



IN THE SUPREME COURT OF NAURU
AT YAREN

APPEAL NO. 112/2015

Being an appeal against a decision of the Nauru Refugee
Status Review Tribunal brought pursuant to s43 of the
Refugees Convention Act 2012

BETWEEN

CRI029

APPELLANT

AND

The Republic of Nauru

RESPONDENT

Before: Khan J
Dates of Hearing: 31 August and 1 September 2016
Date of Judgment: 22 September 2017

Case may be cited as: CRI029 v The Republic

CATCHWORDS:

Whether the Tribunal failed to arrange for a psychiatric or psychological report into the mental health of the appellant in his ability to recall matters.

Held: That the Tribunal failed to arrange for a medical report in accordance with the provisions of paragraphs 207 and 208 of the UNHCR Handbook – and that the Tribunal’s procedure was unfair and constituted jurisdictional error.

APPEARANCES:

Counsel for the Appellant: A Krohn
Counsel for the Respondent: C Fairfield

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 16 October 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 18 December 2015 and the grounds of appeal were amended on 12 August 2016. The appellant filed a further amended notice of appeal pursuant to an order made by consent on 1 September 2016. The terms of the order also gave leave to both parties to file and serve further submissions relating to the Tribunal’s power under s 24(1)(d) of the Act.

BACKGROUND

4. The appellant is a single man aged 30 of Bengali ethnicity. He is a Sunni Muslim.
5. The appellant was born on 2 February 1987 in the town of Brahminbaria, to the east of Dhaka. The appellant’s father, mother, two sisters and brother still live in the broader area, also called Brahminbaria. His father owns a small farm and leases it out due to poor health.
6. Both major political parties in Bangladesh, the Bangladesh Nationalist Party (“BNP”) and Awami League (“AL”), have put the appellant under pressure to join their respective ranks. His father was opposed to any such association.
7. He was first put under pressure by AL in 2006. In 2009, the attention escalated to persistent harassment. He was offered a paid position but refused all invitations to become involved. The appellant claimed that he was taken to the AL office where he was threatened with death if he did not join. He requested time to think about it and travelled to Dhaka six weeks later. He did not return home until six months later in 2010, except for a few overnight trips to see his family.
8. On the appellant’s return, the AL again took him to their office where he was assaulted. When he went he told his parents and they advised him to go away again. He decided that Dhaka was not safe as it was only an hour from Brahminbaria and therefore decided to go to Sylhet which was further away. He got a job in a restaurant.
9. The appellant has been under pressure from BNP since 2010. He was frequently harassed by BNP members in his area.
10. In June 2012, the appellant was threatened by AL members with guns, causing him to again flee to Sylhet. In October 2012, AL members assaulted the appellant’s father and brother in Brahminbaria. This assault had serious consequences for the brother, who spent three or four months in hospital. The appellant later claimed that this incident occurred in 2011.

11. Following the assault of his brother, the appellant travelled to Dhaka to visit his brother in hospital. He continued to work in Sylhet but made trips to Brahminbaria where he stayed with various relatives to avoid the AL. Due to his father's poor health he had a responsibility to provide for his family and so could not stay away for long periods.
12. The appellant's family subsequently sold their home and moved to a location approximately one and a half hours away.
13. The appellant left Bangladesh in December 2012. He travelled by boat from Bangladesh to Indonesia via Thailand. After a year in Indonesia he arrived on Christmas Island on 14 December 2013.

NEW CLAIM

14. Two days prior to the hearing before the Tribunal, the appellant was informed by his parents that a warrant had been issued for his arrest in Brahminbaria for a murder committed in the local market place. He suspects that this allegation has been deliberately falsified by the AL.

APPLICATION TO THE SECRETARY

15. On 10 January 2014, the appellant attended a Transfer Interview.
16. On 6 March 2014, the appellant made an application to the Secretary for recognition as a refugee and for complementary protection under the Act.
17. On 23 February 2015, the Secretary made a determination that the appellant is not a refugee and is not owed complementary protection.

APPLICATION TO THE TRIBUNAL

18. 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.

