



IN THE SUPREME COURT OF NAURU

AT YAREN

[APPELLATE DIVISION]

Case No. 117 of 2015

IN THE MATTER OF an appeal
against a decision of the Refugee
Status Review Tribunal TFN 15049,
brought pursuant to s43 of the
Refugees Convention Act 1972

BETWEEN

ETA080

Appellant

AND

THE REPUBLIC

Respondent

| | |
|-------------------|-------------------|
| Before: | Crulci J |
| Appellant: | T. Baw |
| Respondent: | G. R. Kennett SC |
| Date of Hearing: | 28 September 2016 |
| Date of Judgment: | 30 June 2017 |

CATCHWORDS

APPEAL - Refugees – Refugee Status Review Tribunal – Whether the Tribunal failed to take into account relevant considerations – Whether the Tribunal failed to deal with evidence in reasons – APPEAL DISMISSED

JUDGMENT

1. This matter is before the Court pursuant to section 43 of the *Refugee Convention Act 2012* ("the Act") which provides:

43 Jurisdiction of the Supreme Court

(1) A person who, by a decision of the Tribunal, is not recognised as a refugee may appeal to the Supreme Court against that decision on a point of law.

(2) The asked to the appeal are the Appellant and the Republic.

...

2. The determinations open to this Court are defined in section 44 of the Act:

44 Decision by Supreme Court on appeal

(1) In deciding an appeal, the Supreme Court may make either of the following orders:

- (a) an order affirming the decision of the Tribunal;
- (b) an order remitting the matter to the Tribunal for reconsideration in accordance with any directions of the Court.

3. The Court notes that the parties filed consent minutes of order on 24 March 2016, by which the time for the filing of the Notice of Appeal was extended, such that the Notice of Appeal can be treated as being validly filed.
4. The Refugee Status Review Tribunal ("the Tribunal") delivered its decision on the 8 December 2015 affirming the decision of the Secretary of the Department of Justice and Border Control ("the Secretary") of the 26 June 2015, that the Appellant is not recognised as a refugee under the 1951 Refugees Convention¹ relating to the Status of Refugees, as amended by the 1967 Protocol relating to the Status of Refugees ("the Convention"), and is not owed complimentary protection under the Act.

BACKGROUND

¹ 1951 Refugee Convention and 1967 Protocol also referred to as "the Refugees Convention" or "the Convention".

5. The Appellant is a 27-year old married man from Anandipur in the Noakhali District of Bangladesh. The Appellant's family include his parents, brother, three married sisters, and his wife. The Appellant completed his schooling in 2006. He did not work after school. He lived in Malaysia between 2008 and 2012.
6. The Appellant was involved with the Bangladesh Nationality Party ("BNP") for a number of years in Bangladesh, including as a member. Following a series of threats and violent clashes with the rival party, the Awami League ("AL"), the Appellant left Bangladesh, firstly in June 2008, then returning home in December 2012 for his wedding, before leaving for second time on 10 January 2013. The Appellant went to Malaysia and travelled to Indonesia in November 2013. The Appellant then travelled to Australia by boat. He arrived in Christmas Island on 19 December 2013, and was transferred to Nauru on 24 December 2013.

