

**THE HIGH COURT
JUDICIAL REVIEW**

[2022] IEHC 155
2020 747 JR

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

BETWEEN

O.O.

APPLICANT

AND

**THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL AND THE MINISTER FOR
RESPONDENTS**

Judgment of Mr. Justice Heslin delivered on 15th day of March 2022

Introduction

1. By order made on 19 October 2020 the applicant was granted leave to apply by way of an application for judicial review in respect of the following reliefs: -
 - (i) *"An order of certiorari sending forward to this Honourable Court for the purpose of being quashed the decision of the first named respondent, pursuant to s. 46 (3) (a) of the International Protection Act 2015, dated the 31st August 2020, issued to the applicant on the 2nd September 2020, affirming the recommendation of the International Protection Office that the Applicant should be refused a declaration as a refugee, and refused subsidiary protection status;*
 - (ii) *Such further or other order as to this Honourable Court may deem meet including an extension of time, if necessary;*
 - (iii) *An order providing for an award of the costs of these proceedings to the applicant".*
2. No issue is taken by the respondent with regard to 'time'. The "Legal Grounds" set out in the applicant's statement of grounds dated 1 October 2020 begin as follows: -
 - "1. *The tribunal has erred in law in rejecting the applicant's general credibility and his entire claim for international protection on the basis of disbelief of the applicant's account of his travel from Nigeria, and his entry into Ireland.*
 2. *The conclusions of the tribunal were reached unlawfully having failed to consider the core of the applicant's claim, his experience in Nigeria, at all.*
 3. *Further, or in the alternative, the findings of the tribunal that the applicant's account of his travel to Ireland, and, in particular, his entry into the State without passing through Immigration Control at Dublin Airport, was implausible/incredible, was unreasonable or disproportionate in circumstances where: -*
 - (a) *further the Applicant is a Nigerian man who did in fact manage to enter the State without a valid visa;*

- (b) *there was no Dublin III 'hit' or match in respect of the applicant's fingerprints to indicate that he had a valid visa for, or visited, any other EU Member State (including the UK) before coming to Ireland;*
- (c) *it is well documented that migrants and refugees can, and have, passed through Dublin Airport without valid visas and/or without passing through Immigration Control;*
- (d) *in 2018 a man who worked in Dublin Airport as a ground handler was jailed for 4 years for organising for third country nationals to bypass Dublin Airport Immigration Control by using staff swipe cards to access an employee gate which was not guarded or on camera (people smuggling). The conviction was widely reported in national media. This corresponds with the applicant's account of what happened at Dublin Airport.*
- (e) *the tribunal has erred in law in rejecting the applicant's sworn evidence of events and his experience in Nigeria, as a result of having rejected his "general credibility" and thus rejecting the applicant's entitlement to the benefit of the doubt. The applicant provided on oath a detailed and coherent account of the events in Nigeria which resulted in his fleeing the country. This evidence was rejected as the applicant was disbelieved in relation to his account of his travel/arrival in Ireland only, which is entirely peripheral to his claim (a core claim upon which the Tribunal has granted appeals in the past) . . ."*

Background

3. The applicant was born on the 23 June 1967 in Lagos, Nigeria. Before coming to Ireland, the applicant resided in Lagos working as a businessman managing a shop. He lived in a shared apartment with three other younger single men. The applicant is a heterosexual single male. He has never been married and has no children. The applicant claims that he and his flatmates were abused, and even attacked, due to a perception in the area that they were gay men.
4. The applicant sought asylum at the Office of the Refugee Applications Commissioner ("ORAC") office in Dublin city on or about 16 February 2015 and completed an 'ASY 1' form and 's. 8' interview. The applicant completed a Refugee Status questionnaire on 20 February 2015. The applicant underwent a 's. 11' interview which was conducted by an authorised ORAC officer on 24 July 2015. A 's. 13 report' issued from ORAC dated 28 August 2015 which recommended that the applicant should not be declared a refugee. By letter dated 6 October 2015 the applicant was informed that the Refugee Applications Commissioner recommended that he not be declared to be a person eligible for asylum. The relevant decision found that the applicant had not demonstrated a well-founded fear of suffering persecution if returned to Nigeria.
5. The applicant appealed the aforesaid decision by notice of appeal dated 27 October 2015. He completed an International Protection questionnaire in February 2017 and, by

application dated 10 February 2017, applied for international protection, which included an application for subsidiary protection.

6. On 11 July 2017, the applicant was interviewed, pursuant to s. 35 of the International Protection Act, 2015 ("the 2015 Act"). On 23 November 2015, the International Protection Office ("IPO") recommended, pursuant to s. 39 of the 2015 Act, that the applicant should not be given subsidiary protection on the basis that substantial grounds had not been shown for believing that the applicant would face a real risk of suffering serious harm if returned to Nigeria. The IPO had also refused the applicant leave to remain pursuant to s. 49.
7. By notice of appeal dated 27 April 2018, the applicant appealed the IPO's findings. On 31 July 2018, the International Protection Appeals Tribunal ("the Tribunal") received further submissions and accompanying country of origin information in support of the said appeal. The appeal in respect of both refusals was scheduled for hearing on 9 August 2018. A "News24.com" report was received on 3 September 2018. Following the appeal which the applicant attended, he received a decision of the Tribunal, made pursuant to s. 46(3) (a) of the 2015 Act, dated 25 September 2018, refusing him both a declaration as a refugee and a declaration as a person eligible for subsidiary protection.
8. The foregoing decision was challenged by way of judicial review and was quashed by this Court on 18 November 2018 (*O. v. Minister for Justice* [2019] IEHC 761).
9. Further submissions and country of origin information were received by the Tribunal on 28 July 2020. The applicant attended at the Tribunal for the oral hearing of his appeal, which took place on 10 August 2020. The applicant gave evidence under oath in support of his claim.
10. The appeal was refused (by a different member of the Tribunal) in a decision dated 31 August 2020 which was issued to the applicant on 2 September 2020 ("the decision"). It is the foregoing decision which is the subject of the present proceedings.
11. The applicant has made further representations to the IPO for leave to remain pursuant to s. 49 (9). No deportation order has issued in respect of the applicant.
12. The foregoing is referred to in the applicant's 1 October 2020 Statement of Grounds under the heading "Relevant Facts".

Statement of grounds para. 4

13. With regard to the issue of the applicant's travel from Nigeria to this country, it is appropriate to quote verbatim what the applicant pleads at para. 4 of his statement of grounds:

"4. The applicant left Nigeria on the 9th February 2015 and travelled to Ireland via Ghana and Turkey with the assistance of a people-smuggler. The applicant claims he brought (sic) through the airports in Turkey and Dublin by a people-smuggler and followed his instructions. He claims that he himself was not required to produce

any travel documents in the course of his travel, and that he did not go through immigration/passport control in Dublin Airport”.

Evidence

14. The evidence before this Court comprises the following: (1) the applicant’s affidavit sworn on 13 October 2020 and the exhibits thereto (which include submissions made in the context of his appeal to the Tribunal, country of origin information submitted to the Tribunal, and a copy of the latter’s decision); (2) an affidavit sworn by Ms. Wendy Lyon, solicitor for the applicant and the exhibits thereto (comprising a redacted decision in Case 1854406 – IPAT – 18, copies of newspaper articles from the “Irish Times” and the “Journal” concerning the conviction, in 2018, of a baggage handler in Dublin Airport arising out of permitting third-country nationals to bypass immigration control by using employee passes to open an unwatched staff door); (3) an affidavit sworn by Ms. Patricia Rezmives, a legal executive with the applicant’s solicitors, who avers that she took a ‘memo’ of the questions asked and evidence given at the Tribunal (and exhibits a copy of same).
15. I have carefully considered the contents of all the foregoing. As regards the issue of travel, the only averment made by the applicant comprises para. 8 of his 13 October 2020 affidavit wherein he states the following: -

“8. I say that my travels to Ireland were not particularly focused upon at the hearing. I did not realise that the decision would hinge entirely upon my account of travelling to and entering Ireland. The Tribunal Member did not mention any evidence that a third country national could not pass through Dublin Airport in the way that I did. I say that other evidence, which must surely be known to the Tribunal, suggests that it was possible to pass through Dublin Airport by-passing immigration control at the time”.

16. It is fair to say that para. 8 of the applicant’s 13 October 2020 affidavit comprises the only averments made by him as regards the hearing before the Tribunal and anything with which this Court is concerned. In other words, the applicant takes no issue whatsoever with the way his case and his evidence is characterised in the Tribunal’s decision.
17. Later in this judgment I will look closely at the decision itself. Before doing so, it is appropriate to acknowledge this Court’s gratitude to both counsel and their respective instructing solicitors for the assistance provided, in particular, in the form of detailed written submissions which were supplemented by means of skilled oral submissions made with clarity throughout the hearing which took place on 30 November.

The applicant’s submissions

18. The principal submissions made on behalf of the applicant can be summarised as follows. The Tribunal’s “complete rejection” of the applicant’s account of his travel to Ireland was unreasonable and/or disproportionate. The Tribunal member erred in law in rejecting the applicant’s “general credibility” and his entire claim for international protection on the basis of disbelief of the applicant’s account of his travel from Nigeria. The Tribunal

member failed to consider the 'core' aspects of the applicant's claim at all, and rejected his appeal only on the basis of an unfounded finding on a peripheral matter in relation to his travel arrangements and arrival in Dublin. It is also submitted that, even if that finding was reasonable, something the applicant does not accept, it should not have led to a complete rejection of the applicant's evidence concerning everything that happened in Nigeria.

