



THE HIGH COURT

[2026] IEHC 608

Record Number 2024/1475 JR

Between

K.M. and P.M.M. (a minor suing by his mother and next friend K.M.)

Applicants

and

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL AND

THE MINISTER FOR JUSTICE

Respondents

JUDGMENT of Ms Justice Nessa Cahill delivered on 1 September 2026

INTRODUCTION

1. In these proceedings the Applicants seek an order quashing a decision of the First Respondent (“*the Tribunal*”) of 29 October 2024 in which it affirmed a decision of the International Protection Office (“*the IPO*”) that they be refused leave to remain, a refugee declaration or a subsidiary protection declaration.
2. This case centres on the credibility findings which were made by the Tribunal after conducting an oral hearing and specifically the Tribunal’s findings regarding the absence of documentation and its assessment of one specific document which was submitted by the Applicants following the oral hearing.

BACKGROUND

3. The First Applicant (who I will refer to in this judgment as K.M.) is a 31-year-old national of Botswana. The Second Applicant is K.M.'s daughter and is a dependent minor.
4. K.M. claimed international protection on 25 May 2022 on the basis that if she was returned to Botswana she would face persecution at the hands of her daughter's father. Her claim is that she became a prostitute in Botswana in 2017 (a month after she graduated from college), and then obtained an internship in Matsunaga in January 2018, but later moved to Gaborone and started a new internship at Gaborone City Council in January 2019. She states that she became pregnant by one of her long-term clients, a Mr T. According to K.M., when she informed Mr T. of the pregnancy he attempted to force her to have an abortion and began harassing her at her place of work. K.M. says that she quit her job in March 2019 due to the harassment.
5. K.M. claims that in May 2019 Mr T. came to her home and attempted to force her to grant him custody of the child when it was born or have an abortion and that this escalated into an argument and Mr. T. raped K.M. This incident was not reported to the police in Botswana.
6. K.M. claims that Mr T. came to her home in Easter 2022 and created a disturbance, banging on her door and windows leading to K.M. calling the police. Mr T. was arrested but no further action was pursued by K.M. She says that she went to live with her father after Easter 2022, but her father's wife did not want her there, and that her father advised her to leave the country. The Applicants left Botswana on 21 May 2022 and arrived in Ireland on 23 May 2022.
7. K.M. attended an interview with an IPO officer pursuant to section 35 of the International Protection Act 2015 (*"the 2015 Act"*) on 24 May 2023 (*"the s35 interview"*). By letter dated 21 August 2023 the Applicants were informed of the recommendation of the IPO officer that they should not be given a refugee declaration or a subsidiary protection declaration (*"the IPO Recommendation"*). The Applicants filed a notice of appeal on 28 August 2023 and, following an oral hearing on 25 July 2024, the Tribunal gave a decision on 29 October 2024 affirming the IPO Recommendation (*"the Tribunal Decision"*).
8. On 27 November 2024 K.M. filed an application for judicial review. Leave was granted on 20 December 2024 based on an amended statement of grounds. The Respondents' statement of opposition was delivered on 8 July 2025.

THE TRIBUNAL DECISION

9. The Tribunal accepted that K.M. was a 31-year-old woman from Botswana, but did not accept the other aspects of her claim. It found her claim in relation to Mr T. to be “*vague, lacking in detail, uncorroborated and at times inconsistent*” (at [39]) and concluded that,

“the Appellant’s claim that she was persecuted in Botswana by a man named [Mr. T] after she became pregnant by him while he engaged her as a sex worker is rejected by the Tribunal as not credible” (at [39]).

10. In the course of the Decision, the Tribunal noted the failure to produce any documentation regarding the identity or employment of Mr T. despite repeated requests to do so and the failure to corroborate the claim that Mr T. was a man of influence through work with Mascom or connections with the police. K.M. was given one week by the Tribunal to provide any further information regarding the identity or employment of Mr T. and the Tribunal refers to the news article from the Sunday Standard dated 17 September 2012 which was submitted *via* email by her solicitor on 7 August 2024 (“*the 2012 Article*”). The article is headed “*young entrepreneurs receive Kitsong cabins from Mascom*”. The article describes a project which was “*aimed at encouraging the youth of Botswana to be involved in entrepreneurship*” and which had a prerequisite that the youth be unemployed. The article states, “*Mac Donald T..., an entrepreneur from Digawana, said his winning of the award is a great pleasure in his life*”. The Tribunal continues:

“neither the Appellant nor her solicitor have advised as to how this document supports her claim for IP. It is noted that the article refers to a man named Mac Donald T..., not Boitshoko T... The Tribunal finds that the document does not support the Appellant’s claim” (at [33]).

11. The Tribunal also noted that K.M. provided different explanations at different stages of the interview as to why she never reported Mr T. to the police. Her evidence at interview on this question is quoted at some length in the decision. The Tribunal conclusion was that “*when asked why she never reported [Mr T.] to the police, she provided different explanations at different stages of interview. At one point she said it was because she did not know where he was, then she said it was because the police in Botswana would not investigate the matter and then she said it was because he had a friend in the police and he would prevent the matter from being investigated*” (at [38]).
12. The Tribunal also noted that K.M. was asked whether Mr T. questioned parentage, given the line of work she was engaged in, and that she answered that he refused the offer of a DNA test because he saw that the child (at 10 or 11 months old) looked like him and his other children. The Tribunal found that this answer was “*not credible in the circumstances*” (at [34]).

