THE HIGH COURT

[2021] IEHC 220

[2020 No. 194 JR]

IN THE MATTER OF SECTION 5 OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000 (AS AMENDED) AND IN THE MATTER OF

THE INTERNATIONAL PROTECTION ACT 2015

BETWEEN

E

APPLICANT

– AND –

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL, THE MINISTER FOR JUSTICE AND EQUALITY, THE ATTORNEY GENERAL, AND IRELAND

RESPONDENTS

JUDGMENT of Mr Justice Max Barrett delivered on 2nd March 2021.

I

Introduction

1. This application springs ultimately from an unhappy set of circumstances in which the applicant, Ms E, was continuously maltreated in her home country of Pakistan by male members of her family from whom she had every right to expect better.

2. Ms E left Pakistan, went to England for some years, then came to Ireland and belatedly sought asylum here, her delay in seeking asylum apparently being attributable to the fact that she did not previously understood that the asylum regime might apply to a woman in her circumstances.

3. Ms E's asylum application failed at first instance, she appealed to the IPAT, and the IPAT affirmed the initial refusal. She then commenced the within judicial review proceedings of the IPAT decision. Though she pleads an array of points in her pleadings, the hearing focused on two key aspects of the IPAT decision.

4. First, during her appeal Ms E submitted what she claimed was a copy of an advertisement in a Pakistani newspaper publicly disowning her. This advertisement was allegedly published some years after Ms E left Pakistan. Following a consideration of her evidence as to why Ms E's father would have published this advertisement some years after she left Pakistan, the IPAT tribunal member elected by reference to that evidence not to believe that her father had published the advertisement. Ms E claims, *inter alia*, that the reasons for the IPAT tribunal's finding either are not given or are insubstantial and/or unreasonable and/or irrational. This ground of objection is respectfully rejected by the court. The IPAT tribunal treats with the relevant evidence, weighs that evidence, and comes to a conclusion that it could lawfully reach on the evidence before it. Reference was made in this regard to this Court's judgment last year in *VH v. International Protection Appeals Tribunal & Ors.* [2020] IEHC 134. However, the analogy, with respect, does not hold good. Why so? Because in *VH* the decisionmaker in effect stated, 'I don't believe that a village-level government official in Albania would do that', without duly grounding that conclusion in evidence. Here, by contrast, the IPAT assesses Ms E's own evidence as to why her father allegedly did as he did and just is not convinced by that evidence. That is a perfectly lawful way for the IPAT to proceed.

5. Second, counsel for Ms E complains that *"[H]aving found that a Convention nexus exists in circumstances where the Applicant is 'a single Pakistani female', the IPAT erred in law in failing to consider the possibility of prospective risk on this issue*." He is right: it did. (See further the text of the IPAT decision). In so doing the IPAT acted in breach of the law as identified in *I.R. v. Minister for Justice, Equality & Law Reform* [2009] IEHC 353 and the case-law relied upon therein. That being so, an order of *certiorari* will issue and Ms E's appeal will be remitted to the IPAT for fresh consideration.

6. There is enough in the foregoing to indicate: that the facts have been understood by the court; that the arguments made before the court have been weighed and heeded; and why the court has reached the decision that it has. However, should the parties be desirous of still-further analysis of the material and issues presenting, the court engages in same hereafter.

II

Reliefs

i. Certain of the Reliefs Sought

1. The statement of grounds in the within proceedings indicates, *inter alia*, the following reliefs to be sought by Ms E:

> *"1. An order of* certiorari *by way of an application for judicial review quashing the decision of the first-named respondent affirming the first instance decision that the applicant be refused a grant of refugee and/or subsidiary protection status and notified to the Applicant on or about Monday 10th February 2020.*
>
> *2. An order remitting the appeal of the applicant for fresh determination by a freshly constituted Tribunal.*
>
> *…*
>
> *6. Costs."*

ii. Legal Grounds Upon Which Relief is Sought

2. The statement of grounds indicates the following to be the legal grounds upon which the reliefs sought are grounded:

> *"1. The IPAT erred in law in finding, at para. 4.1, that 'the facts and circumstances of the Appellant's claim' comprised of a claim that 'The Appellant's family were forcing the Appellant to marry', in consequence whereof the IPAT failed to consider the family and societal response to the endeavours of the Applicant in seeking to lead an independent and self-autonomous life as a female in Pakistan.*
>
> *2. The IPAT erred in law in finding, at para. 4.2[iii], that 'the Appellant lived independently of her family'. The said finding was made without making any assessment of the level and quality of such perceived independence. Any reasonable assessment would have included a consideration of the Pakistani societal reaction and the [Stated Surname] family reaction to a single woman*

seeking to live an independent and self-autonomous life. Further, the finding that the Applicant, when living away at college, 'went back to the family home voluntarily' was made without consideration of her fears of remaining alone in her accommodation and notably her fear of being subjected to rape.

3. *The documentary evidence comprising of a notice placed in a Pakistani newspaper in 2017 by the Applicant's father wherein he publicly disowned his daughter was unlawfully rejected, at para. 4.2[v], by the IPAT. The finding that 'Based on the evidence heard the Tribunal does not find it credible that the Appellant's father placed this advertisement in the newspaper' fails to identify what 'evidence heard' grounded such a finding. Further and in the alternative, if the 'evidence heard' relates to the preceding paragraphs of the IPAT decision, the reasons given for rejecting the newspaper notice are insubstantial and/or unreasonable and/or irrational.*

4. *The further finding, at para. 4.2[vi], that 'the Tribunal does not find it credible on the balance of probabilities that the Appellant's family were forcing her to marry' was stated to be based on the prior findings of independent living and rejection of the newspaper report which said findings do not provide a reasonable basis for the further finding. In addition, the IPAT fails to state the difference, if any exists, or to reconcile the confusion, between this finding and the repeated finding that 'The Appellant's family attempted to arrange a marriage for the Appellant'.*

5. *Having found that a Convention nexus exists in circumstances where the Applicant is 'a single Pakistani female', the IPAT erred in law in failing to consider the possibility of prospective risk on this issue.*

6. *The findings at para. 5.7 that 'there is no reasonable chance that if she returned to her country of origin that she would face a well-grounded fear of persecution' and at para. 7.2 that 'there are no substantial grounds for believing that if she was to be returned to Pakistan, the Appellant would face a real risk of suffering serious harm' are not supported by the COI stated to be relied upon."*

3. In essence, the case made at the hearing of the within application rested on Legal Grounds 3 and 5.

III

Background

4. By way of background to this case, it is useful to quote various elements of the IPAT decision (the impugned decision) of 5th February 2020, (in which Ms E, the 'applicant' in these proceedings, was the 'appellant'), into which quoted text the court has inserted various annotations:

"[1.1] The Appellant is a…woman from Pakistan who made a claim for protection to the Minister…on 12th August 2016 on the basis that if returned to Pakistan she would

face persecution based upon her membership of a particular social group, being a woman, and/or a real risk of suffering serious harm.

[1.2] The Appellant completed an Application for Refugee Status Questionnaire on 24th August 2016.

[1.3] The Appellant completed an Application for International Protection Questionnaire on 9th February 2017.

[1.4] The Appellant was interviewed on 3rd March 2017 pursuant to the provisions of s.35 [of the] International Protection Act 2015 by the International Protection Office.

[1.5] By letter dated 10th January 2018, the Appellant was informed that an International Protection Officer [hereinafter referred to as 'IPO'] recommended, pursuant to section 39(3)(c) of the International Protection Act 2015, that the Appellant should be given neither a refugee declaration nor a subsidiary protection declaration on the basis that only some of the material elements of the Appellant's claim were credible….

[2.1] By notice of appeal dated 17th July 2017 the case advanced to the International Appeals Tribunal [hereinafter referred to as 'the Tribunal'] by [the] *Appellant was as follows:*

[2.2] The Appellant is from…Pakistan. She lived there up to the age of [teenage age stated]…*with her grandparents and an uncle and his wife. Her mother married at a young age and was unable to look after the Appellant which was why she lived with her grandparents. The Appellant has* [a stated number]…*of siblings who did grow up with the Appellant's parents. Currently [a stated sibling]…lives with the Appellant's parents.*

[2.3] From about the age of eight or nine years the Appellant began to suffer abuse at home. [There is a note at this point which indicates that by 'home' the decision-maker means to refer to the house of the Appellant's grandparents]. She was tortured mentally and physically every day. She was taught how to do housework and then would receive correction for mistakes she might make in preparing the food, for example. She would be slapped by hand or by a stick and on occasion items would be thrown at her. This would be done by her uncle and her grandfather. They would also swear at the Appellant if they did not like what she was doing. The Appellant found this mentally stressful. She did not go to the police about this treatment because she was too young. She explained that girls stayed at home and did not go out by themselves.

[2.4] The Appellant finished school when she was about [stated teenage age]….She remained home for about three years. As the Appellant 'knew all the housework' she said she started to get marriage proposals. The first was from a man who was about forty years old, un-educated and rich. The Appellant did not want to marry

this man. Ultimately the proposal ended because 'his mother did not like me' and the Appellant explained that the dowry was not good enough. The Appellant said [that] the abuse continued at the home every day during the three-year period.

[2.5] The Appellant then left home and moved into a government hostel in [Stated Place]….which was…a [relatively short] drive away from home. She did this so that she could continue her studies and to escape the 'torture and abuse every single day….It was not a normal life'. Initially her family did not know where she was but the principal made contact with them to verify her documents. The Appellant completed her intermediate studies in [Stated Year]….The Appellant said she would go home occasionally at weekends if the others in the hostel went home. She said that she received the same abusive treatment each time she returned home. The Appellant said [that] the fees were low for the hostel and she funded this by teaching young children. The family continued to talk about marriage. The family insisted the Appellant come home after her intermediate studies as they felt she had enough education. She said [that] they always had someone keep an eye on her in the house in case she ran away from home. The Appellant did not go to the police or to a woman's aid organisation at this time because she 'did not know about this'.

