IN THE SUPREME COURT OF NAURU
AT YAREN

APPEAL NO. 25/2015
Being an appeal against a decision of the Nauru Refugee Status Review Tribunal brought pursuant to s 43 of the *Refugees Convention Act 2012*

BETWEEN

TOX096 APPELLANT

AND

The Republic of Nauru RESPONDENT

Before: Khan J
Date of Hearing: 21 July 2016
Date of Judgment: 27 September 2017

Case may be cited as: TOX096 v The Republic

CATCHWORDS:

Whether the Tribunal misunderstood the nature of the appellant's evidence – whether the Tribunal failed to consider relevant considerations – whether the Tribunal failed to make determinations on material questions of fact – whether the Tribunal failed to act according to the principles of natural justice – whether the Tribunal's decision was unreasonable.

HELD: the appellant understood the appellant's evidence but found no corroborating material – The Tribunal considered all relevant considerations – the Tribunal applied the principles of natural justice in its use of the country information and its consideration of the appellant's account of his father's arrangements for the appellant's release – the Tribunal's findings about Iranian courts rested on a sound probative foundation – appeal dismissed.

APPEARANCES:

Counsel for the Appellant: A Krohn
Counsel for the Respondent: A Mitchelmore

JUDGMENT

INTRODUCTION

1. The appellant filed an appeal against the decision of the Refugee Status Review Tribunal ("the Tribunal") pursuant to s 43(1) of the *Refugees Convention Act 2012* ("the Act") which states:

> 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 Tribunal delivered its decision on 28 December 2014 affirming the decision of the Secretary for the Department of Justice and Border Control ("the Secretary") that the appellant is not recognised as a refugee and is not owed complementary protection under the Act.

3. The appellant filed an appeal in this Court on 30 October 2015 and the grounds of appeal were amended on 6 July 2016. A further amended notice of appeal was filed on 21 July 2016 and a second further amended notice of appeal was filed on 28 March 2017.

EXTENSION OF TIME

4. Following the decision of this Court in *Kun v The Secretary for Justice and Border Control*[1] ("*Kun*") the respondent took issue to the appeal being filed out of time.

5. On 11 February and 27 April 2015, the Registrar purported to extend the time for the appeal. The Republic's position is that following the decision of *Kun* the Registrar did not have the powers to grant the extension and as such there is no valid appeal before the Court.

6. The Republic for the efficient disposal of the case agreed that the appellant be allowed to present his case on merits of the proposed appeal and at the same time present his argument on substantive issue, and if the Court was satisfied that there was merit in the appeal then the extension of time can be granted. However, after the hearing, the Republic and the lawyers for the appellant have come to an agreement that the extension of time will not be in issue. Accordingly, a consent order was filed on 17 June 2016 whereby the time of appeal was properly extended by the Registrar pursuant to the amendment to the Act on 14 August 2015[2] and consequently the issue of appeal being out of time is no longer an issue.

BACKGROUND

8. The appellant is a 29 year old single man from Iran.

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[1] [2015] NRSC 18 (Khan J).
[2] *Refugees Convention (Amendment) Act 2015.*

9. He was born on 26 October 1987 in Ahwaz city, Khuzestan province. He is of Ahwazi Arab ethnicity. His father often travelled to Kuwait on a renewable visa. The applicant was able to accompany his father using this visa until he turned 18 years old.

10. The appellant worked for his father's construction company from 2003 to 2012. His job was to hire equipment and he assisted with design and managing construction sites.

11. He graduated from a private Iranian university with a degree in architecture in 2009. He was not able to study in his own Arab Ahwazi language. The course was taught in Farsi.

12. He then completed his national military service from 2009 to 2011, serving with Sepah at the Ahwaz airport and the Basij before resuming working for his father's company.

13. From 2012 until his departure from Iran, he worked as a contractor for a national oil company, supervising the laying of pipes. He also raced cars recreationally.