19. The appellant's solicitors, Craddock Murray Neumann ("CAPS"), made written submissions to the Tribunal.
20. The matter was listed for hearing before the Tribunal on 9 June 2015 when the appellant appeared with his legal representative, Miss Stephanie Lee. The appellant informed the Tribunal that his father was sick in hospital in Bangladesh having heart problems and diabetes; and for that reason he was mentally not ready for the hearing; and further he had problems remembering things.
21. The appellant told the Tribunal that he had informed his case manager about these problems and requested an adjournment of the hearing. The Tribunal advised him that it will only adjourn this hearing if a medical report from a "qualified medical practitioner" is produced and that report should state that he is unfit to attend the hearing.
22. In consultation with his legal representative the matter was adjourned to enable the appellant to seek assistance from a psychologist. The Tribunal stated that if the psychologist's report indicated that he was not well enough to participate in the hearing, then the proceedings would be rescheduled; otherwise a decision would be made on the papers as agreed by the appellant.
23. After the hearing was postponed, the appellant visited International Health and Medical Services ("IHMS") with his lawyer, Miss Lee. He was attended to by a mental health nurse team leader whose advice was that IHMS will need to meet the appellant in the coming weeks to work out strategies to resolve his memory difficulties and anxieties in relation to his mental health with a view to him being more prepared to appear before the Tribunal.
24. The Tribunal responded to CAPS that in the absence of any medical evidence in relation to the appellant's fitness to participate in a hearing on 9 June 2015, the Tribunal was not prepared to reschedule the hearing and would proceed to determine the matter on the material before it.
25. On 19 June 2015, the Tribunal wrote CAPS that it will not make any determination on the matter until 29 June 2015 and will consider any material provided in regards to the request to reschedule the hearing prior to that date.
26. On 26 June 2015 CAPS wrote to the Tribunal enclosing copies of medical records from 9 June 2015 and 10 June 2015. CAPS conceded that the records do not explicitly indicate that the appellant was unfit to attend and participate in the hearing on 9 June 2015, but the records would assist the Tribunal to verify that he had difficulties with anxiety, concentration and memory and his general state of health on the date of the hearing. The Tribunal was requested to take those matters into consideration in the determination of the appellant's hearing.
27. On 3 July 2015, the Tribunal informed CAPS that it considered the material that was provided to it and the hearing was rescheduled to another date.

28. In the clinical record of the mental health nurse dated 9 June 2015¹ it is stated inter alia:
- a) Thoughts – focused on stressors, family, RSD, long time in detention. States he becomes anxious and confused when in CAPS interview situation and is very worried he will be disadvantaged by this.
 - b) Discuss with ILO re concerns expressed about Interpreter (to be documented separately according to client’s wishes).
 - c) He is unable to “remember” much of his past life approx. 18/12 in detention. He is also concerned about a particular interpreter and gave details as to why he didn’t trust this interpreter and that he was very concerned that any information he gave today would not remain confidential. He states that he went into the CAPS apt and “couldn’t think” because of the above.
29. In the clinical record dated 10 June 2015² the following observations were made by the mental health nurse, inter alia:
- a) Current Mental State:
Detention fatigue
Anxiety about the future
 - b) PLAN
Client agreed to see the Psychiatrist for his 18 months MHA; Review.
30. The Tribunal rescheduled the hearing to 6 August 2015 when the appellant appeared before the Tribunal to give evidence and present his argument with his representative and interpreter in Bengali and English languages.
31. The Tribunal handed down its decision on 16 October 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.

WRITTEN SUBMISSIONS ON ORIGINAL GROUNDS OF APPEAL

32. Both parties filed written submissions on the original grounds of appeal and also made oral submissions at this hearing.

ADDITIONAL GROUNDS OF APPEAL

33. At the hearing of this appeal on 31 August 2016, I raised with both counsel the question of the powers of the Tribunal under s 24(1)(d) of the Act and on 1 September 2016 leave was granted to the appellant to file an additional ground of appeal (Ground Six) which reads as follows:

¹ Book of Documents, 114.

² Book of Documents, 112.

The Tribunal erred in law in that it failed to exercise its powers as required by law including sections 7, 22, 24, 34, 36 and 40 of the Act.