[2.6] The Appellant then moved to a different hostel with some friends. This hostel was about three or four hours by car away from her home. The Appellant said she 'wanted to escape for myself'. The Appellant continued her studies at a woman's college. She mentioned that this was better than a co-educational college as her grandparents had been calling her 'characterless' which appeared to mean [that] the Appellant was seducing men. This came about as she was living away from home and her family thought [that] she was living with a man. She also said that her family would 'taunt me and say one day you will regret it not listening to us.' The Appellant completed her studies in [Stated Year] and obtained [a stated degree]. She visited her family occasionally during the…period of this course. The poor treatment of the Appellant continued. On one occasion when she was at home her friends called to bring her back to the hostel. The Appellant's grandfather allowed the Appellant [to] return for her exams on condition that she promised to marry the man with whom they had arranged the latest marriage proposal. The Appellant said her family wanted money from the man's family.

[2.7] The Appellant's family arranged six marriage proposals for the Appellant over the years. The first five were withdrawn by the proposed groom's side for a range of reasons including issues with the dowry. The sixth proposal was to an older man who was already married and had two children. The Appellant did not want to marry this man. The Appellant was coming under a deal of pressure to marry this man.

[2.8] The Appellant started [a stated course]…in her college. She completed six months of the course and did not see her family. The Appellant and her [named]

friend…applied for student visas to go to the United Kingdom. Her friend helped her pay for this and said that the Appellant could pay her back. The Appellant departed for the United Kingdom on 12th December 2011. [The friend]…did not accompany her as she had got engaged and so could not travel.

[2.9] …[While in the United Kingdom the] Appellant was in contact with her family occasionally. When she discovered that her father beat her mother because she had spoken to the Appellant, the Appellant stopped the [contact]….The Appellant did not seek asylum in the United Kingdom because she said that she did not know about asylum then. She thought it was for religious and not women….

[2.10] The Appellant travelled to Ireland on 24th January 2016. She had paid a Pakistani man to arrange a work permit in Ireland for her. This arrangement fell through and the Appellant lived with some Pakistani people in [Stated Place]…for a number of months before claiming asylum on the 12th August 2016.

[2.11] The Appellant's family discovered that she was in Ireland and seeking asylum. The Appellant's [above-mentioned] friend…told her that her father had placed an advertisement in a newspaper and sent her a copy of the advertisement. The Appellant submitted same to the Tribunal. The advertisement said:

> *'I am disowning my real daughter [Stated Name] for her disobedience from all of my properties that may be transferable or non-transferable. I will not be held responsible for any of her actions or promises in the future that she may have made. Advertiser: [Stated Name, Stated Address]'….*

The Appellant stated that this meant that they took the decision that she is not part of the family.

[2.12] The Appellant fears returning to Pakistan because her family will kill her as they think she is not part of their family.

…

[4] Assessment of Facts and Circumstances

[4.2] ….[The] Tribunal finds on the balance of probabilities that the Appellant's family attempted to arrange a marriage for the Appellant….

It appears from the evidence heard and the response above that the Appellant lived away from home for over seven years. During this time the Appellant went back to the family home voluntarily and on occasion she was brought back by her family. The stays at home were mostly for weekends….

…Advertisement placed by the Appellant's father

The Appellant submitted an advertisement to the Tribunal which was placed by her father in a daily newspaper in 2017 in which he disowns his daughter. The Presenting Officer asked the Appellant why her father who had nothing to do with her for over six years would take out such a notice in a newspaper. The Appellant said 'when he know what I am doing he is in anger that is why he took that decision…he beat me in the street…'. The Presenting Officer asked why her father would advertise the fact that he is disowning her. She said 'he is in anger…so now my mother face all the things from me.'

When the Appellant's legal representative asked the Appellant about the advertisement and why her father would have done such a thing the Appellant said 'if I go back and they kill me…nobody will blame them…because [the advertisement said]…we renounce her…showing not bothering anymore…I know their thinking.'

The Appellant submitted a photocopy of part of the page of a newspaper which she told the Tribunal she received by email.

Based on the evidence heard the Tribunal does not find it credible that the Appellant's father placed this advertisement in the newspaper.

[Emphasis added].

[Court Note: Counsel for the applicant focused on the fact that the IPAT states that it "*does not find it credible that the Appellant's father placed this advertisement in the newspaper*". He contended that no reason is offered, e.g., that the IPAT thinks it a forgery, that there is some inherent problem with the advertisement itself, etc. He referred to s.46(6) of the Act of 2015 in this regard ("*A decision of the Tribunal under subsection (2) or (3) and the reasons for it shall be communicated by the Tribunal to the applicant concerned and his or her legal representative (if known), and the Minister*"). He accepted that the IPAT is of course entitled not to believe that the advertisement is genuine; however, it has to give reasons. It cannot just say 'I just don't accept it'; that is not to offer a reasoned decision. However, it seems the court, with respect, that Ms E has misread the IPAT's decision in this regard. The IPAT prefaces its conclusion with the words "*Based on the evidence heard*…". What evidence is it referring to in this regard? Clearly it is referring to the immediately preceding evidence, to which reference is made in the impugned decision, whereby the applicant was asked 'Why would your father suddenly decide after several years to publish the advertisement disowning you?' and clearly finds itself unconvinced by the answers received. So what the IPAT member is saying in effect is, 'Based on the evidence heard [and just discussed] I don't believe that your father would have proceeded in such a manner', i.e. placed an ad disowning his daughter in the newspaper several years after she was gone from home. A differently constituted IPAT might perhaps have concluded that good reason had been offered by the daughter for her father's actions, i.e. that the father was laying the groundwork for a future defence in the event that she is the victim of a so-called 'honour-killing' in Pakistan at some future time. However, the conclusion

reached is one that the IPAT was entitled to arrive at on the facts before it and the court sees no legally assailable deficiency in the IPAT's reasoning to present in this regard.]

[4.3] Based on the conclusions drawn by the Tribunal at [iii] to [v] the Tribunal does not find it credible on the balance of probabilities that the Appellant's family were forcing her to marry.

[Emphasis added].

[Court Note: Arising from the above, it seems that the bulk of the appellant's story is accepted, i.e. that she is from Pakistan, tried to educate herself, and that her family was seeking to arrange a marriage; what is not accepted is that there was an element of force/compulsion in the last regard. As regards the referenced points (iii)-(v), they are concerned with the fact that the appellant lived independently in Pakistan, that the appellant lived independently in the United Kingdom, and the disbelief that the appellant's father placed the advertisement. Again, at this point, counsel for the respondent levelled criticism at the IPAT's conclusion as regards the rejection of the appellant's story concerning the advertisement. However, for the reasons stated previously above, the court does not consider that a legal flaw presents in the IPAT's reasoning in this regard.]

…

Persecution

…

[5.3] The Tribunal has accepted that the Appellant is a national of Pakistan whose family attempted to arrange a marriage for her. The Appellant is a [Stated Age]…single woman. As such the Tribunal concludes that the Appellant could be persecuted on the basis of her membership of a particular social group, defined as a single Pakistani female….

[Emphasis added].

[Court Note: It seems from the various pieces of highlighted text that what the IPAT is stating is 'I accept that it was being sought to arrange a marriage but I don't believe that there was compulsion; however I will analyse your claim on the basis that you are a single woman from Pakistan'. The Tribunal member then proceeds (in the quoted text hereafter) to consider certain (impeccable) Country of Origin Information ("COI") concerning, *inter alia*, so-called 'honour killings' of women in Pakistan.]

Nexus

[5.4] The Tribunal has considered whether the persecution feared by the Appellant should she return to her country of origin has a nexus to Convention grounds.

[5.5] **Country of origin information indicates**

US State Department Country on Human Reports on Human Rights Practice, 2018, Pakistan, Section 6 Discrimination, Societal Abuses and Trafficking in Persons states on women:

Other Harmful Traditional Practices. Women were victims of various types of societal violence and abuse, including so-called honor killings, forced marriages and conversions, imposed isolation, and being used as a chattel to settle tribal disputes. A 2004 law on honor killings, the 2011 Prevention of Antiwomen Practices Act, and the 2016 Criminal Law Amendment (Offenses in the Name or Pretext of Honor) Act criminalize acts committed against women in the name of traditional practices. Despite these laws, hundreds of women reportedly were victims of so-called honor killings, and many cases went unreported and unpunished. In many cases, the male involved in the alleged 'crime of honor' was allowed to flee. Because these crimes generally occurred within families, many went unreported. Police and NGOs reported that increased media coverage enabled law enforcement officials to take some action against these crimes….

Human Rights Watch World Report 2019 – Pakistan states:

Women and Children's Rights

***Violence** against women and girls – including rape, so called honor killings, acid attacks, domestic violence, and forced marriage – remains a serious problem. Pakistani activists estimate that there are about 1,000 'honor' killings every year. In June, the murder of 19-year old Mahwish Arshad in Faisalabad District, Punjab, for refusing a marriage proposal gained national attention. According to media reports, at least 66 women were murdered in Faisalabad District in the first six months of 2018, the majority in the name of 'honor'….*

[Emphasis added].

[Court Note: The above-quoted COI clearly indicates that there is a very real problem in Pakistan with forced marriage and so-called 'honour killings'.]

[5.6] On the basis of this information the Tribunal concludes that there is a nexus between the persecution that the Appellant might suffer in Pakistan and the Convention grounds, such persecution being based on her membership of a particular social group, being a single Pakistani female.

[Emphasis added].

[Court Note: So the Tribunal concludes that there is a Convention nexus.]

Objective Basis.

….

[5.7] ….Considering the Appellant's experiences, which have been accepted and the COI relevant to the analysis quoted above [see 5.5] the Tribunal finds that there is no reasonable chance that if she were returned to her country of origin that she would face a well-founded fear of persecution.

…

Analysis of Serious Harm

….

[7.2] Grounds for Subsidiary Protection.

Considering the Appellant's experiences which have been accepted and the country of origin information relevant to the analysis, the Tribunal finds that there are no substantial grounds for believing that if she was to be returned to Pakistan, the Appellant would face a real risk of suffering serious harm…".

5. The court turns now to consider certain case-law of relevance.

IV

Some Case-Law

i. Case-Law Relevant to the Rejection of the Advertisement

6. Where an adverse finding involves discounting/rejecting documentary evidence/information that is relied upon in support of a claim and which is *prima facie* relevant to a fact/event pertinent to a material aspect of credibility, the reasons for that rejection should be stated.