14. As an Ahwazi Arab person, the appellant has been subject to discrimination from Persian Iranians in every aspect of his life. He could not find permanent work and his father was required to register his company through a Persian associate and share the profits.

15. The appellant attended peaceful demonstrations between 2007 and 2013 in support of the rights of his ethnic group. He took the precaution of using a scarf to protect his identity.

16. His cousins led the demonstrations. Four or five years ago, his cousins were executed after being held responsible for explosions that occurred in the Ahwaz area. The appellant suspects that the government framed his cousins for these crimes in response to their political activity. They were linked to an organisation in London called Khalq Arab.

17. Following the executions, he became more involved, assisting with distributing flyers and posting messages online using a different identity. He felt liberated and no longer hid his face when in public. He did not get into trouble at work for participating in these activities because he was only the supervisor of a small unit and his father had connections.

18. Eight or nine months before the appellant's departure, another cousin who was head of Khalq Arab was arrested and remains in detention.

19. In March or April 2013, he received a court summons regarding a car accident that he was allegedly involved in. He was then charged with participating in Ahwazi separatist activities and detained and tortured for three months. He was interrogated about his involvement in explosions and demonstrations and about his cousin. He was

only released when his father paid a bribe to the guards. He was threatened that if he continued his activities he would 'disappear'. He immediately departed Iran with the assistance of another bribe paid by his father. He has not specifically asked his father why he had to leave the country but assumes that it was because his life was in danger.

20. Due to his ethnicity and as a member of the Ahwazi separatist movement, the appellant fears harm from the Iranian authorities. He also fears harm as a failed asylum seeker returning to Iran.

APPLICATION TO THE SECRETARY

21. On 6 November 2013, the appellant attended a Transfer Interview.

22. On 18 December 2013, the appellant made an application to the Secretary for recognition as a refugee and for complementary protection under the Act.

23. On 18 July 2014, the Secretary made a determination that the appellant is not a refugee and is not owed complementary protection.

APPLICATION TO THE TRIBUNAL

24. The appellant made an application for review of the Secretary's decision pursuant to s 31(1) of the Act which provides:

> A person may apply to the Tribunal for merits review of any of the following:
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> a) a determination that the person is not recognised as a refugee;
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> b) a decision to decline to make a determination on the person's application for recognition as a refugee;
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> c) a decision to cancel a person's recognition as a refugee (unless the cancellation was at the request of the person);
>
> d) a determination that the person is not owed complementary protection.

25. On 3 August 2014, the appellant made a statement and on 1 October 2014 his lawyers, Craddock Murray Neumann, made written submissions to the Tribunal. His lawyers had previously provided written submissions on 18 September 2014 regarding the appellant's relationship with his two cousins who have also sought asylum, attaching statements of the appellant and his cousins. The authors of the statements are not the same cousins referred to in connection with Khalq Arab.

26. On 3 October 2014, the appellant appeared before the Tribunal to give evidence and present his arguments with his representative and an interpreter in Farsi language.

27. The Tribunal handed down its decision on 28 December 2014 affirming the decision of the Secretary that the appellant is not recognised as a refugee and is not owed complementary protection under the Act.

THIS APPEAL

28. The appellant filed five grounds of appeal which are:

1) The Tribunal erred in law and misinterpreted the law and the material before it in not understanding the nature of the appellant's evidence.

2) The Tribunal fell into error of law in that it failed to consider relevant considerations, whether material questions of fact, integers of the claim, material or information.

3) The Tribunal erred in law in that, it failed properly to have regard to information, or to make determinations on material questions of fact, as required by law, including sections 22, 31, 35, 36, 37, 39 and 40 of the Act.

4) The Refugee Review Status Tribunal (Tribunal) erred in law and/or fell into jurisdictional error in that it failed to act according to the principles of natural justice, including the natural justice hearing rule, and failed to comply with section 22 of the *Refugees Convention Act 2012*, or failed to comply with section 37 of the *Refugees Convention Act 2012*.

