the Police but the SHO of the Police Station refused to take a report and said that he was an infidel. On 15th December 2003, an F.I.R. had been registered against the applicant, he claims that the Police raided his house and arrested him, he claims that he was at the Police Station for 10 days and released after he paid a bribe of 20,000 rupees. He claims that charges were laid against him under Section 295/C of the Criminal Code (Blasphemy Laws).

He claims that on 28th September 2005, he was transporting rice, he was on his way to Faisalabad when a motorcar overtook and signalled them to stop. He claims that there were three men with Kalashnikovs; they asked for the applicant, the driver pointed him out. He was pulled out of the truck, verbally abused and forced into a car. He claims that in a wooded area they started verbally abusing him and beating him, he claims that these men were from Khatem-e-Nabuwat. They asked the applicant where Salman Ahmed was, the applicant states that they alleged that he had converted him. He claims that he was kept locked up overnight and the next morning a man with a long beard started beating him. The applicant states that he demanded that the applicant insult Merza Sahib, he refused to do this and the man continued to beat him. He claims that he was locked in again and later two men with Kalashnikovs came and told him to pay 500,000 rupees, or he would die. They handed him the phone so that he could contact his wife and arrange the ransom. The applicant explained that his wife contacted a non-Ahmadiyah friend who arranged to pay the money; the applicant was released after three days.

The applicant states that two of his sons are at college, he is worried for them, they have been expelled from the college because they are Ahmadiyah, the applicant explains that they went to the Government College of Commerce in Sargodha; they were expelled 6 to 7 months ago. The applicant explained that he decided to leave the country in 2005 after he started receiving threatening phone calls. He claims that he is the only son of his 80 year old mother, and yet she asked him to leave for his own safety."

5. Several documents were submitted by the applicant in support of his claim for refugee status, including a copy of the F.I.R. dated 15th December 2003; a list of questions the applicant expected to be asked generally; a list of questions and answers the applicant expected to be asked about the Ahmadiyah faith; a letter from the Ahmadiyah Community in Ireland; and a letter from the Ahmadiyah Community in the United Kingdom. The inferences drawn from some of those documents by the Tribunal member are at issue in this application in leave.

The Tribunal's Decision

6. It appears to me that two central issues lie at the heart of the Tribunal's assessment of whether the applicant had a well-founded fear of persecution if returned to Pakistan, firstly whether he was a high-profile member of the Ahmadiyah faith and secondly, whether internal relocation within Pakistan was a viable alternative to offset any real risk of persecution.

Was the applicant a high profile member of the Ahmadiyah faith?

7. At the outset of her analysis of the applicant's claim, the Tribunal member referred to the decision of the United Kingdom Immigration Appeal Tribunal in K.K. [2005] UK IAT 00033. There the IAT found that for the "unexceptional Ahmadi" there is no real risk of persecutory treatment on a return to Pakistan merely by reason of being Ahmadi. The IAT defined the "unexceptional Ahmadi" "as, in relation to the present claimant, a man who is of the Ahmadi faith but:

(i) has no record of active preaching and is not a person in respect of whom any finding has been made that there is a real risk that he will preach on return;

(ii) has no particular profile in the Ahmadi faith;

(iii) has no history of persecution or other ill-treatment in Pakistan related to his Ahmadi faith; and

(iv) has no other particular feature to give any potential added risk to him (e.g. by being a convert to the Ahmadi faith).

8. The Tribunal member then went on to assess these factors in relation to the applicant's claim. She referred to his claim that he was involved in preaching and that he converted someone. However, she found that the objective evidence provided by the applicant did not support this claim:-

"The letters from the Ahmadiyya Community do not make any reference to him being a preacher or someone who would be considered to be "high profile", rather they simply refer to the fact that the applicant is a member of the Community and practices his religion. There is no evidence that he has any particular profile in the Ahmadiyya faith. The applicant does complain of a history of persecution at the hands of a particular group, he claims that this is directly related to his Ahmadiyya faith; the applicant gives evidence that while he approached the Police they provided no protection or assistance to him."