OVERVIEW OF THE ISSUES

13. Four grounds are advanced by the Applicants, although counsel for the Applicants indicated in oral submissions that the case hinges primarily on Grounds one and two. The four grounds may be broadly summarised as follows:
14. First, the Applicants contend that the Tribunal erred and acted irrationally in its treatment of the evidence regarding Mr T. and his employment (which is said to be incidental only) and that it erred and was irrational in finding her evidence to be vague, given the statements made and the content of the 2012 Article. It was also said to be irrational to expect more information, without it being clear what documentation K.M. could have been expected to provide and that the Tribunal placed disproportionate weight on the specific nature of Mr T.'s employment.
15. The second argument advanced is that the Tribunal erred in the findings made regarding the absence of documentation having regard to section 28(7) of the International Protection Act 2015 (*"the 2015 Act"*) and the 2012 Article. The Applicants assert that the Tribunal relied significantly if not primarily on the lack of documentation to ground the finding of a lack of credibility and that an absence of documentation cannot be the basis for the Decision. It is also said that the 2012 Article does support K.M.'s case and it was irrational to find there was no corroboration. This is said to be the Applicants' strongest ground.
16. The third ground is that the Tribunal erred in law and failed to give reasons when rejecting the credibility of the K.M.'s evidence that Mr T. did not require a DNA test on the basis he saw a resemblance between him and the Second Applicant at 10 or 11 months old.
17. The fourth ground is that the Tribunal erred in finding that the Applicant provided differing and inconsistent explanations at various stages of the interview for not reporting Mr T. to the police. The Applicant contends that these were not inconsistencies but rather the Applicant was answering different questions each time.
18. I will address certain general principles and will then assess each of these four grounds and the parties' positions in respect of them. Before doing so, I observe that, in the statement of opposition delivered on 8 July 2025, the Respondents raise a preliminary issue that the application was out of time, owing to the date of delivery of the amended statement of grounds. This objection was not maintained at the hearing, and wisely so. I would also note that this case is squarely based on claims of irrationality and legal error in credibility findings that were made. There is no claim of a breach of fair procedures.

GENERAL LEGAL PRINCIPLES

19. As these proceedings centre on credibility findings it is useful to begin with a general overview of the guidance that governs the assessment of credibility by the Tribunal and the review of such assessments by the court.
20. Beginning with the role of the Tribunal, its function is to weigh the evidence as a whole, the full picture that emerges from all available evidence and to assess facts which relate to the substantive basis of the claim that it made. Individual mistakes do not necessarily undermine credibility “*provided the conclusion is tenably sustained by other correct facts*”. The Tribunal should not engage in conjecture or speculation or focus on matters which are minor or incidental only. A further point of importance that emerges from *I.R. v. Minister for Justice, Equality and Law Reform* is that, when making a decision on credibility, the decision-maker is not obliged to refer to every item of evidence and every argument advanced, provided the “*substantive basis*” for the credibility decision and the process of evaluation can be understood from the reasons given. Finally, when a tribunal is rejecting or discounting a specific item of documentary evidence “*which is prima facie relevant to a fact or event pertinent to a material aspect of the credibility issue*”, reasons for this should be given (at [11(9)]). These points are emphasised by the Respondents in its submissions and are not controversial.
21. The function of this court in a challenge to a Tribunal decision is to assess whether the process by which the determination was reached is legally sound and not vitiated by any material error of law or breach of natural justice, and that the determination does not fly in the face of common sense and reason. As the Respondents point out, it is not for the court to step “*into the shoes*” of the decision maker (*G.K. v. IPAT* [2022] IEHC 204). The specific parameters of the Court’s role in reviewing credibility findings are also clearly established. The seminal judgment of Cooke J. in *I.R. v. Minister for Justice, Equality and Law Reform and Refugee Appeals Tribunal* [2009] IEHC 353, [2015] 4 IR 144 underscores that the assessment of credibility is for the administrative decision-makers and the Court may not substitute their view with its own. Further, a review by the court of a tribunal’s decision on credibility should be based on a review of the entire, cumulative decision and not a dissection or parsing of isolated aspects of it (*see also N.P.B.K. v. IPAT* [2020] IEHC 450 at [23]-[30]).
22. Section 28(7) of the 2015 Act is relevant when there is a lack of documentary evidence. If, and only if, the conditions stipulated in that provisions are satisfied, it is not necessary for an applicant to produce documentary evidence to support statements made. The pre-conditions contained in that provision are important:

“Where aspects of the applicant’s statements are not supported by documentary or other evidence, those aspects shall not need confirmation where the international protection officer or, as the case may be, the Tribunal, is satisfied that—

- (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 international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so, and*
- (e) the general credibility of the applicant has been established.”*

23. This provision is unambiguous: it is only if general credibility has been established; a satisfactory explanation regarding any lack of “*relevant elements*” has been given; and the statements are “*coherent and plausible*”, that documentary or other evidence of any particular aspect of the applicant’s case is not required. This has been referred to as a “*benefit of the doubt*” approach (*A.H. v. IPAT* [2022] IEHC 84 at [17]-[19]).

