



IN THE SUPREME COURT OF NAURU
AT YAREN

APPEAL NO. 15/2015

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

DWN111

APPELLANT

AND

The Republic of Nauru

RESPONDENT

Before: Khan ACJ
Date of Hearing: 6 March 2017
Date of Judgment: 21 July 2017

Case may be cited as: DWN111 v The Republic

CATCHWORDS:

Whether the country information that the Tribunal chooses to rely on is a question of fact for the Tribunal.

Held: that the country information and the weight to be given to it is entirely a matter for the Tribunal in the discharge of its review task.

APPEARANCES:

Counsel for the Appellant: In person (Ms Keane as McKenzie friend)
Counsel for the Respondent: R O'Shannessy

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 27 August 2015.

EXTENSION OF TIME

4. The decision of the Tribunal was delivered on 28 December 2014 which was received by the appellant on 23 January 2015. Section 43(3) provides that a notice of appeal must be filed within 28 days of the receipt of the decision by the appellant.
5. On 30 June 2015, the Registrar by consent of the respondent made an order that the time for filing of the appeal be extended to 31 August 2015.
6. The notice of appeal was filed on 27 August 2015. Following the decision of *Kun v Secretary for Justice and Border Control*¹ the Registrar did not have the powers to grant the extension, and as such the appeal was not competent.
7. Section 43(3) of the Act was amended by s 43(5) of the *Refugees Convention (Amendment) Act 2015* which increased the period of time for filing of appeal from 28 to 42 days; and it further gave the Registrar or Judge powers to extend the period of time beyond 42 days if satisfied that it was in the interests of justice to do.
8. On the date of the hearing the appellant made a request for an extension of time for filing the appeal with the consent of the respondent and an extension was granted as the Court was satisfied that it was in the interests of justice to do so; and also gave leave to the appellant to rely on the grounds of appeal filed on 27 August 2015 as if they were filed after the orders of extension were granted by this Court.

BACKGROUND

9. The applicant is a 30 year old man from Pakistan.
10. He was born on 26 March 1987 in Rawalpindi in Punjab province. He is of Punjabi ethnicity and is a Sunni Muslim.
11. The appellant completed a commerce degree at the University of Punjab and worked as an assistant accountant.
12. The appellant’s father is a retired public servant living in Rawalpindi. His brothers were living in Islamabad until recently, and are now living and working in other Punjabi cities.

¹ [2015] NRSC 18 (Khan J).

13. The appellant claims that in February or March 2013 he was contacted by members of Tehreek-e Taliban (“TTP”) attempting to recruit him for bombings. The phone calls continued in April 2013 despite the appellant changing his SIM card. The callers threatened to kill him and his father if he refused them. He told the callers that he was not interested and did not support them.
14. On 8 May 2013, the appellant was attacked in the evening at gunpoint by two or three assailants. His phone, wallet and laptop were stolen and he was beaten. The attackers told him that the beating was a warning and that things would be worse if he did not join them. The appellant reported the incident to police but was not able to identify his attackers. The appellant took leave from work two or three days per week, telling his employers that he was busy at home.
15. Three or four days later he received another call requesting that he assist with bombings. The caller did not advise how to join or who to contact. Calls were also received on the landline telephone by the appellant’s father between March and June, asking about the appellant and threatening to kill him. He changed his telephone number again.
16. In June 2013, the appellant was kidnapped in the afternoon when walking home. He was held in a van for 45 minutes and beaten to the extent that he lost consciousness. He was again threatened with death if he did not join his attackers. He asked for one more chance and they threw him from the van. They did not tell him how to contact them.
17. The appellant had been told by police that they could do nothing to stop TTP and so the appellant stopped going to work at all.
18. He received one further phone call suggesting that this was his last chance to join TTP. He hung up without answering, switched off his phone and left Pakistan 15 days later in June 2013.
19. The appellant’s father has not received any further calls from TTP on the landline telephone since the appellant has been in Nauru.
20. The appellant cannot explain why he was targeted, but knows that other men in the area have been subject to similar attention.

APPLICATION TO THE SECRETARY

21. On 28 November 2013, the appellant attended a Transfer Interview.
22. On 17 December 2013, the appellant made an application to the Secretary for recognition as a refugee and for complementary protection under the Act.
23. On 21 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:

- a) a determination that the person is not recognised as a refugee;
 - b) a decision to decline to make a determination on the person's application for recognition as a refugee;
 - 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 September 2014, the appellant made a statement and on 28 September 2014 his lawyers, Craddock Murray Neumann, made written submissions to the Tribunal.
26. On 30 September 2014, the appellant appeared before the Tribunal to give evidence and present his arguments with his representative and an interpreter in Pashto and English languages.
27. The Tribunal did not accept that the TTP contacted the applicant, tried to recruit him, threatened him or harmed him. This decision was based on the country information before the Tribunal that suggested the applicant was not in the class of persons targeted by the TTP for recruitment. Further, the Tribunal did not accept the appellant's evidence that the TTP would contact him and demand that he join them without telling him how to become involved or making any attempt to convince him of their cause. The Tribunal also did not accept that the TTP would not follow through on the repeated threats to his life or that the TTP would be able to continually find his new phone number immediately after he changed it.
28. 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