19. In support of the submission that it was unreasonable and/or disproportionate for the Tribunal to find the applicant's account of his travel to Ireland as implausible or incredible, the following is submitted on behalf of the applicant: (a) he is a Nigerian man who did, in fact, manage to enter the State without a valid visa and it is submitted that he most likely passed through an airport; (b) there was no Dublin III 'hit' or match in respect of the applicant's fingerprints to indicate that he had a valid visa for, or visited, any other EU Member State (including the UK) before coming to Ireland and, if he came by air, he must have come from outside the EU, probably via Istanbul, which, it is submitted, is the main connection point/hub for flights from Nigeria; (c) it is said to be both obvious and well-known that asylum seekers can and have passed through Irish airports without valid visas and/or without passing through immigration control and/or without proper travel documentation; (d) many asylum seekers present at the IPO in Dublin rather than at any airport or port, indicating that they have managed to enter the country without a visa; (e) in 2018, a man who worked in Dublin Airport as a ground handler was jailed for 4 years for organising for third country nationals to bypass Dublin Airport immigration control which, it is submitted, corresponds with the applicant's account of what happened at Dublin Airport.
20. Before proceeding further, it is appropriate to note that certain of the foregoing submissions are not based on any evidence which is before this Court. In particular, although the applicant's solicitor has exhibited press coverage in respect of the conviction of a Mr. Cham at Dublin Circuit Criminal Court in respect of five charges of facilitating the entry into the State, of a person who was an illegal immigrant, or who was seeking asylum at Dublin Airport, on dates between 13 December 2016 and 22 January 2017, there is no evidence which would allow this Court to hold that it is either "obvious" or "well known" that asylum seekers can pass through Irish airports without valid visas, proper travel documentation or passing through immigration control.
21. That an individual appears to have been convicted in respect of facilitating the entry of asylum seekers at Dublin Airport between 13 December 2016 and 22 January 2017 (almost two years *after* the applicant left Nigeria on 9 February 2015) does not, in my view, provide an evidential basis to ground the submission as to what the applicant contends to be both "obvious" and "well known".
22. The applicant also submits that the adverse credibility finding made by the Tribunal lacked any real foundation, was "weak", and was unreasonable. Particular reliance was placed by the applicant on principles set out by Cooke J. in *I.R. v. Minister for Justice* [2009] IEHC 353 concerning the assessment of credibility, in particular principles (4); (5),

and (6) and it was submitted that, in the present case the applicant provided his account under oath and answered the questions put to him, whereas, in the absence of anything contradicting the applicant's account, the Tribunal's decision must amount to speculation or conjecture.

23. It was also submitted that, at the hearing, the Tribunal Member referred to having "information" about immigration at Dublin Airport, but nothing was provided to the applicant indicating that there is a form of watertight landing/immigration control system in operation at Dublin Airport. It is fair to say that the foregoing submission was not grounded on any evidence before this Court. There is no averment to the foregoing effect made by the applicant, or by his solicitor. Nor is the issue referred to anywhere in the Tribunal's decision.
24. In the manner I touched on earlier, the applicant has not claimed on affidavit that the Tribunal's decision was other than a comprehensive and accurate record of the evidence given. In light of the foregoing, I am satisfied that it would not be appropriate to entertain submissions as regards the foregoing "information" which are not grounded in any evidence.
25. A key submission made on behalf of the applicant was that it was not open to the Tribunal to dismiss the entire of the applicant's claim on the basis of what the applicant characterised as a finding only in respect of a 'peripheral' issue (namely the applicant's account of his travel to Ireland) and not in respect of the core of the applicant's claim (concerning country of origin). With particular reference to the re-cast Qualification Directive 2011/95/EU (on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted) ("the 2011 Directive") it was submitted that the approach taken by the Tribunal was, impermissibly, to reject the applicant's account of his travel and, as a result, find that the applicant's general credibility had not been established and to not give the benefit of the doubt to the applicant.
26. It was repeatedly emphasised that the adverse credibility finding related to the 'peripheral' issue of travel. It was submitted that, even assuming that it was reasonable for the Tribunal to take the view that what the applicant said as regards travel was wholly incredible, the Tribunal was still required to proceed to deal with his 'core' claim which the Tribunal failed to do. It was also submitted that, as regards deciding the applicant's 'core' claim, the Tribunal was obliged to make clear what material facts were accepted; what material facts were rejected; and what material facts were found to be uncertain.
27. It was also submitted that the applicant's statements about what happened to him in Nigeria were coherent and plausible and did not run counter to available general information about Nigeria and the applicant's "general credibility" should not have been rejected in these circumstances. It was submitted that this rejection was disproportionate.

28. It was accepted on behalf of the applicant that he lacked any documents in support of his claim, but it was submitted that his lack of documentation has been explained; and reliance was placed inter alia on the UNHCR "Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection", which states at para. 196, inter alia, that: -

". . . there may also be statements that are not susceptible of proof. In such cases, if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt. 197. The requirement of evidence should thus not be too strictly applied in view of the difficulty of proof inherent in the special situation in which an applicant for refugee status finds himself. . ."

29. It was submitted that the approach taken by the Tribunal to decision-making was fundamentally flawed and the submission was made that there is a special responsibility on any court which examines determinations where a flawed decision may result in loss of life or liberty.
30. Reliance was also placed, on behalf of the applicant, on passages from Hathaway and Foster "The Law of Refugee Status" (2nd Ed., p. 84) as follows: -

"In Canada, so long as the claimant's testimony is plausible, credible, and frank, it may constitute the whole of the evidence of the objective risk necessary to support an affirming finding of refugee status, even where it consists largely of hearsay evidence. There is no requirement of external corroboration of an uncontradicted credible account, although the refugee claimant may reasonably be expected to address any apparent inconsistent evidence, including that which may be contained in general human rights reports.

In what circumstances will testimony be adjudged plausible, credible and frank and hence sufficient to establish the objective foundation of a claim to refugee status? The primary rule has been stated by the Federal Court of Appeal to be that "[w]hen an applicant swears to the truth of certain allegations; this creates a presumption that those allegations are true unless there be reasons to doubt their truthfulness". In view of this basic premise, two forms of caution are appropriate before any inferences are drawn that might discount the sworn testimony of a refugee claimant.

First, the decision maker must be sensitive to the fact that most refugees have lived experiences in their country of origin which give them good reason to distrust persons in authority. They may thus be less than forthright in their dealings with immigration and other officials, particularly soon after their arrival in an asylum state. The past practice of the Board of assessing credibility on the timelines of the claim to refugee status, compliance with immigration laws, or the consistency of statements made on arrival with the testimony given at the hearing is thus highly

suspect, and should be constrained in the contextually sensitive manner discussed previously in Chapter 2.

Second, it is critical that a reasonable margin of appreciation be applied to any perceived flaws in the claimant's testimony. A claimant's credibility should not be impugned simply because of vagueness or inconsistencies in recounting peripheral details, since memory failures are experienced by many persons who have been the objects of persecution. Because an understandable anxiety affects most claimants compelled to recount painful facts in a formal and foreign environment, only significant concerns about the plausibility of allegations of direct relevance to the claim should be considered sufficient to counter the presumption that the sworn testimony of the applicant is to be accepted as true. As stated in Francisco Edulfo Val Verde Cerna:

"The Board does not expect an applicant for Convention refugee status to have a photographic memory for details of events and dates that happened a long time ago, but it is reasonable to expect that important events that happened as a consequence of other events should be found to have taken place in some consistent and logical order".

Ultimately, however, even clear evidence of a lack of candour does not necessarily negate a claimant's need for protection: - "Even where the statement is material, and is not believed, a person may, nonetheless, be a refugee. Lies do not prove the converse". Where a claimant is lying, and the lie is material to his case, the [determination authority] must, nonetheless, look at all of the evidence and arrive at a conclusion on the entire case. Indeed, an earlier lie, which is openly admitted may, in some circumstances, be a factor to consider in support of credibility".

31. Counsel for the applicant also cited *Rangit Thind Singh v. Minister of Employment and Immigration* (Federal Court of Appeal Decision – 538 – 83 November 27th 1983) wherein Heald J. concluded that: -

"[w]hen an applicant swears to the truth of certain allegations, this creates a presumption that those allegations are true, unless there be reason to doubt their truthfulness".

32. It is submitted on behalf of the applicant that, had the Tribunal adopted the approach described by the authors in 'Hathaway and Foster' and by the Federal Court of Appeal in the Singh decision, the applicant would not have needed to be extended the 'benefit of the doubt'.
33. It is also submitted on behalf of the applicant that he had submitted a considerable amount of 'country of origin' reports which, although not relating specifically to him, identified factors, such as being single and cohabiting with other men, as being perceived as indications of homosexuality. Reference was made, inter alia, to extracts from a UK Home Office report which stated inter alia that:

"Unmarried men of certain ages... arouse suspicion of either homosexuality or impotence. Unmarried men are more likely to be suspected of homosexuality than unmarried women are. In Nigeria, homosexuality cannot be displayed in public LGBTI people face discrimination in practically every sphere of life. People who are perceived to be homosexual are called derogatory names, verbally abused, and ostracised by the rest of the community.... blackmail and extortion are part of everyday life for homosexuals in Nigeria ... homosexual men meet underground . . .".

34. Reliance was also placed by the applicant on extracts from "Goodwin – Gill": *"The Refugee in International Law"* (2nd. Ed., Clarendon Paperbacks, Oxford, p. 354) which states *inter alia*: -

"Simply considered, there are just two issues: first, could the applicant's story have happened, or could his or her apprehensions come to pass, on their own terms, given what we know from available country of origin information? Secondly, is the applicant personally believable? If the story is consistent with what is known about the country of origin, then the basis for the right inferences has been laid. Inconsistencies must be assessed as material or immaterial. Material inconsistencies go to the heart of the claim and concern, for example, the key experiences that are the cause of flight and fear. Being crucial to acceptance of the story, applicants ought in principle to be invited to explain contradictions and clarify confusions.

Inconsistency may be immaterial if it relates to incidentals, such as travel details, or distance dates of lesser significance. A statement from which different inferences can be drawn however, is not an inconsistency, and generally a negative inference as to credibility ought only to be based on inconsistencies that are material or substantial; a series of minor inconsistencies and contradictions may nevertheless combine together to cast doubt on the truthfulness of the claimant".