7. When it comes to the proposition stated in the immediately preceding paragraph, the court has been referred to, and relies upon, the decision of the High Court (Cooke J.) in *I.R. v. Minister for Justice, Equality & Law Reform & Anor*. [2009] IEHC 353.

8. In I.R. the applicant hailed from Belarus. He arrived in Ireland on 8th March 2006 with his girlfriend and immediately claimed asylum upon the ground that he feared persecution for his political opinion and political activities as a member of the Belarus Popular Front (BPF), opposition party, if returned to that country. On 12th March 2006 he completed the asylum application questionnaire. At question 20, he listed a series of documents that were being made available or which would be made available when received from his parents by post. In a s.13 report of 18th March 2006 the Refugee Applications Commissioner recommended that the applicant not be declared a refugee essentially upon the ground that his account of having suffered persecution in Belarus lacked credibility. That assessment was made on the basis of the applicant's apparent lack of knowledge when questioned about the BPF and its leadership. The report referred to the documents

produced by the applicant as listed on the ASY 1 form and in the questionnaire but said merely that "*The authenticity of the documents submitted cannot be verified or refuted*".

9. An appeal was taken against the report and recommendation. Included amongst the grounds of appeal were specific submissions as to the Commissioner's failure to consider a medical report put in by the applicant, the newspaper article written by the applicant's girlfriend which had been produced, and the impugning of the applicant's credibility by reference to the Belarussian court documents. By letter dated 3rd October 2006 the applicant submitted to the Tribunal a medico-legal report of 14th September 2006 on an examination of the applicant at the Centre for the Care for Survivors of Torture here in Dublin. The appeal decision of the Tribunal was dated 17th April 2007, ("the Contested Decision").

10. By order of 10th February 2009, Charleton J., *inter alia*, granted leave to the applicant to bring an application for, *inter alia*, an order of *certiorari* to quash the Contested Decision. Leave was granted on the basis of a number of grounds, specifically (a) an alleged failure to adequately consider the medical reports submitted including the above medical legal report of 14th September 2006; (b) an alleged failure to consider and to make an assessment as regards credibility in respect of a body of specific documentation submitted which supported and corroborated his account of his mistreatment and of the events described in Belarus; and (c) an alleged failure to assess the current and future risk to the applicant of persecution on return to Belarus as a failed asylum seeker and a person who had breached the draconian and repressive laws of Belarus.

11. In the course of a judgment which saw an order of *certiorari* granted and the Contested Decision quashed, Cooke J. observed, *inter alia*, as follows, at para. 10:

> *"So far as relevant to the issues dealt with in this judgment 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."*

[Emphasis added].

12. The court's particular attention was drawn by counsel for the applicant to point 9. But the court respectfully does not see an issue to present in this regard. The IPAT does not

speak into a vacuum its disbelief in the newspaper advertisement dimension of the appellant's case. It prefaces its conclusion (that it just does not believe that the father would have placed the advertisement several years after his daughter disappeared) with the words "*Based on the evidence heard…*". Clearly in this regard the IPAT is referring to the evidence that is referenced in the immediately preceding text whereby the applicant was asked 'Why would your father suddenly decide after several years to publish the advertisement disowning you?' and finds itself unconvinced by the answers received. So the IPAT member states 'Based on the evidence heard [and just discussed] I just don't believe that your father would have proceeded in such a manner, i.e. placed an advertisement disowning his daughter in the newspaper several years after she was gone from home. The conclusion reached is one that the IPAT was entitled to arrive at on the facts before it and the court sees no deficiency in its reasoning to present in this regard.

13. The court has also been referred in this regard to the decision last year *in VH v. International Protection Appeals Tribunal & Ors*. [2020] IEHC 134. There this Court observed, *inter alia*, as follows:

> *"1. Mr VH is a national of Albania who applied for international protection in the State on or around 9 January 2017. In a report of 28 February 2018, the International Protection Office recommended that Mr VH be given neither a refugee declaration nor a subsidiary protection declaration. This was affirmed by (the impugned) decision of the first-named respondent on 24 June last. These judicial review proceedings have ensued.*
>
> *2. By way of background, Mr VH applied for international protection on the primary basis that if returned to Albania he would be subjected to persecution and/or serious harm arising from a land dispute involving his family. In addition, Mr VH asserted an entitlement to protection on the ancillary basis of his Roma ethnicity.*
>
> *3. The first ground of objection concerns the International Protection Appeal Tribunal's ('IPAT') finding at para. 4.4.4 of the impugned decision, that:*
>
> > 'While the Appellant submitted a copy of a Declaration by…[Mr X], the purported head of village…in support of his claim, [1] it was not submitted in its original form and [2] is understood to have been obtained for the purposes of the Appellant's international protection application. [3] In particular, the Tribunal finds the statement 'the state law is still weak in Albania in order to guarantee the safety of its citizens', contained therein, to be an improbable declaration by a local Government official. For these reasons, the Tribunal finds this Declaration not to be credible.'
>
> *4. As to [1], it is appropriate, pursuant to s.28 of the International Protection Act 2015 ('Act of 2015'), for the IPAT to evaluate the nature/quality of such evidence as is placed before it**. Here, however, the IPAT does not indicate that there was any inquiry as to why a copy was provided, nor does it indicate any reasons why, as a consequence of that inquiry, the Declaration was found***

to be objectionable. Thus, it seems to the court that there has been, in this regard, a breach of fair procedures and/or a failure to give reasons.

5. *As to [2], just because evidence is self-serving is not of itself a basis for rejecting that evidence; were matters otherwise most of the evidence that, e.g., is heard or placed on evidence in court proceedings, could be jettisoned on that basis alone. The court has been referred,* inter alia*, in this regard to, and respectfully adopts the below-quoted reasoning, in:*

Kimbudi v. Minister of Employment and Immigration (1982) 40 NR 566 (FCA) where Urie J., in his judgment for the Canadian Federal Court of Appeal, stated, *inter alia*, as follows, at para. 4:

> '[T]he *[Immigration Appeal]* Board was clearly wrong in holding, as it did, that there was no evidence that [the applicant] is known to the Angolan authorities. While the evidence to which I have referred may be characterized as self-serving, it is difficult for me to conceive what evidence would be available to him in Canada [or here, in Ireland] which would not suffer from that characterization.'

R. (S.S.) v. Secretary of State for the Home Department [*2017] UKUT 164 (IAC), that*:

> 'A reason, however brief…[is] needed for the designation…'self-serving', an expression which was, to a large extent, variable in meaning and provided little or no assistance.'

M.J. (Singh v. Belgium: Tanveer Ahmed unaffected) Afghanistan v. Secretary of State for the Home Department [2013] UKUT 253 (IAC), *at para. 33, that:*

> '[W]e agree with the point made…in submissions concerning the use of the term 'self-serving'. If that were the only basis upon which the judge had rejected evidence then we would find it to be lacking in proper reasoning. No doubt an appellant will generally, if not always, find it of assistance to put forward evidence that assists his case and to that extent such evidence may be regarded as 'self-serving', but that cannot in any sense be said to be a reason for marginalising it.'

6. *As to [3], the IPAT does not point to any false information in the Declaration but to an unexplained sense on the part of the IPAT official that what is stated in the Declaration is something that is unlikely to be stated by a local (village) government official. There is no reasoning offered for this sense, so there is a failure to provide reasons. Additionally, insofar as the IPAT considers the Declaration not to be credible, in effect casting a burden on Mr VH to establish the genuineness of the Declaration, without any mention of this at the hearing or thereafter, thus giving him no opportunity to discharge such burden, and then*

relying on his failure to discharge the burden so cast to assail his credibility, this seems to the court to involve a near-classic breach of fair procedures."

[Emphases added].

14. *VH* falls properly to be seen as following on from the judgment of Cooke J. in I.R. The key paragraphs for the purposes of the within proceedings are the underlined portions of points 4-6 above. However, the court respectfully does not consider the facts in *VH* to be analogous to the facts at hand. In *VH*, the decisionmaker in effect stated 'I don't believe that a village-level government official in Albania would do that' without duly grounding that conclusion in evidence. Here the situation is different. The IPAT member is stating in effect that 'I have considered the reasons that you have offered as to why your father would publish an advertisement about you several years after you have left home and I am not convinced by those reasons that you have offered.' The conclusion reached is one that the IPAT was entitled to arrive at on the facts before it and the court sees no deficiency in its reasoning to present in this regard.

ii. Case-Law Relevant to Prospective Risk

15. It is when one comes to prospective risk that the court respectfully considers the IPAT to have erred and it is by reference to this error that the court will proceed to grant the orders of *certiorari* and remittal that have been sought.

16. While asylum as a concept entails a relatively straightforward proposition – if an eligible applicant can demonstrate a risk of persecution, torture or ill-treatment if returned to her country of origin she must be given international protection – the practicalities of determining whether such protection should be granted present with a morass of complicated factual and legal issues. The problems arising for decisionmakers in this regard are compounded by the potentially very serious consequences of error or illogic at any stage of the decision-making process. The critical question that arises under the Refugee Convention 1951, as amended, is whether an applicant, if returned to her country of origin, will face a real risk of persecution on one of the Convention grounds. (For signatory states to the European Convention on Human Rights, Article 3 ECHR is also of relevance in this regard). It follows that a decisionmaker, such as the IPAT, is required to assess the future risk of persecution or ill-treatment that an applicant might receive if returned to her country of origin.

17. Although the *burden* of proof in an asylum application sits always on the applicant, the standard of proof is lower than the usual civil *standard*. Why so? At its most fundamental this is because the civil standard of proof is typically deployed in determining the likelihood that *past* events happened, whereas determination of asylum cases proceeds on an assessment of *future* risk of persecution or ill-treatment that an applicant may suffer on return. It is in recognition of the difficulties that could present for an applicant through the imposition of the civil standard of proof that asylum applications proceed not by reference to the balance of probabilities but whether the applicant has shown a reasonable degree of likelihood of persecution or a real risk of ill-treatment on return.