5) The Tribunal erred in law in that the decision was based on illogical findings, or findings without probative evidence, or was so unreasonable that no reasonable Tribunal could so have proceeded.

SUBMISSIONS

29. In addition to the submissions filed by the appellant and the respondent, they also made oral submissions which were of great assistance to me and I am indeed very grateful to both counsel.

CONSIDERATION

Ground One - The Tribunal erred in law and misinterpreted the law and the material before it in not understanding the nature of the appellant's evidence

30. The Tribunal stated at [29][3]:

> [29] The Tribunal does not accept that the applicant had three cousins who were leaders of Khalq Arab in Ahwaz, or that they were detained and executed in 2009/2010 or at any other time... There is no evidence to support this claim...

[3] Refugee Status Review Tribunal Decision.

31. The appellant submits at [26][4] that the statement by the Tribunal that "there is no evidence to support this claim..." reveals an error by the Tribunal in its assessment of the application for review. The appellant further submits that:

a) the appellant made a written statement in his application for protection in his application to the Tribunal which was signed and made as formal evidence;

b) the application for protection referred to the consequences of making "false or misleading information" and to signing any statutory declaration;

c) that at the beginning of the hearing the appellant took an oath to tell the truth;

d) what the appellant said at the hearing was sworn evidence.

32. The appellant further submits that in saying that "there was no evidence to support this claim..." the Tribunal misconceived what the appellant told it. The appellant concedes that his evidence may not have been supported by corroborative evidence, but what the appellant said was not only a claim but in itself evidence. The Tribunal erred in law in a manner which affected the statutory task of "recognising, considering and weighing all of the evidence before it".

33. The respondent submits that when the Tribunal said, "there is no evidence to support this claim…", it has to be viewed in its proper context and should be read fairly[5].

34. The Tribunal at [28][6] set out to find some evidence to support that claim but could not find any in the website address produced by the appellant. What the Tribunal was doing was trying to find some evidence that may 'independently corroborate' the appellant's account about his cousins and when the Tribunal did not find any it concluded that "there was no evidence to support this claim…"; and therefore, it cannot be inferred that the Tribunal misunderstood the appellant's evidence.

35. I accept the respondent's submissions that the Tribunal did not err in misunderstanding the nature of his evidence and the Tribunal's statement has been taken out of context. In its proper context, it means nothing more than that the Tribunal was looking for some independent source to corroborate the appellant's claim and was unable to find any.

36. This ground of appeal has no merits and is dismissed.

Grounds Two and Three

Ground Two – the Tribunal failed to consider relevant considerations, whether material questions of fact, integers of the claim, material or information

[4] Appellant's written submissions.
[5] *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259, 271-2 (Brennan CJ, Toohey, McHugh and Gummow JJ), approving *Collector of Customs v Pozzolanic* (1993) 43 FCR 280.
[6] Refugee Status Review Tribunal Decision.

Ground Three – the Tribunal failed properly to have regard to information, or to make determinations on material questions of fact as required by law, including sections 22, 31, 35, 37, 39 and 40 of the Act

37. The appellant submits at [29][7] that "The Tribunal must consider each material question of fact, a necessary and relevant consideration and integer of the claim." The appellant submits at [30][8] that:

> The Tribunal must have regard to relevant considerations. In doing so it must engage consciously with the claims, questions and material before it. As Perry J said in *SZSZW v Minister for Immigration and Border Protection* [2015] FCA 562 (5 June 2015), at [17]:
>
> > "... the requirement to consider a claim or integers of a claim made by an applicant requires the application of an active intellectual process. As the Full Court held in *Minister for Immigration and Border Protection v MZYTS* [2013] FCAFC 114; (2013) 136 ALD 547 (*MZYTS*) at 559 [38], '*[t]hat task could not be lawfully undertaken without a consciousness and consideration of the submissions, evidence and material advanced by the visa applicant...*'".

