IN THE SUPREME COURT OF NAURU

AT YAREN

Case No. 15 of 2016

IN THE MATTER OF an appeal against a decision of the Refugee Status Review Tribunal TFN T15/00219, brought pursuant to s 43 of the *Refugees Convention Act 2012*

BETWEEN

WET 054 Appellant

AND

THE REPUBLIC Respondent

Before:	Justice Freckelton
Appellant:	Ms T. Baw
Respondent:	Mr A. Aleksov
Date of Hearing:	6 December 2017
Date of Judgment:	19 April 2018

CATCHWORDS

APPEAL – findings in the absence of any supporting evidence – irrationality or illogically in Tribunal findings – reasoning of the Tribunal – APPEAL DISMISSED.

JUDGMENT

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

> *(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 is defined to mean "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 prescribed in s 44(1) of the Act:

> *(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. The Refugee Status Review Tribunal ("the Tribunal") delivered its decision on 23 June 2016 affirming the decision of the Secretary of the Department of Justice and Border Control ("the Secretary") of 9 October 2015 that the Appellant is not recognised as a refugee under the Refugees Convention as amended by the 1967 Protocol and is not owed complementary protection under the Act.

6. The Appellant filed a Notice of Appeal on 14 October 2016, an Amended Notice of Appeal on 8 December 2016 and a Further Amended Notice of Appeal on 31 May 2017.

BACKGROUND

7. The Appellant is a single male born in Tehran in Iran. He has three sisters and a half-brother in Iran. His parents and another brother are deceased. He has completed an Advanced Diploma in Accounting, and had commenced a Master's degree before fleeing Iran.

8. The Appellant claims a fear of harm deriving from his interaction with alleged members of the Iranian Ministry of Intelligence and Security ("MOIS") while working as a "senior cashier" at the Parsain Azadi Hotel, in the course of which a demand was made that he provide information about the President and presidential candidates who were staying at the hotel. He fears that he will be imputed with a political opinion adverse to the Iranian government because he refused to co-operate with State authorities. The Appellant also claims a fear of harm because of his conversion to Christianity, and because he has sought asylum abroad.

9. In June 2013 the Appellant departed Iran for Malaysia, and then Indonesia, before boarding a boat for Australia in August 2013. He was then transferred to Nauru on 25 January 2014 for the purposes of having his claims assessed.

INITIAL APPLICATION FOR REFUGEE STATUS DETERMINATION

10. The Appellant attended a Refugee Status Determination ("RSD") interview on 14 July 2014. At that interview, he advanced claims relating to legal proceedings in Iran arising from his brother's death in a car accident. However, the Appellant did not claim to fear harm because of the proceedings. As to the claims giving rise to a fear of harm for a Convention reason, the Secretary summarised the those claims as follows:

    - *In 2011 the Applicant began working at the Parsain Azadi Hotel as a senior cashier.*
    - *At 4am on Saturday 8 June 2013, while undertaking his duties as a senior cashier, the Applicant received a phone call on his personal mobile telephone. There was no caller id. The Applicant claims that private numbers in Iran are generally owned by members of the Ettela'at. As such, the Applicant suspected a member of Ettela'at made the phone call.*
    - *The caller advised the Applicant that he was aware that on 11 June 2013 then President Ahmadinejab and all other presidential candidates would be staying at the hotel. The caller advised he needed to know what floor they would be staying on, what restaurant they would be eating at and the time they would be eating.*
    - *The Applicant advised the caller he did not know what floor the presidential candidates would be staying on, what restaurant they would be eating at or what time they would be eating.*
    - *The caller then advised the Applicant he would call him on 10 June and the Applicant must provide the information. The caller threatened to kill his siblings, nephews and nieces and the Applicant if he did not provide the information. The caller then advised the Applicant he knew the Applicant's family, their names, addresses and the schools they attended.*
    - *The caller then advised the threats were serious and that he was responsible for making the Applicant's legal case for his brother's accident 'disappear'.*
    - *Since departing Iran the Applicant's siblings have been monitored by the Iranian authorities. The authorities have telephoned the Applicant's sister and advised her they are aware the Applicant is residing in Nauru.*
    - *In early August 2014 the Applicant's brother-in-law was detained for three days by men not wearing a uniform. He was physically assaulted and interrogated regarding the Applicant.*[1]

[1] Book of Documents ("BD") 73.