Particulars

- a) The Tribunal failed to exercise its powers under s 24(1)(d) of the Act to require the Secretary to arrange for the making of a psychiatric or psychological investigation into the mental health of the appellant and his ability to recall matters and to give evidence or arguments about them to the Tribunal.
- b) Further or in the alternative, the Tribunal failed to exercise its powers under 7(1)(b) and 31(1), or under section 36 of the Act, to arrange a psychiatric or psychological investigation into the mental health of the appellant and his ability to recall matters and to give evidence or arguments about them to the Tribunal.
- c) By failing to exercise its power under section 24(1)(d) of the Act, or under 7(1)(b) and 34(1), or under section 36 to arrange a psychiatric or psychological investigation into the mental health of the appellant and his ability to recall matters and to give evidence or arguments about them to the Tribunal, the Tribunal failed to take such steps as were necessary for the appellant to be able to participate fully in the review and hearing of his matter by the Tribunal, and to give such evidence and arguments as he may have wished, and was thereby in breach of sections 22 and 40 of the Act.

FURTHER WRITTEN SUBMISSIONS

34. Both parties filed further written submissions on the additional Ground Six of the appeal. It was agreed that I should make a determination on the written submissions.

CONSIDERATION

35. Since Ground Six affects the entire review process by the Tribunal, I shall consider the submissions on that ground first and depending on the outcome of my determination I shall then consider other grounds of the appeal if it is necessary.
36. At the first hearing on 9 June 2015 after the formalities were explained to the appellant in the presence of his lawyer, Miss Stephanie Lee, the appellant informed the Tribunal that he was not mentally ready to proceed with the hearing as his father was seriously ill and he had problems with recollecting information (memory problem).
37. The appellant told the Tribunal that he had made a request earlier for the postponement of the hearing. When questioned by the Tribunal as to who did he make the request to, he told the Tribunal that he had informed his case manager. The

following exchanges took place between the Tribunal members and the appellant and his lawyer³:

Interpreter: I am not ready for the hearing at all and I made a request regarding this matter earlier as well.

Ms Boddison: Well, what do you mean you made a request?

Interpreter: That I was not mentally ready and my father has been seriously ill. At the same time I have serious problems with recollecting – recalling the information.

Ms Boddison: Who did you make the request to because it hasn't been communicated to us?

Interpreter: Through my case manager.

Ms Boddison: Did you tell your representative this morning about this?

Interpreter: Yes, I did even before.

Ms Lee: Yep and this morning you said that you would get through the interview.

Interpreter: Yeah, I have told her this morning but earlier different representative told me that I had to come for the interview.

Ms Boddison: Well, we can postpone or reschedule hearings but we really need a good reason for doing that. So if you're not feeling well we would probably expect you to get some medical evidence or something to verify that you're not able to proceed today.

Interpreter: Because the documentary evidence – the mental health professionals want to see me every week but the thing is if I can't remember anything how can I proceed with the interview.

Ms Boddison: All right. So are you requesting that we postpone today or do you want to proceed and us take into account the fact that you're claiming that you have these mental health problems?

Interpreter: Sorry, could you ...

Ms Boddison: Are you asking us to postpone or reschedule this hearing or are you – do you wish to proceed and you're asking us to take these matters into account?

Interpreter: I'm requesting for postponement.

³ Book of Documents, 88.

Ms Lee: Could I speak to my client?

Ms Boddison: Yes. So maybe you want to have a break and talk to your representative about that. Okay. We'll just adjourn.

ADJOURNED

RESUMED

Ms Boddison: So did you want to speak to us or want your adviser to speak on your behalf?

Interpreter: If you could postpone, would be great. But regarding the medical I didn't come as ...

Ms Can you speak up, Mr Interpreter.

Interpreter: Yeah. Regarding the medical documentations, I didn't come to medical because of the lack of interpreters. Whenever we come to medical we don't find any interpreter.

Ms Boddison: Just so we're clear, I just want to understand what are the reasons why you want to postpone the hearing.

Interpreter: At the moment I can't remember anything – what should I answer.

Ms Boddison: And you said something about your father. What's the situation with your father?

Interpreter: For the last one month my father has been in hospital and he's seriously ill – problem with the heart and diabetic.

Ms Zelinka: He's been ill for quite some time; is that right? Last one month?

Interpreter: Now it's very serious.

Ms Zelinka: So if we postpone to either later in the week or the next sitting, why would your memory be any better at that time?

