



**IN THE SUPREME COURT OF NAURU**  
**AT YAREN**

Case No. 12 of 2017

IN THE MATTER OF an appeal  
against a decision of the Refugee  
Status Review Tribunal TFN  
T16/00345, brought pursuant to s 43  
of the *Refugees Convention Act 2012*

BETWEEN

**DWN 008**

Appellant

AND

**THE REPUBLIC**

Respondent

Before: Freckelton J  
Appellant: Self-represented  
Respondent: Catherine Symons  
Date of Hearing: 30 November 2017  
Date of Judgment: 22 March 2018

**CATCHWORDS**

Appeal – error of law – relevant considerations – APPEAL DISMISSED.

## JUDGMENT

1. This matter is before the Court pursuant to s 43 of the *Refugees Convention Act* 2012 (“the Act”) which provides:

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

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

...

2. A refugee is defined by Article 1A(2) of the *Convention Relating to the Status of Refugees 1951* (“the *Refugees Convention*”), as modified by the *Protocol Relating to the Status of Refugees 1967* (“the *Protocol*”) as any person who:

*Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable to, or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable to or, owing to such fear, is unwilling to return to it ...*

3. Under s 3 of the Act complementary protection means protection for people who are not refugees but who also cannot be returned or expelled to the frontiers or territories where this would breach Nauru’s international obligations.

4. The determinations open to this Court are defined in s 44 of the Act:

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

(a) *an order affirming the decision of the Tribunal;*

(b) *an order remitting the matter to the Tribunal for reconsideration in accordance with any directions of the Court.*

5. On 12 August 2016, the Court delivered its decision on the appeal in *DWN 008 v The Republic*.<sup>1</sup> Crulci J made orders quashing the decision of the Tribunal and remitting the matter for reconsideration according to law. On 20 September 2016, the Appellant received a written invitation to appear before the Tribunal. On 6 October 2016, the Tribunal hearing proceeded, and on 20 December 2016, the Tribunal again affirmed the decision of the Secretary.

6. The Appellant filed an initial Notice of Appeal on 27 January 2017, and an Amended Notice of Appeal on 21 March 2017.

## BACKGROUND

7. The Appellant was born in Durani village in the Saddar district of Pakistan. He is of Pashtun ethnicity and Sunni Muslim religion, and has four brothers and three

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<sup>1</sup>[2017] NRSC 13.

sisters. He received four years of education at a government school, and ten years of private education. From 1995 to 2009 he owned a fabric shop in a bazaar.

8. The Appellant claims a fear of harm on the basis of an imputed political opinion of opposition to the Taliban, his Sunni Muslim religion, and his status of a failed asylum seeker.
9. The Appellant departed Pakistan and travelled through Sri Lanka, Thailand, Malaysia, and Indonesia in July 2013, before boarding a boat for Australia that arrived on Christmas Island in August 2013. On 2 September 2013, the Appellant was transferred to Nauru.

#### INITIAL APPLICATION FOR REFUGEE STATUS DETERMINATION

10. The Appellant attended a Refugee Status Determination ("RSD") interview on 18 February 2014. The Secretary summarised the material claims presented at that interview as follows:

- *[The Appellant] resided in Durani village from birth until approximately 1996, when his family moved to Wara-Manduri, a neighbouring village, due to village issues;*
- *Wara-Manduri is approximately 15 minutes' drive from Durani;*
- *Wara-Manduri is Sunni village surrounded by Shi'a villages and Shi'a militants;*
- *In early June 2010, his house was destroyed as a result of fighting between Shi'a militants and the Taliban. Shi'a militants set fire to all the Sunni houses in the village;*
- *Following the destruction of his house in 2010, he and his family went to stay at the UNHCR camp for internally displaced persons (IDP) in Peshawar for four days;*
- *After his return to Durani, until he left in June 2013, he would travel to Peshawar to collect rations from the UNHCR, such as food and blankets;*
- *He would pass through Taliban checkpoints on the road to Peshawar to collect his UNHCR rations;*
- *When he passed through these checkpoints, the Taliban said he would be killed if he was receiving help from the UNHCR, being supported by them or spying for them;*
- *On around 1 June 2013, the Taliban left a threat letter (the "Threat Letter") outside his house addressed to him personally;*
- *The Threat Letter in summary:*
  - *demanded to know why he received help from the UNHCR;*
  - *claimed the UNHCR were infidels;*
  - *declared him to be an infidel for receiving aid from them;*
  - *stated if the Taliban caught him, they would kill him; and*
  - *stated that the Taliban suspected he was working with NATO and the Pakistani Government to combat and undermine the Taliban.*
- *He believed the Taliban knew he was associated with the UNHCR because he was frequently travelling to Peshawar.<sup>2</sup>*

11. The Secretary considered the following claims presented by the Appellant to be credible:

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<sup>2</sup>BD 60.