11. The Appellant also claimed that, following his departure from Iran, photographs of the Appellant at the airport in Jakarta were dropped at his sister's house, but after an hour the photographs faded.[2] The Appellant also claimed to have been threatened by two transferees in Nauru in May 2014. According to the Appellant, one of the men has returned to Iran, and the Appellant suspects that he works for the Sepah. The Appellant believes that the men have advised the Iranian government that he is seeking asylum abroad.[3]

12. The Secretary accepted the following elements of the Appellant's claims as credible:

- The Appellant worked as a senior cashier at Parsain Azadi Hotel from 2011 until 2013;
- As part of his duties the Appellant learned the details of MOIS bodyguards and other officers as well as Iranian and foreign dignitaries;
- The Appellant had arguments with fellow transferees while residing in Christmas Island;
- In early 2014 the Appellant was threatened by fellow transferees while residing in Nauru;
- One of the transferees who threatened the Appellant has returned to Iran.[4]

13. However, the Secretary did not accept the following material elements of the Appellant's claims as credible:

- The Appellant was requested to provide details about the President or the 2013 presidential candidates;
- The Appellant's sister received a package containing photographs of the Appellant;
- The Appellant's family has received phone calls advising them the government of Iran is aware he is residing in Nauru;
- The Appellant's family has been under surveillance since his departure from Iran;
- The Appellant was threatened by a Sepah agent.[5]

14. In making these findings as to the credibility of the Appellant's claims, the Secretary was influenced by the following factors:

- Country information indicates the MOIS is an extremely powerful organisation responsible for protecting Iran's national security and nuclear program, and it is implausible that the MOIS would have had any need to contact the Appellant to obtain the information as claimed;[6]

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[2] BD 75.
[3] BD 73.
[4] BD 84-85.
[5] BD 85.
[6] BD 80-81.

- There was no independent information to suggest that the President or presidential candidates were harmed, or attempted to be harmed, in June 2013;[7]
- There was no information to indicate the existence of photographs that fade within an hour;[8]
- The use of such secretive tactics to advise the Appellant's family that it is aware the Appellant had departed Iran is inconsistent with the tendency of Iranian authorities to detain and monitor individuals without restraint;[9]
- The claim that the Appellant's family is under surveillance is implausible because, without the Appellant being contacted, there is no reason for the Appellant's family to be monitored;[10]
- The Appellant does not have a political or religious profile that would cause Iranian authorities to monitor his family.[11]

15. In light of these findings, and the Appellant's relatively junior role at the hotel, as part of which he was freely provided with the information, the Secretary was not satisfied that the Appellant had a profile that would result in him being imputed with a political opinion adverse to the government, and therefore did not face any real possibility of harm upon return to Iran on this basis.[12]

16. In relation to the Appellant's claimed fear of harm due to being a failed asylum-seeker, the Secretary accepted that some failed asylum-seekers may attract the attention of authorities upon arrival and be subject to mistreatment. However, many of the asylum-seekers subject to mistreatment were known to have had anti-regime profiles and documented protest activity.[13] The Secretary was not satisfied that the Appellant had any characteristics or profile that would attract the attention of the authorities.[14] This being the case, there was no reason to believe that the Appellant would be physically harmed upon arrival.