24. It may be noted that section 28(7)(d) was deleted by the *International Protection Act 2026* with effect from 12 June 2026, and wording was instead inserted into section 28(7)(e) (“*taking into account the time at which the applicant applied for international protection*”). This amendment is not relevant to this judgment.

Ground One

25. The case pleaded by the Applicants is that the Tribunal erred and acted irrationally in its treatment of the evidence regarding Mr T. and his employment and in its findings that the evidence in this respect was vague. Reliance is placed on the 2012 Article. It is also asserted that the Tribunal placed disproportionate weight on the specific nature of Mr T.’s employment and irrationally expected more information without clarity as to what additional information K.M. could be expected to provide. Applying *I.R. v. Minister for Justice, Equality and Law Reform*, it is contended that it is unclear why the tribunal had regard to the particulars of Mr T.’s employment and did not treat this as an incidental matter only. Reliance is also placed on the 2012 Article as corroboration of K.M.’s account.

26. In reply, the Respondents criticise the Applicants for parsing the Decision and subjecting individual parts of it to isolated examination in disregard of the cumulative impression upon the decision maker (contrary to the guidance in *I.R. v. Minister for Justice, Equality and Law Reform and Refugee Appeals Tribunal*). It is then said that the Tribunal correctly found that the Applicant’s claim in relation to Mr

T. is “*vague, lacking in detail, uncorroborated and at points inconsistent*”. It was specifically noted that there was no reference in the s 35 interview to Mascom and that the Applicant’s evidence regarding Mr T.’s employment was vague and lacking in detail (there being references to working with network towers, computers, recruitment). It was also said that K.M. was vague as to whether Mr T. was in a senior position or had his own company.

Assessment

27. By this ground, the Applicants challenge the rationality of the Tribunal’s findings that the evidence on a particular issue (the employment of Mr T.) lacked credibility. I reject this ground for several reasons.
28. First, as a matter of general principle, it would not be appropriate for this Court to isolate and parse findings as to Mr T.’s employment and test their rationality, without regard to the entirety of the Tribunal’s credibility findings. In the particular circumstances of this case, the findings regarding Mr T.’s employment are intertwined with other credibility findings and I do not believe they can or should be disentangled in the manner attempted by the Applicants. It must be recalled that the kernel of K.M.’s case is that she fears persecution at the hands of the father of her child. It is part of her case that Mr T. was a powerful and connected man, a figure of authority. His power and wealth were specifically relied upon by K.M. as part of the reason for not filing police complaints against him (as appears from the Decision itself at [29]). It would be wrong for this Court to test the findings on Mr T.’s employment without also having regard to the findings on Mr T.’s influence and status or, in turn, the findings regarding the reasons for not filing police complaints against him. In fact, it is not apparent from a review of the Decision as a whole that the Tribunal did make any material findings regarding, or attach weight to, the question of employment in isolation from other findings. Rather, the material finding by the Tribunal was that “*when taken in its entirety, the Appellant’s claim regarding [Mr T.] is vague, lacking in detail and entirely unsupported by any documentation or adequate explanation to support her belief that [Mr T.] was a man of influence through his claimed work with Mascom or his claimed connection with the police*” (at [38]). The question of his employment is intertwined with those of influence and connection with the police.
29. Second, the Applicants rely on the guidance in *I.R. v. Minister for Justice, Equality and Law Reform* that it is not appropriate for a tribunal to focus on incidental or minor factual matters as a basis to reject credibility. I agree with the Respondents that the question of Mr T.’s employment, which is intimately connected with the question of his status and influence, is not merely incidental to the substantive basis of K.M.’s case. The Tribunal was entitled to have regard to the assertions made and to test their credibility as a material component of the case advanced.

30. Third, the Tribunal makes its credibility findings having referred in its Decision to the evidence of the Applicant that:

- Mr T. was “*a very wealthy man*”;
- he had “*his own company and has influence*”;
- he won a tender or project with the telecommunications company, Mascom;
- he “*was always travelling around the country servicing their network towers*”;
- his work “*involved computers*”;
- he “*shared on Facebook that he is doing recruitment*”;
- he “*was working with the mayor*”;
- he “*might not have a high position but he has access to Mascom*”.

31. The Tribunal also refers to the reasons given by the Applicant for not make reports to the police at different times which included:

- “*I did not know where he lived*”;
- “*they will just release him on bale (sic)*”;
- He had friends in the police and “*one of his friends was adamant not to open a police case*”;
- When she tried to open a police case, “*they would not listen to me*”.

32. The Tribunal finds the claim that Mr T “*was a man of influence through his claimed work with Mascom or his claimed connection with the police*” to be vague, lacking in detail and inconsistent (at [38] and [39]). This is based on the evidence “*when taken in its entirety*”.

33. The onus is on the Applicants in these proceedings. In light of the evidence recited in the Decision (as listed above), I do not believe that the Applicants have discharged the onus of showing that it was irrational for the Tribunal to reject the credibility of the case presented as regards the overlapping questions of the occupation, power and influence of Mr T. It is important to reiterate here that I am not assessing the credibility of the evidence as the primary decision-maker, but assessing the rationality of the findings made to test whether any reasonable tribunal could have made the findings which this Tribunal did. Applying this test, I am satisfied that the findings of vagueness, lack of detail and inconsistency made were reasonably open to the Tribunal on the basis of the evidence described in the Decision.