INITIAL APPLICATION FOR REFUGEE STATUS DETERMINATION

7. The Appellant attended a Refugee Status Determination ("RSD") interview on 17 June 2014. The Appellant said that in 2004 he was involved in a clash between the BNP and AL on a rooftop, and was pushed off the roof and broke his leg. He spent five months in hospital and became fearful of the AL. In 2005 he became an active member of the BNP, encouraging others to get involved and attending meetings and rallies. His brother, 'B', and brother-in-law, 'S', were members of the BNP and were harassed by the AL. 'B' fled to Saudi Arabia in 2005. In 2007, he witnessed 'S' and his brothers being beaten by AL supporters with hockey sticks.
8. In about February 2008, AL members threatened the Appellant. The members told the Appellant to leave the BNP and join the AL. The Appellant refused and the members threatened to kill him. After this, the Appellant received 20 to 25 threats a month by telephone from the members telling him to leave the BNP and join the AL. In about March 2008, the Appellant went into hiding in Dhaka. Due to the threats and deteriorating security situation, he left Bangladesh in June 2008.
9. In December 2012, the Appellant said that he returned to Bangladesh for his wedding. He resumed his activities with the BNP, organising activities on behalf of the BNP. On 28 December 2012, he was in Shonai Muri when a fight started between the BNP and AL supporters at a rally, but he got away without being hurt. On 7 January 2013, AL supporters attacked the Appellant and a friend, at a village bazaar. He sustained an injury to the nose, but his friend broke his arm and was in hospital for six months. He reported the incident to the police but they did nothing about it.
10. The Appellant fled to Dhaka, and left Bangladesh for Malaysia on 10 January 2013. He was not able to have his working visa renewed in Malaysia so he decided to travel to Australia.

11. He fears that, if he were to be returned to Bangladesh, he would be disabled and killed. He does not believe that he would be safe anywhere in Bangladesh as the AL are throughout the country and are targeting BNP supporters everywhere.

Secretary's Decision

12. The Secretary did not find the following elements of the Appellant's claim credible:
 - a. the Appellant was threatened 25 times and hit twice per month by AL supporters in 2008;
 - b. his brother and brother-in-law fled Bangladesh because they were targeted for political reasons;
 - c. he hid for three months in Dhaka; and
 - d. he travelled to Malaysia because he feared for his own safety.
13. The Secretary found it implausible that the AL threatened the Appellant at least 25 times², given that the Appellant did not have a political profile and was unable to provide details in respect of the claimed threats. He was also unable to provide clear accounts of being hit by AL supporters. The Secretary also found the Appellant's claim that he went into hiding in Dhaka to be lacking in credibility, given his political profile, the size of Dhaka, and the absence of details in the Appellant's responses at the interview. The Secretary found that the Appellant's interest in further study in Malaysia and obtaining a work visa, do not indicate that the Appellant travelled to Malaysia because he feared for his safety.
14. The Secretary concluded that the Appellant's fear of harm was not well-founded. There was also no basis to infer that the Appellant would face harm if returned to Bangladesh that would constitute a breach of Nauru's international obligations to provide complementary protection.

REFUGEE STATUS REVIEW TRIBUNAL

15. The Appellant lodged his application for review by the Refugee Status Review Tribunal ("the Tribunal") on 7 July 2015.
16. Before the Tribunal, the Appellant reiterated the claim that he was a member of the BNP. Documentation suggested that he joined the Jatiyabadi Chhatra Dhal ("JCD"), the student wing of the BNP, in August 2004.³ After he left school, he continued to go to JCD meetings and occasionally participated in rallies, but he was not harmed beyond a push or a slap.⁴ When there were major tensions between the BNP and AL, he

² Book of Documents ("BD") 76 at line 4

³ BD188 [18].

⁴ BD 189 [20].

went into hiding in Dhaka or Chittagong.⁵ The violence peaked in 2008 and many of his friends left. The Appellant heard of kidnappings and shootings and felt insecure so he went to Dhaka for three or four months before going to Malaysia.⁶

17. The Appellant affirmed his earlier account of returning to Malaysia in December 2012 to get married, and of the incident at the bazaar with his friend.⁷ The Appellant also referenced his brother, 'B', and put forward information that he left for Saudi Arabia in 2005, however, the Appellant did not know why his brother left.⁸ 'B' returned in August 2015, and the Appellant learnt that he went to the market one day and did not return. His family got a phone call to tell them to prepare a certain sum of money and await a further call. This phone call had not been received by the time of the hearing and the Appellant was upset and worried, and concerned that this may have affected his presentation to the Tribunal.⁹
18. Upon questioning by the Tribunal about what motivated the Appellant to join the BNP, the Appellant said "if you remained neutral, you'd be picked on" by both sides.¹⁰ The Appellant was also absent from school for some months.¹¹ The Tribunal therefore found that the Appellant was not as involved in the JCD as would be expected from a committed party member. The Tribunal also concluded from the fact the Appellant was not harmed beyond a push or a slap that he did not attend many rallies or left them early.¹²
19. As with the Secretary, the Tribunal found that the Appellant did not leave Bangladesh to "escape persecution".¹³ The Tribunal noted country information that indicated there was not any particularly noticeable violence in early 2008.¹⁴ The Appellant also worked in Malaysia for four and a half years and returned voluntarily for the wedding.¹⁵
20. The Tribunal also accepted that the Appellant was involved in an incident at the Shonai Muri bazaar in January 2013 with his friend, because this was a consistent claim made by the Appellant throughout the RSD process.¹⁶ The Tribunal accepted that the Appellant received minor injuries but his friend was more seriously injured.¹⁷