17. As a consequence, the Appellant's fear of harm on the basis of any imputed political opinion, or being a failed asylum-seeker, was not well-founded and the Appellant did not qualify for refugee status.[15] For the same reasons the Secretary found the Appellant would not be persecuted if returned to Iran, the Secretary considered that the Appellant would not be subject to harm prohibited by the international treaties ratified by Nauru, and the Appellant also did not qualify for complementary protection.[16]

REFUGEE STATUS REVIEW TRIBUNAL

18. Before the Tribunal, the Appellant reiterated his claims in relation to his work at the Parsain Azadi Hotel, the phone call he received while working at the hotel, his

[7] BD 82.
[8] BD 82.
[9] Ibid.
[10] BD 83.
[11] Ibid.
[12] BD 86.
[13] BD 88.
[14] Ibid.
[15] BD 89.
[16] Ibid.

decision to flee Iran, and the threats to his siblings remaining in Iran. The Appellant also reiterated his claims in relation to the threats from fellow transferees in Nauru, and his treatment as a failed asylum-seeker returning to Iran. In submissions dated 30 March 2016, the Appellant further claimed to have converted to Christianity, having been baptized in August 2015.[17] The Appellant also explained that, as he had spent some 30 months in detention, he was having difficulties with his memory.[18]

19. As had the Secretary, the Tribunal accepted that the Appellant worked at the hotel.[19] However, the Tribunal did not accept that the Appellant received the claimed phone call while working at the hotel, in which the caller demanded information regarding the President and presidential candidates, causing the Appellant to flee Iran.[20] In reaching this conclusion, the Tribunal considered a number of factors, including that it was implausible that the Appellant would not warn any family member of the threats,[21] it was implausible that the lack of any audio recording of the call would have comforted the Appellant as claimed if he believed he was being scapegoated,[22] the information he was asked to provide could easily have been obtained through other means,[23] the Appellant gave no persuasive explanation as to why he believed the caller to have been part of the MOIS,[24] the Appellant gave inconsistent evidence as to his involvement with the colleague who helped him to flee, and it was unlikely that this manager would offer him a more senior job as claimed if he abandoned his job without notice.[25] The Tribunal also did not accept that the Appellant held secret or sensitive information as a result of his role at the hotel that would make him a target for the authorities upon return to Iran.[26]

20. The Tribunal therefore did not accept that there was any real possibility the Appellant would suffer harm upon return to Iran by Ettela'at agents or other security agents or authorities.[27] The Tribunal further found that the MOIS did not contact the Appellant's sister over the telephone, or by leaving photographs at her house.[28] The Tribunal also found that the brother-in-law was not interrogated or detained as claimed, noting that the alleged interrogation as to the Appellant's whereabouts were inconsistent with the claim that members of the MOIS were aware that the Appellant was residing in Nauru.[29]

21. In relation to the claim regarding there being Sepah agents in Nauru, the Tribunal accepted that the Appellant may have argued with other Iranians on Nauru, but did not accept that this resulted in information being passed on to Iranian

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[17] Ibid.
[18] BD 240 at [24].
[19] BD 249 at [91].
[20] BD 250 at [94].
[21] Ibid at [95].
[22] Ibid.
[23] Ibid at [97].
[24] Ibid at [98].
[25] BD 251 at [100].
[26] BD 252 at [105].
[27] BD 251 at [101].
[28] BD 251-252 at [107]-[108].
[29] BD 252 at [109].

authorities about the Appellant, leading to the phone call to the Appellant's sister.[30] In relation to the claim regarding being a failed asylum-seeker, the Tribunal arrived at a similar conclusion to that of the Secretary. It pointed to country information indicating that it is primarily failed asylum-seekers who have been, or are suspected of having been, involved in anti-regime political activities who are mistreated upon return.[31]

22. In relation to the claim regarding the Appellant's conversion to Christianity, the Tribunal considered that the Appellant's interest in Christianity was superficial, and in response to his difficulties as an asylum-seeker in Nauru.

23. In light of the foregoing, the Tribunal considered that the Appellant did not have a well-founded fear of persecution in the reasonably foreseeable future in Iran because of his actual or imputed political opinion, his religion, or membership of the particular social group of failed asylum seekers, or persons who applied for asylum in the West, separately or cumulatively.[32] The Appellant was therefore not a refugee within the meaning of the Convention.[33] Given the Tribunal's findings regarding the possibility of the Appellant suffering any harm upon return to Iran, the Tribunal also found that the Appellant was not owed complementary protection.[34]