38. The appellant further submits that the Tribunal must have proper regard to information, or to make determinations on material questions of fact, as required by law, including ss 22, 31, 35, 36, 37, 39 and 40 of the Act.[9]

39. I will deal with grounds two and three together, noting that the submissions focussed on ground two.

Particular (a) - The applicant's explanation for the not mentioning his relatives' situations

40. The appellant submits at [32][10] that the Tribunal stated "he did not mention the profile of his relatives before the Refugee Status Determination ("RSD") interview because he was told to be concise"; and at [29][11] the Tribunal stated that it:

> ...does not accept his explanation for the tardiness in making this claim. His explanation that he was not given the opportunity to provide this evidence is not supported by the detailed evidence he provided on other aspects of his claims.

41. The appellant submits that at the Transfer Interview, apart from being told 'to be concise' by his lawyer, he did not have much time to talk about his own situation; much less talk about his relatives' situation.[12]

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[7] Appellant's written submissions.
[8] Ibid.
[9] Ibid, [31].
[10] Appellant's written submissions.
[11] Refugee Status Review Tribunal Decision.
[12] Appellant's statement dated 3 August 2014, [7].

42. The appellant also submits that when he submitted his claim[13] he was told by his lawyer to answer directly and to keep answers brief; at the CAPS interview he was not asked about his relatives' political activities so he did not provide any information. At that time, he did not realise the relevance of it and he was told to focus on what had happened to him.[14]

43. That appellant submits that the Tribunal did not engage with and did not consider his explanation for not mentioning his relatives' political situation and experiences. The appellant therefore submits that this was a failure on the part of the Tribunal to discharge its obligations under the Act and an error of law.

44. The respondent in response submits that the Tribunal's summary[15] of the appellant's explanation "that he was not given an opportunity to provide this evidence" is a fair characterisation of the 'full explanation' that the appellant provided. His lawyer's advice about preparing his claim falls within that summary.[16]

45. The respondent further submits that the Tribunal is not required to give details of all the evidence and explanations given by an applicant for RSD process; that it is required to deal with explanations which fall within the ambit of the Tribunal's summary; that the appellant has not identified any basis on which this Court could infer that the Tribunal had regard to only part of that explanation.

46. The respondent therefore submits that this ground of appeal does not demonstrate any error of law.

47. I am satisfied that what the Tribunal stated at [22] – [29] is a fair summary of what the appellant said which was that he had to be concise and focus on himself and the reasons why he could not return to Iran.

48. This ground of appeal is not made out and is dismissed.

Particular (b) – Whether the appellant was or may be suspected of political opinion

49. The appellant submits that the Tribunal at [34][17] did not accept that he "had a political profile" when it rejected his claimed history of actual political opinion and action and his claimed sufferings.

50. The appellant submits that the Tribunal failed to consider a necessary question raised by the material relating to the discrimination suffered by Ahwazi Arabs and their discrimination and history of dissidence. This question was whether the appellant may be suspected of a political opinion opposed to the government. The appellant submits that this arose squarely by the material before the Tribunal; and it failed to consider a material question of fact and an integer of the claim.[18]

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[13] Appellant's statement dated 18 December 2013.
[14] Appellant's statement dated 3 August 2014, [8]-[9].
[15] Refugee Status Review Tribunal Decision, [29].
[16] Respondent's written submissions, [22].
[17] Refugee Status Review Tribunal Decision.
[18] Appellant's written submissions, [36].

51. The respondent in response relies on *Dranichnikov v Minister for Immigration and Multicultural Affairs*[19] where the High Court of Australia held that an administrative decision-maker or Tribunal is required to "respond to a substantial, clearly articulated argument relying on established facts". The respondent contends[20] that there was no clearly articulated claim of the nature now raised before this Court; and that the Tribunal was not required to consider it.