29. The appellant uses a "dot point" format without numbering the grounds of appeal. The grounds of appeal read as follows:

The appellant hereby appeals pursuant to s 43 of the Refugees Convention Act 2012 against the decision of the Refugee Status Review Tribunal made on 28th day of December 2014 on the following grounds:

- Ground One - I believe the tribunal did not make a decision based on sufficient country information evidence;
- Ground Two - The tribunal did not believe that the TTP (Pakistan Taliban) is operating in the Punjab area, but according to country information the TTP is active throughout Pakistan;
- Ground Three - If I didn't have a problem in my country there is no valid reason for me to have stayed in Nauru for over two years, and the tribunal did not take this into account as evidence that I have a genuine fear of returning to Pakistan, my life was threatened in my country and I am only safe outside of Pakistan;
- Ground Four - If there was a safe place in Pakistan I would be able to settle there but I do not believe there is;
- Ground Five - It is very difficult for me to relocate to any city because the TTP is active throughout Pakistan, and the authorities are not willing or able to protect me.

SUBMISSIONS

30. The appellant was self-represented and did not file any written submissions. He made oral submissions with the assistance of a McKenzie friend at the hearing of the appeal. The respondent filed written submissions and also made oral submissions at the hearing which was of assistance to the Court.

CONSIDERATION

Grounds One and Two

31. The appellant submits that he wanted to provide further country information to the Tribunal apart from the information that it already had before it. When I asked the appellant as to what further information he wanted to put before the Tribunal, the appellant said that he wanted to provide country information which related to his locality; and the information was in the form of news and media articles.
32. When the appellant was asked to point out in the transcript of proceedings as to where he raised this issue, the appellant said that no such formal request was made before the Tribunal hearing; and that he only raised it with his lawyer and was told that the Tribunal already had sufficient information.
33. The respondent in response submits "as to the country information, what the Tribunal chooses to rely on is a question of fact for the Tribunal".² The respondent also relies on *NAHI v Minister for Immigration and Multicultural Affairs*³ and submits at

² *ROD128 v Republic of Nauru* [2017] NRSC 8, [37] (Khan J).

³ [2004] FCAFC 10, [13].

paragraph [18] (a) of its written submission “the assessment of country information, and the weight to be given it, is entirely a matter for the Tribunal in the discharge of its merits review task”.

34. Although the appellant had additional information on Rawalpindi, he in consultation with his legal representative decided not to produce it to the Tribunal. In any event, as discussed above, the country information that the Tribunal chooses to rely on is a question of fact for the Tribunal.
35. Further, these grounds of appeal do not raise a ‘point of law’ for the purposes of s 43 of the Act and are therefore dismissed.

Grounds Three, Four and Five

36. Ground three raises the issue that no place is safe in Pakistan; ground four raises the issue of relocation; ground five alleges that TTP is active throughout Pakistan and the authorities are not able to provide protection.
37. The appellant submits that since no place was safe in Pakistan, he cannot relocate to another place; and further if he were to relocate, then the authorities will not be able to protect him as they are unable to protect themselves.
38. The respondent submits that the issue of relocation did not arise in the Tribunal’s decision and indeed I find that the issue of relocation was not raised by the Tribunal.
39. The Tribunal made findings at [19] that TTP did not contact the appellant or try to recruit him or harm him. It further stated at [20] of its decision as:

Firstly, the Tribunal does not accept that the TTP attempted to recruit the applicant in Punjab. The TTP is a Pashtun group based in the tribal areas of the Federally Administered Tribal Area (FATA) and Khyber Pakhtunkhwa (KPK). When the Tribunal put this to the applicant, he stated that the TTP has branches in other areas and that there is no restriction on where they can work. The Tribunal accepts that the TTP is linked to other militant groups operating in Punjab but does not accept that the TTP is active in Punjab or that the TTP sought to recruit in Punjab.

40. The Tribunal at [30] made a finding that the risk to the applicant is ‘remote’ and that the applicant lives in Rawalpindi which is away from the tribal lands. The Tribunal further stated at [30]:

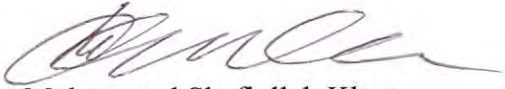
The applicant lives in Rawalpindi which is a large urban centre in Punjab, away from the tribal lands of FATA and KPK where the TTP is based. He is not a target of militant activity which has been directed primarily at the security forces, government targets, pro-government tribal leaders and educational institutions.

41. In light of my discussions above, I find that grounds three, four and five have no merit and are dismissed.

CONCLUSION

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

DATED this 21st day of July 2017



Mohammed Shafiullah Khan
Acting Chief Justice