THIS APPEAL

24. The Appellant's Further Amended Notice of Appeal filed on 31 May 2017 contended that:

    1. *The Tribunal erred in law by:*

        a. *making a finding in relation to the security protocol of the Appellant's former employer at D[98] that was unsupported by any evidentiary basis; failed to deal with the evidence; or was irrational or illogical.*
        b. *Making a finding in relation to the information sought from the Appellant during a threatening telephone call, at D[97] and D[98], that was based on a misunderstanding or misconstruction of the evidence; failed to deal with all of the evidence; or was irrational or illogical or legally unreasonable.*
        c. *Making findings in relation to not notifying his family of the threat, at D[95], and the non-recording of the threatening call, at D[96], that misconstrued or misunderstood the evidence; or was irrational, illogical or legally unreasonable.*

25. The Appellant relied upon a number of authorities in support of the proposition that a tribunal may fall into error by making a finding of fact in the absence of any supporting evidence,[35] or where it makes a decision that is irrational, illogical and not based upon findings or inferences of fact supported by logical grounds.[36] The

[30] BD 253 at [112]-[113].
[31] BD 248 at [76]
[32] BD 256 at [134].
[33] Ibid at [135].
[34] BD 257 at [137].
[35] See, eg, *Australian Retailers Association v Reserve Bank of Australia* (2005) 148 FCR 446.
[36] *Re Minister for Immigration and Multicultural Affairs; Ex parte Applicant S20/2000* (2003) 198 ALR 59.

failure to evaluate the content of evidence may also give rise to jurisdictional error.[37]

26. In particular, the Appellant took the Court to *Minister for Immigration and Citizenship v SZMDS*,[38] in which the Australian High Court considered the ground of review for irrationality. The Appellant relied upon the finding of Gummow and Kiefel JJ, that "*... the Tribunal's conclusion about the state of satisfaction required by s 65 and its findings on the way to that conclusion revealed illogicality or irrationality amounting to jurisdictional error*", in support of the proposition that the Tribunal's process of reasoning must be rational and logical, as well as the findings of fact made by the Tribunal.[39]

27. The Respondent submitted that the approach of Crennan and Bell JJ, which suggested that the ground of irrationality concerns only the findings of fact made by the Tribunal, should be preferred. Their Honours held that (at [135]):

> "*A decision might be said to be illogical or irrational if only one conclusion is open on the evidence, and the decision maker does not come to that conclusion, or if the decision to which the decision maker came was simply not open on the evidence or if there is no logical connection between the evidence and the inferences or conclusions drawn.*"

28. The Respondent submitted that this approach ought to be given greater weight than the approach of Gummow and Kiefel JJ, as Gummow and Kiefel JJ confined their analysis to the particular statutory regime applicable in Australia, whereas Crennan and Bell JJ considered the issue more generally.[40]

29. The Respondent noted that the statutory regime in Australia requires a decision-maker to reach a state of satisfaction regarding whether a person is a refugee under ss 36(2) and 65 of the *Migration Act 1958* (Cth) as a jurisdictional fact, but that no such regime exists in Nauruan Act.

30. The Appellant submitted that, although there is no need under the Nauruan Act to satisfy a jurisdictional fact, this does not negate the need for the Tribunal to engage in reasoning that is logical and rational, and not simply based on conjecture.[41] To this end, the Appellant relied upon *Thevendram v Minister for Immigration and Multicultural Affairs*, where Lee J held that the Tribunal must not make a finding that "amounts to no more than an assertion that aspects of an applicant's claim are "implausible", or are "not credible", and contended that the obligation for a decision-maker to give reasons under statute ensures "the procedure by which a decision is made is a rational procedure, not arbitrary or capricious".[42]

CONSIDERATION

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[37] See *Minister for Immigration and Border Protection v CZBP* ("*CZBP*") [2014] FCAFC 105.
[38] (2010) 240 CLR 651.
[39] Ibid at [132].
[40] Supreme Court Transcript 33 at ln 23 – 26.
[41] Ibid 52 at ln 44 – 47.
[42] [2000] FCA 1910 at [34]-[35].