Later in her decision, the Tribunal member again revisited the issue of whether the applicant was a prominent member of the Ahmadi faith and stated:-

"This applicant had to remind himself with a list of questions and answers about the details of his faith, these are not in my view the actions of someone who has the in-depth knowledge of a religion such that they would be in a position to proselytise or preach. The applicant's own evidence was that when people spoke to him about his religion he spoke with them about it, and that in the course of his business he would discuss it, he did however that he never preached in public spaces or on the side of the road."

The Tribunal member therefore concluded that the applicant did not fit the profile of someone who would draw attention to himself as an Ahmadiyya.

Internal relocation

9. In the course of her decision, the Tribunal member referred to a United Kingdom Operational Guidance Note of 15th March 2007 on the question of internal relocation. She stated:-

"In relation to the question of internal relocation, the...Operational Guidance Note states that the law provides for freedom of movement within Pakistan, but the

government limited this right in practice. It notes that Ahmadiyaas are concentrated in Punjab and Sindh. The spiritual centre of the Ahmadiyaa Community is in Punjab, in the large predominantly Ahmadiyaa town of Rabwah, where 90% of the population is Ahmadiyaa. The UNHCR view is that while an internal relocation alternative may be viable in some circumstances, particularly for low level members of the Community, relocation may only be a temporary solution given the ease with which Ahmadiyaa affiliation can be detected. The Note states that taking into account the issues addressed, internal relocation would not be unduly harsh for ordinary members of the Ahmadiyaa Community who fear extremists. It draws a distinction between ordinary Ahmadiyaas and prominent Ahmadiyaas involved in preaching or proselytising in which case internal relocation to escape the threat may not be appropriate. Caseworkers are informed that they will need to consider whether the individual concerned had lived away from the area where they face a threat, whether the threat that they face is likely to follow them, and whether they would be easily identifiable in their new location. Applying these considerations to the instant case, I find that the individual in question, the applicant, has not lived away from the area where he claims to have faced persecution, the question of whether the threat is likely to follow him is one which is difficult to answer, however on the facts that the applicant has provided, it is not apparent to me that the threat will follow him. There is significant evidence of a land dispute, which clearly centres upon the physical location of the land, this applicant has given evidence that despite an F.I.R. having been registered against him, simply by moving to the fields while he was visited by the police at his home, he was able to avoid detection and/or arrest. This points to a situation which suggests that the applicant could move away from his area and avoid detection or harassment. While the applicant claims that he would be located no matter where he went because of the presence of the F.I.R., I find that his evidence suggests otherwise, given the fact that he has been able to live without suffering any repercussions as a result of the registration of the F.I.R., between the time of its registration and the time he left Pakistan, despite him having lived in the same place for two years post registration. This applicant gave evidence of an element of collusion between the people who have instituted legal proceedings against him, and the Muslim extremist group that have harassed him. While the applicant may make the argument that his land is in one location and he therefore cannot move, I point to the fact that this applicant has moved to Ireland, notwithstanding the presence of his land in that particular location....

In summary, I conclude that this applicant has suffered persecution in the past, at it is partly due to his religion, however I find that the threat to him on the basis of his religion is, based on the evidence, localised, and accordingly I would expect this applicant to explore the internal relocation alternative, which I consider would not be unduly harsh in the circumstances. I refer to the UK OGN 2007 which concludes that for Ahmadiyaa who are not considered to have a profile, relocation to Rabwah would not be unduly harsh. On that basis I am unable to conclude that this applicant shows that there is a reasonable likelihood that he would face persecution within the entirety of his country of origin for the reason he alleges."