34. Fourth, the Applicants contend that the 2012 Article is material corroboration of the K.M.’s case. This highlights a tension in the Applicants’ case: on the one hand, it is said that the Tribunal placed too much emphasis on an issue of incidental relevance only, namely the employment of Mr T. On the other hand, it is said that the 2012 Article – which pertains solely to the question of Mr T.’s asserted employment - is of material evidential weight. These positions cannot both be correct. In my view, the Tribunal did

attach some weight to the inconsistency and lack of clarity in K.M.'s case regarding the employment of Mr T. as part of the overall assessment of the credibility of the case presented and was entitled to do so. This was because the Applicant herself placed some weight on the position of employment by Mr T. and the related assertion of power and influence. It was not treated as a minor aspect of her case, but quite a central one. As already found, I am of the view that the Applicants have not shown that the findings made by the Tribunal were unreasonable or irrational.

35. Turning then to the 2012 Article, it is not apparent to me how this article is said to render irrational the findings of vagueness in the Applicants' own statements (as pleaded in the amended statement of grounds) and I do not accept that it does undermine those findings. The 2012 Article is general and, at its height, links an individual to a contract with Mascom in 2012. I do not see how it undermines the findings of vagueness or lack of detail by the Tribunal here. There is a separation question of how the 2012 Article was weighed by the Tribunal and whether and how it interacts with the findings of a want of documentary substantiation – and a related question of what documentation the Applicant may have been expected to produce. These fall more appropriately under Ground Two and are addressed under that heading next.

Ground Two

36. It is pleaded that the Tribunal erred in the findings made regarding the absence of documentation having regard to section 28(7) of the 2015 Act. It is said that the Tribunal relied significantly if not primarily on the lack of documentation to ground the finding of a lack of credibility and that a claim cannot be rejected on the basis of non-substantiation alone, as section 28(2) of the 2015 Act and article 4(1) of Directive 2011/95/EU ("*the Qualification Directive*") require the Tribunal to reach a decision on the merits based on available information.

37. In written submissions, the Applicants cite various authorities on the application of section 28(7) (including *J.H. (Albania) v. IPAT* [2018] IEHC 752 and *H. v. IPAT* [2024] IEHC 598). *GA v. IPAT* [2022] IEHC 440 and *Morchiladze v. IPAT* [2021] IEHC 732 are then cited for the proposition that a decision-maker cannot rely on a lack of substantiation alone to refuse protection. The Applicants also rely in written and oral submissions on *D.E., L.E and S.E. v. Refugee Appeals Tribunal* [2013] IEHC 304 and the *obiter* comments by Mac Eochaidh J. that credibility should be determined before – and not on the basis of – an examination of the absence of documentary evidence.

38. The cases relied on at hearing were *C. (Nigeria) v. IPAT* [2025] IEHC 606 and *I.R. v. Minister for Justice, Equality and Law Reform*. These cases are said to demonstrate that the decision-maker must consider all elements of the application. The Applicants' counsel addressed the applicable threshold for this question and contended, first, that a court must be satisfied beyond a reasonable doubt that the document

provided would have made no difference to the outcome. It was acknowledged that *A.M.C. (Mozambique) v. International Protection Appeals Tribunal* [2018] IEHC 133 (cited in *C. (Nigeria) v. IPAT*) indicates the more “middle ground” approach of whether the document was capable of influencing the decision. It is argued here that, whether the threshold in *O.M. v. International Protection Appeals Tribunal* [2025] IEHC 51 or that in *A.M.C. (Mozambique)* is applied, both are satisfied, as, on either test, the 2012 Article was relevant and capable of materially influencing the decision. It may be noted here that the Respondents’ position is that the test must be that set out in *A.M.C. (Mozambique)*.

39. There is a question raised as to what documentation could have been provided by the Applicant here. It is also said that the 2012 Article does support K.M.’s case and it was irrational to find there was no corroboration. The position of the Applicants is that, while the Tribunal did refer to the 2012 Article, and the Applicants accept that its relevance was not made plain to the Tribunal, the reference to Mascom was clear and showed a link with Mr T. which was supportive of K.M.’s case. It was submitted that the slight difference in the name of Mr T. was easily resolved by reference to the papers (where both names were used). According to the Applicants, this should have been clarified and should not have been a reason not to attach weight to the document. This was said to be the strongest aspect of the Applicants’ case.
40. The Respondents’ position on Ground Two is that the Decision does not rely primarily or significantly on the absence of documentation when assessing general credibility. Rather, the lack of corroboration is one of four factors expressly referenced for the overall finding of lack of credibility and it is a matter to which the Tribunal is entitled to have regard. It was contended in oral submissions that section 28(7) is a “lifeboat provision” and that there needs to be a general credibility finding before it arises, which is not the case here. Reference was also made to the shared burden of proof on the parties. Reliance was placed on *G.A. v. IPAT* – which was said to be on all fours with this case, and on *Morchiladze v. IPAT*.
41. In oral submissions, the Respondents rejected the relevance of the 2012 Article asserting that it only shows that in 2012 (10 years before K.M. came to Ireland) an unemployed person won a tender with Mascom. It is pointed out that the name in the Article was different to the name given by K.M. in the section 35 interview and questionnaire. The position of the Respondents is that the Article does not show that the individual in question was wealthy, a man of influence, had his own company, or did any particular work and that, even if the Article showed that Mr T, had a relationship with Mascom in 2012, this does not show any relevance to the attacks alleged in 2019 and 2022 or otherwise demonstrate that the Tribunal findings are incorrect. The Respondents emphasise that no submissions or indication of the asserted relevance of the Article were provided to the Tribunal; that the Tribunal did consider and fairly and correctly summarises the Article and correctly noted the name disparity; and that the Tribunal did not err in finding that the 2012 Article does not support the Applicant’s claim.