The First Particular

31. The first impugned finding, relates to the security protocol of the Appellant's former employer. At [94] of the Tribunal's reasons it explained that for a number of reasons it did not accept that a hotel such as the Parsian, which was accustomed to high-level foreign and domestic dignitaries and VIP guests "had no protocol for reporting security breaches. Further, it would be extraordinary for him not to have protected his own interests by immediately reporting the call to his supervisor or to security staff."[43]

32. The Appellant submitted that this finding of the Tribunal was erroneous because:

- there was no evidence that the Parsian Hotel had any such security protocols, or the Appellant had a supervisor to whom he could report such a call, and in making these findings the Tribunal relied on assumption;[44]
- it was irrational, illogical and not based upon findings of fact to find it "extraordinary" that the Appellant would not have reported the phone call in the face of evidence that the Appellant's family was threatened, and he was afraid of reporting the call in case his family would be harmed;[45]
- there was no evaluation of the Appellant's evidence on the absence of any security protocol at the hotel; see *CZBP*.

33. Counsel for the Appellant pointed to the Appellant's evidence at the Tribunal hearing that the hotel had no such security protocol as it was recently opened and poorly organised:

> *TRIBUNAL MEMBER: Was there a protocol that staff had to follow if there appeared to be a risk to VIP guests?*
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> *INTEPRETER: No. I would imagine such a protocol should have then existed in a principle of running the hotel. However, because the hotel was just opened at the time, it was not running in a very organised – it was not being run in a very organised manner.*
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> *TRIBUNAL MEMBER: How long had it been open?*
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> *INTERPRETER: Two years, roughly. And also giving consideration to the fact that the person used a private line, a private number to contact me, I could not dare contact anybody about that. I could not trust anybody regarding that.*[46]

34. In relation to the Appellant's contentions surrounding the first impugned finding of the Tribunal, the Respondent contended that these can only be properly understood as an allegation there was "no evidence" for the finding there was no security protocol at the hotel.[47] It argued that the Tribunal's rejection of the Appellant's evidence as to the lack of a security protocol was based on established and objective facts about the hotel, including it being "large and

[43] BD 250 at [94].
[44] Appellant's Submissions at [19].
[45] Ibid at [20].
[46] BD 174 at ln 13 – 26.
[47] Respondent's Submissions at [22].

upmarket", and that it had hosted "UN chiefs, heads of state from various western countries, head of FIFA and major European soccer teams".[48] The Respondent submitted that this provides ample evidentiary support for the Tribunal's finding.[49]

35. The reasoning of the Tribunal was inferential. A Tribunal is entitled to draw inferences from information before it. What it is not permitted to do is to engage in conjectural analysis or mere guesswork. Weighing the evidence of the Appellant against what was known about the hotel, the Tribunal did not accept the evidence of the Appellant about the absence of a protocol. It did not fail to consider the evidence and did not engage in reasoning that was irrational or illogical. Its reasoning was within its prerogative and is not characterised by an error of law. This particular to the Appellant's ground is not made out.

The Second Particular

36. The second finding complained of by the Appellant is found at [97] of the Tribunal's reasons, relating to information allegedly sought in a threatening phone call:

> "*... the information he claims he was asked to provide would have been known to multiple hotel employees and, as he agreed at the hearing, could have been easily obtained, including from the Ettela'at employees at the hotel. Iran's intelligence service closely monitors all activities within the hotel and according to the applicant had full time agents on site. All government agencies are constitutionally obliged to give information to the MOIS and the MOIS would therefore have established ways of gathering information about the whereabouts and timing of a dinner involving the President and Presidential candidates without the need to ring a member of the hotel staff or set up a scapegoat among the staff.*"[50]

37. The Appellant submitted that this finding was contrary to the Appellant's evidence that only three people working at the hotel knew the information sought by the caller. Whilst the Iranian intelligence agencies may have had the means to obtain the intelligence, the point was the authorities were setting him up as a scapegoat to be blamed if they needed.[51]

38. He advanced a theory that he was being utilised in the absence of others who could be blamed:

> "*Firstly, I don't believe this information is general information or available to the public. Secondly I believe that the people in charge of a hotel similar to ours or any other workers for that matter are either war veterans – retired – and people from Ettala'at who are put in charge here. Considering that all the big bosses, people in charge, at the hotel were of those backgrounds, are basically people from within the government circle, they could not be blamed or labelled for things like that. Hence, they were looking for some normal person to blame.*"[52]

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[48] BD 249 at [91].
[49] Respondent's Submissions at [29].
[50] BD 250 at [97].
[51] Appellant's Submissions at [22].
[52] BD 180 at ln 32 – 39.