The Applicant's Submissions

10. Counsel for the applicant, Mr. Diarmuid Rossa Phelan S.C., submitted that the essential issue in the case was whether the applicant was an ordinary or high-profile member of the Ahmadi community. It was submitted that the Tribunal member misapplied the decision in *K.K.* by failing to have regard to the entirety of factors set out therein. In particular, the Tribunal member failed to have adequate regard to the applicant's history of past persecution, which the Tribunal member had accepted. It was further submitted that the applicant did not claim

to be a high-profile preacher of the Ahmadi faith but his persecutors view him as a preacher and he is in fact engaged in some preaching. In this regard, the applicant relied upon Regulation 10(2) of the European Communities (Eligibility for Protection) Regulations 2006 which provides:-

"When assessing whether a protection applicant has a well-founded fear of being persecuted, it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristics which attracts the persecution, provided that such a characteristic is attributed to the applicant by an actor of persecution."

11. Mr. Phelan submits that the letters provided by the applicant from the Ahmadiyah community were standard form letters issued to confirm an individual's membership of the Ahmadiyah faith, and were not supposed to categorize the extent of the applicant's preaching. It was submitted that the applicant did not have a fair opportunity to respond to the conclusions which the Tribunal member drew from these letters. It was further submitted that the Tribunal member had failed to weigh into the balance the contents of the police report dated 15th December 2003, which records allegations that the applicant was actively preaching his faith in public and distributing leaflets. The applicant also took issue with the adverse inference which the Tribunal member drew from the fact that he had a list of questions and answers on the Ahmadi faith in his possession. This document was submitted by the Tribunal member with his claim and the applicant argues that it is in no way indicative of the fact that he was unaware of its contents or needed reminding regarding the fundamental elements of his faith. It was submitted that it was incumbent upon the Tribunal member to put this matter to the applicant in order for him to comment upon it.

12. With regard to internal relocation, the applicant submitted that the Tribunal member failed to give adequate consideration to country of origin information submitted by the applicant, a document entitled "Rabwah a Place for Martyrs?", which was alleged to correlate to the case made by the applicant and to suggest that the position of Ahmadi is worse than the country of origin information relied upon by the Tribunal member suggests. It was submitted that the Tribunal member should have weighed the conflicting country of origin information into the balance and stated why she preferred one piece of country of origin information over the other.

13. Mr. Phelan further submitted that the decision of the Tribunal member was lacking in clarity. He relied in this regard upon the decision of Cooke J. in *Yang Liu v. Minister for Justice, Equality and Law Reform and Refugee Appeals Tribunal* (Unreported, High Court, February 11th), where the following was held:-

"A final Section 7 of the contested decision headed 'Conclusion' reads as follows, 'The Tribunal has considered all relevant documentation in connection with this appeal including the notice of appeal, the 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 section 13 of the Act. Accordingly, pursuant to section 16(2) of the Act, I affirm the recommendation of the Refugee Applications Commissioner made in accordance with section 13 of the Act.' It is immediately apparent that there is a regrettable lack of precision in the way in which this conclusion was expressed. While it is quite obvious that the Tribunal member has not believed the applicant's account of the activities which led him to flee China it is not entirely clear whether this is based exclusively on the four particular points A to D set out above as mentioned in the decision or whether the Tribunal member has relied upon other matters

from the list of documents mentioned in the Conclusion. He says that he affirms the recommendation of the Commissioner but not whether he is adopting the Commissioner's report in all respects. ..In a decision of this type amenable to judicial review before the High Court it is set in law that the basis upon which a decision adverse to the addressee's interest has been reached should be explained with sufficient clarity to enable that person to know why his application has been rejected and to enable this Court to exercise its judicial review function. In this case the Court considers there is an arguable lack of clarity and precision in the contested decision as to the exact reasons relied upon for not believing the applicant's claim for fear of persecution such as warrants further consideration upon a substantive hearing of this proceeding."

