

THE HIGH COURT

JUDICIAL REVIEW

2006 570 JR

BETWEEN

O. A. A.

APPLICANT

AND

**THE REFUGEE APPEALS TRIBUNAL, THE MINISTER FOR JUSTICE,
EQUALITY AND LAW REFORM**

RESPONDENTS

**Judgment of Ms. Justice Clark delivered on the 24th day of February,
2009.**

1. This is the **substantive** action for an order of *certiorari* quashing the decision of the Refugee Appeals Tribunal made on the 19th April, 2006, affirming the recommendation of the Refugee Applications Commissioner, notified to the applicant on the 30th April, 2006. Leave was granted by Mr. Justice Edwards on the 7th November, 2008 in the following terms:-

"In the said purported decision of the first named respondent, the member found and stated "many credibility aspects vitiate the applicant's stated fear. The documents noted did not corroborate an abduction or kidnapping. The affidavit concerning a missing person contained the photographs of the applicant; the incident is unreported and not corroborated in country of origin information; the applicant's statements that the OPC removed all the documents in the applicant's house appears implausible. The applicant in her interview notes appears to date the attack and removal of her son's passport to August 2005 whereas in all the documentation submitted in her questionnaire the attack is dated as the 1st October, 2005." In so finding and in so drawing one and more adverse instances on credibility in relation to:

(i) the photograph of the affidavit concerning a missing person and/or

(ii) the fact that the incident viz. the abduction of the applicant's husband and two of her children was not reported or collaborated in country of origin information

(a) the decision of the first named respondent, is unreasonable, irrational and flies in the face of common sense and/or;

(b) the decision of the first respondent does not contain any rational analysis as to why the factual finding indicated the truth was not being told and/or;

(c) the first named respondent erred in law in taking into account matters irrelevant to the determination of the application and/or;

(d) the first named respondent erred in law and acted *ultra vires* in the manner in which he assessed the objective element of the applicant's fear of persecution and/or;

(e) the first named respondent relied on personal conjecture and/or erroneous interpretation of the evidence presented in reaching negative conclusions regarding credibility and/or;

(f) the first named respondent made adverse credibility findings related to peripheral matters.

In relation to the third adverse finding on credibility concerning the date of the attack, the first named respondent:-

(a) made a significant and material error of facts on which he relied in making the third adverse finding on credibility and/or;

(b) erred in law in failing to take into account relevant evidence and considerations and/or;

(c) failed to have regard to explanations furnished in relation to credibility issues which were perceived as being of significance."

2. The hearing took place in the King's Inns, Court No. 1, on the 12th February, 2009. Robert Haughton S.C. with Ms. Maureen Cronin B.L. appeared for the applicant and Emily Farrell B.L. appeared for the respondents.

Background facts

3. The **facts** of this particular case as stated by the applicant are that she was born in Nigeria in 1967, is of Yoruba ethnicity, a Muslim and a married woman with three children. She applied for asylum in the State on the 6th December, 2005 at the Office of the Refugee Application Centre (ORAC) and stated at her initial interview that her son was born in Belfast in December 2004 and has Irish citizenship. Her house in Lagos was ransacked and all her documents were stolen and her family was kidnapped. She did not have any documentation to support her son's nationality and was advised how to obtain replacement documentation. The applicant had a Nigerian driver's license as proof of her identity. She did not have a passport.

The questionnaire

4. In her **questionnaire**, she stated that she left Nigeria "because her husband was a former member of the O'Odun Peoples Congress (OPC). When he saw that the ideals of the group were being jettisoned for selfish aims by some members, such as acting in vigilante manner, he opted out of the association. This did not go down well with the leaders of his unit as he was said to know "too much to go". They decided to eliminate him and his entire family. On 1st October, 2005 following a series of threats and assaults, my husband and two children were abducted from our home and taken away to an unknown destination. I have been living in fear and running for my dear life and that of my baby".