52. The respondent further submits that the claim was not in express terms nor did it arise by the implication on the material before the Tribunal.[21] The respondent relies on *NABE v Minister for Immigration and Multicultural and Indigenous Affairs (No. 2)*[22] where the Full Court of the Federal Court of Australia observed that:

> It is however significant that the precise ground of failure to consider an implied claim... was not the subject of any express claim before the Tribunal. It seems to have emerged by way of submission in this second round appellate hearing.
>
> Although such a claim might have been seen as arising on the material before the Tribunal it did not represent, in any way, "a substantial clearly articulated argument relying upon established facts" in the sense in which that term was used in *Dranichnikov*. A judgment that the Tribunal has failed to consider a claim not expressly advanced is... not lightly to be made. The claim must emerge clearly from the materials before the Tribunal.

53. The respondent submits that the 'imputed political opinion' claim was not expressly made; it did not emerge from the material prepared by experienced legal representatives at the various stages of RSD. It is the product of ex-post facto construction of a Convention claim, which is precisely the type of exercise cautioned against by Mortimer J of the Federal Court of Australia in *MZAJC v Minister for Immigration and Border Control*[23] where her Honour stated:

> ...The assessment of what a Tribunal might reasonably be expected to appreciate should be undertaken by a reviewing court as best as it can without the advantage of hindsight. The reviewing court will always have before it a formulation of the claim that was "not appreciated", but the court should be astute not to scrutinise the Tribunal's reasons, nor the material before the Tribunal, too assiduously with that perspective of hindsight.

54. The respondent submits that particular 2(b) is without foundation and should be dismissed.

55. I agree with the respondent's submission that the imputed 'political claim' was not expressly made, nor did it arise from the material before the Tribunal and it is indeed a creation of a Convention claim which is an afterthought.

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[19] (2003) 197 ALR 389, 394 [24].
[20] Appellant's written submissions, [25].
[21] Ibid, [26].
[22] (2004) 144 FCR 1, 22 [67]-[68].
[23] [2016] FCA 208, [11].

56. In the circumstances, this ground of appeal fails.

Particular (c) – Whether the appellant may in future suffer for political opinion

57. The appellant submits that the Tribunal failed to consider whether the appellant by reason of his ethnic background may have political opinions which in the foreseeable future may lead him to express those opinions or to act in such a way that he may suffer persecution or harm of such a kind to engage Nauru's international obligations.[24]

58. The respondent submits in response that the appellant has not specified any obligation that might be so engaged; and in any event its response in relation to 2(b) is applicable to this ground as well and does not demonstrate any error of law.

59. I agree with the respondent's submissions and this ground of appeal is dismissed.

Particular (d) – Complementary protection

60. In relation to this claim the appellant submits the Tribunal had many sources of evidence about violations of human rights in Iran; and how Nauru would be in breach of its international obligations if the appellant was returned to Iran with the real risk of suffering such abuse. The appellant further submits that the Tribunal had evidence and submissions of closely related extended family members who were also seeking asylum; with a level of inter-dependence such that it was put on the basis for considering the appellant and his relatives on Nauru as members of the same unit.[25]

61. The appellant further submits that despite this the Tribunal only gave the most cursory formulaic consideration to the claim for complementary protection at [43][26]. The Tribunal did not refer to the detailed submissions made on 1 October 2014 which contained extensive and detailed body of evidence of abuses of human rights, risk of arbitrary death, physical violence on questions whether such treatment of the appellant may amount to degrading treatment such as to violate Nauru's international obligations to return the appellant to this situation[27]. The Tribunal thus erred in that it failed to properly consider whether refoulement of the appellant would breach Nauru's international obligations.

62. The respondent in response submits that the bases on which the appellant claimed that he was owed complementary protection were:

    a) his ethnicity and political views and membership of a particular social group;

    b) his irregular departure from Iran and subsequent application for asylum in Nauru; and

[24] Appellant's written submissions, [37].
[25] Ibid, [38]-[39].
[26] Refugee Status Review Tribunal Decision.
[27] Appellant's written submissions, [40].

c) his exposure to serious discrimination because of his Arab ethnicity and actual and imputed beliefs.