39. The Appellant also gave evidence about the telephone call in his written statement dated 3 April 2016:

> *"I wish to clarify that I never said that Etalaat rang me but the way they knew everything about me made me think it was them. Only high ranking officials in Iran are able to have a private number in Iran. The call I received was from a private number. The people who called me were looking for information. They wanted me to be a scapegoat. They wanted to associate me with a group that they were thinking of pinning the blame on…*
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> *Etalaat can do a lot of things. When they want to do something bad, they find someone to shield them and take the blame. If I had given them the information, they could have used that against me. And if they got into trouble, they could have accused me of being the culprit of whatever their plan was...*
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> *I do not know why Etalaat, or whoever rang me, wanted to know these details about the meeting and Ahmadinejad's stay (the President at the time). I assume they wanted to harm Ahmadinejad due to his conflict with the Khamenii."*[53]

40. The Appellant submitted that, in light of his evidence and the fact there was no evidence to the contrary, the Tribunal's process of reasoning, that the caller could have easily obtained the information through alternative means, and the ultimate finding, were so irrational or illogical that no decision-maker could have reasoned in this way, or made the same finding, upon the same evidence.[54]

41. The Appellant submitted that the Tribunal's finding at [98] was also tainted by irrationality, and not supported by logical grounds, or findings of fact, for the same reasons as the finding at [97]:

> *"Fourth, it is unclear why the applicant, had he received such a call, would have assumed that the caller was from the MOIS given that MOIS staff on site would have had ready access to the information. It is more likely that a hotel employee who received such a call would suspect the anonymous caller to have been a non-government agent, perhaps from an anti-government group, or an official checking on security."*[55]

42. The Appellant asserted that, as a result of the Tribunal's reasoning at [97]-[98], the Tribunal fell into error in finding that there was "no real possibility that the applicant will suffer harm on return to Iran by… [those] who sought to set up the applicant to take the blame for an attack on presidential candidates".[56]

43. The Respondent submitted that the Appellant has not identified with any specificity what this finding actually was.[57] The Respondent submitted that the Tribunal considered the Appellant's two explanations for why he was telephoned – firstly, that he had the information, and, secondly, he was being used as a scapegoat. The Tribunal rejected both of these explanations – the first on the

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[53] BD 154 at [42]; BD 154 at [44]; BD 254 at [45].
[54] Appellant's Submissions at [24].
[55] BD 250 at [98].
[56] BD 251 at [101].
[57] Respondent's Submissions at [37].

basis that the intelligence agencies would have means of obtaining the information without contacting a hotel employee, and, the second on the basis that it was implausible the Appellant would be comforted by the lack of any recording, and the agencies would have established ways of getting such information.[58] Therefore, according to the Respondent, to assert that no rational or logical decision-maker could have made the same findings of fact in relation to the availability of the information was simply an expression of emphatic disagreement with the Tribunal's reasoning,[59] as identified by Gleeson CJ in *Minister for Immigration and Multicultural Affairs v Eshetu.*[60]

44. In my view, the Tribunal dealt with the evidence and simply did not accept the theory of the Appellant. It understood it and rationally did not agree with the position adopted by the Appellant. In doing so it did not engage in any legal error. This particular to the Appellant's ground fails.