- The Appellant's house in Wara-Manduri (15 km from Durani) was destroyed by fighting involving the Taliban in early June 2010;
- After leaving Wara-Manduri, the Appellant spent four days at the United Nations (UN)--run IDP camp in Peshawar in June 2010;
- After four days at the IDP camp, the Appellant moved to Durani in June 2010; and
- The Appellant continued to receive UN assistance from June 2010 until he left Pakistan in June 2013.<sup>3</sup>

12. However, the Secretary did not consider the following claims to be credible:

- The Appellant's house was destroyed in June 2010 by Shi'a militants because he is Sunni;
- The Appellant has personally received targeted threats from the Taliban because he was receiving UN aid; and
- The Appellant received a threatening letter from the Taliban.<sup>4</sup>

13. In making these adverse credibility findings, the Secretary noted that no material country information indicated that Shi'a militants targeted Sunni civilian homes during the relevant period; rather, the Appellant's home was "destroyed as an unintended consequence of fighting between the Taliban and anti-Taliban forces".<sup>5</sup> There was also a very large number of people receiving aid from the UNHCR in the Peshawar camp, and it was not plausible that the Taliban individually targeted the Appellant,<sup>6</sup> nor that the Taliban would not have been immediately aware the Appellant was passing through the checkpoint to collect his UNHCR rations, given he was carrying his UNHCR ration card.<sup>7</sup> In relation to the threatening letter allegedly received from the Taliban, the Secretary acknowledged country information that showed the Taliban sent threatening letters to individuals perceived to be against their political beliefs, but noted that the Appellant had simply received UNHCR assistance.<sup>8</sup>

14. Following on from these findings, the Secretary said there was no reasonable possibility that the Appellant would be targeted in the reasonably foreseeable future if returned to Pakistan.<sup>9</sup> The Appellant's application for refugee status was rejected. The Secretary also said there was nothing implicitly raised in the Appellant's evidence, or by independent evidence, suggesting that there was a reasonable possibility of the Appellant facing other serious harm if returned to Pakistan, and the Appellant was also not owed complementary protection.<sup>10</sup>

## FIRST APPLICATION BEFORE REFUGEE STATUS REVIEW TRIBUNAL

<sup>3</sup>BD 64.

<sup>4</sup>Ibid.

<sup>5</sup>BD 62.

<sup>6</sup>BD 63.

<sup>7</sup>BD 64.

<sup>8</sup>BD 63.

<sup>9</sup>BD 65.

<sup>10</sup>BD 66.

15. Before the first Tribunal, and the Tribunal as subsequently constituted, the Appellant reiterated and elaborated on his claims in relation to the destruction of the family home, the sectarian divide in Pakistan, the Appellant's travel to Peshawar to obtain rations, the Taliban's demands for his rations, the threatening letter from the Taliban, and his flight from Pakistan.
16. As had the Secretary, in light of the country information on the security situation in Wana-Manduri in 2010, and the vast number of families relying on UNHCR camps for assistance, the first Tribunal did not accept that the Appellant's family home in Wana-Manduri was destroyed by Shi'as in 2010 because of his Sunni Muslim beliefs,<sup>11</sup> nor that the Taliban targeted the Appellant specifically for seizure of his rations and harassment.<sup>12</sup> Further, given discrepancies in the Appellant's evidence as to the content of the threatening letter, the Tribunal did not accept that the Appellant ever received such a letter from the Taliban.<sup>13</sup> As a result, the Tribunal did not consider that the Appellant had a well-founded fear of persecution upon return to Kurram.
17. Irrespective of the above finding, the Tribunal considered the issue of whether it would be reasonable for the Appellant to relocate to another area in Pakistan, such as Punjab, given he lacked any profile that would cause the Taliban to seek him out elsewhere in Pakistan. The Tribunal concluded that it would be reasonable, noting the Appellant's young age, business experience in Pakistan and Saudi Arabia, access to income from the family farm and UNHCR rations, and the absence of any concrete evidence that he would face discrimination in Punjab as a Pashtun.<sup>14</sup>