63. Further at [42][28] the respondent submits each of these complementary protection claims was considered and rejected by the Tribunal as follows:

a) Political views: The Tribunal did not accept that the applicant had any active involvement in the Ahwazi separatist movement (DR [29]), nor that he was detained without charge, tortured and interrogated about his cousins or his own political activity (DR [34]). The Tribunal also found that the applicant was not involved in political activity, did not come in contact with the authorities, and was not detained because of his political activity (DR [36]).

b) Irregular departure from Iran: The Tribunal found that the applicant departed Iran legally on a genuine passport, and that such people generally do not attract the adverse attention of the Iranian authorities upon return, even if they have been outside the country for some considerable period of time (DR [37]).

c) Application for asylum in Nauru: The Tribunal accepted that the applicant may be questioned on arrival by the Iranian authorities as to why he had sought asylum, but was not satisfied that he would be subjected to persecution for reason of having sought asylum. The reasons given for that finding included that the applicant did not have a political profile, was not wanted for any criminal matter, departed Iran lawfully using a genuine passport issued in his name (valid until 2018), and had not engaged in any political activity abroad (DR [41]).

d) Discrimination: The Tribunal accepted that Ahwazi Arabs are marginalised and subject to discrimination in access to education, employment, adequate housing and political participation (DR [13]). However, the Tribunal found that the applicant's own experience as an Ahwazi Arab in Iran – based on his own evidence – did not support his claim that he was routinely discriminated against because of his race (DR [18]). Rather, the Tribunal found that there was no evidence to suggest that the applicant could not resume his previous lifestyle if he returned to Iran – a lifestyle that included continuous gainful employment, international travel, operating a business, a car racing hobby, and ownership of a house and car (DR [19]). Accordingly, the Tribunal found that the applicant had not, and in the future would not, suffer discrimination amounting to persecution for reason of his Ahwazi Arab ethnicity (DR [20]).

64. The respondent submits that the Tribunal made a very comprehensive finding with respect to and rejecting each of the appellant's complementary protection claims based on the evidence including the appellant's own evidence and that the Tribunal was entitled to adopt those at [43][29] when it determined that the appellant was not owed complementary protection. The respondent submits that instead of a cursory

[28] Respondent's written submissions, [32].
[29] Refugee Status Review Tribunal Decision.

formulaic consideration of the claim of the complementary protection the Tribunal relied on the factual findings as set out in [1]-[41] of its reasons.[30]

65. I agree with the respondent's submissions that the finding on complementary protection was very detailed and very well considered and therefore this ground of appeal has no basis and is dismissed.

Ground 4 – the Tribunal failed to act according to the principles of natural justice

66. Section 37 of the Act was repealed on 10 December 2012 by s 24 of the *Refugees Convention (Derivative Status and Other Measures) Act 2016* so the provision of s 37 is no longer applicable to this appeal. I must deal with this ground under the principles of the common law of Nauru as determined in *DWN066 v Republic*[31] ("*DWN066*").

67. On 28 March 2017, the appellant was given leave to file an amended ground of appeal in relation to Ground Four which was filed and which states as follows:

> The Refugees Status Review Tribunal (Tribunal) erred in law and/or fell into jurisdictional error in that it failed to act according to the principles of natural justice, including the natural justice hearing rule, and failed to comply with section 22 of the *Refugees Convention Act 2012* or failed to comply with section 37 of the *Refugees Convention Act 2012*.

68. The appellant having filed the amended ground of appeal, both the appellant and respondent chose not to make any further submissions. I noted that both the written submissions and oral submissions on this ground was more focussed on s 37.