The Respondent's Submissions

14. Counsel for the respondent, Mr. Patrick McGrath BL, submitted that there was ample evidence and information before the Tribunal member which entitled her to reach the conclusions which she did. It was submitted that the available country of origin information did not support the applicant's expressed fear that he would be arrested at the airport and executed if returned to Pakistan. It was submitted that the applicant was legally represented throughout the proceedings and the onus was upon him to adduce evidence that he was a high-profile member of the Ahmadiyah community who would face persecution if returned to Pakistan. The applicant was aware that his degree of involvement in the religion was a fundamental issue in the case and had received a copy of the ORAC report and the United Kingdom Operational Guidance Note. The applicant had not made any reference in the course of the proceedings to the category of preacher he allegedly fit into in the Ahmadiyah faith.

15. Mr. McGrath submitted that the issue of the letters from his community which suggested that he was not a high profile member of the Ahmadi faith was put to the applicant in the course of the Tribunal's hearing. No suggestion had been put forward by the applicant that he was disadvantaged by not having had the opportunity to obtain a further letter. With regard to the list of questions and answers about his faith in possession of the applicant, conflicting explanations were offered by the applicant as to why and how he had this document in his possession. At the first interview, he stated that he wrote this list himself. Before the Tribunal, he stated that the document had been sent to him by his uncle. When it was pointed out to the applicant that he had been allegedly preaching since the age of 36/37, he was asked why he would need such a reminder if he was aware of his faith. He claimed that he was now 45 and that he keeps forgetting things, he claimed that he thought he might miss some details.

16. With regard to the F.I.R., which had been issued at the behest of an extremist group in December 2003, the applicant had not been arrested on foot of it before December 2005, when he left Pakistan. It was put to the applicant by the Tribunal member that the F.I.R. was not taken seriously. It was submitted that the Tribunal member was entitled to draw the adverse inferences which she did and to conclude on the evidence before her that the applicant was not a high-profile member of the Ahmadiyah Community and that internal relocation was a viable alternative such that he did not, in the Tribunal's view, establish a well-founded fear of persecution if returned to Pakistan.

The Court's Assessment

17. This being an application for leave, s. 5 of the Illegal Immigrants (Trafficking) Act 2000 applies and the applicant must therefore establish "substantial grounds" for contending that the decision of the Tribunal member should be quashed. In

McNamara v. An Bord Pleanála (No. 1) [1995] 2 I.L.R.M. 125, Carroll J. interpreted the phrase "substantial grounds" in the provisions of the Planning Act 1992 as being equivalent to "reasonable", "arguable" and "weighty" and held that such grounds must not be "trivial or tenuous." This is the onus which the applicant must discharge in the present case.

18. The relevant principles governing a Tribunal's assessment of an applicant's credibility were set out by Finlay Geoghegan J. in *Traore v. Refugee Appeals Tribunal* (Unreported, High Court, 14th May, 2004) where she stated:

"The assessment of the credibility of an applicant and his/her story is often crucial to the determination of his or her entitlement to a Declaration of Refugee Status. As I observed recently in *Kramarenko v Refugee Appeals Tribunal and Ors* (Unreported, High Court, Finlay Geoghegan J., 2nd April 2004) credibility potentially comes into play in two aspects of the assessment of a claim. Firstly, in the assessment of the subjective element of the applicant's claim, that he/she has a fear of persecution for a Convention reason if returned to his/her own country and secondly, in assessing the objective facts relied upon by the applicant, to establish that the fear is well-founded. The assessment of the credibility of the applicant is a matter for the relevant decision-maker who, in the scheme established by the Refugee Act, 1996 is either an official of the Refugee Applications Commissioner or on appeal the Tribunal member. This is often a difficult task particularly as the story relates to what is alleged to have happened in the country of origin. The assessment is required to be carried out in accordance with established legal principles and in accordance with the principles of constitutional justice. In this case part of the claim made is that the assessment of credibility was not carried out in accordance with the relevant legal principles. It is, therefore, appropriate to briefly consider such principles prior to setting out my conclusions on the individual grounds.