#### FIRST APPEAL BEFORE THIS COURT

18. The Appellant filed a Notice of Appeal to this Court alleging, amongst other grounds not ultimately addressed by the Court, that the Tribunal failed to provide a written statement of reasons under s 34(4) of the Act (ground 1), failed to accord the Appellant procedural fairness (ground 5), and made a finding with no evidence to support it (ground 7).
19. The Court upheld ground 1 because, in two sections of the Tribunal's reasons ([22] and [37]), the words "Refer Subs" appeared, giving the impression that the Tribunal's written statement was in breach of s 34(4), and denying the Appellant the ability to properly understand the Tribunal's reasoning and construct an appeal if the decision was affected by an error of law. Grounds 5 and 7 were based on a finding by the Tribunal that the Appellant had "lived and worked overseas", relevant to the Tribunal's consideration of the reasonableness of relocation. The Tribunal was found to have failed to discharge its procedural fairness obligations by putting this to the Appellant for comment, and, critically, this finding was not borne out by the evidence.

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<sup>11</sup>BD 151 at [20].

<sup>12</sup>BD 153 at [32].

<sup>13</sup>BD 154 at [34].

<sup>14</sup>BD 155 at [42].

20. The Court made orders allowing the appeal, quashing the decision of the first Tribunal, and remitting the matter to a reconstituted Tribunal for reconsideration.

## SECOND APPLICATION BEFORE REFUGEE STATUS REVIEW TRIBUNAL

21. The Appellant attended a second review hearing before the Tribunal on 6 October 2016, and the Tribunal delivered its determination, along with a second written statement of reasons, on 20 December 2016.

22. As to the claim about the destruction of the family home and being driven out from Manduri, the Tribunal said that the Appellant's evidence was consistent and broadly in accordance with country information about the conflict in Kurram in 2010, and accepted that the incident occurred in the manner claimed.<sup>15</sup> However, the Tribunal considered that the Appellant's evidence and claims regarding the threat posed by the Taliban had evolved considerably throughout the process, and contained internal inconsistencies. Initially, the Appellant said he attracted the adverse attention of the Taliban due to his receipt of UNHCR aid, but following the decision of the Secretary, added that he had also been agitating against the Taliban, and, as a result, received the threatening letter.<sup>16</sup> The Tribunal considered the Appellant's assertion that he did not mention the content of the threatening letter at the RSD interview because he was not asked about it to be unconvincing.<sup>17</sup>

23. In addition, at the Transfer interview the Appellant did not mention any particular fear of harm emanating from the letter, but in his RSD statement said he feared the Taliban would kill him. However, before the first Tribunal, the Appellant reverted to his claim that the letter contained no specific threat of harm, but said before the second Tribunal that the letter contained a specific threat to cut, or cut off, his head, and hang him.<sup>18</sup> The Tribunal found it difficult to understand why the Appellant did not mention the threat previously, given it caused him to flee Pakistan.<sup>19</sup> The Appellant's evidence as to whether there was one or two letters, and the identity of the author, was also found to be "confused and contradictory".<sup>20</sup> Also, the fact the Appellant's friends and relatives were still travelling to the camp to collect the Appellant's rations further pointed to that the threat of harm posed by the Taliban was not significant.<sup>21</sup>

24. As to the claimed threat of harm from Shi'as due to his Sunni religion, the Tribunal noted that despite the proximity of the Shi'a-dominated village of Manduri to the Appellant's home village of Durrani, the Appellant was not able to point to any actual harm or threat of harm directed at his family by the Shi'as, or any country information detailing such a threat or attack.<sup>22</sup> In relation to the claimed threat of harm on account of being a failed asylum-seeker, the Tribunal

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<sup>15</sup>BD 276 at [99].

<sup>16</sup>BD 277 at [111].

<sup>17</sup>Ibid.

<sup>18</sup>BD 277 – 278 at [112].

<sup>19</sup>BD 278 at [112].

<sup>20</sup>BD 278 at [113].

<sup>21</sup>Ibid.