35. On behalf of the applicant it is acknowledged that there are authorities which run counter to, as well as authorities which support, the applicant's contention that an international protection application cannot be refused solely on the basis of credibility findings concerning 'peripheral' matters such as 'travel' to the State. As regards authorities which are relied upon by the applicant, they include, in particular, the decisions of this Court in *I.S. v. Refugee Appeals Tribunal & Ors.* [2015] IEHC 859; *F.U. (Afghanistan) v. Refugee Appeals Tribunal & Ors.* [2015] IEHC 78; *O.P. v. The Minister for Justice and Equality* [2019] IEHC 298; and *E(M) v. Refugee Appeals Tribunal & Ors.* [2014] IEHC 145.
36. Reference is made *inter alia* to para. 73 of Faherty J.'s decision in *I.S.*, wherein she stated: -

"The view expressed by the decision-maker suggests that the applicant did not give a reasonable explanation as to why he did not seek asylum in "another EU state", yet there is nothing on the face of the decision to assist the court as to what was put to the applicant in this regard or what his explanation was, which was deemed

unreasonable. Nor does this appear to have been addressed in the s. 11 interview or the s. 13 report. In any event, this finding, of itself, could not sustain a decision rejecting the claim for refugee status, given the peripheral nature of the finding to the core claim". (emphasis added).

37. The applicant also refers to certain passages in the decision of Eagar J. in F. U. (Afghanistan), including, in particular, the following:

"18. The first named Respondent also dealt with the issue of travel to Ireland which in my view where agents are involved is a peripheral point. . . .

19. In "The Law of Refugee Status" by James Hathaway and Michelle Foster (Second Edition, 2014) the authors deal with "Credibility implications of mode of departure, travel or arrival":

"Perhaps because assessing the credibility of testimonial evidence is so inherently difficult, it is sometimes suggested that credibility can be determined by a reference to the circumstances of an Applicant's departure from her home country, the route taken to arrive in the asylum state and the mode of arrival to seek protection. While evidence on each of these issues may have some relevance, much jurisprudence suggests an exaggerated reliance on the evidence of this kind to assess credibility." (My emphasis)".

20. The authors further note: "Evidence of this kind is not, however, determinative but should be rather weighed together with other facts to discern the true extent of the risk faced by the refugee complainant."

38. The applicant also relies on para. 30 (4) from the judgment of Eagar J. wherein, as part of the court's decision in that case, the following was stated: -

"(4) I find the issues as outlined above by me in relation to the method of travel to be peripheral issues which are not determinative of issues of credibility".

39. The applicant also relies on passages from Keane J.'s decision in O.P. wherein, from para. 49 onwards, the learned judge (paraphrasing I.R.) set out relevant principles governing the manner in which the Tribunal was obliged to assess credibility. The applicant relies, in particular, on the following summary in O.P. : -

"50. First, the obligation on the tribunal was to assess credibility by reference to the full picture that emerged from the available evidence and information taken as a whole, when rationally analysed and fairly weighed.

51. Second, that assessment was not to be based on a perceived, correct instinct or gut feeling as to whether the truth was being told or not.

52. *Third, any finding by the tribunal of lack of credibility had to be based on correct facts, untainted by conjecture or speculation, and the reasons drawn from those facts had to be cogent and bear a legitimate connection to the adverse finding.*
53. *Fourth, the reasons given for a finding on credibility had to relate to the substantive basis of the claim made and not to minor matters or to facts which were merely incidental in the account given.*
54. *Fifth, where an adverse finding involved discounting or rejecting documentary evidence or information relied upon in support of a claim and which was 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.*
55. *And sixth, while there is no general obligation to refer to every item of evidence and to every argument advanced, the reasons stated must 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”.*
40. For the applicant, reliance is also placed on para. 11 of the judgment by MacEochaidh J. in *E.(M)*. wherein the learned judge stated inter alia the following: -

“In many instances, the part of an asylum seeker's narrative describing travel, border crossing and knowledge of third country transit may be delivered in a manner which is difficult to believe. It is not uncommon for such matters, though not capable of being believed, to be considered peripheral to an asylum claim. There are many reasons why an asylum seeker might not tell the truth about how they travelled to Ireland, including the fear of negative consequences for their claim if they were to tell the truth about being trafficked and using false documents. As has been frequently remarked, the existence of untruths about peripheral matters unrelated to a core claim of persecution, though required to be considered in the context of general credibility, will not of itself necessarily deprive an asylum seeker of protection”.

41. Counsel for the applicant very fairly and appropriately acknowledged that the argument sought to be made in respect of core/peripheral matters has been rejected by this Court in *I.E. v. Minister for Justice and Equality* [2016] IEHC 85, wherein Humphreys J. stated *inter alia* the following: -

“12. Thus, where an applicant's credibility is rejected generally, the tribunal does not need to make any specific finding on whether the acts of persecution actually occurred or to what extent or whether any other element of the test for a well-founded fear of persecution exists.” . . .

“25. I previously commented in R.A., at para. 51 that the shaping of the decision is a matter for the decision-maker and not for the applicant. Still less is it a matter for

the court. I would not accept that there is anything unreasonable about condemning an applicant's credibility, by reason of an implausible tale related to travel arrangements as was done in this case."

. . .

"30. *There is no general obligation either in law or in logic requiring a decision-maker to make such credibility findings only on the basis of difficulties with the central claim being made. Indeed, the implications of that contention are clearly unacceptable. Such an approach would allow an applicant to dissemble with impunity on any matter other than the central allegation of persecution, which may not be capable of verification, and then complain if his or her credibility is called into question".*

42. On behalf of the applicant it is acknowledged that a number of decisions have followed the approach outlined in I.E. and a non-exhaustive list of such cases is said to include *D.S. Nepal v. IPAT* [2019] IEHC 212; *B.D.C. (Nigeria) v. The International Protection Appeals Tribunal* [2018] IEHC 460; *D.U. (Nigeria) v. IPAT* [2018] IEHC 630; *JMN v. RAT* [2017] IEHC 115; *MG v. Refugee Appeals Tribunal* [2017] IEHC 94; and *NN v. Minister for Justice and Equality* [2017] IEHC 99.
43. The submission is made on behalf of the applicant that the case law at best demonstrates that it may be possible to reject credibility based on a non-core issue, but it is submitted that this would need to be in cases where the credibility complaint is far more significant than the complaints raised in the impugned decision in the present case.
44. The applicant also cites p.50 from Hathaway and Foster *The Law of Refugees* in which the learned authors state *inter alia*: -

"A claim to Convention refugee status is not in any sense compromised by illicit arrival in the state in which protection is sought. Persons who sneak across frontiers or who disguise their true motive when they seek entrance may still be genuine refugees if they otherwise meet the requirements of the definition.

The eligibility of illegal entrance to qualify as refugees is clear from the absence of any reference in the Convention as legal admission as a criterion of refugee status. This possibility was explicitly raised and rejected and the Conference Plenipotentiaries by way of an unsuccessful Australian proposal to exclude fraudulent entrance from the scope of Protection.

To the contrary, the granting of refugee status to illegal entrance was specifically contemplated by incorporation in the Convention of Article 31, titled 'Refugees Unlawfully in the Country of Refugee.' In this provision, the Conference went so far as to require contracting states to exempt refugees from ordinary penalties that might attach to illegal entry or presence in their territory. While this article does not prohibit the eventual deportation of a refugee to a state in which she is not at risk, it provides ample support for the position that illegal entry is not a sufficient

concern to deprive an individual of the right to have her refugee claim determined in accordance with the Convention."

45. The applicant also draws attention to UK policy guidance i.e. the "UK BA, Asylum Instructions, Considering Asylum Claims and Assessing Credibility" (February 2012, para. 4.3.4), in which, *inter alia*, the following is stated under the heading "Benefit of the doubt and general credibility" by way of clarifying the meaning of UK domestic legislation's transposition of article 4(5) of Directive 2011/95 EU:

"What it is saying is that if an applicant meets all 5 criteria, a decision-maker should give the benefit of the doubt – there would, after all be no reason not to do so. However, the reverse is not automatically true. Because an applicant fails to meet one or more of the criteria, this in itself does not permit a decision-maker to disregard all unsubstantiated areas of an applicant's claim because an unsubstantiated statement can be credible if it is generally internally consistent, compatible with known facts and plausible. It is, once again, a matter for determining the weight to be given to these issues in the light of the material facts of the case."

46. The applicant also refers to an extract from "Asylum Law & Practice" (Mark Symes and Peter Jorro; 2nd Edition; 2010) in which the authors state *inter alia*:

"Dishonesty as to the travel route is a secondary consideration compared with evaluation of the more fundamental question of the veracity of the account of events in the country of origin. There may be good reason disguising the mode of journey to the UK, such as an attempt to protect the methods of operation of those who effected an asylum's departure from the country of origin."

47. Reliance is also placed on the House of Lords decision in *R (Sivakumar) v. SS HD* [2003] UK HL 14; [2003] 1 WLR 840 wherein Lord Steyne stated *inter alia*:

"Moreover, if the case is considered globally, the conclusion is justified that there was a strong claim to refugee status. The evaluation of the material facts must not be compartmentalised."

48. The applicant also refers to the decision in *J.T. (Cameroon) v. SSHD* [2008] EWCA Civ 878, wherein at (19) Lord Justice Pill interpreted *Sivakumar* and concluded that "a global assessment of credibility is required" without "an undue concentration on minutiae".

49. The applicant also relies on the following extract from the "UNHCR handbook" which states as follows: -

"Benefit of the doubt:

"203. After the applicant has made a genuine effort to substantiate his story there may still be a lack of evidence for some of his statements. As explained above (paragraph 196), it is hardly possible for a refugee to 'prove' every part of his case

and, indeed, if this were a requirement the majority of refugees would not be recognised. It is therefore frequently necessary to give the applicant the benefit of the doubt.

