



IN THE SUPREME COURT OF NAURU
AT YAREN

APPEAL NO. 68/2015

Being an appeal against a decision of the Nauru Refugee
Status Review Tribunal brought pursuant to s 43 of the
Refugees Convention Act 2012

BETWEEN

VEA019

APPELLANT

AND

The Republic of Nauru

RESPONDENT

Before: Khan ACJ
Date of Hearing: 27 March 2017
Date of Judgment: 21 July 2017

Case may be cited as: VEA019 v The Republic

CATCHWORDS:

Whether this Court can review the decision of the Tribunal or whether it is required to deal with an appeal under s 43 which is on a point of law – whether inadequate interpretation may give rise to a point of law and in what circumstances.

Held: this court cannot review the decision of the Tribunal – the bare assertion of misinterpretation cannot give rise to a point of law without particulars – no error of law raised – appeal dismissed.

APPEARANCES:

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

JUDGMENT

INTRODUCTION

1. The appellant filed an appeal against the decision of the Refugee Status Review Tribunal (“the Tribunal”) pursuant to s 43(1) of the *Refugees Convention Act 2012* (“the Act”) which states:

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

2. The Tribunal delivered its decision on 22 May 2015 affirming the decision of the Secretary for the Department of Justice and Border Control (“the Secretary”) that the appellant is not recognised as a refugee and is not owed complementary protection under the Act.
3. The appellant filed an appeal in this Court on 27 August 2015.

EXTENSION OF TIME

4. The decision of the Tribunal was delivered on 25 May 2015 which was received by the appellant on 30 May 2015. Section 43(3) provides that a notice of appeal must be filed within 28 days of the receipt of the decision by the appellant.
5. On 17 June 2015, the Registrar by consent of the respondent made an order that the time for filing of the appeal be extended to 31 August 2015.
6. The notice of appeal was filed on 27 August 2015. Following the decision of *Kun v Secretary for Justice and Border Control*¹ the Registrar did not have the powers to grant the extension, and as such the appeal was not competent.
7. Section 43(3) of the Act was amended by s 43(5) of the *Refugees Convention (Amendment) Act 2015* which increased the period of time for filing of appeal from 28 to 42 days; and it further gave the Registrar or Judge powers to extend the period of time beyond 42 days if satisfied that it was in the interests of justice to do.
8. On the date of the hearing the appellant made a request for an extension of time for filing the appeal with the consent of the respondent and an extension was granted as the Court was satisfied that it was in the interests of justice to do so; and also gave leave to the appellant to rely on the grounds of appeal filed on 27 August 2015 as if they were filed after the orders of extension were granted by this Court.

BACKGROUND

9. The appellant is a single 25 year old man from Bangladesh.
10. He was born on 20 November 1991 in Bongram village, Kushtia District. His parents and five siblings still live in Bangladesh.
11. In 2005, the appellant joined Islamic Chatro Shibir, the student wing of Jamaat-e-Islami (“JI”). He was attacked by a group of Awami League (“AL”) supporters in 2007 and he was taken unconscious to a medical clinic for treatment.

¹ [2015] NRSC 18 (Khan J).

12. In July 2007, the appellant travelled to Malaysia and was employed in welding, construction and labouring jobs until December 2012 when he returned to Bangladesh. He then became an official member of JI.
13. In 2012, membership of JI was increasing and AL felt threatened and there was tension between JI and the governing AL. AL was persecuting JI leaders by arresting and detaining them for their political views. AL had also deleted Koranic wording from the Bangladesh Constitution.
14. Between January and March 2013, the appellant attended a number of JI protest demonstrations in Kushtia. In February 2013 police came to his house with a warrant for his arrest telling his parents he was to report to the police station immediately. Although this caused him to fear for his safety he continued to attend the demonstrations, believing it his duty to campaign for the release of political prisoners. He did not attend the police station as he feared he would be arrested, detained indefinitely and tortured like other political prisoners.
15. He did not go to the police station as he feared that he would be arrested or detained indefinitely and tortured like other political prisoners.
16. In March 2013, he participated in a large demonstration which was attacked by police. He was beaten severely with batons, suffering bruising all over his body, and taken to hospital. When he returned home he heard from his parents that police had killed and severely injured many JI members.
17. After this attack, he decided it was not safe for him to remain in Bangladesh as the police could arrest him at any time. He wanted to stay and campaign for the release of the political prisoners but decided to leave the country for his own safety.
18. On 10 April 2014, he went back to Malaysia and subsequently travelled to Indonesia and Christmas Island. He was transferred to Nauru on 21 November 2013.
19. He was informed by his family members that the police regularly visited the family home and were looking for him.
20. He fears that if he returns to Bangladesh he will be detained, tortured and killed by the members of AL and the law enforcement authorities. He also fears that he will face harm on the basis of his political opinion and also as a failed asylum seeker.
21. The appellant submits that no place in Bangladesh is safe for him as AL rules the entire country and the arrest warrant is effective against him for the whole country; and the police will find him regardless of where he goes.