The Third Particular

45. The third finding the Appellant challenges relates to the Appellant's decision not to inform his family of the phone call, and his belief that the call was not recorded. Those findings are found at [95]-[96]:

> "*First, while claiming that he took the threats to his siblings, nieces and nephews seriously, and claiming in his RSD statement that he believed they would be killed if he did not cooperate with the caller, he failed to warn any family member about the threats, telling the Tribunal that he did not want to worry them. This explanation is implausible given the risk to which his sudden departure would thus have exposed them. He has provided no logical reason for his failure to warn them. His conduct is highly inconsistent with having received the claimed threat.*
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> *Second, if he believed he was being scapegoated, his claim that his "one comfort" was that the call was not recorded is similarly implausible. If he thought the call was from MOIS he would not have assumed that the absence of a recording would provide any protection, especially as, at another point in the hearing, he expressed his belief that Iranian authorities arrest, question and kill people "before considering anything".*[61] [emphasis added]

46. The Appellant directed the Court to the following exchange between a Tribunal member and the Appellant at the Tribunal hearing:

> "*INTERPRETER: Nobody from neither the hotel nor my family knew about my decision to leave Iran and I thought if I were to leave and considering those dangers that I would be facing, it would be best if my family would know little or nothing about the reasons why I was leaving Iran so that – otherwise, if they knew about it, they would probably approach them and ask questions and they will be put under pressure.*
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> *TRIBUNAL MEMBER: Although the fact that you didn't cooperate with the intelligence agency could lead your family to be arrested or seriously harmed.*

[58] Respondent's Submissions at [42].
[59] Supreme Court Transcript 43 at ln 5 – 7.
[60] (1999) 197 CLR 611 at 626 [40].
[61] BD 250 at [95]-[96].

INTERPRETER: One thing that gave me sort of comfort was the fact that because that telephone conversation was not a formal written way of communication, they did not have any means by which they would pursue the matter further and approach my family and relatives.

TRIBUNAL MEMBER: I don't think that the Iranian security people or the intelligence agency follow rules quite as carefully as that.

INTERPRETER: Unfortunately not because they had asked for and taken my brother-in-law away twice and questioned and also tortured him and, unfortunately, you're right."[62]

47. The Appellant asserted the Tribunal failed to understand and construe properly the Appellant's evidence, as the Appellant's reason for not informing his family went further than simply being because he "did not want to worry them"; it was to protect his family from Iranian intelligence agencies. He explained that he wanted to flee Iran without telling his family anything, as he believed his family was more likely to be safe if they were not hiding anything from the agencies.

48. In the Appellant's submission, the Tribunal's reference to it being "implausible" that the Appellant was comforted by the lack of recording of the phone call did not fairly reflect the Appellant's evidence that, without any formal written communication, the agencies would have no means by which they could approach his family after he fled. The Appellant submitted these processes of reasoning, and the finding arrived at by the Tribunal, were so irrational or illogical that no logical decision-maker could have arrived at the same findings on the evidence available.[63]

49. The findings of the Tribunal at [95]-[97], so the Appellant submitted, were links in a chain of reasoning employed by the Tribunal, and were critical to the ultimate decision of the Tribunal to refuse the Appellant's application for refugee status and complementary protection. The Appellant grounded this submission in the statement of Sundberg, Emmett and Finkelstein JJ in *Minister for Immigration and Multicultural Affairs v Al-Miahi* ("*Al-Miahi*"):

> *"A decision may be based upon the existence of many particular facts. It will be based upon the existence of each particular fact that is critical to the making of a decision. A small factual link in a chain of reasoning, if it is truly a link in a chain and there are no parallel links, may be just as critical to the decision, and just as much a fact upon which the decision is based, as a fact that is of more obvious immediate importance. If a decision is in truth based, in that sense, on a particular fact for which there is no evidence, and the fact does not exist, the decision is flawed, whatever the relative importance of the fact."*[64]

50. The Respondent submitted that the Tribunal's findings were open to it on the evidence before it, and the Appellant's challenges to the Tribunal's findings on

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[62] BD 176 at ln 39 – BD 177 at ln 14.
[63] Appellant's Submissions at [34].
[64] [2001] FCA 744 at [38].

the ground of irrationality are "emphatic statements of his disagreement with the Tribunal's conclusions which do not concern a point of law".[65]

