



IN THE SUPREME COURT OF NAURU
AT YAREN

APPEAL NO. 67/2015

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

CRI017

APPELLANT

AND

The Republic of Nauru

RESPONDENT

Before: Khan ACJ
Date of Hearing: 9 March 2017
Date of Judgment: 24 July 2017

Case may be cited as: CRI017 v The Republic

CATCHWORDS:

Whether the Tribunal considered the evidence of harm suffered in the past – whether the Tribunal considered the risk of serious harm in the future.

Held: no error of law is raised – appeal dismissed.

APPEARANCES:

Counsel for the Appellant: In person (Ms Montalban 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 22 May 2015 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.

EXTENSION OF TIME

4. The Tribunal’s decision was delivered on 22 May 2015 and it was received by the appellant on 30 May 2015. Under s 43(3) of the Act the appellant was required to file the appeal within 28 days of 30 May 2015.
5. The appeal was not filed within 28 days. The appellant with the consent of the respondent made an application for extension of time on 12 June 2015. The Registrar purported to grant an extension on 17 June 2015 for the appeal to be filed on or before 31 August 2015. Following the decision in *Kun v Secretary for Justice and Border Control*¹ it became clear that the Act did not confer any powers on the Registrar to extend the time.
6. The appellant filed a further application for extension of time with the consent of the respondent on 28 August 2015. On 25 September 2015 the Registrar made an order granting an extension of time for the appeal to be filed by 31 October 2015.
7. The Act was amended by the *Refugees Convention (Amendment) Act 2015* (“Amendment Act”) which came in to effect on 14 August 2015. Under s 43(3) of the Amendment Act, the time for filing of the appeal was increased from 28 days to 42 days and s 43(5) gave the Court discretion to grant an extension beyond the 42 days if it was satisfied that it was in the interests of the administration of justice to do so.
8. The orders made on 25 September 2015 in my view were valid and therefore the appeal filed on 30 October 2015 was competent. There was some confusion on the part of the respondent that the appeal was not competent but that is not so.

BACKGROUND

9. The appellant is a single 32-year-old man from Bangladesh.
10. He was born on 2 April 1985 in Pubna district. He is a Sunni Muslim.
11. The appellant’s father died in 1990 and he lived with his mother. He worked as a farmer and taxi driver after completing year 10 at school. He claims that he was not able to find any other work because he was not a member of a political party.

¹ [2015] NRSC 18 (Khan J).

12. Both the Awami League (“AL”) and the Bangladesh Nationalist Party (“BNP”) attempted to recruit the appellant. He resisted these attempts and now claims to have an imputed political opinion of opposition to both parties. He also believes that he will be susceptible to forced recruitment as a young male.
13. The appellant resolved never to join a political party after being injured as an innocent bystander to a politically motivated fight when he was 10 years old. He has never voted in an election.
14. Between 2005 and 2010, the appellant was approached 10 to 15 times by groups of up to 20 people from either party. The appellant escaped these incidences by asking for time to consider their request.
15. In 2007 the appellant spent several nights hiding at different friends’ houses after being forced to attend an AL meeting. AL members attended his home and told his mother that they would kill him.
16. The appellant also claimed that he was beaten by AL and BNP members on several occasions between 2005 and 2010, including one time in front of his mother in 2009.
17. In September 2011, the appellant was forced to attend an AL meeting where he was beaten and tied up. After escaping, he was caught, beaten and left for dead. Following this he did not return home but worked on different farms until his mother could raise enough money to pay for his departure from Bangladesh.
18. The appellant departed Bangladesh in October 2012 and arrived in Indonesia. He remained there until late 2013 when he departed for Australia by boat. His boat was intercepted by Australian authorities and he was transferred to Christmas Island on 14 December 2013. On 19 December 2013 he was transferred to Nauru.

APPLICATION TO THE SECRETARY

19. On 7 January 2014, the appellant attended a Transfer Interview.
20. On 17 March 2014, the appellant made an application to the Secretary for recognition as a refugee and for complementary protection under the Act.
21. On 23 January 2015, the Secretary made a determination that the appellant is not a refugee and is not owed complementary protection.

APPLICATION TO THE TRIBUNAL

22. 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.
23. On 29 January 2015, the appellant made a statement and on 22 March 2015 his lawyers, Craddock Murray Neumann, made written submissions to the Tribunal.
24. On 30 March 2015, the appellant appeared before the Tribunal to give evidence and present his arguments with his representative and an interpreter in Bengali and English languages.
25. The Tribunal did not accept that the appellant had been put under pressure to join AL or BNP or that he hid at various addresses. This finding was based on inconsistencies in the evidence and the lack of an explanation for why either party wanted to forcefully recruit him and why they would invest so much resources in the attempt. Further, the Tribunal found that the appellant failed to seek State protection despite country information indicating that a military endorsed caretaker government was in power for part of the relevant time period and therefore would have been in a position to provide protection.
26. The Tribunal also found that the appellant's failure to gain employment in any regular work other than farming and driving taxis was not related to any political opinion he may have held or been imputed to hold.
27. The Tribunal noted country information indicating that a person with no interest in politics need not fear any persecution, regardless of whether they fit the demographic of young male or otherwise.
28. The Tribunal handed down its decision on 22 May 2015 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 section 43 of the Refugees Convention Act 2012 against the decision of the Refugee Status Review Tribunal made on 22nd day of May 2015 on the following grounds:

- Ground One - I believe I have not been given justice and my decision should be reconsidered.