18. Although the leading Irish case on the assessment of risk in the context of asylum claims remains that of the High Court (Cooke J.) in M*.A.M.A. v. Refugee Appeals Tribunal & Ors.* [2011] IEHC 147; [2011] 2 IR 729, that decision is heavily informed by the earlier decision of the English Court of Appeal in *Karanakaran v. Secretary of State for the Home Department* [2000] 3 All E.R. 449, which decision – which itself draws on numerous English and Commonwealth authorities, in particular certain Australian authorities – remains a leading decision in the neighbouring jurisdiction on this aspect of the law. So it is worth pausing to consider the decision in *Karanakaran* in a little detail.

19. *Karanakaran* featured an appeal by the eponymous Mr Karanakaran from an order of the Immigration Appeal Tribunal dated 8th April 1999, which dismissed his appeal from an order of a special adjudicator dated 2nd June 1998 dismissing his appeal from removal directions, dated 21st February 1996. These followed a decision of the Home Secretary of State of January 1996 refusing Mr Karanakaran's application for asylum. On 21st February 1996, a notice of refusal of leave to enter the United Kingdom was served on him, together with directions for his removal to Sri Lanka. In granting permission to appeal to the Court of Appeal, the vice-president of the Immigration Appeal Tribunal observed that the appeal raised a question of law of general applicability as to the correct standard of proof to be applied when deciding the reasonableness of internal relocation. (In English courts and tribunals around the time of the decision of the Court of Appeal in *Karanakaran*, the appropriateness of internal relocation had been a fairly familiar topic for debate in cases involving young Tamil men such as Mr Karanakaran who had grown up in the northern part of Sri Lanka and who expressed a fear of returning there).

20. Turning to the issue of the standard of proof in asylum cases, Brooke L.J. (with whom Robert Walker J. concurred) observed, *inter alia*, as follows, from p. 451 onwards:

> *"It is necessary to start this part of this judgment by saying something about previous decisions in both England and Canada which relate to different aspects of the standard of proof in asylum cases. Later in the judgment I will review the course the law has taken in recent years in Australia.*
>
> *The English cases show that the courts have recognised that different techniques are required in asylum cases when a decision-maker has to make judgments about future outcomes. The law in this respect is now authoritatively settled in this country by the decision of the* House of Lords in R v. Secretary of State for the Home Dept, ex p Sivakumaran (UN High Comr for Refugees intervening) *[1988] 1 All ER 193, [1988] AC 958. In that case it was held that when deciding whether an applicant's fear of persecution was well-founded it was sufficient for a decision-maker to be satisfied that there was a reasonable degree of likelihood that the applicant would be persecuted for a convention reason if returned to his own country (see [1988] 1 All ER 193 at 197–198, 202, [1988] AC 958 at 994, 1000 per Lord Keith of Kinkel, per Lord Goff of Chieveley)…..*
>
> The decision in Ex p Sivakumaran did not, however, resolve the different, but related, question as to the standard of proof a decision-maker should apply when

considering evidence of past or present facts before he or she goes on to make the necessary assessment of the future.

…

In Kaja v. Secretary of State for the Home Dept *[1995] Imm AR 1 the Immigration Appeal Tribunal was concerned to resolve difficulties that had been confronting adjudicators following the decision of the House of Lords in Ex p Sivakumaran. Although Mr Kaja's appeal had been dismissed in quite robust terms, the adjudicator did not explain what standard of proof he had applied. A panel of senior legal members of the tribunal was therefore specially convened in order that they could give guidance on the correct approach to questions connected with the standard of proof to be adopted in asylum cases in relation to the establishment of past and present facts, as opposed to the assessment of future chances.*

…

It appears…that whatever the majority of the tribunal actually decided in Kaja's case, their decision has been generally interpreted as meaning that decision-makers are at liberty to substitute a lower standard of proof than that conventionally used in civil litigation when judges make findings about past and present facts. In Horvath v Secretary of State for the Home Dept *[1999] INLR 7 at 20, a case in which the correctness of the decision in Kaja was challenged by the Secretary of State before the Immigration Appeal Tribunal (but not subsequently in this court), the tribunal said that whatever the majority may have said in their determination in Kaja's case, 'everyone since that case thinks' that they decided that an historical event or fact is proved by an asylum-seeker when he or she demonstrates that there is a reasonable likelihood that it occurred. This interpretation of that decision also appears in Professor Jackson's book* Immigration: Law and Practice *(1996) p 378, para 10–199.*

…

*We…informed counsel [that] we wished to relist the [*within*] appeal for further argument. In particular, we told them we wished to hear argument on the following issues: (1) whether Kaja's case was correctly decided; (2) whether it would be possible to maintain a regime in which there was one standard of proof in relation to historic or existing facts for the purposes of the first part of the definition of 'refugee' in the convention, and a different standard of proof in relation to such facts for the purpose of considering issues of protection and internal relocation; and (3) the extent to which the assessment of an applicant's personal characteristics (when relevant to internal relocation issues) was inextricably bound up with the findings as to historic and existing facts that were made about him/her.*

…

It now transpired that the issues with which we are concerned on this part of the appeal have come before the High Court of Australia at least four times in the last ten years.

[R]elevant Australian decisions at Federal Court level, have been helpfully brought together in the recent judgment of Sackville J (with which North J expressly agreed) in that court in Minister for Immigration and Multicultural Affairs v Rajalingam *[1999] FCA 719….*

…

At paras 60–67 Sackville J derived the following principles from the decided cases.

(1) There may be circumstances in which a decision-maker must take into account the possibility that alleged past events occurred even though it finds that these events probably did not occur. The reason for this is that the ultimate question is whether the applicant has a real substantial basis for his fear of future persecution. The decision-maker must not foreclose reasonable speculation about the chances of the future hypothetical event occurring.

(2) Although the civil standard of proof is not irrelevant to the fact-finding process, the decision-maker cannot simply apply that standard to all fact-finding. It frequently has to make its assessment on the basis of fragmented, incomplete and confused information. It has to assess the plausibility of accounts given by people who may be understandably bewildered, frightened and, perhaps, desperate, and who often do not understand either the process or the language spoken by the decision-maker/investigator. Even applicants with a genuine fear of persecution may not present as models of consistency or transparent veracity.

(3) In this context, when the decision-maker is uncertain as to whether an alleged event occurred, or finds that although the probabilities are against it, the event may have occurred, it may be necessary to take into account the possibility that the event took place in deciding the ultimate question (for which see (1) above). Similarly, if the non-occurrence of an event is important to the applicant's case, the possibility that that event did not occur may need to be considered by the decision-maker even though it considers that the disputed event probably did occur.

(4) Although the 'What if I am wrong?' terminology has gained currency, it is more accurate to see this requirement as simply an aspect of the obligation to apply correctly the principles for determining whether an applicant has a 'well-founded fear of being persecuted' for a convention reason.

(5) There is no reason in principle to support a general rule that a decision-maker must express findings as to whether alleged past events actually

occurred in a manner that makes explicit its degree of conviction or confidence that its findings were correct. (In Guo's case, for instance, the High Court considered that it was enough that the tribunal appeared to have no doubt that the probability of error was insignificant).

(6) *If a fair reading of the decision-maker's reasons as a whole shows that it 'had no real doubt' that claimed events did not occur, then there is no warrant for holding that it should have considered the possibility that its findings were wrong.*

Miss Giovannetti, for the Secretary of State, commended the Australian approach. Mr Lewis, also supporting this approach, reminded us that in R v. Secretary of State for the Home Dept, ex p Ravichandran [1996] Imm AR 97 at 109 Simon Brown LJ observed that the question whether someone was at risk of persecution for a convention reason 'should be looked at in the round, and all the relevant circumstances taken into account'. *It was common ground between counsel that it would be quite impracticable to maintain a regime in which there was one approach to the evidential material relating to historic or existing facts for the purposes of the first part of the definition of 'refugee' in the convention, and a different approach to such material for the purpose of considering issues of protection and internal relocation. It was also common ground that the assessment of an applicant's personal characteristics (when relevant to internal relocation issues) was inextricably bound up with the findings as to historic and existing facts that were made about him/her.*

In my judgment, the approach in fact recommended by the majority of the Immigration Appeal Tribunal in Kaja's case, as much more fully explained in the Australian cases whose effect I have summarised, is the approach which should be adopted at each of the stages of the assessment process with which we are concerned….

I must make it clear that I am aware of the decision of the majority of the House of Lords in Re H and ors (minors) (sexual abuse: standard of proof) *[1996] 1 All ER 1, [1996] AC 563, although it was not cited to us by counsel. Lord Nicholls of Birkenhead, in the leading speech in that case, made it clear that he was treating family proceedings as essentially a form of civil proceedings (see [1996] 1 All ER 1 at 16–17, [1996] AC 563 at 586). In the present public law context, where this country's compliance with an international convention is in issue, the decision-maker is, in my judgment, not constrained by the rules of evidence that have been adopted in civil litigation, and is bound to take into account all material considerations when making its assessment about the future.*

This approach does not entail the decision-maker (whether the Secretary of State or an adjudicator or the Immigration Appeal Tribunal itself) purporting to find 'proved' facts, whether past or present, about which it is not satisfied on the balance of probabilities. What it does mean, on the other hand, is that it must not

exclude any matters from its consideration when it is assessing the future unless it feels that it can safely discard them because it has no real doubt that they did not in fact occur (or, indeed, that they are not occurring at present). Similarly, if an applicant contends that relevant matters did not happen, the decision-maker should not exclude the possibility that they did not happen (although believing that they probably did) unless it has no real doubt that they did in fact happen.

For the reasons much more fully explained in the Australian cases, when considering whether there is a serious possibility of persecution for a convention reason if an asylum-seeker is returned, it would be quite wrong to exclude matters totally from consideration in the balancing process simply because the decision-maker believes, on what may sometimes be somewhat fragile evidence, that they probably did not occur. Similarly, even if a decision-maker finds that there is no serious possibility of persecution for a convention reason in the part of the country to which the Secretary of State proposes to send an asylum-seeker, it must not exclude relevant matters from its consideration altogether when determining whether it would be unduly harsh to return the asylum seeker to that part, unless it considers that there is no serious possibility that those facts are as the asylum-seeker contends.