51. The Respondent asserted that the Tribunal's rejection of the Appellant's evidence as to his decision not to inform his family of the phone call, and his belief the call was not recorded, was grounded in matters that had a proper basis in the evidence, namely, that it was illogical that the Appellant would not tell his family about the call to avoid worrying them, and then expose them to harm by fleeing Iran, and that the Appellant would be comforted by the lack of recording, when the agencies do not necessarily require proof to take action.[66] The Respondent submitted that it can be inferred from the Tribunal's statement that the Appellant "has provided no logical reason for his failure to warn them" that the Tribunal considered the Appellant's additional explanation that he did not want to expose his family to harm from the intelligence agencies, but did not consider it to be persuasive.[67]

52. With reference to *Al-Miahi*, the Respondent submitted that, unless a court is satisfied that a path of reasoning adopted by the decision-maker involved "links in a chain", an appellant cannot rely on an attack on one of those links to found an error of law.[68] If it is unclear whether the decision-maker adopted a "links in a chain" or "strands in a rope" manner of reasoning, the appeal must be resolved against the Appellant because they have not met the burden of persuasion. The Respondent submitted that the Tribunal, in this case, adopted a "strands in a rope" manner of reasoning, evident through the use of the expression "for these reasons" in [101], and the absence of any indication the individual findings constituted logical or consequential steps.[69]

53. It is significant in construing the reasoning of the Tribunal that the Appellant gave evidence that he did not tell his family about what had happened because he did not want to worry them:

> *MS MCINTOSH: Yes. Did you ever warn your sisters or your brother that they were at risk?*
>
> *INTERPRETER: Just not to make the worried, I did not mention anything to anybody about it.*
>
> *MS MCINTOSH: That's very surprising, that you wouldn't have worried them to be careful or even move away from their homes if you believed they were at risk from Ettela'at?*
>
> *INTERPRETER: There's a lot of its and buts involved. However, I thought at the time that if I were to inform them and make them to be worried and more concerned, even that concern when they say me raised more issues ad trouble for me because the decision for me leaving Iran happened in one day at the most.*[70]

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[65] Respondent's Submissions at [4].
[66] Ibid at [49].
[67] Supreme Court Transcript 46 at ln 40 – 43.
[68] Ibid 26 at ln 41 – 45.
[69] Ibid 27 at ln 27 – 30.
[70] BD 175 at ln 13 – 27.

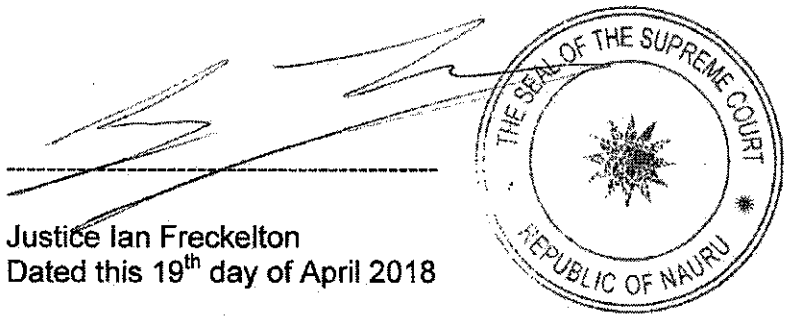
54. It is clear that this exchange provides the evidentiary basis for the Tribunal's findings. It was neither irrational nor illogical; rather, it was open to the Tribunal.

55. It is also clear that the Tribunal considered the alternative explanation for the Appellant not giving information to his family about what had occurred offered by the Appellant in the exchange set out at [46] above.

56. Inherent in this account were contradictions that, amongst other things, left a rational and logical basis for the Tribunal to make the findings that it did. Essentially, the position of the Appellant in this ground of appeal is one of disagreement with the reasoning of the Tribunal. That does not constitute a proper basis for appeal. Accordingly, this particular to the Appellant's ground also fails.

CONCLUSION

57. Under s 44(1) of the Act, I make an order affirming the decision of the Tribunal and make no order as to costs.



Justice Ian Freckelton
Dated this 19th day of April 2018