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

50. With regard to the foregoing, the submission is made that the 'benefit of the doubt' is not necessary in every case, but the benefit of the doubt principle was intended to assist applicants. It is submitted that the applicant presented his account of events under oath, which account was coherent plausible and consistent with the country of origin information and this, it is submitted, ought to have been enough to meet the "low standard of proof on the balance of probabilities". It is further submitted that, regardless of any adverse finding as to credibility referable to travel, the Tribunal could and should have given the 'benefit of the doubt' to the applicant, insofar as his core claim was concerned.

The respondent's submissions

51. The principal submissions on behalf of the respondent can be summarised as follows. The tribunal had regard to all documents and considered all country of origin information. The tribunal accepted that the appellant's account of the material events did not in a very general sense run contrary to the country of origin information. The tribunal went on to hold that the appellant's claim was broadly coherent and consistent, if somewhat lacking in specific detail, particularly in relation to the alleged attack in January 2015. The tribunal did not find implausibility in any aspect of the applicant's account of the core claim to the extent that there was a basis for making adverse credibility findings on that basis. The tribunal noted, as it was entitled to, that the applicant's claim was built on his own assertions together with country of origin information that was supportive in a general sense and that the applicant's claim was not supported by documentary or other evidence that confirms his account. The tribunal then went on to look at the case in the round and found that the core facts of the applicant's claim had not been established on the balance of probabilities. Thus, submits the applicant, the tribunal did in fact consider and decide the core aspect of the applicant's claim.
52. It was submitted that, having done so, the tribunal went on to consider whether it was possible to extend the 'benefit of the doubt' to the applicant and accept the core facts of his claim on that basis. It is submitted that the tribunal then went on to assess the applicant's travel to Ireland and, in doing so, noted that this was peripheral to the core of the applicant's claim, but the tribunal was entitled to consider the applicant's account of his travel to Ireland in the context of assessing his general credibility. It is submitted that there was no failure to consider the core aspects of the applicant's claim.
53. With reliance on the decision in *I.E.*, it was submitted that the credibility of a person in relation to matters impossible to verify can be determined by reference to peripheral

matters and that it was appropriate for the tribunal to apply the view it formed as to credibility to the overall claim of the applicant.

54. The respondent submits that newspaper reports of a conviction of a Dublin Airport worker in 2018 are not corroborative of the claims made by this applicant. The respondent submits that, based on the vague account proffered by the applicant to the tribunal, the latter was entitled to form the view it did, and the tribunal's rejection of the applicant's account was neither unreasonable nor disproportionate in the absence of sufficient detail provided by the applicant.
55. It was submitted that the tribunal was entitled to find that the applicant's account of his travel to Ireland was vague and, that being so, it was submitted that incredibility was demonstrated. It was submitted that, in the present case, the decision in *K.M.* is relevant insofar as a credibility finding can be based on travel-related issues.
56. The respondent submits that, whilst the tribunal did not find any implausibility in any aspects of the applicant's account of his core claim, which was based on the applicant's own assertions together with country of origin documentation supportive in a general sense, looking at the case 'in the round' as the tribunal was entitled to do, it held that the applicant's claim was not established on the balance of probabilities.
57. The respondent emphasises that it was after the foregoing finding that the tribunal went on to assess whether it was possible to extend the benefit of the doubt to the applicant and accept the core facts of his claim on that basis but, in the manner explained in the tribunal's decision, the applicant's general credibility was not established on the balance of probabilities. Thus, it was not possible to extend the benefit of the doubt to him.
58. The respondent submits that, among the findings made by the tribunal was that, while broadly coherent and consistent, the applicant's claim was held to be somewhat lacking in specificity and detail, particularly in relation to the alleged attack in January 2015. It is submitted that this incident in January 2015 was, in essence, what is said by the applicant to have 'triggered' his departure from Nigeria. The respondent submits that it is a weakness in the applicant's case that he cannot recall sufficient detail about this catalyst incident. The respondent further submits that, merely because the applicant's statements are not contradicted by country of origin information, does not mean that credibility is automatically accepted.
59. Particular emphasis is laid by the respondent on the fact that the adverse credibility finding was made after the applicant's evidence was given at an oral hearing, where the first named respondent had the opportunity to observe the demeanour of the applicant. It is emphasised that it was the first named respondent who had the capacity to assess and consider the applicant's credibility in that context.
60. The respondent relies *inter alia*, on the decision of Mr. Justice Peart in *Imafu v. MJELR & Ors.* [2005] IEHC 416, wherein the learned judge stated (at p.11): -

"This Court must not fall into the trap of substituting its own view on credibility for that of the Tribunal member. The latter just as a trial judge is...rather than the appellate court, in the best position to assess credibility based on the observation and demeanour of the applicant when she gives her evidence. These are essential tools in the assessment of credibility, and it is always essential to remember that what appears as the spoken word in a transcript or in a summary of evidence contained in any written decision cannot possibly convey the necessary elements for the assessment of credibility. That is why the court will be reluctant to interfere in a credibility finding by an inferior tribunal, other than for the reason that the process by which the assessment of credibility has been made is legally flawed".

61. The respondent submits that the applicant's credibility and the adverse findings made thereon were made by a process which was *not* legally flawed or disproportionate.
62. It is submitted that the tribunal cannot be said to have made adverse credibility findings without having made a reasonable assessment of the evidence given at oral hearing and conducting an adequate consideration of the country of origin information and submissions before it. The submission is made that the fact the tribunal rejected the applicant's credibility because of vagueness and lack of specificity does not mean that the tribunal's assessment was not carried out with sufficient vigilance and care. It is emphasised that the integrity of the applicant was assessed in the context of all the evidence 'in the round' and it is denied that an adverse credibility finding is unfair or, of itself, reflective of any flaw in the decision if it was fairly considered, as it was in the present case.
63. The respondent submits that merely because the applicant gave plausible evidence (in the form of his own assertions together with country of origin information which was supportive in a general sense) does not mean that the applicant's evidence has to be accepted without question.
64. It is submitted that, notwithstanding the country of origin information which was before the tribunal, there was a lack of specificity and there was vagueness in the applicant's account, both being factors which prevented the tribunal from accepting the truthfulness of his evidence.
65. The respondent submitted that travel arrangements were an aspect of the applicant's account which the tribunal was entitled to consider in the context of assessing his overall credibility based on the observation and demeanour of the applicant and, citing from the decision in *K.M.*, the respondent submitted that the tribunal's findings with respect to travel "*went directly to the issue as to whether or not the applicant was credible in claiming to be a bona fide refugee*".
66. Several extracts from the decision in *I.E.* were cited by the respondent illustrating that the adverse credibility finding in that case was based on matters relating to issues such as the applicant's travel arrangements, rather than the account of persecution, as such.

67. The respondent also submitted that the court should be wary of a forensic de-construction of individual aspects of a credibility finding, especially in circumstances in which the decision-maker has observed the applicant's demeanour while giving evidence.

68. The respondent referred to the decision of Mr. Justice MacEochaidh in *P.S. v. RAT* [2016] IEHC 398, wherein the learned judge noted that the court's role in judicial review, on credibility grounds, is constrained to assessing the rationality of the decision, when it was held: -

"This Court, on an application for judicial review, is not asked to decide whether on the balance of probabilities events are more or less likely to have happened. To do so would be to usurp the function of the decision-maker. The question for the Court, on the facts of this case, is whether the decision that events or circumstances were implausible was rational as a matter of law. The Court is being asked to decide whether the credibility findings were rational."

69. The respondent submits that, in the present case, the credibility findings were rational and were based on the lack of specificity and detail which related to the applicant's claim of anticipated persecution based on his perceived membership of a perceived social group. The respondent also submits that the rejection of the applicant's account of how he travelled to Ireland went directly to the *bona fides* of his claim.

70. It was submitted that the issue of travel to Ireland was not, of itself, the only reason for refusing subsidiary protection. The applicant, it was submitted, had failed to ground his claim with sufficient detail.

71. The respondent submitted that the tribunal did, in fact, consider all country of origin information, all documentation and submissions, and the evidence given by the applicant in advance of reaching its decision. The respondent also referred to para. 91 of the judgment of Mac Eochaidh J. in the *P.D.* case as follows: -

"It is an oversimplification of this jurisprudence to say that a decision-maker must decide on the truth of each element of a claim for asylum. The common thread in the judgments is the need for clearly expressed decisions in relation to the core claim. The extent to which the elements of a claim are required to be formally decided depends on the circumstances of each case. As asylum claims require the establishment of a number of elements, for example: membership of a social group or race or religion or nationality and a well-founded fear of persecution – it may be possible to dispose of the application where proof of one of the necessary elements fails. Where, for example, an applicant claims to be a Nigerian who suffered religious persecution and it emerged that persons of that faith suffer no persecution in Nigeria, the decision-maker could lawfully decide that the applicant did not have a well-founded fear of persecution without the necessity of deciding whether or not she was a member of the particular religious faith claimed. In my view, no illegality would attach to such decision. Ideally, it should be clearly stated that no decision is needed on this aspect of the claim and that, in my view, would comply with the

Meadows inspired comments quoted above as to the need for clarity in administrative decisions. The difficulty which frequently arises is that it is unclear to applicants what is believed and what is not believed or whether any decision has been taken in respect of an important part of a claim and this may be of some consequence for the purposes of an administrative appeal”.