5. She stated that she reported the abduction to the Nigerian police at a named police station and they told her that they would investigate the matter but when she went back for the outcome of the investigation they said that they could not

help because her husband "had stepped on some powerful toes". She then left for her home town staying there for two weeks when she heard that they were "on to her" as they operate a network.

6. She did not wish to return to Nigeria because she feared that she would meet with the fate that befell her husband and two children. She feared for her life and that of her baby and could never feel safe as neighbours told her that they kept shouting "where is the wife, where is the wife, by all means we shall get her". She did not want to spend her life looking over her shoulder. She then asked a friend to arrange to sell off her business and she paid an agent 250,000 naira to travel by air to France and Cork and then by rail to Dublin on a false passport.

7. She explained the circumstances in which her son came to be born in Belfast in December, 2004: she had had a difficult time with her previous deliveries and had decided to go to where she could give birth to her child with modern medical facilities. She had travelled to the United Kingdom for medical care on a valid passport and visa issued in Lagos and went to Belfast to have her baby. She then obtained an Irish passport for her son before returning to Nigeria. That passport was removed from her house in Nigeria after she and the baby returned.

The ORAC interview

8. She attended for **interview** on the 10th January, 2006 bringing her son's copy birth certificate which indicated that he was born at the Royal Maternity Hospital in Belfast on the 24th December, 2004. She was in possession of a number of other documents being a photocopy of her son's passport which was issued on the 19th January, 2005 in London, an extract from a crime diary of The Nigeria Police together with a sworn affidavit for missing persons with her photograph attached to the left hand corner.

9. It is not necessary for the purposes of this hearing to recite all the facts of her case except insofar as they relate to the credibility findings made by the Refugee Appeals Tribunal that are being impugned. At her s. 11 interview the applicant explained how she had no passport for her baby as it was taken from her home by the OPC people "who attacked us on 15th August, 2005". She explained that she was a very organised person and had a file of all her family documentation but that "the attackers put it all in a sack and took everything".

10. By way of personal background she explained that she had an MSc in Finance from the University of Lagos and had worked as a tax consultant for ten years at a good salary. Her husband was the manager of a named bank in Lagos and was also in receipt of a good salary. The children were in private education and the couple were in the process of having a bigger house built. During the course of the interview the applicant became extremely upset as it became obvious to her that the interviewer had difficulty accepting the credibility of the story relating to the kidnapping of her husband and the children by the OPC. In addition, the reasons for the applicant having a photocopy of her son's passport were considered to be implausible. She was invited to change her account and was questioned by the ORAC officer about newspaper reports indicating that contrary to her view that the OPC were virtually untouchable that members of the OPC have been tried and convicted for offences. The applicant expressed her view that the police were unable to touch the OPC, "they are arrested but immediately released or they are convicted and granted early release". The interview had to be halted for a while in order for a second interviewer to come in and explain to the applicant that it was necessary to put country of origin information to her and also that she would have an opportunity to change her story which was found to be implausible, if she wished to, without words being put in her mouth. The

applicant did not change her narrative. She said that her travel arrangements were from Lagos to Paris, then to Cork and a train to Dublin using a false passport which she returned to the agent.

11. By way of explanation, the applicant said she had paid the expenses of the delivery of her son in Belfast and that even though she was aware that parents of Irish born children were entitled to residency rights, she had not availed of those rights and had returned to her husband and family in Nigeria on 21st January, 2006. She had not applied for asylum in the U.K. when her baby was born.

The ORAC decision

12. Her application was rejected and the decision of the Office of the Refugee Applications Commissioner (ORAC) was centred on credibility issues. The decision stated that while the authenticity of the documents produced could not be verified or refuted, it was found that the photocopy of the child's passport was insufficient to be deemed valid as it did not show all the pages where any international travel made by the child might have been recorded. The submitted Nigerian driver's licence was subject to serious concerns relating to its authenticity as there was no fingerprint as usually found on Nigerian licences. The police file was deemed to be of doubtful authenticity when "one examined the language used". The photograph of the applicant herself on the submitted missing person's complaint affidavit was the subject of adverse comment. The report goes on to say that:-

"many aspects of the applicant's testimony regarding the kidnapping are implausible. It was stated that the applicant's husband did not appear to have been a political activist so there was little motive for a kidnapping. Most of the trouble between the two OPC factions was in 2000 and 2001".