Needless to say, as the High Court of Australia observed in Wu Shan Liang's case, when assessing the future, the decision-maker is entitled to place greater weight on one piece of information rather than another. It has to reach a well-rounded decision as to whether, in all the circumstances, there is a serious possibility of persecution for a convention reason, or whether it would indeed be unduly harsh to return the asylum-seeker to the allegedly 'safe' part of his/her country. This balancing exercise may necessarily involve giving greater weight to some considerations than to others, depending variously on the degree of confidence the decision-maker may have about them, or the seriousness of their effect on the asylum-seeker's welfare if they should, in the event, occur."

21. In his consideration of the issue of the standard of proof in asylum cases, Sedley L.J. (with whom Robert Walker J. also concurred) observed, *inter alia*, as follows, from p.473 onwards:

"The issues for a decision-maker under the convention…are questions not of hard fact but of evaluation: does the applicant have a well-founded fear of persecution for a convention reason? Is that why he is here? If so, is he nevertheless able to find safety elsewhere in his home country? Into all of these, of course, a mass of factual questions enters: what has happened to the applicant? What happens to others like him or her? Is the situation the same as when he or she fled? Are there safer parts of the country? Is it feasible for the applicant to live there? Inseparable from these are questions of evaluation: did what happened to the applicant amount to persecution? If so, what was the reason for it? Does what has been happening to others shed light on the applicant's fear? Is the home situation now better or

worse? How safe are the safer places? Is it unduly harsh to expect this applicant to survive in a new and strange place? What matters throughout is that the applicant's autobiographical account is only part of the picture. People who have not yet suffered actual persecution (one thinks of those Jews who fled Nazi Germany just in time) may have a very well-founded fear of persecution should they remain. People who have suffered appalling persecution may for one reason or another not come within the protection of the convention.

The civil standard of proof, which treats anything which probably happened as having definitely happened, is part of a pragmatic legal fiction. It has no logical bearing on the assessment of the likelihood of future events or (by parity of reasoning) the quality of past ones. It is true that in general legal process partitions its material so as to segregate past events and apply the civil standard of proof to them: so that liability for negligence will depend on a probabilistic conclusion as to what happened. But this is by no means the whole process of reasoning. In a negligence case, for example, the question will arise whether what happened was reasonably foreseeable. There is no rational means of determining this on a balance of probabilities: instead the court will consider the evidence, including its findings as to past facts, and answer the question as posed….So it is fallacious to think of probability (or certainty) as a uniform criterion of fact-finding in our courts: it is no more than the final touchstone, appropriate to the nature of the issue, for testing a body of evidence of often diverse cogency.

The Australian Federal Court put the issues well in Rajalingam's case. It pointed out—not for the first time—that a decision on asylum is an administrative process differing in important ways from civil litigation (see [1999] FCA 719 (para 36)). It follows that an appeal which tracks the original issues will have largely the same character. In addition to the valuable passages from the leading judgment of the High Court of Australia in Minister for Immigration and Ethnic Affairs v. Wu Shan Liang *(1996) 185 CLR 259 which Brooke LJ has cited, the Federal Court considered the assenting views in that case of Kirby J. These too I find valuable:*

> 'First, it is not erroneous for a decision-maker, presented with a large amount of material, to reach conclusions as to which of the facts (if any) had been established and which had not. An over-nice approach to the standard of proof to be applied here is undesirable. It betrays a misunderstanding of the way administrative decisions are usually made. It is more apt to a court of law conducting a trial than to the proper performance of the functions of an administrator….It is not an error of law for such a decision-maker to test the material provided by the criterion of what is considered to be objectively shown, so long as, in the end, he or she performs the function of speculation about the "*real chance*" of persecution….
>
> Secondly, the decision-maker must not, by a process of factual findings on particular elements of the material which is provided, foreclose reasonable speculation upon the chances of persecution emerging from a consideration

> of the whole of the material. Evaluation of chance…cannot be reduced to scientific precision. That is why it is necessary, notwithstanding particular findings, for the decision-maker in the end to return to the question: 'What if I am wrong'? [*Guo Wei Rong v. Minister for Immigration and Ethnic Affairs* (1996) 135 ALR 421 at 441]. Otherwise, by eliminating facts on the way to the final conclusion, based upon what seems "*likely*" or "*entitled to greater weight",* the decision-maker may be left with nothing upon which to conduct the speculation necessary to the evaluation of the facts taken as a whole, in so far as they are said to give rise to a "*real chance*" of persecution.' (See (1996) 185 CLR 259 at 293.)

…

I would put my own view, in summary, as follows. The question whether an applicant for asylum is within the protection of the convention is not a head-to-head litigation issue. Testing a claim ordinarily involves no choice between two conflicting accounts but an evaluation of the intrinsic and extrinsic credibility, and ultimately the significance, of the applicant's case. It is conducted initially by a departmental officer and then, if challenged, by one or more tribunals which, though empowered by statute and bound to observe the principles of justice, are not courts of law. Their role is best regarded as an extension of the initial decision-making process: see Simon Brown LJ in R v. Secretary of State for the Home Dept, ex p Ravichandran *[1996] Imm AR 97 at 112. Such decision-makers, on classic principles of public law, are required to take everything material into account. Their sources of information will frequently go well beyond the testimony of the applicant and include in-country reports, expert testimony and—sometimes—specialised knowledge of their own (which must of course be disclosed). No probabilistic cut-off operates here: everything capable of having a bearing has to be given the weight, great or little, due to it. What the decision-makers ultimately make of the material is a matter for their own conscientious judgment, so long as the procedure by which they approach and entertain it is lawful and fair and provided their decision logically addresses the convention issues. Finally, and importantly, the convention issues from first to last are evaluative, not factual. The facts, so far as they can be established, are signposts on the road to a conclusion on the issues; they are not themselves conclusions. How far this process truly differs from civil or criminal litigation need not detain us now.*

….It is…worth observing (or at least hoping) that the approach which we consider to be the correct one bodies out what Simon Brown LJ said in R v. Secretary of State for the Home Dept, *ex p Ravichandran [1996] Imm AR 97 at 109:*

> 'In my judgment, the issue whether a person or group of people have a "*well-founded fear of being persecuted for* [Convention] *reasons*" raises a single composite question. It is, as it seems to me, unhelpful and potentially misleading to try to reach separate conclusions as to whether certain conduct amounts to persecution, and as to what reasons underlie it. Rather the

question whether someone is at risk of persecution for a Convention reason should be looked at in the round and all the relevant circumstances brought into account. I know of no authority inconsistent with such an approach and, to my mind, it clearly accords both with paragraph 51 of the UNHCR Handbook and with the spirit of the Convention.'

While, for reasons considered earlier, it may well be necessary to approach the convention questions themselves in discrete order, how they are approached and evaluated should henceforward be regarded not as an assault course on which hurdles of varying heights are encountered by the asylum seeker with the decision-maker acting as umpire, nor as a forum in which the improbable is magically endowed with the status of certainty, but as a unitary process of evaluation of evidential material of many kinds and qualities against the convention's criteria of eligibility for asylum."

22. Is it possible to synthesise the foregoing into a set of guiding principles? Before seeking to do so, it is perhaps worth pausing to consider the judgment of Cooke J. in *M.A.M.A.* There the applicable facts were outlined by Cooke J. in the following terms, at paras. 3-6 of his judgment:

"3. The applicant arrived in the State in March 2006 and claimed to be a national of Sudan and a member of the Berti tribe from northern Darfur. His claim for asylum was based on his being a Muslim and of Berti tribal ethnicity who had faced persecution at the hands of the Janjaweed militia in Darfur and attacks from the Sudanese army. He described how in February 2004, his village had been attacked, his house had been destroyed and two brothers killed. His parents, however, managed to escape. The family later went to Gula where the applicant got work driving a lorry. On the 14th December 2005, his lorry was attacked by men in 'land cruisers'. He and three others were arrested by the Sudanese army; he was tied and blindfolded and imprisoned for several weeks during which he was interrogated. He then described how in early February 2006 he was taken with others to be executed but the truck in which they were travelling got stuck in sand, an argument broke out amongst his captors and the applicant managed to escape although handcuffed. He met a man who helped him out of the handcuffs and he then managed to make contact with an uncle who came to his assistance and later arranged for him to leave Sudan and come by ship to Ireland.

4. In the s. 13 report, the Commissioner rejected this story in its entirety for lack of credibility. In a detailed analysis of the account given the Authorised Officer made the following points:-

- *The applicant had no identification documents, no passport and no evidence in relation to his travel to Ireland;*

- *Country of origin information confirmed the attack on the town on the 27th February 2004, but it was not credible that the applicant's parents were not killed in the bombing raid when the two sons nearby were killed;*

- *He gave conflicting accounts of this attack saying that the land cruisers came first and burned the market, but later that the planes came first;*

- *In spite of finding himself in three life threatening situations in Darfur he was able to escape unharmed on each occasion;*

- *In the description of the attack on the lorry convoy it was not credible that the Sudanese army would shoot some of the convoy but take the rest prisoners;*

- *Neither was it credible that they would blindfold him while driving him to prison, an allegation which relieved him of the need to describe where he was imprisoned;*

- *The description of being driven to execution and of the 30-minute argument between the captors when they got bogged down was implausible as was the claim that he got out of the truck and ran away when he heard shooting.*

- *The applicant was clearly evasive and vague in his account of his journey to Ireland and could not identify either of the ships on which he travelled.*

5. *In Part 6 of the appeal decision, the* "Analysis of the Applicant's Claim*", the Tribunal member too finds many of these aspects of the claim to be incredible. The analysis records further questions on these issues put to the applicant during the oral hearing and finds that the responses remained unsatisfactory and implausible. In particular, the Tribunal member notes:-*

> *'The applicant's account of his imprisonment, in particular his claim of being kept in isolation for all of his imprisonment, is not in accord with the known facts of the prison situation that exists in Sudan. Prisons and detention centres are overcrowded, are unsanitary and the applicant's account of his alleged period in detention runs contrary to the known facts of the prisons that exist in Sudan. The applicant's account of his imprisonment and the conditions surrounding the same is seriously suspect.'*

6. *The Tribunal member thus fully rejects as incredible the facts and events given by the applicant as the basis of his claim to have suffered past persecution before having to flee Sudan and the Darfur area from which he claimed to come. That, it is argued, is the full extent of the analysis made by the Tribunal member and the basis upon which the conclusion is reached that the s.13 report and its negative recommendation should be affirmed. It is on that basis that the ground for which leave has been granted is directed at the argument that there was an obligation on the Tribunal member in those circumstances to go further and inquire as to*

whether, nevertheless, the applicant had a prospective risk of such persecution should he be returned to Sudan. It is argued that this is an essential step in the proper examination of an asylum claim and that even where past persecution has not been established, the decision maker must be satisfied that there is no well-founded basis for a fear of future persecution upon repatriation before the claim is rejected."