72. With reference to the foregoing dicta, it was submitted that the applicant in the present case was aware from the decision that lack of specificity was the reason for his adverse credibility.
73. The respondent also referred inter alia to paras. 21 to 25 of the judgment of Keane J. in [2019] IEHC 298 wherein the following was stated: -
- "21 *Reg. 5(1)(b) of the 2006 Regulations requires a refugee status decision-maker to take into account the relevant statements and documentation presented by the protection applicant including information on whether he or she has been or may be subject to persecution.*
22. *O.P. v. MJE IPAT & Ors On the question of the assessment of the evidential value of the unsupported statements of a refugee status applicant, the United Nations High Commissioner for Refugees ("UNHCR") Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection (1979, reissued in 2011) ("the UNHCR Handbook") has this to say on the benefit of the doubt:*
- "203. *After the applicant has made a genuine effort to substantiate his story there may still be a lack of evidence for some of his statements. As explained above (paragraph 196), it is hardly possible for a refugee to 'prove' every part of his case and, indeed, if this were a requirement the majority of refugees would not be recognised. It is therefore frequently necessary to give the applicant the benefit of the doubt.*
204. *The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts."*
23. *In V.Z. v Minister for Justice [2002] 2 I.R. 135 (at 145), the Supreme Court (per McGuinness J; Keane CJ, Denham, Murphy and Murray JJ concurring) noted the use by the High Court in the decision then under appeal of the UNHCR Handbook as an aid to the interpretation of the Geneva Convention (at 145). The Supreme Court endorsed that approach as correct (at 148).*
- 24 *Reg. 5(3) of the 2006 Regulations, a literal transposition of Art. 4(5) of the Refugee Qualification Directive, nods in the direction of the extract from the UNHCR Handbook just quoted, when it states:*

"(3) *Where aspects of the protection applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation when the following conditions are met—*

- (a) *the applicant has made a genuine effort to substantiate his or her application;*
- (b) *all relevant elements at the applicant's disposal have been submitted and a satisfactory explanation regarding any lack of other relevant elements has been given;*
- (c) *the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;*
- (d) *the applicant has applied for protection at the earliest possible time, (except where an applicant demonstrates good reason for not having done so); and*
- (e) *the general credibility of the applicant has been established."*

74. With reference to the foregoing, the respondent emphasises that the UNHCR Handbook; the 2006 Regulations; and s. 28 (7) of the 2015 Act all make clear that the acceptance of an applicant's general credibility is a condition precedent to the availability of the 'benefit of the doubt'. It is submitted that, in the present case, the applicant's general credibility was *not* established.
75. The respondent submits that, in light of the fact that the applicant's general credibility was not established, Article 4(5) of the Directive is not applicable, and similarly, s. 28 (7) of the 2015 Act does not apply, given that the applicant's general credibility was not established.
76. The respondent submits that the 'benefit of the doubt' will only be given when all available evidence has been obtained *and* checked and where the examiner is satisfied as to the applicant's general credibility – something which the tribunal was not satisfied of in the present case.
77. It was submitted that, far from being an additional burden on an applicant, the 'benefit of the doubt' constitutes an additional check by the decision-maker, in ease of an applicant, to see whether it is possible to extend the benefit of the doubt to them and to accept the core facts of their claim. It is submitted that the tribunal considered matters appropriately in the present case but was unable to extend the benefit of the doubt to the applicant in circumstances where his general credibility was not established.
78. It was also submitted that the tribunal's finding that the applicant's general credibility had not been established, was not a finding based exclusively on the aspect of the applicant's travel to Ireland, having regard to the tribunal's findings as details in its judgment (which included evasiveness, lack of specificity, implausibility, vagueness and that the applicant was unreasonably hesitant in terms of answers).

79. It was submitted that the fact the applicant presented his account on oath in a broadly coherent and consistent manner did not detract from the lack of specificity and detail in his account, in particular concerning the “triggering” incident of the alleged attack in January 2015, being the event which prompted the applicant to leave Nigeria on 9 February 2015.
80. The respondent also referred to the decision of Fennelly J. in *Mallak v. Minister for Justice* [2012] IESC 59 wherein the learned judge stated (at para. 66): -

“... The most obvious means of achieving fairness is for reasons to accompany the decision. However, it is not a matter of complying with a formal rule: the underlying objective is the attainment of fairness in the process. If the process is fair, open and transparent and the affected person has been enabled to respond to the concerns of the decision-maker, there may be situations where the reasons for the decision are obvious and that effective judicial review is not precluded.”

81. With reference to the foregoing, the respondent submits that the process in the present case was fair, open and transparent and the applicant was able to respond to the concerns of the decision-maker and the reasons for the decision were obvious to the applicant.
82. The respondent also relied on dicta from the Court of Appeal’s decision in *R.A. v. Refugee Appeals Tribunal* [2017] IECA 297 wherein, after referring to a passage from the judgment of Cooke J. in the *I.R.* case, Hogan J. made clear that the general approach of the court in judicial review applications, where a request for asylum has been rejected on credibility grounds, is well-established and was summed up by Cooke J. in *I.R.* At para. 3 of his judgment in *I.R.*, Cooke J. stated inter alia the following: -

“3. It is because in such cases the judgment of the primary decision-maker must frequently depend on the personal appraisal of an applicant, that it is not the function of the High Court in judicial review to reassess credibility and to substitute its own view for that of the decision-maker. Its role is confined when a finding of lack of credibility is attacked, to ensuring that the process by which that conclusion has been reached is legally sound and not vitiated by any material error of law”.

83. With regard to the foregoing, the respondent submits that in the present case, all evidence was adequately assessed and fairly weighed by the first named respondent and was not vitiated by any material error of law. The respondents also point out that the Court of Appeal in *R.A.* indorsed the 10 principles which were outlined by Cooke J. in *I.R.* which principles include the following: -

“(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.*

...

(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.*

...

(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”.*

84. The respondent submits, with reference to the foregoing, that the decision given by the first respondent regarding his conclusions on the applicant’s credibility was rationally analysed and fairly weighed. The respondent denies that the tribunal breached fair procedures or that the tribunal placed a disproportionate or erroneous burden of proof on the applicant.

85. Having summarised the submissions made, I now turn to the decision which is at the heart of the present proceedings.

The decision challenged in this case

86. The first named respondent’s decision comprises Exhibits “OO2” to the applicant’s affidavit and it refers to the hearing which took place on 10 August 2020 which was attended, *inter alia*, by the applicant, a representative from his solicitor’s office and by his counsel. Section “[1] Introduction” details, *inter alia*, the relevant procedural history and includes a detailed setting-out of all country of origin documents which accompanied the submissions made on behalf of the applicant. The claim made by the applicant is summarised in the decision in the following terms: -

“[2] Case Facts & Documents:

[2.1] *The appellant made the following allegations in support of his claim.*

[2.2] *The appellant was born on 23rd June 1967 in Lagos, Lagos State, Nigeria. He grew up there and completed 15 years of formal education there, including an MBA. He is a Christian. He is heterosexual, has no children and is single.*

[2.3] *In about 2000, the appellant moved into an apartment in Lagos, which he shared with three heterosexual male friends named ["T"], ["D"] and ["N"]. The appellant and his three friends all worked in different jobs. The appellant had a shop where people could use computers and make photocopies of documents.*

[2.4] *The appellant and his three flatmates generally had no problems with their neighbours. There were occasional quarrels but nothing significant. They exchanged pleasantries and small talk with them. A few of the appellant's flatmates had girlfriends on and off. As the years passed, the appellant and his flatmates started to be mocked on occasion by their neighbours for not having steady girlfriends and for not being married. This tended to happen on holidays and festivals when people in the community were socialising.*

[2.5] *The appellant did not take the occasional mockery by neighbours seriously at first. However, in about 2008/2009, the Nigerian government introduced a new law that increased pressure on homosexual people and stoked homophobia amongst the general population. The occasional mockery of the appellant and his flatmates by neighbours became more aggressive and intense and some neighbours were more direct in suggesting that the appellant and his flatmates were gay. The appellant felt increasingly uneasy about the comments from neighbours.*

[2.6] *In December 2014, there was an unpleasant incident when the appellant and his flatmates were a subject of verbal homophobic abuse by their neighbours. One evening in January 2015 the appellant and his flatmates were at home in their apartment watching TV when they heard a commotion outside. A crowd outside was throwing missiles at the apartment, including sticks and stones. The appellant heard people in the crowd shouting that they had evidence that the appellant and his flatmates were gay. The people in the crowd were loud and aggressive. The appellant could not identify people in the crowd as he was not close to any of the windows in the apartment. He fled out the back of the apartment with his flatmates. He left his mobile phone behind in the rush. He made his way to the house of an older friend named [A]. [A] lived in a different part of Lagos. The appellant was not able to make contact with his three flatmates because their mobile numbers were stored in his mobile phone that he had left behind in the apartment and he did not know the numbers off by heart. He never saw his flatmates again.*

[2.7] *The appellant stayed with [A] for a few days. On the advice of [A], the appellant did not return to his apartment to obtain any personal belongings or to see if it had been damaged in any way. [A] advised the appellant that the apartment was under siege and that it would not be safe for the appellant to go there. [A] advised the appellant that it was not safe for the appellant to stay in Nigeria and he made a plan for the appellant to leave Nigeria in early February 2015. He brought the defendant to a different part of Lagos. He told the appellant to get a minivan destined for Accra in Ghana. He said the appellant would be met by a man at the*

bus station in Accra. [A] made all of the arrangements and paid for everything. The appellant is not sure why [A] was willing to do so much for the appellant but thinks it might have been because the appellant did a number of errands for [A] in the past”.

87. At this juncture it is important to emphasise what the role of this Court is and what it is not. This is not an appeal. It is no function of this Court to engage in a merits-based analysis. This Court is not the decision-maker. The role of this Court is confined to assessing whether the decision made was legally sound in the context of the challenge brought by the applicant. Having said the foregoing, it is appropriate to point out that the applicant does not assert that the tribunal’s account of his claim is other than fair and comprehensive. In other words, it is not in dispute that s. [2] captures the claim made by the appellant, and there is no question of any material aspect of the claim not being included. Among the other exhibits to the applicant’s affidavit are copies of the ‘ASY 1’ form completed by the applicant; the report of the applicant’s ‘s. 11’ interview; the applicant’s completed application for international protection; and the report of the applicant’s ‘s. 35’ interview.

The applicant’s account of his travel from Nigeria

88. Paras. [2.8] onwards of the “Case Facts & Documents” record the applicant’s account of his travel from Nigeria to this country and it is appropriate to quote same, *verbatim*, as follows: -

“[2.8] When the appellant arrived in Accra, he met a man at the bus station. The man took him to the International Airport in Accra. He handed the appellant a sealed envelope and told the appellant to only open it if he was stopped at any point on his travels. The appellant never opened the envelope and he does not know what was inside the envelope. The man at the bus station introduced the appellant to another man at the International Airport in Accra.