The ORAC officer found it "surprising that the applicant's husband was not attacked until four or five years later at the end of 2005 and it was stated, at interview, the applicant said that her son's passport was taken away by the OPC people "who attacked us on the August 15th, 2005" [.....] in her questionnaire the applicant wrote that the attack took place on the 1st October, 2005 and it was found incredible that the abduction of a man and two children could have taken place while removing every piece of documentation from the house."

13. Her interviewer found it hard to understand why the applicant sought asylum in Ireland when she had had her son delivered at personal cost in a Belfast hospital in December, 2004 and as she had a friend with whom she stayed in London, it would have been more logical for her to go and live with her friend or to seek asylum in the U.K. if necessary. Country of origin information from Allafricia.com was attached to the s. 13 report. Those documents recite newspaper reports of the arrest, prosecution and trial of members of the OPC in December, 2005.

The Form 1 Appeal submissions

14. The applicant consulted a firm of solicitors who filled in the Form 1 Notice of Appeal. The Refugee Appeals Tribunal (RAT) was notified that the applicant did "not wish to go for an oral hearing because she was very upset at the way she was treated at the interview which caused her to be very upset by the whole process. She was very unhappy with the interview and believes that the interview should have been halted." Included in the submissions for the appeal, it was stated that her husband was a member of the OPC but was opposed to the

violence of the OPC in recent years. Some members of the OPC were not happy with his political opinions and so on the 1st October, 2005 a gang came to the house and kidnapped her husband and two children. They also removed all of the applicant's documentation. Since then, she has received no communication from the kidnappers.

15. It was also pointed out that the s. 13 report is "rather optimistic about the whole situation. Something terrible could have happened the family considering how ruthless the OPC are. If the OPC did find out that the applicant had made a complaint, the applicant's life would be in real danger from the OPC, as the litany of people that have been killed by the OPC is of immense proportion of people and the police are partisan in their approach to the OPC. Maybe had her husband been an ordinary citizen, then they might do a proper investigation." The appeal submissions also point out that "had she had a proper interview and that she would have told the ORAC interviewer that there were two attacks, but she did not get the opportunity to say this at the interview because of all the pressure of the interview." It was submitted that "kidnapping is a serious business and it must be planned and taking all documentation from the house and any evidence, fingerprints, etc., would be an integral part of any professional outfit. One can take, for example, the I.R.A. in the murder of the man in Belfast, they went back to the pub and cleaned up the place and took the video and wiped the place clean." The solicitors submitted country of origin information (COI) which it was stated "shows there is a deep animosity between the police and the OPC and because her husband is a member of the OPC, it might go down well with the police to leave the OPC to their own devices and leave them to kill each other because as one can see from country of origin information enclosed, the police have murdered OPC members and alleged members and it quite possible that the applicant could not get any help from the police ...".

16. One of the documents included in the Notice of Appeal is an extensive Human Rights Watch report of Nigeria's 2003 elections. The report deals at length with various incidents of extreme violence and deaths which occurred during the federal and state elections in 2003 and the local elections in 2004.

17. Of importance to this application, there was no attempt to explain why there was the photograph appended to the applicant's affidavit sworn five days after the alleged abduction of her family was the applicant's own photograph and not that of the family members who were missing, even though the photograph had been the subject of adverse comment in the s. 13 report.

18. As previously mentioned, the applicant's appeal proceeded by way of written submissions and documentary evidence. The Refugee Applications Tribunal Member confirmed the ORAC recommendation and this decision was notified to the applicant on the 27th April, 2006.