Assessment

42. There are a number of discrete issues raised by the Applicants under Ground Two.

(a) Reliance on the absence of documentation

43. The first question under this heading is whether a tribunal can rely primarily or solely on the absence of documentation to reject an applicant's case. As the Respondents' case is that the documentary deficit was not a primary ground for the Decision, it is necessary to begin with some reference to the Tribunal Decision and the findings in fact made.

44. As has been noted, the Tribunal assessed and rejected the general credibility of the Applicant's case based on findings it was vague, inconsistent in places and lacking in detail. The Tribunal also made the finding that the claim regarding Mr T. is "*unsupported by any documentation despite numerous requests to do so*" and that "*the Appellant has failed to provide any corroborative documentation or adequate explanation to support her belief that [Mr. T] was a man of influence...*" (at [38]). The final conclusion is that the claim regarding Mr T. is "*vague, lacking in detail, uncorroborated and at points inconsistent*" (at [39]).

45. As a matter of plain reading of the Decision, I do not accept that the Tribunal relied solely or even primarily on an absence of documentation as a basis for rejecting the Applicant's claim. Instead, having set out the evidence of the Applicant and the content of the 2012 Article, the Tribunal made findings of vagueness, lack of detail and inconsistency, as well as findings of a lack of corroboration. The legal question of whether and when a tribunal can rely primarily or exclusively on an absence of documentation does not therefore properly arise on the facts here.

46. It is notable that this case is different to some of the cases cited and relied upon, such as *G.A. v. IPAT* and *Morchiladze v. IPAT* in which the absence of documentation appears to have been a more dominant ground for refusing protection. It was a feature of those cases that the claims made were reasonably capable of being substantiated by documentation.

47. In *Morchiladze v. IPAT*, Ferriter J. observed that it "*might be expected that core elements of his claim would be readily capable of documentary substantiation...*" (*Morchiladze* at [27], cited in *G.A.* at [80]). *Morchiladze* concerned alleged threats from creditors of failed business ventures, business dealings in which the applicant himself was engaged, and matters within his direct knowledge, such as his claim that he had authority from the Georgian authorities to import vehicles. In *G.A. v. IPAT* the first applicant's case hinged on him having a profitable business, having access to substantial sums of cash, and suffering significant violence, requiring dental and medical treatment. There was an unexplained dearth of documentation to substantiate those assertions.

48. In *G.A.*, Heslin J. observed that even the first applicant himself was of the view:

“..that core elements of his claim are capable of documentary substantiation (in the form of his tax declaration; tax registration; certificates of sale concerning the purchase and sale of vehicles; and a letter confirming his attendance at or treatment received from a dentist identified as Leila Botchorischvili). However, the applicant chose not to provide any such documentation to IPAT, notwithstanding the fact that he was very clearly on notice that the absence of such evidence was a material element in adverse credibility findings reached by the IPO” (at [81]).

49. On the basis of the nature of the claims made in those cases, the applicants may reasonably have been expected to have relevant documentation. The decisions of the Tribunal, which were based to a large extent on the absence of documentation, were upheld.

50. It may be noted that those cases are markedly different to this one for two reasons. First, the case advanced by the Applicant here is that she was a sex worker and had a child with a client who had a position of importance and influence. I do accept that it is less clear in this case what documentation the Applicant could reasonably be expected to produce to substantiate her claim. However, the second important point of distinction is that the Tribunal in this case did not base its decision primarily on the absence of documentation. If the Tribunal had accepted the consistency, clarity and cogency of the Applicant’s case, but rejected it owing solely or primarily to the failure to produce documentation, that may require careful consideration, including consideration of the application of section 28(7). However, as already observed, that is not the decision that was reached by the Tribunal here.

(b) Interpretation of section 28(7)

51. The Applicants contend that general credibility must be assessed separately from, and in advance of, any assessment of documentary evidence. They rely on *D.E., L.E and S.E. v. Refugee Appeals Tribunal* on this point. In his judgment in that case, Mac Eochaidh J. observed that the tribunal had rejected the credibility of the case presented owing to the absence of documentation (among other reasons) without even referring to article 5(3) of the EC (Eligibility for Protection) Regulations (S.I. 518 of 2006) (which preceded and was largely identical to section 28(7)). For this and other reasons, the decision was quashed. In the course of his judgment, Mac Eochaidh J. commented,

“It is of note that Regulation 5(3) forgives the absence of documentary evidence in support of an asylum claim where certain conditions are met, including where the general credibility of the applicant is established. This suggests that it is wrong to rely on the absence of documentary evidence to ground a finding as to the general credibility of an applicant. The legislative scheme strongly suggests that general credibility should be determined before

the absence of documentary evidence comes to be examined. (My remarks on the impact of Reg. 5(3) are made in passing as the parties did not engage in argument on this point nor did the court invite submissions on the impact of these rules in this case.)”