Interpreter: I can't guarantee at the moment.

Ms Zelinka: You can't ...

Interpreter: I can't guarantee that it will happen. But if it comes back definitely I come for the interview.

Ms Zelinka: So if your memory comes back, you will come to an interview?

Interpreter: Yeah. I will try to come.

Ms Zelinka: So do we want to have a short adjournment while we consider whether or not we reschedule?

Ms McKinnon: I'm clear.

Mr Godfrey: I'm clear.

Ms Zelinka: What you have provided today – I don't think – we're not prepared to reschedule this hearing. You – we – so we either proceed today or – and if you don't want to proceed, well, we will make a decision on the material we have. Or we can give you a couple of days to provide medical evidence and if – depending on that, we might reschedule. You can have another talk with your advisor about what you want to do now. And we can go quite slowly today and take breaks if you're not feeling very well.

Interpreter: If you can't postpone, you can make a decision on the basis of my written application.

Ms Zelinka: We can, yes.

Interpreter: I – I'm not ready for the hearing at all.

Ms Zelinka: Well I'll give you another chance to talk to your advisor, because I think I should point out to you that one of the reasons we hold this hearing because we found that we can't take – make a positive decision on your written papers because we're able to do that if we look at the papers and think that, yes, you are a refugee ... complementary protection, sometimes we don't have a hearing. But we invited you because we couldn't do that. So I'll give you one more chance to talk to Ms Lee and then we'll see what we are going to do after that.

Mr Godfrey: Perhaps I'll just add that if someone says that they're medically unfit to attend a hearing, we would need to see evidence specifying that from a qualified medical practitioner. And whether that's because of physical condition or a psychological condition, it would still need something – we need to have clear medical evidence on. And the mere fact that you don't feel – you feel that you're having difficulty recalling things would not normally be enough, I don't think. I think many applicants are in a similar position, and we do understand that the conditions here on Nauru for detainees are difficult. But we've received submissions talking about that and indicating how that can affect your ability to recall things, and we'll certainly take those into account. Okay. So we'll adjourn the hearing now so you can have a further chance to speak to your representative. The hearing is adjourned at 9.59.

38. After the hearing was postponed, the appellant's representative took him to IHMS for an unscheduled appointment and after the clinical findings were submitted to the Tribunal, it decided to reschedule the hearing after considering the material that was provided.
39. There was a change in the Tribunal's attitude in rescheduling the hearing as on 9 June 2015 it had stated in most clear terms that it needed a medical report from "a qualified medical practitioner" but it accepted the clinical findings of a nurse who was not "a qualified medical practitioner".

RESCHEDULED HEARING

40. In the clinical records of 9 June 2015 the appellant expressed certain concerns about a particular interpreter and gave details as to why he did not trust that interpreter and he was very concerned with any information that he gave today would not remain confidential.
41. Although the appellant expressed concerns about an interpreter, neither his legal representative nor the Tribunal clarified this matter. In the first hearing on 9 June 2015 I note that the interpreter was known by No. 6345 whilst in the rescheduled hearing the interpreter's number was 6638. It is not known what was the number of the interpreter that the appellant complained about and since this issue was raised, I feel that it was incumbent on the Tribunal as well as his legal representative to clarify this.
42. In the rescheduled hearing, the appellant in his written submissions dated 16 September 2016 points out issues surrounding the appellant's difficulties in remembering matters at [36] to [40] of his written submissions which are as follows:
 - [36] The Tribunal rescheduled the hearing and the appellant appeared and gave evidence. Nevertheless, it was clear at the resumed hearing that the appellant had again to recall his father's ill health (BD 134, line 1) and had difficulty remembering times and dates (BD 134, lines 7, 41; 135, line 1).
 - [37] Further, the Tribunal itself referred to the appellant's difficulties with dates, his earlier statement, and issues of stress including stress caused by detention. (BD 145) It asked him if his recollection would have been better 17 months before the hearing; he said "...I can't remember things much. And I try my best to tell the truth." (BD 145, line 45). There were other references to difficulty in remembering. (For example, BD 146, line 39) The appellant also said, in answering questions about where he was at particular times, "If I said something like this, means my brain is not working properly."
 - [38] The Tribunal referred again to issues of "dates and the order in which things happened [as] different to what's in your statement. And we understand that you have problems with your memory, and you've been in detention for a long time, so we understand all that. But there are some quite big differences....." (BD 157, 42 ff and BD 158, lines 1-18)

[39] After a break, when the appellant was asked if he wanted to tell anything else (especially in response to concerns raised by the Tribunal) he said “No, there’s nothing.” (BD 159, line 24). His representative then said “.....noting for the record, as you can see, the client has reached capacity with this whole thing, and I think the stress and confusion have got to him now.”