The contested RAT decision

19. The decision recites the background information and lists the documents considered which included the grounds of appeal lodged with the letter dated the 20th February, 2006 which indicated that the applicant did not wish to have an oral hearing, her questionnaire, interview notes, the submissions of her legal representative and the documents submitted by the Commissioner including s. 13 (1) report. The facts relied in the early paragraphs were those which appeared in her questionnaire, her interview notes, her Notice of Appeal and the s. 13 report and were not repeated. It was stated that the essence of the applicant's claim was that her husband and two of her children were abducted from the family home on the 1st October, 2005 by the OPC and have not been seen or accounted

for afterwards. The abduction occurred in the applicant's absence. It was noted that the applicant has produced no documentary evidence to the Tribunal confirming her husband's membership or former membership of the OPC. The extract from the crime diary date stamped 5th October, 2005 was described as a document whose authenticity it was difficult to establish or refute, which relates to an attack on her house by "unknown assailants on the 1st October, 2005". It was also noted that the document was complemented by an affidavit for missing persons dated the 5th October, 2005 which outlines that the applicant's husband and children are missing and that their disappearance is reported to the police. It was noted that neither of these documents make mention of the OPC or of the husband's former involvement in that organisation or any faction of that organisation, even though the applicant personally lodged those documents and it was noted that neither the applicant nor her husband, nor the incident in which the husband was allegedly abducted are mentioned in the copious country of origin information presented. It was also noted that nothing in the affidavit or the crime diary indicated that the abduction or event was other than a criminal act.

20. It was noted that the affidavit for missing persons is dated four days after her husband's disappearance and that "all efforts made to trace them proved abortive" cannot be accepted as conclusive given the meagre timeframe. Moreover that statement appears to be at variance with the applicant's assertion that she returned to the police station to follow up or pursue her case and was told that the police could not help as appeared in her questionnaire.

21. The RAT decision tends to endorse the finding that the story that the kidnappers would not communicate with the applicant as the wife and mother of the hostages was implausible and that if the applicant's husband was abducted, as alleged, country of origin information submitted by the Commissioner would appear to suggest that the authorities in Nigeria prosecute and convict members of the OPC which has been proscribed in Nigeria. The applicant's account that her husband had left the OPC and was attacked because he did not support the violent faction was found not to accord with country of origin information submitted by her own legal representatives which indicated that the two factions were no longer confrontational. All of this, it was stated, tended to detract from the substance of the applicant's claim of persecution and it was found that she had not given credible evidence that she would face persecution on her return to Nigeria.

22. The Tribunal Member then went on to synopsis why these many credibility aspects vitiated the applicant's stated fear and it is these findings recited in the leave decision which were the subject of legal argument in the court to-day.

The Applicant's Submissions

23. Mr. Houghton S.C. on behalf of the applicant relies on two grounds for seeking to quash the RAT decision:-

(1) That the Tribunal Member made flawed adverse credibility findings which were based on conjecture and factual errors; and

(2) Failed to take account of relevant material.

24. As a preliminary point it was accepted that the applicant's desire not avail of an oral appeal hearing was not something to which the court should have regard

but that this choice did not justify the making of unreasonable or irrational findings.

(a) Treatment of Credibility: The Documents (crime report and affidavit)

25. It is submitted that the Tribunal Member acted irrationally in making a negative credibility finding regarding the documents submitted by the applicant which were found not to corroborate her claim that her husband and children were abducted or kidnapped. If there were any deficiencies of information regarding the PDF involvement contained in the crime report and affidavit documents then there was no nexus between that finding and a finding that this undermined her credibility.

The Photograph

26. It is further submitted that the Tribunal Member acted irrationally by making a negative credibility finding based on the presence of the applicant's photograph on the affidavit. There is no evidence that either the ORAC officer or the Tribunal Member had information to the effect that such photographs are not generally required on affidavits in Nigeria. Reliance is placed on the decisions of Peart J. in *Memishi v. The Refugee Appeals Tribunal* [2003] I.E.H.C. 65 and *Sango v. The Minister for Justice, Equality and Law Reform* [2005] I.E.H.C. 395.