⁵ BD 189 [20].

⁶ BD 189 [22].

⁷ BD 189 [24]-[25].

⁸ BD 190 [27].

⁹ BD 190 [27].

¹⁰ BD 191 [30].

¹¹ BD 191 [30].

¹² BD 191 [31].

¹³ BD 192 [34].

¹⁴ BD 192 [34].

¹⁵ BD 192 [35].

¹⁶ BD 192-3 [38].

¹⁷ BD 192-3 [38].

21. The Tribunal therefore concluded (at [42]) that *"it finds there is a reasonable possibility of harm befalling the applicant for reason of his membership of the JCD, but only within his home district area around the town of Shonai Muri where he may be recognised as a former member of the JCD"*.
22. The Tribunal found that because his past political activity was akin to being a member of a local gang and was not ideologically based, he would not seek to involve himself in politics if he returned to Bangladesh, and he would therefore not be harmed by reason of his political opinion.¹⁸
23. The Tribunal found that relocation was relevant to the Appellant and it was reasonable for the Appellant to move to another place in Bangladesh, such as Dhaka or Chittagong, to avoid the risk of Convention related persecution.¹⁹ For the same reasons, there was not a reasonable possibility of a real risk of being subjected to torture or cruel, inhuman or degrading treatment or punishment if he were returned to Bangladesh. Nauru therefore did not owe complementary protection to the Appellant.²⁰

GROUND OF APPEAL

24. The Appellant filed his Notice of Appeal on 28 April 2016. That Notice reads as follows:

The Tribunal erred on a point of law by erroneously finding that "the applicant is able to move to another place in Bangladesh... and that it is reasonable that he do so to avoid this risk of harm"²¹ as it failed to take into account relevant considerations. That failure led to the Tribunal's erroneous conclusions in respect to the appellant's refugee protection claim.

Particulars

Contrary to the Tribunal's finding, there was material before the Tribunal relevant to the test for assessing relocation, including the following sources:

- i. the appellant's statement dated 6 March 2014 attached to the Application for Refugee Status Determination;
- ii. the written submission of the appellant's legal representatives dated 18 September 2015;
- iii. the appellant's supplementary statement dated 14 September 2015, attached to his aforementioned written submissions; and
- iv. the oral evidence and submissions at the Tribunal hearing on 1 October 2015.

¹⁸ BD 194 [45].

¹⁹ BD 195 [49]-[50].

²⁰ BD 195 [54].

²¹ BD 195 [52].

25. Of relevance to the Appellant's claim in this appeal is s 34 of the Act. That section provides as follows:

Section 34: Decision of Tribunal on application for merits review

...