[40] The Tribunal’s reasons for decision noted the issue of detention and confusion: “Presumably at that stage he was less confused (having spent less time in detention).” (BD 187, [33])

(emphasis removed)

43. At [7] of its decision, the Tribunal stated:

... the applicant was offered a review hearing on 9 June 2015 but he did not appear. He presented a medical certificate stating that his mental health problems made it difficult for him to give testimony and answer questions.

The Tribunal’s assertion that the appellant did not appear at the hearing is not correct as in the transcript⁴ he was greeted and welcomed by a Tribunal member and the appellant did not produce a ‘medical certificate’. As discussed above, his legal representative only submitted clinical records of the mental health nurse. The clinical record cannot be classified as a ‘medical certificate’. The Tribunal had made a clear finding that he presented a medical certificate that “his mental health problems made it difficult for him to give testimony and answer questions”.

44. The clinical record of the mental health nurse does not state that so I wonder as to where did the Tribunal get that information about his mental health problem.

WHETHER A PSYCHIATRIC OR PSYCHOLOGICAL INVESTIGATION WAS REQUIRED

45. Ground Six states that the Tribunal erred in law in that it failed to exercise its powers as required by law including sections 7, 22, 24, 34, 36 and 40 of the Act.

46. The mental health of the appellant was a ‘live issue’. It was raised well before the first hearing and certain medical material was produced to the Tribunal by the appellant’s legal representative which the Tribunal considered in rescheduling the hearing.

47. It is the appellant’s submission that in light of the background of this case, the Tribunal should have invoked its powers vested in it by the Act to arrange for a psychiatric or psychological assessment into his mental health so that it could adequately carry out its tasks; and in particular its ‘inquisitorial’ role.

48. The respondent submits at [17] of its submissions dated 11 October 2016 as follows:

For the following reasons, the respondent submits that:

⁴ Book of Documents, 86.

- a) Neither s 22 of the Act, nor s 40, nor any combination thereof, nor any other provision or common law principle, imposed on the Tribunal the obligation for which the appellant contends.
 - b) In any event, the Tribunal's failure to arrange a psychiatric or psychological investigation into the mental health of the appellant do not give rise to any error in the circumstances of this case.
49. In *Minister for Immigration and Multicultural and Indigenous Affairs v SGLB*⁵ Kirby J in the dissenting judgment at [73], [74], [80], [81] and [82] stated as follows:

[73] ...

9. *The inquisitorial obligation:* nevertheless, the Tribunal is not a body engaged in purely adversarial proceedings. It operates according to inquisitorial procedures⁶. This feature of the Tribunal's operation casts obligations upon it that are different from, and in some respects more onerous than, those applicable to more traditional bodies acting according to the more passive decision-making virtues of adversarial trial.

[74] Against the background of these features of review in the Tribunal, the respondent's case and the evidence as to his mental health condition, the question in this appeal is ultimately whether the Tribunal's procedures in the second hearing denied a fair hearing to his claim for a protection visa. If so, the Federal Court's orders, although for a different reason, will be sustained. In my opinion the procedures were unfair. This constitutes jurisdictional error⁷. That error cannot be saved by the privative provision in the Act⁸. In the circumstances, it results in dismissal of the appeal.

[80] Objective evidence was before the Tribunal to support this expressed dissatisfaction with the opinion of the employed psychologist. The evidence of "self-harming" was not apparently contested. The further instance of attempted suicide was objectively demonstrated by the admission to hospital. The concerns regarding the employed psychologist's opinion were given support from a report by Dr Stuart Turner⁹ and by the UNHCR Handbook, quoted by the respondent's agent¹⁰.