52. As the Applicants accept – and as the passage just quoted makes plain - this was *obiter*. It also does not go quite so far as the Applicants contend: what the Court found in the passage just quoted is that the finding on general credibility should not be based on the *absence* of documentation. He does not say that the existence or content of documentation should not be weighed as part of the assessment of general credibility. If there was any uncertainty on this point, it is resolved in more recent cases applying section 28(7) which establish unambiguously that all relevant evidence should be weighed as part of the general credibility assessment. Ferriter J. in *A.H. v. IPAT* (at [79]) endorsed the *dicta* of Humphreys J. in *O.A. (Nigeria) v IPAT* [2020] IEHC 100, that “*the general rule is that an assessment of the reliability of documents cannot be separated from an assessment of the credibility of the applicant; and if there are exceptions to that, then they are more theoretical than real for virtually all practical purposes*”. This also reflects the judgment of Cooke J. in *I.R. v. Minister for Justice, Equality and Law Reform*, in which it was found that “[t]he 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” (at [11(4)]).

53. In summary, I am satisfied that a decision on “*general credibility*” itself involves an assessment of the credibility of an applicant’s case as a whole, including an assessment of the relevance of any documentary or other corroborative evidence (or the lack thereof) to the question of credibility. I reject the submission by the Applicants that the question of documentary corroboration (or the lack thereof) must be treated in isolation from an assessment of general credibility.

(c) The 2012 Article

54. The point that was most heavily emphasised by the Applicants, and said to be the strongest ground, concerns the approach taken by the Tribunal to the 2012 Article. It must be observed at the outset that the case pleaded by the Applicant is not that the Tribunal failed to have adequate regard to the 2012 Article (unlike the case pleaded in *C. (Nigeria) v. IPAT*) or that it failed to give adequate reasons for the decision that the Article does not corroborate the Applicants’ claim. Rather, the Applicants plead that the Tribunal’s finding that there is “*only a very vague claim*” regarding Mr T.’s employment is irrational in light of the statements made and the 2012 Article. It is also pleaded that the Tribunal’s findings are primarily or significantly based on absence of substantiation and it is pleaded that “*this is in the context of*” the 2012 Article. A point is made about the Tribunal highlighting the slight discrepancy between the name Mr T. and the name in the 2012 Article and it is pointed out that the Applicant used a hybrid of the two names in her questionnaire.

55. The Article itself is about Mascom handing over “*Kitsong centres*” to ten unemployed youths to establish their own businesses in selected villages in Botswana. The “*Kitsong centres*” are described in the article as porta-cabins equipped with computers, printers, copiers, data cards, email and internet services. It references a name very similar to that of Mr T. as one of the youths selected and includes a quote from him about how “*proud and happy*” he was.
56. On its face, the 2012 Article does indicate a link at that time between an individual of a similar name to Mr T. and Mascom, but there was no submission made to the Tribunal as to how or why the Article is said to corroborate the case made or redress any concern about vagueness in the Applicant’s case. It was simply forwarded as an attachment to an email. This is clear from the Decision itself: “*neither the Appellant nor her solicitor have advised as to how this document supports her claim for IP*[international protection]”. The Tribunal notes that it refers to a man of a slightly different name “*winning an award from Mascom*” and concludes that “*this document does not support the Appellant’s claim*” (at [33]).
57. If the Article was more detailed, specific and/or recent, or if submissions had been made which sought to demonstrate some particular link between the content of the Article and the case being made by the Applicants, it may require closer consideration, but the Article dates back to 2012, contains only two lines which reference a then-unemployed youth of a very similar name to Mr T. being given a portacabin by Mascom in 2012 to run his own business. I note the complaint that the Tribunal had regard to the discrepancy between the name reported in the Article and the name of Mr T. as represented in evidence by K.M. without further enquiry. However, I am satisfied that, regardless of whether or not the name was different, I fail to see that it was irrational for the Tribunal to find that the Article does not substantiate the assertions by the Applicant that, seven years after the Article, the Applicant became pregnant by Mr T., who was a client of hers and a person of power and influence including police influence. Whether or not the Article referred to Mr T., I cannot see a valid basis to conclude that, in light of the Article, no reasonable Tribunal could have found that the case advanced by the Applicants is vague and inconsistent.
58. In short, the burden rests on the Applicants and they have failed to demonstrate that it was irrational for the Tribunal to decide that the case advanced is vague and inconsistent in places or that the Article does not support the Applicants’ claim.