Kelly J. in *Camara v. The Minister for Justice, Equality and Law Reform* (Unreported, High Court, 26th July 2000) considered in some detail the relevant paragraphs from the Office of the United Nations High Commissioner for Refugees 'Handbook on Procedures and Criteria for Determining Refugee Status' and having referred to paragraphs 37,38,41,67 and 196 then stated:-

'From the foregoing it is clear that an applicant's credibility is always a relevant issue which falls to be assessed by the examiner. Goodwin-Gill ('The Refugee and International Law', Clarendon Paperbacks, Oxford) at page 349, puts the matter this way:-

'Simply considered, there are just two issues. First, could the applicant's story have happened, or could his/her apprehension come to pass, on their own terms, given what we know from available country of origin information? Secondly, is the applicant personally believable? If the story is consistent with what is known about the country of origin, then the basis for the right inferences has been laid.

Inconsistencies must be assessed as material or immaterial. Material inconsistencies go to the heart of the claim, and concern, for example, the key experiences that are the cause of flight and fear. Being crucial to acceptance of the story, applicants ought in principle to be invited to explain contradictions and clarify confusions.'

These quotations appear to me to accurately represent the questions which must be addressed by an examiner and the approach which ought to be adopted by the examiner and the Authority.'

The assessment by the decision-maker of the credibility of the applicant and his story forms part of the decision making power conferred by the Refugee Act, 1996. Hence, following *East Donegal Co-operative Livestock Mart Ltd. v. Attorney General* [1970] I.R. 317, such assessment must also be carried out in accordance with the principles of constitutional justice."

19. The essential task of the Tribunal member was to determine if the applicant had a well-founded fear of persecution for reasons of religion if returned to Pakistan. In the present case, the Tribunal member clearly did not believe that the applicant was a high profile member of the Ahmadiyaa faith who would be subject to a real risk of persecution in Pakistan. She states in her analysis that "*This Ahmadiyaa Applicant does not fit the profile of someone who would draw attention to himself as an Ahmadiyaa.*" She based her credibility assessment upon the evidence of the applicant, relevant country of origin information, the existence of the F.I.R for two years without any adverse consequences for the applicant, and documentation submitted by the applicant, including two letters from the Ahmadiyaa community and the list of questions and answers on the applicant's faith.

20. In accordance with natural and constitutional justice, the applicant and his legal representatives were given an opportunity to explain these documents in the course of the Tribunal hearing. The applicant did not seek an adjournment of the case in order to obtain more particular information than the standard-form letters from the Ahmadiyaa associations, though it was clear that his status in the Ahmadiyaa community was of fundamental importance to the determination of his claim. It is therefore difficult to accept the applicant's submission that there was a breach of natural and constitutional justice in the manner in which the Tribunal member approached this evidence. There were also discrepancies and inconsistencies in the applicant's account of how he had procured the list of questions and answers on his faith and why he had that document in his possession. The Tribunal member was entitled to have regard to these inconsistencies in assessing the applicant's overall credibility.

21. I am satisfied that there was ample evidence before the Tribunal member to entitle her to reach the conclusion that she did. Furthermore, it is of course a matter for the Tribunal member as to the weight to be attached to that evidence. It is well-established in this jurisdiction that the court must not fall into the trap of substituting its own view on credibility for that of the Tribunal member, who has had the benefit of hearing the applicant's evidence first-hand: *Imafu v. Minister for Justice, Equality and Law Reform* (Unreported, High Court, Peart J., 9th December, 2005). I am guided in this respect by the remarks of Feeney J. in *Banzuzi v. Refugee Appeals Tribunal* (Unreported, High Court, 18th January, 2007), where the learned judge stated:-

"On the facts of this case it is clear that a process was followed whereby the applicant had the opportunity of putting extensive and up-to-date country of origin information before the Tribunal and where the applicant was fully heard at an oral hearing. The adverse findings of credibility do not run counter to generally known facts and are not inconsistent with the country of origin information and are based upon a determination by the person who had the benefit of assessing the demeanour of the applicant that his account in certain regards was neither coherent nor plausible. For this court to impose a different view or finding in relation to credibility would be for this court to fall into the trap identified by Mr. Justice Peart in Imafu v. The Minister for Justice, Equality and Law Reform and Others."