23. Arising from the just-described facts, Cooke J. indicated, at para. 1 of his judgment, that the question arising before him for resolution was the following:

> *"Where past facts and events which form the basis of an application for refugee status have been rejected in whole or in part as lacking credibility, in what circumstances and on what basis is it still incumbent upon the administrative decision-maker to ask 'what if I am wrong?' and to assess whether there is nevertheless a prospective risk of persecution of the applicant if returned to the country of origin?"*

24. In the course of his judgment, Cooke J. observed, *inter alia*, as follows:

> *"10. In addressing this issue as to the correct standard and approach to be adopted by a decision-maker in assessing the risk of future persecution when a claim based on past persecution has been rejected as lacking credibility, counsel for the applicant relied upon a number of cases including, notably, the judgment of the House of Lords in the United Kingdom in* Karanakaran v. Secretary of State for the Home Department *[2000] 3 All E.R. 449*. [Court Note: *Karanakaran* was actually a decision of the Court of Appeal but this slip does not in any way impact on the value of Cooke J.'s customarily helpful analysis]*. The judgment of Brooke L.J. in this case undertakes a wide-ranging consideration of the case law on this issue, not only in the United Kingdom Courts, but in the Courts of Australia and Canada.*
>
> *11. That case concerned an appeal from a decision of the Immigration Tribunal which had dismissed an earlier appeal against removal directions made by the Secretary of State, following a refusal of the applicant's claim for asylum based on his Tamil ethnicity and a fear of persecution at the hands of both Tamil Tiger rebels and government forces if repatriated to Sri Lanka. It is to be noted that the matter before the House of Lords thus related to a later stage of an asylum procedure as compared with the circumstances under consideration in the present case based upon the appeal decision of the Tribunal. In the Karanakaran case asylum had been refused and the applicant had been served with a notice refusing leave to enter the United Kingdom together with directions for his removal to Sri Lanka. Although not directly material to the legal issue as to the standard of proof to be applied to the risk of persecution, this distinction is worth noting because, of course, the determination of the appeal by the RAT is not, under the procedures of the Refugee Act 1996, and the Immigration Act 1999 the final occasion upon which the issue as to a prospective risk of persecution on repatriation may fall to be considered. If the claim for asylum is definitively rejected, the applicant will be afforded an*

opportunity of applying for subsidiary protection and will not in any event be deported until the Minister has considered the possible applicability of the prohibition of refoulement under s. 5 of the Act of 1996.

12. *As indicated, the appeal under consideration in the House of Lords raised questions relating to what is variously described in asylum law as being the 'internal flight alternative' or 'internal relocation' or the 'internal protection principle'. Brooke L.J. introduces his review of the cases saying:* 'The issue that has arisen for decision in this case relates to the method of establishing whether it would be unduly harsh to expect an asylum-seeker to live in a different part of his own country'*. He describes how the English Courts had recognised that different techniques were required in asylum cases when the decision maker has to make judgments about future outcomes. The existing case law had not, he considered, resolved the* question 'as to the standard of proof a decision maker should apply when considering evidence of past or present facts before he or she goes on to make the necessary assessment of the future'. *Having referred to a decision of the Immigration Appeal Tribunal in the case of* Kaja v. Secretary of State for the Home Department *[1995] Imm AR 1 and the questions raised as to the correctness of that decision in the case of Horvath [1999] I.N.L.R. 7, Brooke L.J. explains how the appeal in Karanakaran was re-listed for further argument with a view to deciding whether Kaja had been correctly decided and whether it was possible to maintain a regime in which there was one standard for proof in relation to historic or existing facts for the purposes of the first part of the definition of 'refugee' in the Convention and a different standard for proof of facts when considering the issues of protection and internal relocation.*

13. *Having reviewed a wide range of case law, Brooke L.J. adopts with approval a set of principles defined by Sackville J. in the case of Rajalingam [1999] F.C.A. 719 in the Australian Federal Court. He quotes Sackville J. as commenting upon observations made in an earlier Australian case as follows:-*

> '… Drummond J's observations are helpful because they identify a second class of case in which, although the decision-maker finds that alleged past events have not occurred, the chance that they might have occurred could provide a rational foundation for finding that the applicant has a well-founded fear of persecution.'

Brooke L.J. then quotes Sackville J.'s six principles of which those relevant for present purposes are as follows:-

'(1) There may be circumstances in which a decision maker must take into account the possibility that alleged past events occurred even though it finds that these events probably did not occur. The reason for this is that the ultimate question is whether the applicant has a real substantial basis for his fear of future persecution. The decision maker must not foreclose reasonable speculation about the chances of the future hypothetical event occurring.

(2) Although the civil standard of proof is not irrelevant to the fact-finding process, the decision maker cannot simply apply that standard to all fact finding. It frequently has to make its assessment on the basis of fragmented, incomplete and confused information. It has to assess the plausibility of accounts given by people who may be understandably bewildered, frightened and, perhaps, desperate, and who often do not understand either the process or the language spoken by the decision maker/investigator. Even applicants with a genuine fear of persecution may not present as models of consistency or transparent veracity.

(3) …

(4) Although the 'What if I am wrong?' terminology has gained currency, it is more accurate to see this requirement as simply an aspect of the obligation to apply correctly the principles for determining whether an applicant has a '*well-founded fear of being persecuted*' for a Convention reason.

(5) …

(6) If a fair reading of the decision maker's reasons as a whole shows that it "had no real doubt" that claimed events did not occur then there is no warrant for holding that it should have considered the possibility that its findings were wrong.'

15. *Brooke L.J. thus approves the approach reflected in those principles and finds the approach of the majority of the Immigration Appeal Tribunal in Kaja to be the correct approach to be adopted at both stages of the assessment process. He also decides that insofar as the dicta in Horvath suggests that the approach favoured in civil proceedings should be adopted in relation to protection issues, that case should not be followed. He then explains that for the decision-maker this approach means:* '…that it must not exclude any matters from its consideration when it is assessing the future unless it feels that it can safely discard them because it has no real doubt that they did not in fact occur (or, indeed, that they are not occurring at present)'. *He adds*: '…when considering whether there is a serious possibility of persecution for a Convention reason if an asylum seeker is returned, it would be quite wrong to exclude matters totally from consideration in the balancing process simply because the decision maker believes, on what may sometimes be somewhat fragile evidence, that they probably did not occur. Similarly, even if a decision maker finds that there is no serious possibility of persecution for a Convention reason in the part of the country to which the Secretary of State proposes to send an asylum seeker, it must not exclude relevant matters from its consideration altogether when determining whether it would be unduly harsh to return the asylum seeker to that part, unless it considers that there is no serious possibility that those facts are as the asylum seeker contends'.

16. The Karanakaran judgment has, of course, been considered on a number of occasions by the High Court in this jurisdiction and notably by Peart J. in his judgment of the 9th July 2004, in Da Silveira v. RAT *[2004] I.E.H.C. 436. In*

addressing the question as to the standard by which evidence of past persecution and possible future persecution must be judged by the Tribunal, Peart J. said:-

> 'The task of the Tribunal is not simply to be satisfied that there is a well-founded fear of persecution arising from the past, but also that, owing to such well-founded fear for a Convention reason (the applicant) is outside the country of nationality, and is unable or owing to such fear is unwilling to avail himself of the protection of that country. In other words, that if returned to that country he would be likely to suffer persecution in the future. It is therefore not sufficient for the adjudicator to be satisfied or not as the case may be about particular facts and details relating to past persecution. A lack of credibility on the part of the applicant in relation to some, but not all, past events, cannot foreclose or obviate the necessity to consider whether, if returned, it is likely that the applicant would suffer Convention persecution.'

17. This Court accepts as correct the approach to the standard of proof outlined in this case law. The sole fact that particular facts or events relied upon as evidence of past persecution have been disbelieved will not necessarily relieve the administrative decision-maker of the obligation to consider whether, nevertheless, there is a risk of future persecution of the type alleged in the event of repatriation. In practical terms, however, the precise impact of the finding of lack of credibility in that regard upon the evaluation of the risk of future persecution must necessarily depend upon the nature and extent of the findings which reject the credibility of the first stage. This is because the obligation to consider the risk of future persecution must have a basis in some elements of the applicant's story which can be accepted as possibly being true. The obligation to consider the need for 'reasonable speculation' is not an invitation or pretext for gratuitous speculation: it must have some basis in, and connection to, the apparent circumstances of the applicant."

25. It seems to the court that the principles identified hereafter can safely be derived from the foregoing. (The court notes by way of general comment before identifying those principles that the reasoning in *Karanakaran*, and hence the favourable treatment of various precedent authorities in that case, was previously referred to with approval by Cooke J. in *M.A.M.A.).*

Principles

[1] Different techniques are required in asylum cases when a decision-maker has to make judgments about future outcomes (*Karanakaran* (Brooke L.J.)).

[2] When deciding whether an applicant's fear of persecution is well-founded it is sufficient for a decision-maker to be satisfied that there was a reasonable degree of likelihood that the applicant would be persecuted for a Convention reason if returned to his own country (*Sivakumaran, Karanakaran*).

[3] There may be circumstances in which a decision-maker must take into account the possibility that alleged past events occurred even though it finds that these events probably did not occur. The reason for this is that the ultimate question is whether

the applicant has a real substantial basis for his fear of future persecution. The decision-maker must not foreclose reasonable speculation about the chances of the future hypothetical event occurring (*Karanakaran* (Brooke L.J.), *Rajalingam*).

[4] Although the civil standard of proof is not irrelevant to the fact-finding process, the decision-maker cannot simply apply that standard to all fact-finding. It frequently has to make its assessment on the basis of fragmented, incomplete and confused information. It has to assess the plausibility of accounts given by people who may be understandably bewildered, frightened and, perhaps, desperate, and who often do not understand either the process or the language spoken by the decision-maker/investigator. Even applicants with a genuine fear of persecution may not present as models of consistency or transparent veracity (*Karanakaran* (Brooke L.J.), *Rajalingam*).