[2.9] The man at the airport in Accra accompanied the appellant into the airport. They did not go through the main entrance or through immigration channels. The appellant is not sure, but thinks they may have used channels for airport workers. The appellant was wearing ordinary casual clothes and was not stopped at any stage or asked any questions. They arrived at the flight departure area for a plane to Turkey. All the other passengers got on first and then the man told the appellant to follow him on to the plane. They sat near the back of the plane. They were never asked for tickets or identity papers and they were not asked any questions by flight attendants or any other airport staff.

[2.10] The appellant does not know what airline operated the flight to Turkey but it was a large passenger plane. When they arrived in Turkey, they waited for all of the other passengers to get off before disembarking. The appellant and the man he travelled with were not asked for documents at any stage on arrival at the airport in Turkey. They were not asked to show tickets or identity documents. The appellant does not know what city or airport he was in on his arrival in Turkey.

[2.11] *Some time later the appellant and the man boarded another plane. Again, they got on after all other passengers had boarded. The appellant thinks it was another passenger plane. It was shorter and wider than the plane from Ghana to Turkey. They sat near the back of the plane. They were never asked for tickets or identity papers and they were not asked any questions by flight attendants or any other airport staff.*

[2.12] *The plane arrived in Ireland. The appellant does not know if he arrived in Dublin Airport. He and the man got off the plane after the rest of the passengers got off the plane, and the man escorted the appellant out of the airport. They were not asked questions at any stage and they did not pass through immigration checkpoints or, indeed, checkpoints of any nature. The man asked for the sealed envelope from the appellant and the appellant returned it to him. The man then disappeared. The appellant applied for asylum in Dublin some days later.*

[2.13] *The appellant is afraid that he will be killed or seriously harmed if he is returned to Nigeria. He fears harm at the hands of his neighbours in Lagos who have mistakenly imputed a homosexual identity to him. More generally, he fears harm in Nigeria in connection with the fact that he is a single man and is therefore more likely to be thought of as homosexual. He could not relocate to Benin City because, although he could possibly establish himself there and make a living, he does not know anyone there and, more pertinently, his single status would soon cause him to be suspected of being homosexual. This would be true of any place of potential relocation within Nigeria”.*

89. The foregoing concludes the contents of s. [2] of the decision and it is not in dispute that this accurately represents the plaintiff’s claim, including his account of his travel. In other words, it is not suggested that the applicant provided any more detail or any material evidence which is *not* set out in s. [2].
90. Under the heading “Documentation”, the first named respondent notes, at para [2.14] of the decision, that the applicant did not submit any original documentation to ORAC and the IPO in support of his application for asylum and subsidiary protection. Reference is made to the applicant’s legal submissions and to the information which accompanied them comprising international reports, which are then listed. Para. [2.15] explicitly states that *“The notices of appeal, submissions and all of the documents provided have been fully considered”*.
91. At s. [3] of the decision, the first named respondent is satisfied, on the balance of probabilities that the applicant is a national of Nigeria. S. [4] of the decision begins as follows: -

“[4] Assessment of Facts and Circumstances:

[4.1] Pursuant to s. 28 of the IPA, the Tribunal has considered the facts and circumstances of the appellant's claim. In making its findings, the Tribunal has had regard to the appellant's personal circumstances.

[4.2] I assess the material facts of the claim to be that:

- The appellant is a single male who has never been married and has no children;
- The appellant and his three flatmates were mocked by their neighbours on the basis that they were suspected of being gay and their apartment was the subject of a homophobic attack by a mob in January 2015.

COI

[4.3] In arriving at the credibility finding in this decision, the Tribunal accepts that the appellant's account of material events does not, in a very general sense, run counter to COI referred to in the submissions received, including COI that shows that unmarried men of single "certain ages" can arouse suspicion of homosexuality and that particular living arrangements can arouse the same suspicions (see in particular Swedish Migration Board Report on fact finding mission 2014 and Finnish Immigration Service Report, status of sexual and gender minorities in Nigeria, 9 June 2015). The COI also shows that same – sex activity is illegal and taboo in Nigeria and that LGBT people in Nigeria and people who are suspected of being LGBT (even if they are not) are at risk of a range of hostile behaviour from both state and non – state actors, including arrest, prosecution and physical violence.

[4.4] The appellant's claim is broadly coherent and consistent, if somewhat lacking in specificity and detail, particularly in relation to the alleged attack in January 2015. Unlike certain findings in the IPO decision under appeal, the Tribunal does not find implausibility in any aspects of the appellant's account of the core of his claim to the extent that there is a basis for making adverse credibility findings on this basis. At the same time, the Tribunal notes that the appellant's claim is built on his own assertions whether with COI that is supportive in a general sense, and is not supported by documentary or other evidence that confirms his account. Looking at the case in the round, the Tribunal finds that the core facts of the appellant's claim have not been established on the balance of probabilities and so it is necessary to consider whether it is possible to extend the benefit of the doubt to the appellant and accept the core facts of his claim on that basis. (emphasis added)

The applicant's 'core' claim was considered

92. It is plain from the foregoing that the Tribunal did, in fact, consider the applicant's 'core' claim and, in the manner explained in the decision, came to the view that the core facts of the applicant's claim had not been established on the balance of probabilities.

93. It is a statement of the obvious to say that the Tribunal came to this view having had the benefit of hearing first-hand the applicant's sworn evidence and observing his demeanour. Given that the hearing was an oral one, it is self-evident that that the

foregoing formed part of the Tribunal's considerations, as did the contents of all written submissions and country of origin documentation. I am entitled to take this view because the Tribunal explicitly said so (i.e. "*looking at the case in the round, the Tribunal finds...*").

94. It should also be pointed out that the applicant does not assert that the Tribunal did not proffer adequate reasons for rejecting his core claim. On the contrary, the applicant pleads that the Tribunal rejected his entire claim on the basis of disbelief of the applicant's account of his travel from Nigeria and his entry into Ireland. The case made by the applicant is that the Tribunal did not consider and did not decide his core claim at all. Yet, the Tribunal's decision paints an entirely different picture.
95. Furthermore, the reasons why the Tribunal came to the view that the core facts of the applicant's claim had not been established on the balance of probabilities is apparent from s. [4.4].
96. To look "*at the case in the round*", is to consider, inter alia, the applicant's sworn evidence, both as to the content of same and the manner in which it was given, (including the demeanour of the applicant), and it is to weigh this evidence up, alongside all written submissions and accompanying documentation. That is what the Tribunal did in this case.
97. It is also plain from para. [4.4] that the Tribunal took the view that, whilst broadly coherent and consistent, the applicant's claim lacked "*specificity and detail*" and that this was so "*particularly in relation to the alleged attack in January 2015*".
98. As I commented on earlier, the Tribunal's decision captures the entirety of the applicant's claim (see paras. [2.2] to [2.7] and para. [2.13], in particular). Although it is no function of this Court to make a merits-based decision, it seems to me that it was entirely reasonable for the Tribunal to take the view that the applicant's claim was lacking in specificity and detail in the manner expressed by the Tribunal. Nor, I need to emphasise, is that view challenged in the present proceedings.
99. For these reasons I am satisfied that the Tribunal did, in fact, consider and decide upon the applicant's core claim and, for stated reasons, came to the view that the core claim was not established on the balance of probabilities. Neither that decision nor the reasons for it have been challenged in the present proceedings.
100. Insofar as it might be suggested that, where the Tribunal considers a claim to be "*broadly coherent and consistent*" and does not find "*implausibility*" such as would provide a basis for making adverse credibility findings, it is axiomatic that an applicant's account satisfies the balance of probabilities test, I reject such a suggestion. It seems to me that such a proposition would rob the decision-maker of jurisdiction. It would be to suggest that, where a version of events is proffered under oath, the Tribunal is obliged to accept it without question as being sufficient to satisfy the balance of probabilities test, with no opportunity for the Tribunal to take anything else into account (be that the lack of specificity and lack of detail in the account proffered, and/or the demeanour of a witness and/or manner in which evidence was given, or any other issue). By contrast, the

Tribunal in the present case did what it was entitled to do, namely, to look at the case "in the round" and come to its decision on the core claim.

General credibility must be established for the benefit of the doubt to be available

101. It does not appear to be in dispute that the general credibility of an applicant must be established in order for the 'benefit of the doubt' to be available to them. This is clear from the provisions of the re-cast Qualification Directive 2011/95/EU, in particular Article 4(5)(e). The same point is made in the UNHCR Handbook which makes clear (at para. 204) that the benefit of the doubt should only be given "...when the examiner is satisfied as to the applicant's general credibility". (See also paras. 21 – 24, inclusive, from the decision of Keane J. in *O.P. & Ors v. Minister for Justice and Equality & Ors* [2019] IEHC 298; see also para. 8 from the decision of Humphreys J. in *J.H. (Albania) v. IPAT & Anor* [2018] IEHC 752).

102. Returning to the Tribunal's decision, it is clear that having considered and decided upon the applicant's 'core claim', the Tribunal went on to consider whether it was possible to extend the 'benefit of the doubt' to the appellant and to accept the core facts of his claim on that basis. In this context, it is appropriate to quote, verbatim, from para [4.5] onwards from the Tribunal's decision: -

"Travel to Ireland

[4.5] The appellant's travel to Ireland is peripheral to the core of his claim. However, his account in this regard has a bearing on his general credibility and this becomes relevant in a situation where the Tribunal is of the view, as it is in this case, that acceptance of the material facts of the appellant's claim turns on whether it is possible to extend the benefit of the doubt to him. The submission was made by counsel for the appellant at the appeal hearing that it is not possible to reject the core of the appellant's claim solely on the basis of an adverse finding on a peripheral matter such as travel. The Tribunal respectfully disagrees. If an appellant's general credibility is so undermined by an adverse credibility finding on a peripheral matter such as travel, it may be that in a particular case it is not possible to extend the benefit of the doubt to an appellant as regards the core of their claim.