The Dates

27. It is submitted that the Tribunal Member erred in fact by making a negative credibility finding based on a perceived discrepancy between the information given by the applicant at her s. 11 interview and in her questionnaire in relation to the date on which the documents were removed from her house in Nigeria and the date of the abduction. It is argued that the different dates given by the applicant relate to two different incidents: the first relating to the removal of the documents and the second relating to the abduction. The submissions on appeal would reveal that it was made clear that there were two attacks and that the documents were taken on a different date to the alleged abduction.

Lack of reporting or corroboration in COI

28. It is argued that it is not rational to expect that an incident such as the abduction of the applicant's husband and children would be reported in documents such as the U.S. Department of State report or the Human Rights Watch report. It is contended that to make a negative credibility finding on that basis is to act unreasonably and to engage in impermissible conjecture and speculation and to place too high an onus of proof on the applicant.

(b) Failure to take account of relevant material

29. It is submitted that the material contained in the questionnaire and the Notice of Appeal with respect to the two attacks on the applicant's house was not considered by the Tribunal Member. While it was accepted that there is no obligation for a Tribunal Member to expressly consider each and every piece of information before him or her, it was argued that in the present case, it was incumbent upon him to consider that particular information given its materiality to the applicant's claim and its basis for factual errors in credibility findings which were made. Counsel relies on the decision of Peart J. in *da Silveira v. The Refugee Appeals Tribunal* [2004] I.E.H.C. 436.

30. Relying on *Bisong v. The Minister for Justice, Equality and Law Reform* [2005] I.E.H.C. 157 it was submitted that each of these matters in its own right is a substantial matter relating to credibility but much more important from the applicant's position the cumulative effect of the errors serves to undermine the validity of Tribunal Member's determination. In *Bisong* O'Leary J. held that:-

"Each of the three matters played a part (probably a minor part) in the assessment of the applicant's credibility. The crucial and in the view of the court the deciding matter is that each of these three errors relate to a single issue i.e. credibility of the applicant rather than, for example, some relating to credibility and some to some other issue such as the assessment of the internal conditions in the country of origin. If the errors each related to separate areas of assessment there would not necessarily have a cumulative effect. However, in this case, each of the errors was part of the one process i.e. assessment of credibility. In the judgement of the court, when taken together, they could have a cumulative effect on the assessment of credibility. The effect of that accumulation could be to convert what is in each case a simple and unsubstantial ground of complaint into the substantial ground needed to succeed in this application."

31. The applicant argued that this principle is endorsed in *Keagnene v. The Refugee Appeals Tribunal* [2007] I.E.H.C. 17 where Herbert J found that:-

"As the Court cannot be aware of what weight the Member of the Refugee Appeals Tribunal attached to each of the six reasons given by him for finding that the Applicant was not credible or trustworthy and his unsupported testimony was unreliable, the Court must conclude that as reasons four, five, and six cannot be permitted to stand as reached by the application of unfair procedures, the entire decision must of necessity be therefore set aside."

THE RESPONDENT'S SUBMISSIONS

32. Ms. Farrell B.L., counsel for the respondents, notes that leave was **not** granted to argue that the Tribunal Member had selective regard to country of origin information or that he failed to apply a forward-looking test and thus the Court received no argument relating to this aspect of the case.

(a) Treatment of Credibility

33. The State relied on the principle of law pronounced by Herbert J. in *D.K. v. The Refugee Appeals Tribunal* [2006] 3 I.R. 368 where he held as follows:-

"It is the function of the first respondent and, not of this court in a judicial review application, to determine the weight, (if any), to be attached to this country of origin information and other evidence offered by and on behalf of the applicant in this case."