22. With regard to the applicant's submission that the Tribunal member misapplied the test in *K.K.*, it must first be in borne in mind that this decision does not have the force of binding law which the Tribunal member is compelled to follow. Rather, the Tribunal member had regard to some of the factors identified therein in assessing whether the applicant had established a well-founded fear of persecution by reason of his Ahmadi faith. This is necessarily a forward-looking assessment. While the Tribunal member accepted and had regard to the applicant's evidence of past persecution, which she considered to be "partly" due to his religion, she was not satisfied that a well-founded fear existed. This was largely due to her assessment that the threat to the applicant was localised and, on a holistic assessment, there was no well-founded fear as internal relocation was a viable option for the applicant.

23. Counsel for the applicant submitted that the Tribunal member, in assessing the possibility of internal relocation, failed to have due regard to conflicting country of origin information submitted by the applicant, namely a report of the United Kingdom Parliamentary Human Rights Group of January 2007, entitled "Rabwah: A Place for Martyrs?".

24. Counsel for the applicant pointed to pp. 13, 16, 18 and 21 of the report in support of his argument that this country of origin information suggests that the position of Ahmadi is worse than the country of origin information relied upon by the Tribunal member suggests. Having perused the relevant sections of the Report, I am not persuaded that it is the case that the two sets of country of origin information are in conflict such that it was incumbent on the Tribunal member to state why she preferred one report over the other. Page 13 of the Report notes that the Khatme Nabuwaat group are known for instigating F.I.R.s against Ahmadis. This was of course known to the Tribunal member from the applicant's own account of events, which she accepted. The Tribunal member also had regard to the fact that the applicant had lived in Pakistan for 2 years following the lodging of the F.I.R. without any adverse consequences as a result.

25. Page 16 of the report notes that Ahmadi are at risk of being prosecuted under blasphemy laws for preaching activities. Again, this was known to the Tribunal member from the applicant's own account of events. At p. 5 of the decision, the Tribunal member notes:-

"The applicant claims that it is effectively illegal to preach their religion, as they can be prosecuted under the Blasphemy laws. The applicant was asked how he avoided being detected or prosecuted between the time of the registration of the F.I.R. and the time he left Pakistan, he claims that he kept going to the fields to avoid being located by the Police if they came looking for him. He was asked whether he was able to continue running his business, he replied that he was, he claims that the Police would only come once or twice a month."

Clearly, the Tribunal member was entitled to have regard to this evidence that the applicant had thus far successfully managed to avoid prosecution in assessing whether the applicant had a well-founded fear of persecution.

26. Page 18 refers to attacks on property in Rabwah by members or supporters of Khatme Nabuwwat. I am not persuaded that this information adds significant support to the applicant's claim. Attacks on property, while amounting to harassment, do not of themselves constitute persecution for the purposes of the Refugee Convention. Page 21 of the country of origin information refers to the absence of State protection in Rabwah. Again, this is information which the

Tribunal member was aware of and did not dispute in her decision. She accepts that police protection may not be a realistic possibility for Ahmadias. At p. 21 of her decision, she states:-

"In this case the applicant claims to fear elements of an extremist militant group, and/or individuals associated with such a group. In this regard the Operational Guidance Note (UK) Issue 15 March 2007, states that while police protection is available to Ahmadiyaas, law enforcement's lack of power against dominant political groups or collusion between the Police and anti-Ahmadiyaa Mullahs is common enough that Ahmadiyaas may be reluctant to call upon the Police for assistance. It notes that the perpetrators of anti-Ahmadiyaa violence have very seldom been prosecuted, and in effect there is virtual impunity for anti-Ahmadiyaa criminals."