(d) Impact of failure to consider relevant document

59. There was an interesting discussion at the hearing as to the threshold that must be met before a failure to consider a document will justify interfering with the decision of a tribunal. Simons J. in *C.(Nigeria) v. IPAT* clearly set out the different approaches which emerge from the judgments in *A.M.C. (Mozambique) v. International Protection Appeals Tribunal* [2018] IEHC 133, which indicates a

“middle ground” approach of whether it is shown that the document was capable of influencing the decision, as opposed to the higher threshold in *O.M. v. International Protection Appeals Tribunal* [2025] IEHC 51 that it must be shown beyond a reasonable doubt that the document would have no effect on the outcome. The Applicants here contend that, whichever standard is applied, the 2012 Article was relevant and capable of materially influencing the decision, although they favour the “reasonable doubt” test, whereas the Respondents favour that adopted in *A.M.C. (Mozambique) v. IPAT*.

60. In *C.(Nigeria) v. IPAT* itself, Simons J. was satisfied that the document which the Tribunal did not consider (a police summons) was material whatever threshold was applied and continued, “[i]t is unnecessary, for the resolution of the present proceedings, to reach a concluded view on the precise threshold” (at [47]). In this case, I am similarly of the view that it is not necessary to reach a concluded view on the correct threshold to apply. I have already found that the Decision as a whole makes it plain that the credibility of the Applicants’ case was rejected on several grounds, including the absence of corroborating documentation and I have found that it was not irrational for the Tribunal to make the findings it did, the 2012 Article notwithstanding. In addition, there is no express pleading that the Tribunal failed to have adequate regard to the 2012 Article. For these reasons, the materiality threshold that should apply when a tribunal fails to have regard to a specific document is not germane to my decision and I leave this issue over to be assessed in a case in which it is properly at issue.

Third and Fourth Grounds

61. The Applicants’ position at hearing was that Grounds One and Two are the strongest grounds in the proceedings and the primary arguments relied upon. It was said that, if they fail under Grounds One and Two but prevail under Grounds Three or Four, this would require an assessment of whether the relevant findings are severable from other grounds for the Tribunal’s Decision.

Third Ground

62. The third ground is that the Tribunal erred in law and failed to give reasons when rejecting the credibility of the Applicant’s evidence that Mr T. did not require a DNA test on the basis that he saw a resemblance between the Second Applicant (aged 10/11 months old) and him and his other children. The Applicants challenge the rationality of the Tribunal’s finding and plead that inadequate reasons are given. It is claimed that the “Gaussian curve” shows that most infants resemble their mother and father equally. In submissions, it is also said that her “line of work” is only relevant if the evidence showed she frequently engaged in unprotected sex.
63. The response by the Respondents is that the rejection of the credibility of the answer that Mr T. did not accept the offer of a DNA test was rational given the work in which the Applicant was engaged. It is

submitted that the finding made should not be isolated for examination and parsed. Rather, the credibility findings should be viewed and assessed as a whole.

Assessment

64. The finding by the Tribunal on this point, it may be useful to recall, is that the answer on this point was “*not credible in the circumstances*” (at [34]). The Tribunal in that paragraph also referenced K.M.’s “*line of work*”. The Applicants challenge the rationality of this specific credibility finding which was made by the Tribunal on the basis of the evidence presented, including the evidence observed at oral hearing. The high threshold for interfering with such findings has already been set out: it is not a matter of stepping into the shoes of the Tribunal, but rather an assessment of whether it is a decision which no reasonable Tribunal could have made. It also falls to be assessed as part of an overall assessment of credibility and, as the Respondents point out, the Decision should not be dissected and its components parsed. Applying that threshold and guidance, I do not believe it can be said that no reasonable Tribunal could have found that the answer given on this question lacks credibility. The fact that K.M. was engaged in sex work is a rational basis for the finding.
65. As regards the challenge to the adequacy of the reasons, the Tribunal refers to the “*line of work*” and then references “*the circumstances*” when rejecting the credibility of the evidence surrounding the question of a DNA test. While the Applicants challenge the rationality of these reasons and the findings, I do not believe it can be said that the reasons were not apparent or sufficiently stated.
66. In any event, this finding is one part of a broader assessment of credibility, although it is not referenced in those paragraphs of the Decision in which the Tribunal summarises its assessment of the claims and the reasons for the decision ([38] and [39]). Accordingly, even if this single finding was found to be irrational or legally infirm, I am satisfied that the overall Decision would not be undermined by its excision. The decision of the Court of Appeal in *S.M. v. Minister for Justice* [2024] IECA 145 indicates the correct approach in this circumstance: “*it is open to the Court to refuse an order of certiorari even though a reason for an administrative decision has been struck down, where there are other valid reasons supporting that decision.*” (at [85]). Even if the Applicant prevailed under Ground Three, this would not warrant the relief sought.

Fourth Ground

67. The Applicants contend that the Tribunal erred in finding that K.M. provided differing and inconsistent explanations at various stages of the interview regarding making reports to the police. The Applicants contend that these were not inconsistencies but rather that K.M. was answering different questions each time.

68. The Respondents' argument is that the finding of inconsistency did not specifically relate to K.M.'s reasoning for not filing a police report but rather the claim in its entirety. It is maintained that K.M. did answer the question regarding reporting to the police inconsistently at various stages during the interview and that the findings made are rational and the reasons for same are clear.