[4.6] The Tribunal finds the appellant's account of his travel to Ireland to be extremely problematic on two separate fronts: - one connected to implausibility and the other connected to vagueness. The Tribunal is well aware of the need for caution when making findings of implausibility and of the risk of straying into conjecture and speculation. Indeed, the Tribunal has not upheld the findings of implausibility in the IPO decision under appeal that concerned the core of the appellant's claim. However, bearing all of this in mind, the Tribunal finds that it is entirely implausible that the appellant took two international flights on passenger planes from Ghana to Turkey and then from Turkey to Ireland without once being asked to present an identity document, a ticket or to answer any question whatsoever from anyone from officialdom at any stage along that journey. The Tribunal is reinforced in its

rejection of the account of the appellant's travel to Ireland by the vagueness and evasiveness of the appellant under questioning by the presenting officer and the Tribunal in relation to his account of his travel to Ireland. Even taking into account the appellant's assertion that he had never left Nigeria before and that his journey to Ireland included his first time in an airport or on an airplane, the Tribunal finds that he was unreasonably hesitant, evasive and lacking in specificity in answering basic questions from the Presenting Officer about how he entered and exited 'airside' in various international airports and embarked and disembarked passenger planes in international airports with high security measures without having to interact with immigration or airline officials at any point in three separate countries. In closing submissions, counsel for the appellant stated that the appellant's travel to Ireland was a form of criminal smuggling by those who brought him here and that it was not up to the appellant to explain how this was done. However, the Tribunal finds that this submission does not overcome the significant implausibility and vagueness of the appellant's account, which is such that the appellant's account of his travel to Ireland is rejected by the Tribunal".

103. Thus, it is clear from the decision that, having looked at the applicant's case "in the round" and having concluded that the core claim was *not* established on the balance of probabilities, the Tribunal proceeded to see if it was possible to extend the 'benefit of the doubt' to the applicant as regards his core claim. Focusing on the applicant's account of his travel to Ireland, the Tribunal found that the applicant's account was "extremely problematic". The reasons for this were made very clear and arose under two headings, namely "Implausibility" and "Vagueness".

Entirely implausible

104. In para. [4.6] the Tribunal explained, in detail, why it found the applicant's account "entirely implausible". As the Tribunal made clear, they found entirely implausible the applicant's assertions that he was able to pass through three separate international airports in three different countries, embarking and disembarking on two separate international flights, without ever being asked to show an identity document, or to show a ticket, or to answer any question from anyone in "officialdom".
105. This Court does not need expert evidence to safely infer that, in the context of international airline travel, the Tribunal's reference to "officialdom" includes, typically, (a) the checking for a boarding pass/ticket by airline ground-crew in respect of a departing passenger; (b) the checking of a passenger's passport or identity documentation prior to departure; (c) the checking by airline cabin-crew of a boarding pass/ticket; as well as (d) passport control, or identity checks, for arriving passengers.
106. It is entirely fair to say that the account given by the applicant to the Tribunal was in the nature of a 'bald' assertion that one can walk on and off two international flights and pass through three different airports without any ticket, boarding card, passport, identity document or visa ever being asked for, even once, by anyone.

107. I emphasise again that this Court is not conducting a merit-based analysis of the applicant's claim. That said, I am entirely satisfied that it was not at all unreasonable for the Tribunal to take the view that the applicant's account was entirely implausible. In other words, the view taken by the Tribunal could not be said to be one which flew in the face of reason or common sense in light of the evidence which was before the Tribunal.

Vagueness

108. The finding that the applicant's account was entirely implausible was plainly an aspect of the adverse credibility finding reached by the Tribunal. It was not by any means the sole aspect. This is also clear from para. [4.6] which records that "*vagueness*" in addition to implausibility, characterised the applicant's account. Based on the evidence before it, it was not at all unreasonable for the Tribunal to come to the view that the applicant's account was vague. I repeat the fact that nowhere does the applicant assert that he provided the Tribunal with more information than was summarised in the decision, nor is it asserted that the Tribunal was provided with material information which the latter failed to take account of. Fairly considered, the applicant's account is, in objective terms, characterised by vagueness. Nor is any challenge made in the present proceedings to the finding by the Tribunal that the applicant's account was characterised by vagueness. Furthermore, the decision-maker was in the optimum position to assess the credibility of the applicant, including by having regard to his demeanour and the manner in which questions were answered, as well as the content of those answers and whether (as the Tribunal found) the applicant's answers involved vagueness.

109. The foregoing was plainly one of the reasons for the adverse credibility finding, as the Tribunal made clear when it stated that "*... the Tribunal finds that he was unreasonably hesitant, evasive and lacking in specificity in answering basic questions from the Presenting Officer ...*"

Unreasonably hesitant and evasive

110. The lack of specificity speaks to the finding of vagueness. The finding that a witness was "*unreasonably hesitant*" in answering basic questions speaks both to their demeanour and to the weight to be attached to evidence given in an unreasonably hesitant manner. The finding that a witness was "*evasive*" speaks directly to the reliability of the evidence given by that witness. The foregoing were plainly findings which the decision-maker reached. The Tribunal was best-placed to make these findings. It is no function of this Court to re-assess credibility or to substitute this Court's views for the Tribunal's on that issue. It cannot, however, be said that the Tribunal's findings as to credibility were not reasonable. Nor is there any challenge made to the finding that the applicant gave evasive answers or was unreasonably hesitant in giving his evidence.

111. There is an obvious, logical, and rational connection between the account given by the applicant concerning his travel from Ghana to Ireland, via Turkey and the findings of the Tribunal with regard to that account (i.e. that it was entirely implausible). The applicant was before the Tribunal in person and gave his evidence *viva voce* and it would be both impermissible and, frankly, impossible, for this Court to second-guess the Tribunal's findings as to evasiveness and unreasonable hesitancy concerning the applicant as a

witness. There is no question of the Tribunal's findings (that the applicant was evasive and unreasonably hesitant in his answers) being unreasonable or irrational in the sense in which those terms are employed in judicial review and no such challenge is made.

2018 conviction of an airport worker

112. On behalf of the applicant, it was argued that the Tribunal's finding that the applicant's account was implausible/incredible was an unreasonable or disproportionate finding in circumstances where, *inter alia*, in 2018 a man who worked in Dublin Airport as a ground-handler was jailed for assisting third-country nationals to bypass Dublin Airport immigration control. Several comments must be made in relation to the foregoing submissions. Firstly, the Tribunal certainly did not reach its findings exclusively on the basis of the applicant's account of his arrival in Ireland. It is plain from the Tribunal's decision that this was just one of several aspects considered, including vagueness, evasiveness and implausibility in respect of answers concerning the applicant's transit through international airports in three countries.
113. Furthermore, and as I observed earlier in this decision, the exhibiting of press-reports concerning a conviction in respect of offences between 13 December 2016 and 22 January 2017 (almost two years *before* the applicant applied for international protection in this State) is simply not evidence that the applicant was facilitated in by-passing immigration control at any Irish airport. Still less is it evidence that he was able to avoid showing a ticket, boarding-pass, passport, identification document, visa or any other document to any security or airline staff at any point during his transit through airports in Ghana and Turkey.
114. Furthermore, the applicant does not, in fact, claim to have passed through Dublin Airport at all. His evidence was that the plane arrived in Ireland, but he "*did not know if he arrived in Dublin Airport.*" This aspect of the applicant's account is recorded at para. [2.12] of the decision, and there is no suggestion made by the applicant that the tribunal did not accurately record his testimony, in that regard (or in any other respect).
115. It seems to me that for this Court to describe as *unreasonable* the Tribunal's findings that the applicant's account of his travel was *entirely implausible*, this Court would need to impute to the Tribunal (and would need to take 'judicial notice' of) the 'fact' that smuggling routes exist and are so well known and so established that someone who wishes to can pass through airports in three separate countries without ever being asked for a ticket, boarding pass, identification-document, passport, visa or any other document and without being asked a single question by any airline or security staff. This is not 'knowledge' which can be imputed to the Tribunal and it is not something the Court can take judicial notice of.
116. Even if the ability to pass, unquestioned and without documentation ever being asked for, through a series of international airports was something which could be regarded as 'commonplace', one is still left with the fact that the applicant's account was found by the Tribunal to be vague and, not only did he fail to provide details in response to questions

during the relevant appeal, he was "...*unreasonably hesitant, evasive and lacking in specificity in answering basic questions...*" put to him concerning his account.

117. For the foregoing reasons I entirely reject the proposition that there was anything unreasonable about the Tribunal's finding that the applicant's account was entirely implausible. Nor was there anything irrational about the Tribunal's findings. It is now appropriate to quote, verbatim para. [4.7] of the Tribunal's decision: -

"Conclusion on Material Facts

[4.7] In order to extend the benefit of the doubt to the appellant it is necessary that the general credibility of the appellant is established. The Tribunal concludes that the appellant's general credibility is so severely undermined by the complete rejection of his account of his travel to Ireland that it cannot be said that his general credibility has been established. Therefore, it is not possible to extend the benefit of the doubt to the appellant and the material facts of his claim are therefore rejected".

118. It is appropriate to note that the complete rejection by the Tribunal of the applicant's account of his travel to Ireland was for the reasons which were detailed at para. [4.6]. As that section of the Tribunal's judgment made clear, it was *not* merely because of the implausibility of the account provided by the applicant insofar as its *content* was concerned; nor was it exclusively because of the vagueness of the account given by the applicant. Furthermore, it was not exclusively because the applicant was *unreasonably hesitant* and *evasive* and *lacking in specificity* in answering basic questions. It is clear however, that all of the foregoing were factors which caused the Tribunal to completely reject the applicant's account of his travel to Ireland and to make an adverse credibility finding.
119. Thus, all of the foregoing factors were material to the adverse credibility finding because all were specifically referred to by the Tribunal in its reasoned decision. Travel *per se* may well be a 'peripheral' matter but findings that the applicant was (i) vague; (ii) unreasonably hesitant; (iii) evasive; (iv) gave answers lacking in specificity, as regards answering basic questions; and (v) tendered an entirely implausible account, entitled the Tribunal to take the view that the applicant's general credibility had not been established.
120. It bears repeating that the applicant has not challenged the Tribunal's findings including that his answers were vague, evasive, unreasonably hesitant and lacking in specificity. The adverse credibility finding which the Tribunal came to in the present case was a very specific one made in a particular context for specific reasons, clearly expressed. This Court simply cannot hold that the conclusions come to by the Tribunal at para [4.7] were vitiated by any error. For the same reasons, reliance on extracts from international textbooks, UK guides and UK authority cannot avail the applicant, having regard to the facts which emerge from an analysis of the case before this Court.