[5] In this context, when the decision-maker is uncertain as to whether an alleged event occurred, or finds that although the probabilities are against it, the event may have occurred, it may be necessary to take into account the possibility that the event took place in deciding the ultimate question. Similarly, if the non-occurrence of an event is important to the applicant's case, the possibility that that event did not occur may need to be considered by the decision-maker even though it considers that the disputed event probably did occur (*Karanakaran* (Brooke L.J.), *Rajalingam*).

[6] Although the 'What if I am wrong?' terminology has gained currency, it is more accurate to see this requirement as simply an aspect of the obligation to apply correctly the principles for determining whether an applicant has a 'well-founded fear of being persecuted' for a Convention reason (*Karanakaran* (Brooke L.J.), *Rajalingam*).

[7] There is no reason in principle to support a general rule that a decision-maker must express findings as to whether alleged past events actually occurred in a manner that makes explicit its degree of conviction or confidence that its findings were correct (*Karanakaran* (Brooke L.J.), *Rajalingam*).

[8] If a fair reading of the decision-maker's reasons as a whole shows that it 'had no real doubt' that claimed events did not occur, then there is no warrant for holding that it should have considered the possibility that its findings were wrong (*Karanakaran* (Brooke L.J.), *Rajalingam*).

[9] The question whether someone is at risk of persecution for a Convention reason should be looked at in the round, and all the relevant circumstances taken into account (*Karanakaran* (Brooke L.J.), *Ravichandran*).

[10] It would be quite impracticable to maintain a regime in which there was one approach to the evidential material relating to historic or existing facts for the purposes of the first part of the definition of 'refugee' in the Convention, and a

different approach to such material for the purpose of considering issues of protection and internal relocation (*Karanakaran* (Brooke L.J.)).

[11] The assessment of an applicant's personal characteristics (when relevant to internal relocation issues) are inextricably bound up with the findings as to historic and existing facts that were made about her/him (*Karanakaran* (Brooke L.J.)).

[12] In the asylum law context, where a state's compliance with an international convention is in issue, a decision-maker is not constrained by the rules of evidence that have been adopted in civil litigation and is bound to take into account all material considerations when making its assessment about the future (*Karanakaran* (Brooke L.J.)).

[13] The correct application of the standard of proof does not entail the decision-maker purporting to find 'proved' facts, whether past or present, about which it is not satisfied on the balance of probabilities. What it does mean, on the other hand, is that it must not exclude any matters from its consideration when it is assessing the future unless it feels that it can safely discard them because it has no real doubt that they did not in fact occur (or, indeed, that they are not occurring at present) (*Karanakaran* (Brooke L.J.)).

[14] If an applicant contends that relevant matters did not happen, the decision-maker should not exclude the possibility that they did not happen (although believing that they probably did) unless it has no real doubt that they did in fact happen (*Karanakaran* (Brooke L.J.)).

[15] When considering whether there is a serious possibility of persecution for a convention reason if an asylum-seeker is returned, it would be quite wrong to exclude matters totally from consideration in the balancing process simply because the decision-maker believes, on what may sometimes be somewhat fragile evidence, that they probably did not occur (*Karanakaran* (Brooke L.J.)).

[16] Even if a decision-maker finds that there is no serious possibility of persecution for a convention reason in the part of the country to which the executive branch of government proposes to send an asylum-seeker, it must not exclude relevant matters from its consideration altogether when determining whether it would be unduly harsh to return the asylum seeker to that part, unless it considers that there is no serious possibility that those facts are as the asylum-seeker contends (*Karanakaran* (Brooke L.J.)).

[17] When assessing the future, the decision-maker is entitled to place greater weight on one piece of information rather than another. It has to reach a well-rounded decision as to whether, in all the circumstances, there is a serious possibility of persecution for a convention reason, or whether it would indeed be unduly harsh to return the asylum-seeker to the allegedly 'safe' part of his/her country. This balancing exercise may necessarily involve giving greater weight to some

considerations than to others, depending variously on the degree of confidence the decision-maker may have about them, or the seriousness of their effect on the asylum-seeker's welfare if they should, in the event, occur (*Karanakaran* (Brooke L.J.), Minister for Immigration and Ethnic Affairs v. Wu Shan Liang (1996) 185 CLR 259).

[18] The issues for a decision-maker under the Convention are questions not of hard fact but of evaluation (*Karanakaran* (Sedley L.J.)).

[19] The civil standard of proof, which treats anything which probably happened as having definitely happened, is part of a pragmatic legal fiction. It has no logical bearing on the assessment of the likelihood of future events or (by parity of reasoning) the quality of past ones. It is fallacious to think of probability (or certainty) as a uniform criterion of fact-finding in our courts: it is no more than the final touchstone, appropriate to the nature of the issue, for testing a body of evidence of often diverse cogency (*Karanakaran* (Sedley L.J.)).

[20] A decision on asylum is an administrative process differing in important ways from civil litigation. It follows that an appeal which tracks the original issues will have largely the same character. (*Karanakaran* (Sedley L.J.), Rajalingam).

[21] It is not erroneous for a decision-maker, presented with a large amount of material, to reach conclusions as to which of the facts (if any) had been established and which had not. An over-nice approach to the standard of proof to be applied here is undesirable. It betrays a misunderstanding of the way administrative decisions are usually made. It is more apt to a court of law conducting a trial than to the proper performance of the functions of an administrator. It is not an error of law for such a decision-maker to test the material provided by the criterion of what is considered to be objectively shown, so long as, in the end, he or she performs the function of speculation about the "real chance" of persecution (*Karanakaran* (Sedley L.J*.), Wu Shan Liang*)

[22] The decision-maker must not, by a process of factual findings on particular elements of the material which is provided, foreclose reasonable speculation upon the chances of persecution emerging from a consideration of the whole of the material. Evaluation of chance cannot be reduced to scientific precision. That is why it is necessary, notwithstanding particular findings, for the decision-maker in the end to return to the question: 'What if I am wrong'? Otherwise, by eliminating facts on the way to the final conclusion, based upon what seems 'likely' or 'entitled to greater weight', the decision-maker may be left with nothing upon which to conduct the speculation necessary to the evaluation of the facts taken as a whole, in so far as they are said to give rise to a "*real chance*" of persecution (*Karanakaran* (Sedley L.J.), *Wu Shan Liang, Guo Wei Rong v. Minister for Immigration and Ethnic Affairs* (1996) 135 ALR 421)

[23] The question of whether an applicant for asylum is within the protection of the Convention is not a head-to-head litigation issue. Testing a claim ordinarily involves no choice between two conflicting accounts but an evaluation of the intrinsic and extrinsic credibility, and ultimately the significance, of the applicant's case (*Karanakaran* (Sedley L.J.)).

[24] Decision-makers are required to take everything material into account. Their sources of information will frequently go well beyond the testimony of the applicant and include in-country reports, expert testimony and—sometimes—specialised knowledge of their own (which must of course be disclosed). No probabilistic cut-off operates here: everything capable of having a bearing has to be given the weight, great or little, due to it (*Karanakaran* (Sedley L.J.)).

[25] What decision-makers ultimately make of the material aforesaid is a matter for their own conscientious judgment, so long as the procedure by which they approach and entertain it is lawful and fair and provided their decision logically addresses the Convention issues (*Karanakaran* (Sedley L.J.)).

[26] The Convention issues from first to last are evaluative, not factual. The facts, so far as they can be established, are signposts on the road to a conclusion on the issues; they are not themselves conclusions. How far this process truly differs from civil or criminal litigation need not detain one (*Karanakaran* (Sedley L.J.)).

[27] The issue of whether a person or group of people have a "*well-founded fear of being persecuted for* [Convention] *reasons*" raises a single composite question. It is unhelpful and potentially misleading to try to reach separate conclusions as to whether certain conduct amounts to persecution, and as to what reasons underlie it. Rather the question whether someone is at risk of persecution for a Convention reason should be looked at in the round and all the relevant circumstances brought into account. (*Karanakaran* (Sedley L.J.), *Ravichandran*).

[28] How Convention questions are approached and evaluated should be regarded not as an assault course on which hurdles of varying heights are encountered by the asylum seeker with the decision-maker acting as umpire, nor as a forum in which the improbable is magically endowed with the status of certainty, but as a unitary process of evaluation of evidential material of many kinds and qualities against the Convention's criteria of eligibility for asylum (*Karanakaran* (Sedley L.J.)).

[29] The task of the IPAT is not simply to be satisfied that there is a well-founded fear of persecution arising from the past, but also that, owing to such well-founded fear for a Convention reason (the applicant) is outside the country of nationality, and is unable or owing to such fear is unwilling to avail himself of the protection of that country. In other words, that if returned to that country he would be likely to suffer persecution in the future. It is therefore not sufficient for the adjudicator to be satisfied or not as the case may be about particular facts and details relating to past persecution. A lack of credibility on the part of the applicant in relation to

some, but not all, past events, cannot foreclose or obviate the necessity to consider whether, if returned, it is likely that the applicant would suffer Convention persecution (*Da Silveira*, *M.A.M.A*.).

[30] The sole fact that particular facts or events relied upon as evidence of past persecution have been disbelieved will not necessarily relieve the administrative decision-maker of the obligation to consider whether, nevertheless, there is a risk of future persecution of the type alleged in the event of repatriation. In practical terms the precise impact of the finding of lack of credibility in that regard upon the evaluation of the risk of future persecution must necessarily depend upon the nature and extent of the findings which reject the credibility of the first stage. This is because the obligation to consider the risk of future persecution must have a basis in some elements of the applicant's story which can be accepted as possibly being true. The obligation to consider the need for 'reasonable speculation' is not an invitation or pretext for gratuitous speculation: it must have some basis in, and connection to, the apparent circumstances of the applicant (*M.A.M.A*.).