The Documents (Crime Report and affidavit)

34. Counsel submits that an examination of the documents referred to as the Crime Report and the missing persons affidavit clearly indicates that the applicant claimed her house was attacked by "unknown assailants". The two documents are therefore not corroborative of the applicant's claim that her husband was a member of the OPC or that it was members the OPC who abducted her husband and children. She submits that it was reasonable for the Tribunal Member to find as he did that, assuming the authenticity of the documents, they relate to the reporting of a criminal act. Counsel further contends that the Tribunal Member's finding in that regard indicates that the police received the report and made an entry with an intention to investigate. The Tribunal Member therefore concluded that state protection was available to the applicant and that in the circumstances the applicant cannot be a "refugee" within the meaning of s. 2 of the Refugee Act 1996.

The Photograph

35. Counsel argues that it is quite clear from what is stated in the decision which precedes the finding on the photograph under the heading "credibility" that the finding regarding the photograph on the missing persons affidavit was not the only negative credibility finding. Ms. Farrell BL contends that it was open to the Tribunal Member to find as he did in that regard. The Tribunal member noted that the oddity of the photograph of the applicant rather than the missing persons appearing on the affidavit was a matter which was also raised in the s. 13 report and that the applicant was therefore on notice that questions had been raised in respect of the affidavit. The applicant ought therefore to have made submissions in that regard in her Notice of Appeal, particularly in circumstances where she had chosen not to request an oral appeal hearing.

36. Counsel further argues that the ratio of *Memishi v. The Refugee Appeals Tribunal* [2003] I.E.H.C. 65 and *Sango v. The Minister for Justice, Equality and Law Reform* [2005] I.E.H.C. 395 is that where an adverse credibility finding is made such that personal credibility is rejected, that finding must bear a nexus to the facts of the claim. In this case the finding made with respect to the photograph was not central to the applicant's core claim but related to the evidence relied upon by her to support the fact of her complaint to the police and could be severed from the rest of the decision. Counsel argued that not all findings must bear a nexus to the core claim but only those which lead to a finding of lack of credibility of the core claim. In *Memishi* the Tribunal Member had failed to address the key issue as to whether the personal features of the applicant would cause him to face persecution. In the present case, the photograph was not the basis of the decision to reject credibility. It was one of a number of other more important findings and may in fact have been no more than a comment in a global assessment of the Tribunal Member's decision.

The Dates

37. Counsel for the respondents submits that there is no clear evidence that an error of fact relating to dates occurred. She contends that there is no evidence in the questionnaire or s. 11 interview notes that there were two incidents at the family home and that in the circumstances it was reasonable and rational for the Tribunal Member to consider the attack on the home in which the abduction occurred and the attack on the home in which the documents as being one attack as opposed to two and therefore to note discrepancies with respect to the dates of that attack. She accepted that reference was made in the Notice of Appeal to two attacks but submits in the alternative that if there is an error of fact with respect to the dates, any such error was not of such weight as to merit the decision being quashed.

Lack of reporting or corroboration in COI

38. It is argued that the Tribunal Member was correct when he stated that the alleged abduction was not reported or corroborated in the COI and that it was open to him to find as he did in that regard and that the finding was reasonable and that it was for the Tribunal Member to attach weight to that issue. This is a case where credibility was not the only basis for the negative finding as the applicant's account itself lacked substance because her account of her husband's former involvement with the OPC and the falling out of the two factions continuing into 2005 was simply not supported by COI.

(c) Severance

39. Counsel for the respondents further submits that as the basis as the applicant's claim was found to be lacking both in substance and credibility and the Tribunal Member made quite a number of findings in respect to her credibility the

benefit of the doubt cannot be granted to the applicant in circumstances where paras. 203 and 204 of the UNHCR Handbook are relevant. Those paragraphs state:-

"203. After the applicant has made a genuine effort to substantiate his story there may still be a lack of evidence for some of his statements. As explained above (paragraph 196), it is hardly possible for a refugee to 'prove' every part of his case and, indeed, if this were a requirement the majority of refugees would not be recognized. It is therefore frequently necessary to give the applicant the benefit of the doubt.

204. The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examined is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible and must not run counter to generally known facts."