<sup>22</sup>BD 280 at [120].

noted that the Appellant had not adduced any country information or independent evidence that failed asylum-seekers are persecuted in Pakistan.<sup>23</sup> Tellingly, his brother had returned home after having worked in the Middle East for a number of years without any problem.<sup>24</sup>

25. In light of these inconsistencies, and apparent escalation of the Appellant's claims, the Tribunal did not accept that the Appellant had ever suffered any serious harm while passing the Taliban checkpoints.<sup>25</sup> The Tribunal also did not accept that the Taliban would perceive the Appellant as proponent of the Pakistani government, or otherwise form an adverse view of him. There was no reasonable possibility that the Appellant would be subject to harm due to his imputed political opinion, religion, or seeking asylum in a western country.<sup>26</sup> The Tribunal was also not satisfied that there was any reasonable possibility of the Appellant being persecuted by Shi'as because of his Sunni religion,<sup>27</sup> and a failed asylum seeker.<sup>28</sup> The Tribunal therefore found that the Appellant was not a refugee within the meaning of the Convention.<sup>29</sup>

26. As to the claim for complementary protection, noting its finding that there was no reasonable possibility of the Appellant experiencing serious harm upon return, the Tribunal was also not satisfied that the Appellant faced a real risk of prohibited treatment if returned to Pakistan so to enliven Nauru's international obligations.<sup>30</sup> The Appellant was not owed complementary protection.<sup>31</sup>

#### THIS APPEAL

27. The Appellant's Amended Notice of Appeal received on 23 March 2017 reads as follows:

1. *The Tribunal made an error of law in that it failed to have regard to relevant considerations, or a material question of fact, or an integer of the claim, as required by law because it failed to take into account the appellant's written submissions dated 30 September 2016 (written submissions) and sources cited within those submissions in finding that the Appellant did not have a well-founded fear of persecution by Shi'a militias in his home area.*

#### *Particulars*

- (a) *The Tribunal's decision at [120] only explicitly refers to the contents of the submissions filed on behalf of the appellant in September 2014, not the written submissions (filed on behalf of the appellant in September 2016).*
- (b) *Had the Tribunal had regard to the contents of these submissions in considering whether the Appellant was at risk of harm from Shi'a militias in his*

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<sup>23</sup>BD 280 at [123].

<sup>24</sup>BD 281 at [123].

<sup>25</sup>BD 278 at [116].

<sup>26</sup>BD 279 at [116]; BD 279 at [119].

<sup>27</sup>BD 280 at [121].

<sup>28</sup>BD 281 at [124].

<sup>29</sup>Ibid at [127].

<sup>30</sup>BD 282 at [131].

<sup>31</sup>Ibid at [132].

*home area, it would have explicitly adverted to these submissions (as it explicitly adverted to the September 2014 submissions).*

- (c) The Tribunal's decision at [120] does not advert to the "DFAT Country Report – Pakistan, January 2016" ("DFAT Report") cited in the written submissions at [17]. The conclusions drawn by this report are contrary to those of the Tribunal.*
- (d) Had the Tribunal had regard to the "DFAT Report", it would have explicitly referred to the citation and contents of this report in its decision.*
- (e) The Tribunal's failure to refer to the September 2016 submissions or the DFAT report in the context of its findings as to whether the Appellant would face a real possibility of persecution in his home area from Shi'a militias constitutes an error of law.*

28. The Appellant was self-represented and did not file any written submissions on the appeal. At the oral hearing, the Appellant said that the Tribunal did not try to understand the harm that he had been exposed to from the Shi'as. The Appellant also noted that he had been experiencing mental health difficulties.

29. The Respondent submitted that the failure of the Tribunal to make specific reference to the September 2016 submissions or the DFAT report at [120] of its reasons did not result in any "point of law" for the purposes of s 43(1) of the Act. The critical question was "whether the Tribunal understood and dealt with the claim that the appellant made concerning an apprehension of harm from Shi'as on account of his Sunni religion".<sup>32</sup>

30. The Respondent submitted that the Tribunal identified this question in numerous sections throughout its reasons, including by reference to the September 2016 submissions and the additional written statement of 28 September 2016; see BD 263 at [35]; BD 263 at [36]; BD 263 at [37]; BD 266 at [44]. Indeed, the Tribunal dealt with this question at [120] by reference to country information cited in the September 2014 submission, including by reference to the Human Rights Watch report that was referred to in the September 2016 submissions. The Respondent submitted that it is not to the point that the Tribunal did not make explicit reference to the DFAT report at [120], as the content of that report was similar to that of the Human Rights Watch report, and its effect was acknowledged by the Tribunal elsewhere in its reasons, seen through that the language of the report that was picked up by the Tribunal at [45].