No function of this Court to re-assess credibility

121. At this juncture, it seems appropriate to quote from Cooke J.'s decision in I.R. wherein (at para. 1) the learned judge stated inter alia that: ". . . *the assessment of the credibility of oral testimony is one of the most difficult challenges faced by the decision-maker. The difficulty is particularly acute in asylum cases . . .*". Cooke J. continued, at para. 2, to give the following guidance, which, to my mind, is particularly relevant in the present case: -

"2. *In such cases the decision-makers at first instance have the unenviable task of deciding if an applicant can be believed by recourse to little more than an appraisal of the account given, the way in which it was given and the reaction of the applicant to sceptical questions, to the highlighting of possible discrepancies or to contradictory evidence from other sources. Recourse will also be had in appropriate cases to what is called "country of origin information" but in most cases this will be of use only in ascertaining whether the social, political and other conditions in the country of origin are such that the events recounted or the mistreatment claimed to have been suffered, may or may not have taken place.*

3. *It is because in such cases the judgment of the primary decision maker must frequently depend on the personal appraisal of an applicant, that it is not the function of the High Court in judicial review to reassess credibility and to substitute its own view for that of the decision maker. Its role is confined when a finding of lack of credibility is attacked, to ensuring that the process by which that conclusion has been reached is legally sound and not vitiated by any material error of law."* (emphasis added)

122. I am entirely satisfied that the process by which the Tribunal reached an adverse credibility finding was legally sound and not vitiated by any material error of law. This was not a situation where the Tribunal was, for example, presented with a detailed account by an applicant who was found to be forthright in answering questions. Rather, the Tribunal found the applicant to be evasive in his answers as well as unreasonably hesitant and, despite the applicant having been given the opportunity to 'fill in the gaps' as it were, the Tribunal clearly found that this opportunity was not taken by the applicant, who gave an account which it found to be vague and lacking in detail.

123. Earlier in this decision I found that, in fact, the Tribunal considered the applicant's 'core' claim. This plainly involved a consideration of the notice of appeal; submissions; all documents provided by or on behalf of the applicant; and his oral testimony (including the applicant's demeanour and the manner in which he gave evidence i.e. both the *form* and *content* of his evidence). Having, in fact, looked at the applicant's case "in the round" the Tribunal found that the 'core' facts of the applicant's claim had *not* been established on the balance of probabilities. Thus, the applicant has failed to establish the 1st and 2nd legal grounds as pleaded in his statement of grounds. Furthermore, for the reasons detailed above, the applicant has not established the 3rd of his pleaded grounds.

124. Having regard to the foregoing, it does not seem to me to be necessary to attempt to resolve any tension between, on the one hand, the approach taken in the *I.E.; D.S. (Nepal); B.D.C. (Nigeria); D.U. (Nigeria); J.M.N.; M.G. and N.N.* cases and, on the other

hand, the approach in earlier cases such as *I.S.; F.U. (Afghanistan)* and *E.M.* This is because on the facts of the present case, the Tribunal considered the applicant's 'core' claim and found that it had not been established on the balance of probabilities. Thereafter, it considered whether it could extend the 'benefit of the doubt' to the applicant but, for the reasons set out by the Tribunal, it held that the applicant's general credibility had not been established. Thus, the benefit of the doubt could not be extended to the applicant.

125. Lest I be entirely wrong in my view that the Tribunal did in fact consider the applicant's 'core' claim and, having looked at it "in the round", came to the view that the applicant had not met the balance of probabilities standard, I want to state that, in my view, the process by which the Tribunal reached adverse credibility findings was entirely lawful.

'Weak' credibility findings

126. In submissions on behalf of the applicant it was suggested that the adverse credibility findings made by the Tribunal were "weak". The evidence in this case compels me to reject that submission. The decision of the Tribunal tells a very different story and demonstrates that there were a range of reasons why the Tribunal reached adverse credibility findings including (a) *implausibility*; (b) *vagueness*; and that, in answering 'basic questions' about his account of his travel via three international airports, the applicant was (c) *unreasonably hesitant*; (d) *evasive and*; (e) *gave answers lacking in specificity*". Thus, it seems to me that the adverse credibility findings which the decision-maker reached, for stated reasons, could fairly be described as the opposite of weak.
127. Counsel for the applicant submits, inter alia, that "*the case law at best demonstrates that it may be possible to reject credibility based on a non-core issue but it is submitted that this would need to be in cases where the credibility complaint is far more significant than the complaints raised in the impugned decision herein*". Even if the case law goes no further than to say that it may be possible to reject credibility based on a non-core issue, in the present case the decision-maker plainly made very significant and adverse findings as to the respondent's credibility which were soundly based on a multiplicity of factors. On any analysis, the adverse findings as to credibility were significant and far from what the applicant suggests was a "weak finding". On the facts of this case, there was nothing disproportionate about the decision-maker taking the view that the applicant's general credibility had not been established, given the adverse credibility findings with reference to the travel issue.
128. This seems to me important because, regardless of the statements of principle which emerged from a range of cases which self-evidently involved very particular facts, this Court is presented with a case which has its unique set of facts and circumstances. In the case before this Court, the Tribunal decision-maker lawfully reached what was plainly a strongly-held view, for clearly expressed reasons, that the applicant's general credibility had not been established.
129. Having said the foregoing, it is appropriate to refer once more to the decision by Humphreys J. in *I.E.* wherein the learned judge at para. 12 stated *inter alia* as follows: -

“ . . . where an applicant's credibility is rejected generally, the tribunal does not need to make any specific finding on whether the acts of persecution actually occurred or to what extent or whether any other element of the test for a well-founded fear of persecution exists”.

130. Thus, it is a matter of fact that the Tribunal rejected generally the credibility of the applicant and, adopting a similar approach to the one taken in *I.R.*, the applicant is not entitled to relief. Further extracts from *I.R.* seem to me to be of relevance including the following: -

“I would not accept that there is anything unreasonable about condemning an applicant's credibility, by reason of an implausible tale related to travel arrangements as was done in this case”. (para. 25)

131. It also seems appropriate to note that the appeal to the Tribunal, with which the court was concerned in *I.E.*, was by way of a written procedure only, in circumstances where the Refugees Application Commissioner had made a finding pursuant to s. 13(6) (a) of the Refugee Act 1996 that the applicant had not applied for asylum as soon as practicable after arrival in the State. I draw attention to this because the decision-maker in the present case has had the opportunity to consider the account given under oath by the applicant and to consider the manner in which it was given, to take account, also, of the way in which the applicant dealt with questions concerning his account. Thus, the decision-maker in the present case was in an even better position than the Tribunal was in *I.E.* to assess credibility. The assessment in the present case was, for the reasons outlined in this decision, entirely lawful and not vitiated by error. Nor is the adverse credibility finding purely as a result of implausibility insofar as the content of the applicant's account was concerned.

132. For the foregoing reasons, it seems to me that what Humphreys J. had to say in *I.E.* applies with equal force when the decision-maker was in the optimum position to assess an applicant's credibility and, having done so lawfully, has reached adverse credibility findings. Further passages from *I.E.* seem to me to be of relevance, in particular, the following: -

“ . . . I take the view that the tribunal is entitled, if it has reason to do so, to reject the credibility of an applicant and may do so on the basis of any element of the applicant's evidence that it considers to be fundamentally undermining of the applicant's credibility. There is no general obligation either in law or in logic requiring a decision-maker to make such credibility findings only on the basis of difficulties with the central claim being made. Indeed, the implications of that contention are clearly unacceptable. Such an approach would allow an applicant to dissemble with impunity on any matter other than the central allegation of persecution, which may not be capable of verification, and then complain if his or her credibility is called into question”. (para. 30)

133. It seems to me that, on the particular facts of the present case, the approach taken by this Court in *I.E.* is the appropriate one at a level of principle. Applying the principle to the facts, it is clear that due to a range of factors all of which were identified in the Tribunal's decision, the first named respondent took the view that the applicant's account concerning his travel to Ireland was fundamentally undermining of his credibility and, thus, his general credibility had not been established. I also gratefully adopt the analysis by Humphreys J. of the earlier decisions in *I.R.* and in *R.O.*
134. For these reasons, and despite the undoubted skill and commitment to the applicant's case deployed by his counsel, I am satisfied that the applicant is not entitled to any relief and it is necessary to dismiss his application.
135. On 24 March 2020 the following statement issued in respect of the delivery of judgments electronically: *"The parties will be invited to communicate electronically with the Court on issues arising (if any) out of the judgment such as the precise form of order which requires to be made or questions concerning costs. If there are such issues and the parties do not agree in this regard concise written submissions should be filed electronically with the Office of the Court within 14 days of delivery subject to any other direction given in the judgment. Unless the interests of justice require an oral hearing to resolve such matters then any issues thereby arising will be dealt with remotely and any ruling which the Court is required to make will also be published on the website and will include a synopsis of the relevant submissions made, where appropriate."*
136. Having regard to the foregoing, the parties should correspond with each other, forthwith, regarding the appropriate form of order including as to costs which should be made. By way of a preliminary view on the issue of costs, there does not appear to me to be any fact or circumstance which would justify a departure from what might be called the 'normal rule' that costs follow the event. In default of agreement between the parties on any issue, short written submissions should be filed in the Central Office within 14 days.