69. In oral submissions, the Respondents contend that the findings made by the Tribunal rejecting the reasons given by K.M. for not making reports to the police, are an important part of the Tribunal's Decision. In the course of oral submissions, counsel for the Respondents addressed the claim that K.M.'s answers in this area were directed to different questions and not inconsistent. He contended that the findings by the Tribunal are directed to K.M.'s evidence in chronological sequence, specifically:

- Paragraph 34 of the Decision addresses harassment at her work in early 2019 (before her resignation) and the reason given there was that Mr T. was working for the mayor.
- Paragraph 35 addresses further harassment during the same period and the reason given by K.M. for not going to the police then was that she did not know where Mr T. lived as he had moved away. The Decision also references K.M.'s assertion that Mr T. had friends in the police and that he would be released on bail and her answer that she did go to the police but they would not listen to her.
- Paragraph 36 of the Decision is concerned with the rape in May 2019 and K.M. said she did not go to the police because her mother's aunt would evict her and she chose accommodation over reporting the crime.
- Paragraph 37 then records K.M. as saying that she did not go to the police as "*one of the police was his friend*". The Respondents contended that paragraph 37 is concerned solely with the incident in Easter 2022.

70. The Respondents' position is that the findings of inconsistency in this evidence (Decision at paragraph 38) are rational and not erroneous.

Assessment

71. The Tribunal's finding on this point is summarised in the Decision at paragraph 38 (repeated here for ease of reference):

"When asked why she never reported Mr [T] to the police, she provided different explanations at different stages of interview. At one point she said it was because she did not know where he was, then she said it was because the police in Botswana would not investigate the matter and then she said it was because he had a friend in the police and he would prevent the matter from being investigated" (at [38]).

72. The challenge to this finding is heavily based on a dissection and parsing of the Decision. Leaving that to one side, it is important to emphasise the material finding is that K.M. did give “*different answers at different stages of interview*”. I accept that the answers given appear to deal with different events and different dates, as pleaded by K.M. Indeed, the Respondents also agree that there were different answers given dealing with different periods and incidents, as reflected in paragraphs 34 to 37 of the Decision. I do not believe the Tribunal Decision is as clear as it could be in its treatment of this topic. However, it does appear that paragraph 34 addresses the reason for not reporting the initial harassment at work (“*I did not report because he was working with the mayor*”) and paragraph 35 also refers to the reason for not reporting harassment at work (“*I did not know where he lived*” and “*they will just release him on bale*” (sic)). Paragraph 36 also clearly refers to evidence regarding reporting the rape in May 2019 (“*my mother’s aunt said she would kick me out of my home. I chose accommodation over reporting the crime*”).
73. There is somewhat less clarity as regards aspects of paragraph 35 and 37. Paragraph 35 references the evidence that Mr T. had “*police friends*” and “*one of his friends was adamant not to open a police case*”, and that she did attempt to get the police to open a case, “*but they would not listen to me*”. It does not expressly indicate what events this evidence pertained to, but it seems likely it is about the harassment, as that is the question recounted in the beginning of that paragraph. The evidence set out in paragraph 37 is that domestic violence legislation was put to K.M. and she answered that she did not report Mr T as “*the police was his friend*”. It is not clear whether that evidence was linked to a specific time or event. Insofar as counsel for the Respondents contended that paragraph 37 is concerned solely with the incident in Easter 2022, I have to say that it is not apparent to me from reviewing that paragraph that is clearly so confined. There is no such specificity in that paragraph, although the evidence in question is set out at paragraph 18 of the Decision and there, K.M. referred to no charges being brought in Easter 2022 because Mr T. had a friend in the police.
74. The overarching point is that the Decision does in fact reflect the fact that K.M. was answering different questions arising from different facts. I do not believe the complaint by the Applicants that the Tribunal irrationally compared different answers to be made out. If the Decision is read as a whole (as it ought to be according to *I.R. v. Minister for Justice, Equality and Law Reform*), it is manifest that K.M. did give different answers at different times. These answers are in the main contextualised in paragraphs 34 to 37 and then summarised in paragraph 38. I am satisfied that the findings of inconsistencies were not irrational but were conclusions that were fully open to the Tribunal from a chronological assessment of the evidence given. I reject the Applicants’ criticism that the Decision is irrational in its treatment of the evidence on police reporting.
75. In any event, even if the Decision had treated the answers separately from their context, I do not accept the findings would be irrational. This is for the simple reason that the Tribunal reflects several different,

at times contradictory, reasons which were given by K.M. for not making a report to the police over a relatively limited period of time.

76. I am satisfied that, regardless of any specific factual context, it would have been reasonably open to the Tribunal to make the finding of inconsistency that was made. Consequently, I do not accept that Ground Four demonstrates a valid basis to interfere with the Tribunal's Decision. Even if it did, I am satisfied that the Decision contains other valid reasons, particularly regarding the evidence about Mr T., which would separately support and sustain the decision and overwhelm any such flaw, such that the test set out in *S.M. v. Minister for Justice* is satisfied.

CONCLUSIONS

77. Each of the grounds relied upon in this application for judicial review is rejected. The application for judicial review must therefore fail.

78. Given this outcome, I am of the provisional view that the correct costs order is an order that the Applicants are liable for the costs incurred by the Respondents. I will list the matter before me at 10.30am on Wednesday 7 October 2026 for the purpose of hearing any submissions the parties may wish to make on the question of costs and to make final orders.