- (4) The Tribunal must give the applicant for review and the Secretary a written statement that:
- (a) sets out the decision of the Tribunal on the review; and
 - (b) sets out the reasons for the decision; and
 - (c) sets out the findings on any material questions of fact; and
 - (d) refers to evidence or other material on which the findings of fact were based.
26. The Appellant submitted that the Tribunal failed to take into account relevant evidence from the Appellant that it would be unreasonable to relocate, because he would be recognised as a BNP supporter throughout Bangladesh, and the fact the AL were in power meant there would be no protection from an attack by AL supporters.²² At the hearing, the Appellant gave evidence as to the ways in which he would be known to the AL, such as one of the villages telling an AL supporter; giving identification to start a business or apply for a job; or the AL supporters spreading a photograph of him on the internet to colleagues in Dhaka or Chittagong.
27. In addition, the Appellant claims that the Tribunal's reasons failed to note that the Appellant's brother was missing, and an extortion attempt was made for his family to see him again, causing the Appellant severe mental distress. According to the Appellant, the absence of any reference in the Tribunal's reasons to the situation with respect to the Appellant's brother, and the Appellant's concern about being attacked by AL supporters in other cities in Bangladesh, and belief that the authorities would not be willing or able to protect him, supports the submission that the Tribunal did not give "real and genuine consideration" of that evidence. The Tribunal therefore failed to fulfil its statutory duty under s 34(4) of the Act.
28. The Respondent submits that the Appellant's true complaint is that the Tribunal did not give weight to certain aspects of the Appellant's evidence when it made the finding that it was reasonable for him to relocate to another place in Bangladesh.²³ In respect of s 34(4), the Respondent submits that the wording does not impose any obligation on the Tribunal to set out evidence that has been rejected by the Tribunal.

²² The relevant evidence, the Appellant submits, is outlined at BD 124[44], [46]; BD 43[26],[27]; BD 124[47]; BD123[39]; BD122[30]; and BD 100[59].

²³ See Respondent's submissions at [15] and Supreme Court Transcript, 35 line 38.

29. Failure of the Tribunal to refer to aspects of the Appellant's evidence is, therefore, not an error of law. Absence of any reference to a piece of evidence does not provide any basis for inferring that the evidence was not considered. In any event, in relation to statements of the Appellant that he would suffer harm upon returning to Bangladesh, and that relocation would not be reasonable or "effective", the Respondent submits that the Tribunal dealt with this at paragraphs [38 to 39], and [48]²⁴. The Tribunal also dealt with the evidence relating to the Appellant's brother and found that it did not lead to any well-founded fear of persecution on the part of the Appellant at paragraphs [27] and [53]²⁵.

30. The Appellant submits that the Tribunal failed to give proper evaluation to the Appellant's evidence of the following:

- a. he did not have to have a high profile to suffer serious harm, his family have been BNP supporters for years and he would be recognised as a member and supporter if he returned to any part of Bangladesh;
- b. his brother left Bangladesh almost 10 years ago and he returned about 20 August 2015, and after a few days there he went to the market and never returned. He had been kidnapped because an extortion attempt was made on the family a few days later if they wanted to see his brother again;
- c. the AL are active in a network throughout Bangladesh and once his identity is disclosed in a new place, the AL members from his home area could make him a target elsewhere;
- d. the AL are in power throughout Bangladesh and he did not believe the authorities would be willing or be able to protect him even if he relocated; and
- e. his brother's grave situation is a real life example of what would happen to him if he returned and it has caused him severe mental distress.

31. The following excerpts of the Tribunal's reasons address in part some of the matters outlined above:

- a. at [52]²⁶, the Tribunal finds that there is a "reasonable possibility of harm befalling the applicant for reason of his membership of the JCD at the hands of BCL or AL members", i.e., the Tribunal found there was a "reasonable possibility" of the Appellant being harmed in his home district regardless of that he might have a low political profile;
- b. at [46]-[47]²⁷, the Tribunal found that the Appellant would not suffer serious harm if he were to return to Bangladesh because he

²⁴ BD 192-194

²⁵ BD 190, 195

²⁶ BD 195

²⁷ BD 194

would not seek to involve himself in political activity, i.e., the Tribunal considered whether the Appellant would be harmed, leaving the Appellant's political profile to one side;

- c. at [53]²⁸, the Tribunal refers to what has occurred to the Appellant's brother and finds that there is "no real possibility that the applicant would be persecuted on account of his brother's situation and that any fear of persecution on this basis is not well-founded";
- d. at [48]²⁹, the Tribunal considers the possibility of the Appellant being pursued in other areas of Bangladesh and finds that "AL supporters would not be likely to pursue the applicant to other areas of Bangladesh";
- e. given the Tribunal's finding that there was no reasonable possibility of the Appellant facing harm if he was to relocate to another area of Bangladesh, the Tribunal did not need to address the question of state protection;
- f. the Tribunal was not bound to consider the question of the Appellant's mental distress in light of what occurred to his brother.