27. While the report relied upon certainly details a significant amount of harassment and discrimination against the Ahmadiyaa community in Rabwah, harassment and discrimination does not of itself amount to persecution. The Tribunal member concluded on the evidence before her that, in the case of this particular applicant, the threat was localised and the applicant could be expected to explore the internal relocation alternative, which would not be unduly harsh in the circumstances.

28. The treatment of country of origin information was addressed by Edwards J. in *Simo v. Minister for Justice, Equality and Law Reform* [2007] IEHC 305, where he stated:-

"While this court accepts that it was entirely up to the Refugee Appeals Tribunal to determine the weight (if any) to be attached to any particular piece of country of origin information it was not up to the Tribunal to arbitrarily prefer one piece of country of origin information over another. In the case of conflicting information it was incumbent on the Tribunal to engage in a rational analysis of the conflict and to justify its preferment of one view over another on the basis of that analysis."

29. In *M.I.A. v. Refugee Appeals Tribunal and Minister for Justice, Equality and Law Reform* [2008] IEHC 336, Hedigan J. considered the principle set out in *Simo* and concluded:-

"I would strongly concur with the view expressed by Edwards J. in Simo that decision-makers must treat country of origin information with care and in accordance with the principles of natural and constitutional justice. It does not follow, however, that the obligations set out in Simo apply in each and every situation where a decision-maker seeks to rely on country of origin information. Rather, as Edwards J. noted at pages 10-11 of the transcript of his decision of 30th November 2007, the obligation for the decision-maker to give a reason for his or her reliance on one report over another arises "where there is a major conflict and where the status of one piece of country of origin information versus another piece of country of origin information is an issue of very significant importance in the case."

30. Applying these principles to the present case, I am not satisfied that there was a conflict of significance between the two reports. The United Kingdom Home Office Operational Guidance Note paints a similar picture of harassment and discrimination of Ahmadiyaa in Pakistan as the country of origin information relied upon the applicant. Both reports point to the existence of blasphemy laws which Ahmadi may be prosecuted under, and to the consistent discrimination and

harassment of Ahmadis in Pakistan. The United Kingdom Home Office Operational Guidance Note concludes, however, that:-

"Taking into account these issues internal relocation will not generally be unduly harsh for ordinary members of the Ahmadi community. However prominent Ahmadis involved in preaching/proselytising may draw attention to themselves and for them internal relocation to escape the threat may not be appropriate."

The report relied upon by the applicant (which concentrates specifically on Rabwah) does not specifically address the issue of internal relocation, but states in its foreword that Rabwah is a "not a safe haven for Ahmadis fleeing persecution elsewhere in Pakistan" and describes it as a "dead-end, to which even more victims should not be exiled." However, the report does not make any claim that the discrimination and harassment detailed therein amounts of itself to persecution for the purposes of the Refugee Convention. I would emphasise however, that the Tribunal member's conclusion was that the applicant should explore the alternative of internal relocation generally; she did not specifically state that relocation to Rabwah should be explored. She was satisfied that having regard to the applicant's circumstances, including his status as an ordinary member of the Ahmadiyah community, that internal relocation would not be unduly harsh. In summary, I am not satisfied in all the circumstances of the case that the country of origin information relied upon by the applicant is so in conflict with the country of origin information referred to by the Tribunal member that the Tribunal erred in law in failing to state why she preferred one piece of country of origin information over another.

31. Nor do I accept the applicant's argument that the Tribunal member's decision was lacking in clarity. I think it is clear from a reading of the decision, that the Tribunal member rejected the applicant's claim as she did not consider that he was a high-profile member of the Ahmadiyah community who would be at risk of persecution if he explored the possibility of internal relocation.

32. In conclusion, I am not satisfied that substantial grounds have been shown by the applicant and I must therefore refuse to grant leave.