40. Counsel notes that the Tribunal Member made quite a number of findings in respect to the applicant's credibility. If the Court accepts that the Tribunal Member did err when making some or all of the adverse credibility findings, any such errors are severable from the RAT decision. Reliance is placed on *Kikumbi v. The Refugee Appeals Tribunal* [2007] I.E.H.C. 11 and *K. v. The Refugee Appeals Tribunal* [2008] I.E.H.C. 294.

41. Counsel for the respondents seeks to distinguish *Bisong v. The Minister for Justice, Equality and Law Reform* [2005] I.E.H.C. 157 and *Keagnene v. The Refugee Appeals Tribunal* [2007] I.E.H.C. 17 on the basis that the findings made in those cases were central to the decisions that were challenged whereas the negative credibility findings that are challenged in this case were not central to the decision which was based both on a lack of substance and a lack of credibility. She ultimately argues that the decision can stand if any such errors are severed.

THE COURT'S ASSESSMENT

42. This is a case where I believe it was unfortunate that the applicant did not proceed with her oral appeal or take the opportunity in the appeal submissions to fully address the credibility issues which were clearly stated in the ORAC s. 13 (1) report. This is not to say that entirely appropriate and effective appeals cannot be conducted by paper based procedures but to refuse to attend for the oral hearing and to omit dealing with matters which could and should have been addressed is regrettable. The biography of the applicant shows that she is remarkably well qualified and educated. She was an experienced traveller having been to London in the late stages of her third pregnancy from where she travelled to Belfast to give birth to her baby in The Royal Victoria Hospital, a place where she knew that she could be assured of high obstetric standards of care. She was also resourceful enough to bring her new born son to the Irish Embassy in London where she had him registered as an Irish citizen and obtained an Irish passport. It is noted that she carefully read and corrected each page of the s. 11 interview notes. She gave every appearance of having the capacity to deal with aspects of her narrative which were found to be lacking in credibility before the ORAC. In these circumstances, she should have been able to undertake an oral appeal where fair procedures must operate. However, the court has to accept the case as it stands as similarly the Tribunal Member had to assess the case on the documents before him and nothing else.

43. There can be no doubt when examining the documents furnished that there is nothing in any of the COI documents furnished which makes any mention of the abduction of a bank manager who was the spouse of a taxation expert from a "good" area of Lagos. Far more significant, there is no record of the abduction of such a man and his young son and daughter. The Human Rights Watch report furnished includes many reports of sometime relatively minor incidents of politically motivated attacks giving location, dates and details. I believe that whole point of furnishing reports from recognised NGOs such as Human Rights Watch or Amnesty International is that these organisations make it their business to collect, investigate and collate the minutiae of human rights abuses in order to make an overall assessment of political, religious or social stability in a particular country. The consideration of these objective reports is a recognised tool in guidelines and statute in the important process of establishing the credibility of an asylum applicant and is indispensable in the operation and application of the benefit of the doubt. In the circumstances, it cannot be deemed unfair to expect to find such mention in reports dealing specifically with the activities of a well documented and apparently vicious organisation.

44. This failure to be noted in such documentation on its own is important but not necessarily fatal to the finding of credibility. However, when the absence is placed along with other credibility findings based on the applicant's own description of events, it begins to take on a larger role. In itself, the absence of mention or note in the report could perhaps, as Mr. Haughton S.C. argues, be placing too high a burden of proof on an applicant. However, the lack of reporting of such a cruel event together with the other unusual factors in this case (the contents of the two reports, the missing passports) distinguish it from other cases especially, as occurred in this application, where much COI was furnished to prove similar activities of the accused organisation. The absence of the recording of the incident in COI is only a factor in credibility and not a determining issue.