32. Turning to what matters constitute 'relevant considerations', Mason J articulated the judicial review ground of failing to take into account a relevant consideration in the exercise of power in *Minister for Aboriginal Affairs v Peko-Wallsend* ("Peko-Wallsend").³⁰ His Honour noted (at 308-309):

"The failure of a decision-maker to take into account a relevant consideration in the making of an administrative decision is one instance of an abuse of discretion entitling a party with sufficient standing to seek judicial review of the ultra vires administrative action."

His Honour continued:

"The ground of failure to take into account a relevant consideration can only be made out if a decision-maker fails to take into account a consideration which he is bound to take into account in making that decision..."

What factors a decision-maker is bound to consider in making the decision is determined by construction of the statute conferring discretion. If the statute expressly states the considerations to be taken into account, it will often be necessary for the court to decide whether those enumerated factors are exhaustive or merely inclusive. If the relevant factors – and in this context I use this expression to refer to the factors which the decision-maker is bound to consider – are not

²⁸ BD 195

²⁹ BD 194

³⁰ *Minister for Aboriginal Affairs v Peko-Wallsend* (1986) 66 ALR 299.

expressly stated, they must be determined by implication from the subject matter, scope and purpose of the Act..."

33. Judge Khan in *MEG 026 & 27 v the Republic*,³¹ considered the Appellant's claim that the Tribunal failed to consider the evidence in support of her application by reference to the following:

*Minister for Immigration and Ethnic Affairs v Wu Shan Liang & Ors*³² (at [37] (per Meaves, French and Cooper JJ)

"These reasons for the decision under review are not to be construed minutely and finally with an eye keenly attuned to the perception of error."

At 291 (per Kirby J)

(1). *The reasons and the challenge must be read as a whole. They must be considered fairly. It is erroneous to adopt a narrow approach, combing through the words of the decision-maker with a fine appellate tooth-comb against the prospect that a verbal slip will be found warranting the interference of an error of law.* (emphasis mine)

(2). *This admonition has particular application to the review of the decisions which, by law, are committed to lay decision-makers, ie. tribunals, administrators and others. This is not to condone double standards within the reasons and decisions of legally qualified persons and others. It is simply to recognise the fact that where, by law, a decision is to be made by a person with a different, non-legal expertise, or non-special expertise, a different mode of expression of the decision may follow. It must be taken to have been contemplated by the law maker.*

34. *WAE v Minister for Immigration and Multicultural and Indigenous Affairs*³³ per French, Sackville and Hely JJ:

"It is plainly not necessary for the Tribunal to refer to every piece of evidence and every contention made by an applicant in its reasons. It may be that some evidence is irrelevant to the criteria and some contentions misconceived. Moreover, there is a distinction between the Tribunal failing to avert to evidence which, if accepted, might have led to it make a different finding of fact (cf Minister for Immigration and Multicultural affairs v Yusuf) and a failure by the Tribunal to address a contention which, if accepted, might establish

³¹ *MEG 026 & 027 v the Republic* [2017] NRSC 5.

³² *Minister for Immigration and Ethnic Affairs v Wu Shan Liang & Ors* (1996) 185 CLR 259.

³³ *WAE v Minister for Immigration and Cultural and Indigenous Affairs* [2003] FCAFC 184 at [46]

that the applicant had a well-founded fear of persecution for a convention reason. The Tribunal is not a Court. It is an administrative body operating in an environment which requires the expeditious determination of a high volume of applications. Each of the applications it decides is, of course, of great importance. Some of its decisions may literally be life and death decisions for the applicant. Nevertheless, it is an administrative body and not a Court and its reasons are not to be scrutinised "with an eye keenly attuned to error".