69. In *DWN066* I discussed the case of *Kioa v West*, where Brennan J of the High Court of Australia said: [32]

> A person whose interests are likely to be affected by the exercise of the power must be given an opportunity to deal with the relevant matters adverse to his interest which the repository of the power proposes to take into account in deciding its exercise [citing *Ridge v Baldwin*]. The person whose interest is likely to be affected does not have to be given an opportunity to comment on every adverse piece of information, irrespective of its credibility, relevance or significance...
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> Nevertheless in the ordinary case when no problem of confidentiality arises an opportunity should be given to deal with adverse information that is credible, relevant and significant to the decision to be made.

[30] Respondent's written submissions, [33].
[31] [2017] NRSC [23], [32] (Khan J).
[32] (1985) 159 CLR 550, 628-9.

Particular (a) – information not put for comment

70. Under the heading "information not put for comment", the appellant submits that the Tribunal relied on the following information in the review decision:

(i) Information in the United Kingdom Home Office, *Country of Origin Information Report*, September 2013 (referred to in the Tribunal's decision as a report of the United Kingdom Border Agency) regarding the risk of mistreatment of an individual returning to Iran, having gained asylum overseas. (Decision [40]).

(ii) Information in the Department of Foreign Affairs and Trade, DFAT Country Information Report Iran, 29 November 2013 regarding the likelihood of persecution of an individual for claiming asylum overseas. (Decision [40])

(iii) Information in the Department of Foreign Affairs and Trade, DFAT Country Information Report Iran, 29 November 2013 regarding cultural factors involving "face" which were held to influence the likely conduct of a person returning to Iran, having claimed asylum overseas. (Decision [40])

(iv) Information in the United Kingdom Home Office, *Country of Origin Information Report*, September 2013 (referred to in the Tribunal's decision as a report of the United Kingdom Border Agency), regarding the division, classification and areas of competence of various Courts in Iran. This was a basis for the Tribunal rejecting the appellant's claim to have been abducted and tortured when he went to the Revolutionary Court for what the appellant believed was a matter relating to a car accident. (Decision [32])

(v) Information in the *Landinfo* report about the treatment of Iranians returning to Iran even if outside Iran for some considerable time. (Decision [37])

71. The appellant submits that the Tribunal, having used the above reports, failed to comply with its obligation of natural justice and procedural fairness in breach of s 22 of the Act.

72. The respondent submits that the Tribunal made reference to the information referred to at (i) above for evaluative purposes. Further, the information referred to at (ii) above is not, in its terms, a rejection, denial or undermining of the appellant's claims; it says nothing about the appellant.

73. With respect to the documents referred to at (iii) to (v), the respondent submits that in terms of s 37 it does not refer to any breach by the Tribunal and the appellant in his reply submitted that:

> The appellant does not seek to make submissions at [43](iii)-(v) of his written submissions and to the extent necessary seeks to add these particulars to Ground 4, particular (a), of the Amended Notice of Appeal.

74. I agree with the respondent's submissions on the Tribunal's use of the information referred to at (i) and (ii) above. There are hardly any submissions on how the information referred to at (iii) to (v) affected the appellant's position. This ground of appeal is dismissed.

Particular (b) – the appellant's account of his father's arrangements for the appellant's release

75. The appellant submits as follows at [50][33] that:

> [50] The Tribunal also failed to give the appellant, as required by natural justice, an opportunity to know and to respond to what the Tribunal later said was "an inconsistent an[d] implausible account of when, who and why his father was contact to arrange his release." (Decision, [32])

76. The respondent submits that the appellant appears to contend that the Tribunal was required to give the appellant an opportunity to know and to respond to a finding that he gave "an inconsistent and implausible account of when, who and why his father was to contact his release".[34] The respondent further submits that the common law procedure does not require the Tribunal to put its "subjective appraisals, thought processes or determinations"[35] and the Tribunal's finding that the appellant's evidence in this respect should not be believed was a "finding on credibility which is the function of the primary decision-maker par excellence".[36]

77. I refer to *Kioa v West*[37] where it was stated:

> The person whose interest is likely to be affected does not have to be given an opportunity to comment on every adverse piece of information, irrespective of its credibility, relevance or significance...