26. Of the just-iterated principles, it seems to the court that the following principles are of especial relevance in the particular context of the within application:

'*[3] There may be circumstances in which a decision-maker must take into account the possibility that alleged past events occurred even though it finds that these events probably did not occur. The reason for this is that the ultimate question is whether the applicant has a real substantial basis for his fear of future persecution. The decision-maker must not foreclose reasonable speculation about the chances of the future hypothetical event occurring (*Karanakaran *(Brooke L.J.),* Rajalingam*)'.*

Court Note re. Principle [3] in the context of the within application: The court respectfully does not see that at any point in the impugned decision the IPAT has considered (i) the prospect of a forced marriage and/or a so-called 'honour killing' of the applicant taking place in the event that the applicant is returned to Pakistan, (ii) by reference to circumstances in which the publication of the newspaper advertisement is taken to have occurred, (iii) in a context where the impeccable COI sources that were before the IPAT indicate forced marriages and so-called 'honour killings' to be a real and continuing problem in Pakistan.

'*[5] In this context, when the decision-maker is uncertain as to whether an alleged event occurred, or finds that although the probabilities are against it, the event may have occurred, it may be necessary to take into account the possibility that the event took place in deciding the ultimate question. Similarly, if the non-occurrence of an event is important to the applicant's case, the possibility that that event did not occur may need to be considered by the decision-maker even though it considers that the disputed event probably did occur (*Karankaran *(Brooke L.J.),* Rajalingam*).'*

Court Note re. Principle [5] in the context of the within application: See the Court Note re. Principle [3].

'[6] Although the 'What if I am wrong?' terminology has gained currency, it is more accurate to see this requirement as simply an aspect of the obligation to apply correctly the principles for determining whether an applicant has a "well-founded fear of being persecuted" *for a Convention reason (*Karanakaran *(Brooke L.J.),* Rajalingam*).'*

Court Note re. Principle [6] in the context of the within application: See the Court Note re. Principle [3].

*'[8] If a fair reading of the decision-maker's reasons as a whole shows that it 'had no real doubt' that claimed events did not occur, then there is no warrant for holding that it should have considered the possibility that its findings were wrong (*Karanakaran *(Brooke L.J.),* Rajalingam*).'*

Court Note re. Principle [8] in the context of the within application: The court does not read the impugned decision to be stating that the IPAT member had no real doubt; rather, the IPAT member takes a particular view having heard the evidence but does not express that view in terms that the member had *no* real doubt but that the newspaper advertisement was not published. Hence, it seems to the court, there is no warrant for holding that the IPAT should *not* have considered the possibility that its findings were wrong.

*'[13] The correct application of the standard of proof does not entail the decision-maker purporting to find 'proved' facts, whether past or present, about which it is not satisfied on the balance of probabilities. What it does mean, on the other hand, is that it must not exclude any matters from its consideration when it is assessing the future unless it feels that it can safely discard them because it has no real doubt that they did not in fact occur (or, indeed, that they are not occurring at present) (*Karanakaran *(Brooke L.J.)).'*

Court Note re. Principle [13] in the context of the within application: There is no indication in the IPAT decision nor is it worded in such terms that it would seem that the decisionmaker expressly or otherwise took the view that the IPAT could safely *discard* the newspaper advertisement issue (whether on the basis that it had no real doubt but that the newspaper advertisement was not in fact published, or otherwise).

*'[15] When considering whether there is a serious possibility of persecution for a convention reason if an asylum-seeker is returned, it would be quite wrong to exclude matters totally from consideration in the balancing process simply because the decision-maker believes, on what may sometimes be somewhat fragile evidence, that they probably did not occur (*Karanakaran *(Brooke L.J.)).'*

Court Note re. Principle [15] in the context of the within application: The within proceedings, it seems to the court, seems to involve a belief on the part of the IPAT, on quite fragile evidence, that the publication of the newspaper advertisement did not in fact occur.

*'[16] Even if a decision-maker finds that there is no serious possibility of persecution for a convention reason in the part of the country to which the executive branch of government proposes to send an asylum-seeker, it must not exclude relevant matters from its consideration altogether when determining whether it would be unduly harsh to return the asylum seeker to that part, unless it considers that there is no serious possibility that those facts are as the asylum-seeker contends (*Karanakaran *(Brooke L.J.)).'*

Court Note re. Principle [16] in the context of the within application: See the court's observation re. Principle [15] which it would repeat, *mutatis mutandis*, in the context of Principle [16].

*[22] The decision-maker must not, by a process of factual findings on particular elements of the material which is provided, foreclose reasonable speculation upon the chances of persecution emerging from a consideration of the whole of the material. Evaluation of chance cannot be reduced to scientific precision. That is why it is necessary, notwithstanding particular findings, for the decision-maker in the end to return to the question: 'What if I am wrong'? Otherwise, by eliminating facts on the way to the final conclusion, based upon what seems 'likely' or 'entitled to greater weight', the decision-maker may be left with nothing upon which to conduct the speculation necessary to the evaluation of the facts taken as a whole, in so far as they are said to give rise to a "real chance" of persecution' (*Karanakaran *(Sedley L.J.),* Wu Shan Liang, Guo Wei Rong v. Minister for Immigration and Ethnic Affairs *(1996) 135 ALR 421).*

Court Note re. Principle [22] in the context of the within application: See the Court Note re. Principle [3].

*'[29] The task of the IPAT is not simply to be satisfied that there is a well-founded fear of persecution arising from the past, but also that, owing to such well-founded fear for a Convention reason (the applicant) is outside the country of nationality, and is unable or owing to such fear is unwilling to avail himself of the protection of that country. In other words, that if returned to that country he would be likely to suffer persecution in the future. It is therefore not sufficient for the adjudicator to be satisfied or not as the case may be about particular facts and details relating to past persecution. A lack of credibility on the part of the applicant in relation to some, but not all, past events, cannot foreclose or obviate the necessity to consider whether, if returned, it is likely that the applicant would suffer Convention persecution (*Da Silveira, M.A.M.A.*).'*

Court Note re. Principle [29] in the context of the within application: See the court's observation re. Principle [30] below. Though Cooke J. appears to refer with approval to *Da Silveira*, he also appears to acknowledge (correctly, if this Court might respectfully volunteer its own view in this regard) that there could be instances in which, to borrow from the terminology of counsel for the applicant in the within proceedings, an applicant's credibility as to a certain aspect of their case is "*so shredded*" that there are no elements of the applicant's story that could possibly be true. Counsel gave as an example of such a case (and, if the court might respectfully observe, it is a good example) the instance where an applicant purports to come from Country A (where awful circumstances present) and can in fact be conclusively stated to come from Country B (where no such circumstances present).

'*[30] The sole fact that particular facts or events relied upon as evidence of past persecution have been disbelieved will not necessarily relieve the administrative decision-maker of the obligation to consider whether, nevertheless, there is a risk of future persecution of the type alleged in the event of repatriation. In practical terms…the precise impact of the finding of lack of credibility in that regard upon the evaluation of the risk of future persecution must necessarily depend upon the nature and extent of the findings which reject the credibility of the first stage. This is because the obligation to consider the risk of future persecution must have a basis in some elements of the applicant's story which can be accepted as possibly being true. The obligation to consider the need for 'reasonable speculation' is not an invitation or pretext for gratuitous speculation: it must have some basis in, and connection to, the apparent circumstances of the applicant (*M.A.M.A*).'*

Court Note re. Principle [30] in the context of the within application: See the Court Note re. Principle [3]. The court does not see this as a case in which what is sought by the applicant of the IPAT is that it engage in gratuitous speculation.

V

Conclusion

27. Having regard to all of the foregoing, the court will grant the order of *certiorari* sought and remit the within matter to the IPAT for fresh consideration.

28. For the avoidance of doubt, the court considers that the pleadings in the within case (most notably paras. 3 and 5 of the 'Legal Grounds' identified in the statement of grounds) gave fair notice of the case to be met by the respondent and which was made at the hearing of the within proceedings.

29. Given that this judgment is being delivered remotely, it may assist the parties for the court to note that, subject to any argument that the parties may wish to make, given that Ms E has succeeded in obtaining the reliefs that she has come seeking, albeit that she has not succeeded on all the legal points raised, it seems to the court that an order for costs in her favour is appropriate.

TO THE APPLICANT/RESPONDENT:
WHAT DOES THIS JUDGMENT MEAN FOR YOU?

Dear Applicant/Respondent,

I have dealt in the preceding pages with the various issues presenting in this application. Much of what I have written might seem like jargon. In this section, I identify briefly some key elements of my judgment and what it means for you. ***This summary is not a substitute for what is stated in the preceding pages. It is meant merely to help you understand some key elements of what I have stated.*** *To preserve the applicant's confidentiality I refer to her below as 'Ms E'.*

This application springs ultimately from an unhappy set of circumstances in which the applicant, Ms E, was continuously maltreated in her home country of Pakistan by male members of her family from whom she had every right to expect better.

Ms E left Pakistan, went to England, came to Ireland and belatedly sought asylum here, her delay in this regard apparently being attributable to the fact that she did not previously understood that the asylum regime might apply to a woman in her circumstances.

Her asylum application failed, she appealed to the IPAT which affirmed the initial refusal. She then commenced the within judicial review proceedings of the IPAT decision. Though she pleads an array of points in her pleadings, the hearing focused on two key aspects of the IPAT decision.

First, with her application Ms E had submitted what she claimed was a copy of an advertisement in a Pakistani newspaper publicly disowning her. This advertisement was allegedly published some years after Ms E left Pakistan. Following a consideration of her evidence as to why Ms E's father would have published this advertisement some years after she left Pakistan, the IPAT elected by reference to that evidence not to believe that her father had published the advertisement. Ms E claims that the reasons for the IPAT tribunal's finding either are not given or are insubstantial and/or unreasonable and/or irrational. I have respectfully rejected this ground of objection. The IPAT treats with the relevant evidence, weighs that evidence, and reaches a conclusion that was lawfully open to it to reach on the evidence before it.

Second, counsel for Ms E complains that having found that a Convention connection exists in circumstances where Ms E is 'a single Pakistani female', the IPAT erred in law in failing to consider what is known as 'prospective risk'. He is right: it did. In so doing the IPAT acted in breach of the law as identified in the case of I.R. v. Minister for Justice, Equality & Law Reform *[2009] IEHC 353. That being so, an order of* certiorari *will issue and Ms E's appeal will be remitted to the IPAT for fresh consideration.*

Yours faithfully

Judge Max Barrett.