45. The applicant submitted two other documents in support of her claim that her family was abducted. Both documents were self generated and presented to establish that the applicant had made a complaint to the local police and to the court that her family were abducted by the OPC. As already pointed out, adverse credibility findings were made relating to the failure to mention the "abduction" or the involvement of the OPC in either document which describe an attack on the house when the family *"ran away and since which the applicant's husband and two children have been missing."* Any reluctance on the part of the applicant to mention the involvement of the OPC because of the well known animosity between the police and that organisation were not mentioned by either party at the hearing of this substantive application. The Tribunal Member on the other hand did give it some consideration as in his decision he states *"The report (Human Rights Watch) states that relations between the federal government and the OPC have ranged from distant to overtly hostile. [...] There is nothing in the Applicant's evidence to suggest that her husband was engaged in any criminal activity such as might attract the attention of the police."* Whatever way therefore that one views the authenticity or otherwise of the two documents, the omission of the word abduction or kidnapping in either complaint of missing persons is objectively puzzling. The applicant's Notice of Appeal made no attempt to explain why a sworn missing persons affidavit should contain a picture of the deponent and not the missing parties. It is simply left in the air and was as a result adversely viewed by the Tribunal Member for which no criticism should follow as the issue was well marked in the s. 13 report.

46. Other negative credibility findings followed from an asserted discrepancy in the dates on which the alleged abduction took place. A perusal of the documents

indicates that in her questionnaire, the applicant described the abduction as having taken place on the 1st October, 2005, following a series of attacks and assaults. 1st October, 2005 is the date which appears in the two incident reports submitted. A review of the interview notes is not fruitful as it concentrated more on a discussion of the applicant's personal circumstances and on missing and produced documents rather than on the details of the alleged abduction. The applicant stated at interview that the baby's passport was taken on the 15th August, 2005 but it is not clear whether the other documents including the applicant's passport were taken on the same day as the circumstances are described as:-

"I am very organised and have a file of our family documents. The attackers put it all in a sack and took everything".

47. As the applicant's evidence was that she was not in the house when the abduction took place, one might be inclined to infer that the placing of everything in a sack event took place on the 15th August and not the 1st October if it were not for the fact that the appeal submission contain the submission that:-

"Some members of the OPC were not happy with his political opinions and so on the 1st October, 2005 a gang came to the house and kidnapped her husband and two children. They also moved all of the applicant's documentation. Since then, she has received no communication from the kidnappers."

48. Later the appeal submissions state that the applicant alleged that there were two attacks. No dates are recorded.

49. If there was an error made by the ORAC in the s. 13 (1) report, it seems to the court that such an error merited to be specifically addressed in the appeal submissions. The issue as addressed only served to confuse so if the error was continued by the Tribunal Member - and this is not at all clear - then I do not believe that it was an error of consequence when viewed in the context of the other findings and especially in the uncontested finding that even if all that the applicant said were true, internal protection was available.

50. I have considered the decision of my late colleague O'Leary J. in *Bisong* in the part where he was specifically addressing "**Whether there was there an error of law and if so whether the error constituted a substantial ground**". I believe that the respondents' arguments regarding the legal principle in that decision are correct and that the relied upon sentence has been afforded too wide an interpretation. In particular, although the applicant in that case was successful in his leave application, the quotation relied upon by the applicant in the present case is qualified by the preceding paragraph which expresses the view that:-

"This court is satisfied that each of these three matters could constitute grounds for judicial review of the decision as they constitute the consideration by the deciding body of conclusions unsupported by legally acceptable evidence. In the view of the Court, however, each would not, on its own, constitute the substantial ground needed to meet the requirement of the Act at this stage. The issue for the Court is whether taken together these constitute such substantial grounds."

It seems to the court that unlike the facts in *Bisong*, on examination and following full argument that ultimately, this is not a case where there was a series of

factual errors on which credibility was founded. It is correct that the documents furnished did not corroborate an abduction or kidnapping and that no explanation was provided regarding the photograph attached to the missing persons report affidavit. There may not have been any error in the conflict of dates relating to when the "attackers" removed all the documents in the applicant's house and no irrationality was established relating to the finding that it was to be expected that the multiple abductions were not referred to in COI presented.

Conclusion

51. In the light of the foregoing, I am satisfied that the Tribunal Member did not err when assessing the applicant's credibility and accordingly I must refuse the reliefs sought.