(emphasis mine)

35. In *Bugdaycay & Ors v Secretary for the Home Department*,³⁴ there was evidence before the Court that if the Appellant, a citizen of Uganda, was moved to Kenya, the Appellant would be removed to Uganda, where he had a well-founded fear of persecution. Lord Bridge of Harwich, with whom the Court concurred, said that "*Since the decisions of the Secretary of State appear to have been made without taking that fact into account, they cannot, in my opinion, now stand*".
36. The Full Court of the Australian Federal Court in *SCAT v Minister for Immigration & Multicultural & Indigenous Affairs*,³⁵ found that the Tribunal had failed to consider an important integer of the claim, and this amounted to a jurisdictional error. The integer not addressed was whether the Appellant and/or any member of his family might suffer psychological harm due to religious discrimination if returned to Iran. In those circumstances, the Court said that the issue was "*not simply the Tribunal's silence as to some of the evidence going to an issue; an issue was itself not addressed*".³⁶
37. In *HFM 045 v the Republic*,³⁷ the Appellant submitted that the Tribunal failed to consider the risk he might face in Nepal being an active member of the Rastriya Prajatantra Party ("RPP"), when there was evidence before the Tribunal that there were Maoists in government, who were strongly opposed to members of the RPP. Khan J distinguished *HMF045 v Republic* from *Bugdaycay* on the basis that, in the matter before his Honour, the Tribunal had considered the levels of violence and policing in Nepal and determined on the information before it that the Appellant would not be persecuted for a Convention reason, and his life or liberty were not in danger. Khan J also distinguished the matter before him from *SCAT* on the basis that the Tribunal had "*considered the elements of the claim and performed its statutory task to review the matters placed before it*".³⁸

³⁴ *Bugdaycay & Ors v Secretary of State for the Home Department* [1987] HL 514 at [14]

³⁵ *SCAT v Minister for Immigration & Multicultural Affairs* [2003] FCAFC 80.

³⁶ *SCAT* at [26].

³⁷ *HFM 045 v Republic* [2016]

³⁸ *Ibid.*, at [65].

38. The Notice of Appeal does not identify failure of the Tribunal to perform its statutory task under s 34(4) of the Act as a ground of appeal; however, the particulars and written submissions suggest that the Appellant is contesting the decision of the Tribunal on this basis as well³⁹. The authorities identified by the Appellant in his written submissions indicate that, in some circumstances, in light of the claims and findings and evidence, it may be necessary to deal with evidence in the reasons.
39. As already identified, the Tribunal has dealt with the issues outlined by the Appellant to some extent (as set out at [31] above), although the evidence itself is not necessarily explicitly addressed. The matter turns on whether the Tribunal ought to have done more to “*really and genuinely give it consideration*”⁴⁰.
40. In *NAJT v Minister for Immigration and Multicultural and Indigenous Affairs*⁴¹ (per Madgwick J stated (Conti J agreeing):
- “A decision-maker cannot be said to ‘have regard’ to all the information to hand, when he or she is under a statutory obligation to do so, without at least really and genuinely giving it consideration.”
(emphasis mine)
37. The Appellant took the Court to Australian authorities on the equivalent provision in s 430 of the *Migration Act 1958* (Cth). In *Minister for Immigration and Citizenship v SZRKT*⁴² (per Robertson J), the Federal Court said that a failure of the Tribunal to deal with some (insubstantial or inconsequential) evidence will not necessarily establish jurisdictional error: “*The fundamental question must be the importance of the material to the exercise of the Tribunal’s function and thus the seriousness of any error.*”
38. In *Minister for Immigration and Border Protection v MZYTS*⁴³ at [49]-[50] (per Kenny, Griffiths and Mortimer JJ)

“... The Court is entitled to take the reasons of the Tribunal as setting out the findings of fact the Tribunal itself considered material to its decision... Representing as it does what the Tribunal itself considered important and material, what is present – and what is absent – from the reasons may in a given case enable a Court on review to find jurisdictional error: see *Yusuf* 206 CLR 323 at [10], [44], [69].