- Ground Two - To be a refugee I fear suffering persecution in the future and not just because of what I suffered in the past. I don't think the judge took this into account.
- Ground Three - I believe I will suffer serious harm in the future if I am returned to my country.
- Ground Four - I have given evidence of suffering harm in the past but this was not sufficiently taken into account.

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 made oral submissions at the hearing which was of assistance to the Court.

CONSIDERATION

Ground One

31. In relation to this ground, the appellant submits that he did not get proper justice and therefore invites this Court to review the decision of the Tribunal. As the appellant is acting in person, he probably does not understand the roles of the Tribunal and the roles of this Court in the context of the Act. Insofar as the Tribunal is concerned, it is entrusted with the task of reviewing the decision of the Secretary as provided for in s 31 of the Act. The role of this Court is limited to considering an appeal on a "point of law" under the provisions of s 43 when an appellant is not recognised as a refugee.
32. The appellant's main concern on this ground is that he fears for his life in the future. He submits that he will suffer significant harm and he is quite certain that the supporters of either the BNP or AL would kill him. He further submits that one of his friends was asked to join the party and he refused to do so and he was eventually killed. In his case, he submits that he was forced to join the party and he refused to do so and as a result he was beaten up and that is why he fled Bangladesh.
33. The respondent submits that the Tribunal addressed the issue of forced recruitment by the political parties in its decision at paragraph [42] and [44]. At [44] it is stated: "...However there is no evidence before the Tribunal that indicates that apolitical people like the applicant – those who show no interest in politics and do not join a political party – are likely to be targeted." Further at [45] the Tribunal states: "it is not mandatory to join a political party in Bangladesh" and at paragraph [46], "the Tribunal finds that there is no real possibility that serious harm will be befall the applicant for this Convention reason if he were to return to Bangladesh and continue to eschew politics as he has done in the past."
34. The above clearly illustrates that the Tribunal dealt with the issues that the appellant raised at the hearing that he would suffer significant harm and perhaps be killed.

Grounds Two and Three

35. Ground Two states that “to be a refugee I fear suffering persecution in the future... because of what I suffered in the past. I don’t think the judge took this into account.”
36. Ground Three alleges that the appellant would suffer serious harm in the future if he is returned to Bangladesh.
37. Both grounds two and three overlap ground one which I have discussed in detail and therefore I do not need to discuss the issues raised in grounds two and three.

Ground Four

38. Ground four states that “I have given evidence of suffering harm in the past but this was not sufficiently taken into account.”
39. Although the appellant raised this ground he did not make any submissions on this and concentrated on the fear that if he were to return to Bangladesh he would suffer significant harm and perhaps be killed.
40. The respondent submits that the Tribunal’s decision sets out in detail all of the appellant’s evidence and in the end the Tribunal did not find the appellant’s assertion to be credible and therefore rejected it as it was entitled to do.
41. In paragraph [34] of its decision the Tribunal states:

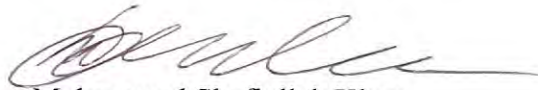
The Tribunal does not accept that the applicant was pressured in Bangladesh to join a political party. The Tribunal does not accept that the AL or BNP tried to forcibly recruit him to join their party. He gave inconsistent and implausible evidence as to why either party would want to recruit him. There was no evidence to indicate why either party would be interested in recruiting him over a seven year period (2005-2012). He gave no convincing evidence as to why either party would invest considerable resources (up to 15 men) to approach him up to 15 or 20 times. The Tribunal draws adverse credibility findings from the fact that the applicant’s recent statements and oral testimony at hearing diverged from his initial statement. There is a huge jump from the account given in his transfer interview and the current set of claims. His most serious claims are not mentioned at all in his transfer interview. The applicant said he did not understand the interpreter however, at both the transfer (and RSD interview) he was asked if he understood the interpreter and provided detailed and related responses to each of the questions he was asked. The Tribunal does not accept that the applicant would provide detail about being accidentally harmed in an incident in 1995 and omit to give evidence about being kidnapped and threatened with having his finger and toe cut off, and threats to kill him in 2011, especially if these were the incidents that triggered his departure from Bangladesh.

42. Unfortunately, none of the grounds of appeal raise a point of law as is required under s 43 of the Act and therefore all the grounds of appeal are dismissed.

CONCLUSION

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

DATED this 24th day of July 2017



Mohammed Shafiullah Khan
Acting Chief Justice