78. I find that there was no basis to suggest that the appellant was denied the rights of natural justice.

79. In the circumstances this ground of appeal is dismissed.

Ground Five – unreasonable – illogicality – findings without probative evidence

80. The appellant refers to the Tribunal's finding that the appellant's claim that he had been summoned "before the Revolutionary Court for fighting after a car accident and being abducted for political activity as a consequence is implausible". The appellant submits that the material referred to by the Tribunal about the structures of the Court in Iran falls short of the evidence for a finding that the claim is implausible and that the Tribunal therefore fell into an error of law.[38]

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[33] Appellant's written submissions.
[34] Respondent's written submissions, [50].
[35] *VAF* (2004) 206 ALR 471, 477 [24] (Finn and Stone JJ).
[36] See *Re Minister for Immigration and Multicultural Affairs; Ex parte Durairajasingham* (2000) 58 ALD 609, 625 [67].
[37] (1985) 159 CLR 550, 628.
[38] Appellant's written submissions, [51].

81. The respondent in response submits that the Tribunal would make an error of law if it makes a finding on a material question of fact for which there is no evidence or material before it; as to whether the particular finding is a finding on a material question of fact must be determined by reference to the Tribunal's reasons.[39] In this case the Tribunal stated:[40]

> His account of being summonsed to appear before the Revolutionary Court for fighting after a car accident and being detained for political activity as a consequence is implausible.

82. The respondent discusses the case of *Re Minister for Immigration and Multicultural Affairs; Ex parte Durairajasingham*[41] where McHugh J considered a finding by the Australian tribunal that a claim by a review applicant was "utterly implausible", describing it as:

> ... essentially a finding as to whether the prosecutor should be believed in his claim – a finding on credibility which is the function of the primary decision-maker par excellence. If the decision-maker has stated that he or she does not believe a particular witness, no detailed reasons need to be given as to why that particular witness was not believed. The Tribunal must give reasons for its decision, not the subset of reasons why it accepted or rejected individual pieces of evidence. In any event, the reason for the disbelief is apparent in this case from the use of the word "implausible". The disbelief arose from the tribunal's view that it was inherently unlikely that the events had occurred as alleged.

83. The respondent further submits[42] that the Tribunal gave its reasons as to why it found the claim to be implausible and at [32][43] it stated:

> He was asked why he was not concerned that the summons required him to attend the Revolutionary Court for a car accident and why he did not engage a lawyer. The Courts are functionally classified according to their area of jurisdiction. There are basically three types of courts in Iran – (a) Public Courts, (b) Clerical Courts and (c) Revolutionary Courts. The Public Courts deals with the civil and criminal matters of the public...

84. The respondent further submits[44] that there are two reasons why the appellant's account was implausible and they were:

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[39] See eg. *Minister for Immigration and Multicultural Affairs v Yusuf* (2001) 206 CLR 323, 331-2 [10] (Gleeson CJ).
[40] Refugee Status Review Tribunal Decision, [36].
[41] (2000) 58 ALD 609, 625 [67].
[42] Respondent's written submissions, [58].
[43] Refugee Status Review Tribunal Decision.
[44] Respondent's written submissions, [59].

a) that it is unlikely that a person would be summonsed to the Revolutionary Court because of a car accident; and

b) that the appellant "was not concerned that the summons required him to attend the Revolutionary Court for a car accident".

85. The respondent in conclusion submits[45] that viewed individually or cumulatively, both of the reasons given by the Tribunal for its finding that the applicant's account was implausible rested on a sound probative foundation.

86. I agree with the respondent's submissions and reasoning and find that this ground of appeal has no merit and is dismissed.

CONCLUSION

87. Under s 44(1) of the Act, I make an order affirming the decision of the Tribunal.

DATED this 27th day of September 2017

Mohammed Shafiullah Khan
Judge

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[45] Respondent's written submissions, [60].