³⁹ Respondent's submissions at [15] and Supreme Court Transcript, 35

⁴⁰ *NAJT v Minister for Immigration and Multicultural and Indigenous Affairs* (2005) 147 FCR 51

⁴¹ *Ibid.*, at 92-93

⁴² *Minister for Immigration and Citizenship v SZRKT* (2013) 212 FCR 99, at 111

⁴³ *Minister for Immigration and Border Protection v MZYTS* [2013] FCAFC 114.

The Tribunal's reasons disclose no process of weighing evidence and preferring some over the other."

39. *Minister for Immigration and Border Protection v SZSRS*⁴⁴ at [34] (per Katzmann, Griffiths and Wigney JJ)

"... In some cases, having regard to the nature of the applicant's claims and the findings and evidence set out in the reasons, it may be readily inferred that if the matter or evidence had been considered at all, it would have been referred to in the reasons, even if it were then rejected or given little or no weight: MZYTS at [52]"

40. *Minister for Immigration and Border Protection v CZBP*⁴⁵ (per Gordon, Robertson and Griffiths JJ)

"The cases revealed that the proper inquiry was whether the evidence or claims were addressed in the Tribunal's decision-making process. So, SZRKT spoke of a failure to "deal with" claims or evidence: at [111]... So too in SZSRS, the Court was also concerned with whether a claim or evidence had been "dealt with": at [56]. The Court emphasised that the critical consideration is "the Tribunal's decision making process": at [56]. Importantly, that process could miscarry where important evidence was "ignored" in the course of the Tribunal's "decision-making."

...

whenever rejection of evidence is one of the reasons for the decision, the Tribunal must set that out as one of its reasons."

41. The Respondent, in submissions, set out qualifications to the passages referred to by the Appellant above. In relation to SZRKT and MZYTS, the Respondent's written submissions highlight passages that are concerned with the difference between ignoring "relevant material" and failing to take into account a relevant consideration. In oral submissions the Respondent submitted that the quoted paragraph of MZYTS was nothing more than an "explanation of why their Honours were prepared to infer that material had not been considered"⁴⁶

42. In relation to SZRKT, the Respondent notes that it was a case of the Tribunal ignoring corroborative evidence of the Applicant's claims.

⁴⁴ *Minister for Immigration and Border Protection v SZSRS* [2014] FCAFC 16.

⁴⁵ *Minister for Immigration and Border Protection v CZBP* [2014] FCAFC 105 at [54], [102]

⁴⁶ Supreme Court Transcript 42, line 15

Regarding CZBP, the Respondent outlines that this passage summarised the Appellant's submissions and was not part of the Tribunal's reasoning.

43. Therefore, the Respondent appears to accept that in some cases, considering the nature of the claims and findings and evidence, it may be necessary to deal with the evidence in the reasons. In reference to the quote by the Appellant in SZSRS, as to whether it can be inferred from the Tribunal's reasons that the Tribunal did not consider a matter or certain evidence are "*matters which arise from case to case based on a reading of the tribunal's reasons in each case, and they don't, in themselves, point to... a particular class of legal error*"⁴⁷.
44. The evidence the Appellant claims in this case to not have been properly evaluated (set out at [30] above), was dealt with by the Tribunal to varying degrees in its reasons (set out at [31] above).
45. The Consideration for this Court is whether more was required by the Tribunal to "*really and genuinely give it consideration*" (NAJT). Given the scope and purpose of the Act, the evidence set out by the Appellant appears to be relevant to the question of whether the Appellant has a well-founded fear of persecution. The Tribunal's reasons outlined in the decision indicate that the Tribunal did turn its mind to the issues identified.
46. It is not necessary for the Tribunal to refer to every single piece of evidence submitted by the Appellant. The Tribunal has considered the Appellant's claims as required by the authorities set out above and did not fail to take into account relevant considerations. The ground of appeal fails.

ORDER

47. (1) The appeal is dismissed.

(2) The decision of the Tribunal TFN 15049, of the 8 December 2015, is affirmed under section 44(1) of the Act.



Judge Jane E Crulci

Dated this 30 June 2017



⁴⁷ Supreme Court Transcript 42, line 41