## CONSIDERATION

31. The essence of the appeal brought by the Appellant is that the Tribunal failed to take into account the second set of written submissions advanced on his behalf on 30 September 2016, as well as the sources referred to within them. He has particularised his complaint by contending that the decision of the Tribunal at paragraph [120] only explicitly refers to the contents of the submissions filed in September 2014, not to the 30 September 2016 submissions.

32. For the reasons set out below, this appeal must be dismissed.

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<sup>32</sup>Appellant's submissions at [29].



33. As identified above, this is a matter which went before the Tribunal on two occasions after this Court's intervention subsequent to the first Tribunal hearing.<sup>33</sup>
34. Written submissions dated 30 September 2016 on the second occasion were prepared for the Tribunal.<sup>34</sup> These submissions were expressed to be "additional to, and are to be read in conjunction with, all other information and submissions that have been provided to date in support" of the Appellant's claims.<sup>35</sup>
35. The previous 24 September 2014 submissions included the argument that the Appellant had a well-founded fear of persecution for reason of his religion, incorporating assertions that there was a reasonable possibility that the Appellant would be persecuted by Shi'a militias because of his Sunni faith. Extensive reference was made in the submissions to country information that was said to support that contention.
36. A further statement by the Appellant, dated 26 September 2016,<sup>36</sup> spoke further to this issue.
37. In the 30 September 2016 submissions on behalf of the Appellant, argument was put in relation to the harm posed to the Appellant from Shi'a militias. Specific mention was made of documentation generated by Human Rights Watch in its Primary Session on Pakistan, 31 August 2016, where it stated that:

*"a series of conflicts, internal disturbances and **sectarian tensions** plagued Pakistan in the run-up to and during the reporting period. **Sunni and Shi'a Muslims** periodically launched attacks **against one another, frequently causing high numbers of casualties.**"<sup>37</sup> (emphasis added)*

The Tribunal acknowledged that the September 2016 submissions contained this statement.<sup>38</sup>

38. Further reference was made by the Appellant to the January 2016 Pakistan Country Information report of DFAT to the effect that that mutual conflict affects both Shi'as and Sunni militants. It reported:

*"There have also been numerous incidents of religious, sectarian and communal violence in Pakistan. In some cases, **sectarian violence is mutual, with both sides acting as belligerents.**"<sup>39</sup> (emphasis added)*

39. In addition, reference was made by the Appellant to the report of Amnesty International in 2015/2016 where it said:

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<sup>33</sup> *DWN 008 v Republic of Nauru* [2016] NRSC 13, BD 161.

<sup>34</sup> BD 79-95.

<sup>35</sup> BD 186 at [7].

<sup>36</sup> BD 177, especially at paras [13]-[14].

<sup>37</sup> BD 187 at [14].

<sup>38</sup> At BD 267 [45]).

<sup>39</sup> BD 188 at [17].

*"[t]he civilian population in FATA continued to be affected by internal armed conflict and that "more than one million people remain displaced as a result of the current and past armed conflict in the northwest."*<sup>40</sup>

40. In its 20 December 2016 decision the Tribunal acknowledged and summarised the further statement by the Appellant of 26 September 2016.<sup>41</sup> It also identified and summarised the submissions written on behalf of the Appellant which were dated 30 September 2016. In doing so it made specific reference to country information "such as the Human Rights Watch Plenary Session on Pakistan, published on 31 August 2016" which it said "rebutts the proposition that it is only Shi'as who are victims of sectarian violence and tends to show that both sides act as belligerents".<sup>42</sup> It then quoted from the report.