[81] The opinion of the employed psychologist was criticised, by reference to Dr Turner's report, on the following grounds¹¹:

⁵ (2004) 78 ALJR 992.

⁶ *Re Minister for Immigration and Multicultural Affairs; Ex parte Miah* (2001) 206 CLR 57 at 69-70 [31]-[32]; *Re Refugee Review Tribunal; Ex parte H* (2001) 75 ALJR 982 at 990 [29]-[30]; 179 ALR 425 at 435; *Muin v Refugee Review Tribunal* (2002) 76 ALJR 966 at 1001 [208]; 190 ALR 601 at 648; *Re Minister for Immigration and Multicultural Affairs; Ex parte Applicant S154/2002* (2003) 77 ALJR 1909 at 1918-1919 [57], 1922-1923 [81], 1923 [86], 1924 [88]; 201 ALR 437 at 450, 455-456, 457; *Minister for Immigration and Multicultural Affairs v Respondents S152/2003* (2004) 78 ALJR 678 at 697 [97]; 205 ALR 487 at 513.

⁷ *Plaintiff S157/2002* (2003) 211 CLR 476 at 489-490 [25], 494 [38], 508 [83].

⁸ *Plaintiff S157/2002* (2003) 211 CLR 476 at 508 [83].

⁹ "Discrepancies and Delays in Asylum Seekers", cited in the letter from the respondent's agent to the Tribunal.

¹⁰ UNHCR Handbook at [207]-[208].

¹¹ Letter from the respondent's agent to the Tribunal, quoting from Dr Turner's report.

“Holding a first degree in psychology does not mean that the individual is appropriately clinically qualified or competent to carry [out] detailed psychological assessments... In my view, these are hard to see as expert reports. The danger is that non-expert advice may lead to incorrect decisions in which an asylum seeker [i]s wrongly refused. The acceptance of non-expert advice may also make those responsible for adjudication more cynical about reports... [T]he interpretation of such restricted evidence should in matters of uncertainty or doubt always be in favour of the asylum-seeker in order to avoid the inherent risks arising from the use of such material.”

The UNHCR Handbook emphasises that¹²:

“It frequently happens that an examiner is confronted with an applicant having mental or emotional disturbances that impede a normal examination of his case. A mentally disturbed person may, however, be a refugee, and while his claim cannot therefore be disregarded, it will call for different techniques of examination.

The examiner should, in such cases, wherever possible, obtain expert medical advice. The *medical* report should provide information on the nature and degree of mental illness and should assess the applicant’s ability to fulfil the requirements normally expected of an applicant in presenting his case”.

[82] The apparent mental state of the respondent was sufficient to cause the Tribunal to obtain a report on his condition. However, the report secured was not that of a fully independent expert. Nor was it a “medical report” as recommended in the UNHCR Handbook. Its terms, when known, supported the respondent’s application for postponement of the second hearing before the Tribunal. The established history of “self-harm”, repeated attempted suicide and the expressed opinion of the respondent’s *pro bono* barrister who had personal dealings with him, all suggested that the proper course for the Tribunal to take was to postpone the hearing and to obtain an independent, expert and medical report on his psychiatric condition.

50. Under s 22(b) of the Act, the Tribunal “must act according to the principles of natural justice and the substantial merits of the case”. In this matter, the Tribunal had ample notice about the appellant’s mental health issues and it should have arranged for a medical report which was in compliance with paragraphs 207 and 208 of the UNHCR Handbook. It failed to do so and therefore the procedure it adopted (as put by Kirby J above) was unfair and constituted jurisdictional error.

51. In the circumstances the appellant succeeds on Ground Six of the appeal. As Ground Six was the central ground of the appeal, it is not necessary for me to decide on other grounds of appeal. I would however like to add that since the hearing of the appeal, s 37 of the Act has been repealed which will affect Ground Two of the appeal.

¹² UNHCR Handbook at [207]-[208] (emphasis added).

CONCLUSION

52. As the appellant has succeeded on Ground Six of the appeal which is the main ground of the appeal, under s 44 of the Act I make the following orders:
- a) the decision of the Tribunal dated 16 October 2015 is quashed;
 - b) the matter is remitted to the Tribunal for reconsideration according to law.

DATED this 22nd day of September 2017



Mohammed Shafiullah Khan
Judge