41. The paragraph of the Tribunal's reasons about which the Appellant complains, and that which follows, read as follows:

*"As noted above, the Tribunal accepts that the applicant and his family were violently displaced from their adopted village of Manduri in 2010 during sectarian conflict in Kurram and after a brief period in a UN camp in Peshawar returned to their original home in Durrani where the rest of his late father's extended family had continued to reside. The Tribunal notes the country information set out in the September 2014 submission relating to the sectarian violence in Kurram and the capacity of Shi'a militant groups to harm Sunnis, but notes that they largely emphasise the defensive nature of their role, such as the 2014 reports of Shi'a villagers seeking their protection against Sunni incursions. The Tribunal also notes the country information that sectarian conflict continues to occur, including the reference in the 2016 Human Rights Watch Plenary Session to the fact that in Pakistan generally Sunnis and Shi'as have periodically launched attacks against one another. Against this, however, it is apparent that despite the proximity of the two villages of Manduri and Durrani, the applicant has been unable to articulate any concrete threat that Shi'as have posed to him or his family since 2010, nor point to any country information about any relevant threat or attack on his village. Similarly, despite his protestations about the insecurity of travel in Shi'a territory, it is apparent that he was unable to safely travel to Parachinar in 2012 to have his own ID card renewed. In this regard the Tribunal has considered his claim that the security situation has deteriorated significantly since 2012, ruling such travel out, but is not satisfied this is supported by the available country information, including the material referred to in the submissions.*

*Having carefully considered all the claims and evidence, the Tribunal is not satisfied that the applicant faces more than a remote chance of being persecuted by Shi'as for reason of his religion, or indeed for any other reason, if he returns to his home in Durrani in the reasonably foreseeable future, including en route from other parts of Pakistan"*<sup>43</sup>

42. The inference that the Tribunal has failed to consider an issue may be drawn from its failure to deal expressly with the issue in its reasons but "[t]hat is an

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<sup>40</sup>BD 188 at [18].

<sup>41</sup>BD 266 at [44].

<sup>42</sup>BD 267 at [45].

<sup>43</sup>BD 280 at [120]-[121].

inference not too readily drawn where the reasons are otherwise comprehensive and the issue has at least been identified at some point.”<sup>44</sup>

43. It is for the Tribunal both to choose and assess the weight of country information.<sup>45</sup> The question of the accuracy of such information is for Tribunal, not an appellate court – were the court to go further, it would be engaging in improper merits review.<sup>46</sup>
44. It was not obligatory for the Tribunal to make reference to every component of the written submissions by the Applicant in 2016. Thus it was not an error to fail to refer explicitly to the DFAT report. It is clear that it had read the material within the written submissions and that it dealt with it by referring explicitly to some of it, referring to some as exemplary. In particular, as the Respondent submitted, the Tribunal notes in relation to the Human Rights Watch that it “tends to show that both sides act as belligerents”, picking up on the language employed in the DFAT report as set out at [37] above. Notably, too, the effect of the DFAT report was similar to that of the Human Rights Watch report to which the Tribunal made explicit reference.
45. The reasoning of the Tribunal is comprehensive in relation to its findings about the risk posed to the Appellant by reason of his religion. In addition, the Tribunal identified the issue to which this report and others summoned in aid by the Appellant (see [28]-[29] above). It is apparent from [120] of the Tribunal’s reasons that it has taken into account both the September 2014 and September 2016 written submissions provided to it on behalf of the Appellant.
46. The Tribunal has weighed the country information and made explicit reference to such material in both the September 2014 and September 2016 submissions. The Tribunal’s reasons make it clear that in spite of this country information, it was not satisfied that the Appellant or his family had been subjected to specific threat since 2010, or that there had been a relevant threat or attack on his village. It was influenced too by the Appellant’s ability to travel safely for his passport renewal during 2012. It was not satisfied that the security situation in Pakistan had deteriorated significantly since 2012, taking into account “the available country information, including the material referred to in the submissions.”<sup>47</sup>
47. It is unequivocally apparent that the Tribunal took into account the submissions dated 30 September 2016 filed on behalf of the Appellant. No error is apparent in its reasoning in this regard.

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<sup>44</sup> *WAEE v Minister for Immigration and Multicultural and Indigenous Affairs* [2003] FCAFC 184 at [47] per French, Sackville and Hely JJ.

<sup>45</sup> *NAHI v Minister for Immigration & Multicultural and Indigenous Affairs* [2004] FCAFC 10 at [11] per Gray, Tamberlin and Lander JJ; *QLN 110 v Republic of Nauru* [2017] NRSC 55 at [51] per Khan J; *WET 071 v Republic of Nauru* [2017] NRSC at [38]-[39].

<sup>46</sup> *Ibid.*

<sup>47</sup> *BD 280* at [120].

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



Justice Ian Freckelton  
Dated this 22<sup>nd</sup> day of 2018