APPLICATION TO THE SECRETARY

22. The appellant attended a Transfer Interview shortly after arriving in Nauru.

23. On 26 February 2014, the appellant made an application to the Secretary for recognition as a refugee and for complementary protection under the Act.
24. On 31 October 2014, the Secretary made a determination that the appellant is not a refugee and is not owed complementary protection.

APPLICATION TO THE TRIBUNAL

25. 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.
26. On 22 February 2015, the appellant made a statement and on 16 March 2015 his lawyers, Craddock Murray Neumann, made written submissions to the Tribunal.
 27. On 20 March 2015, the appellant appeared before the Tribunal to give evidence and present his arguments with his representative and an interpreter in Bengali and English languages.
 28. The Tribunal did not accept that the appellant was a member of JI or the student wing. The Tribunal found the appellant's lack of knowledge of JI and its objectives to be unconvincing.
 29. The appellant's claim that he was attacked by AL members in 2005 was also rejected. It was noted that this claim was not mentioned in the Refugee Status Determination interview despite this being claimed to be the main reason he fled the country. The Tribunal did not accept that a person who was only partly associated with JI would be targeted as a 15 year old.
 30. The Tribunal did not accept that the appellant attended protest demonstrations in 2013 or that the police had issued a warrant for his arrest. The appellant could not explain the motivation for the demonstrations. The Tribunal also was not convinced by the submission that the appellant was so fearful that he lived in hiding and had only limited contact with his family while still attending demonstrations where he was exposed to police attention.

31. The Tribunal also found that the Bangladesh government would have no way of identifying the appellant as a failed asylum seeker. The application process is strictly confidential.
32. The Tribunal handed down its decision on 22 May 2015 affirming the decision of the Secretary that the appellant is not recognised as a refugee and is not owed complementary protection under the Act.

THIS APPEAL

33. The appellant uses a “dot point” format without numbering the grounds of appeal. The grounds of appeal read as follows:

The appellant hereby appeals pursuant to section 43 of the Refugees Convention Act 2012 against the decision of the Refugee Status Review Tribunal made on 22nd day of May 2015 on the following grounds:

- I request the court to look at my case again because I believe the evidence I gave in my oral and written statements was misinterpreted or misunderstood.

SUBMISSIONS

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

CONSIDERATION

35. The appellant’s submission on this ground is that after the decision was delivered by the Tribunal he asked one of his friends to translate it for him and then realised that there were certain inconsistencies in the information he gave during the transfer interview and the evidence he gave to the Tribunal. He submits that this inconsistency is took place because of misinterpretation by the interpreter, and hence this ground of appeal.
36. The respondent submits that if the misinterpretation at the hearing was so bad that it deprived the appellant of the opportunity of presenting evidence and arguments then the appellant would be denied natural justice. The respondent further submits that the appellant has not given any particulars of misinterpretation.
37. I dealt with the issue of misinterpretation in *ROD128 v The Republic*² and stated at [34] as follows:

The respondent accepts that inadequate interpretation may give rise to a point of law, but only where the interpreting is so poor as to deprive the appellant of

² [2017] NRSC 8 (Khan J).

a “reasonable opportunity” to present evidence and argument and thereby amount to procedure unfairness in the context of the whole of the review. However, in order for this point of law to be established, it is necessary:

- a) That there be admissible evidence before a Court proving how the appellant’s evidence and arguments were mistranslated;
- b) Any mistranslation – translation be of such significance that the appellant did not get a “reasonable opportunity” to present evidence and argument;
- c) The absence of this “reasonable opportunity” lead to practical unfairness or practical injustice in the context of the whole review.

38. The appellant has only made a bare assertion that he only realised the inconsistencies when the decision was interpreted to him by one of his friends. He did not give any particulars of inconsistencies and therefore it cannot be suggested that the interpretation was ‘inadequate’ to give rise to a ‘point of law’.

39. This ground of appeal is not made out and is therefore dismissed.

40. The appellant also made the following additional submissions, which is that he did not leave for Malaysia in 2007 seeking employment, that he is very stressed in Nauru and that he is not literate and as such is not able to provide much information.

41. Unfortunately, none of the matters mentioned in the paragraph above raise a ‘point of law’ so I cannot consider them but having perused the Tribunal’s decision it is very clear that the Tribunal considered all the submissions and claims raised by the appellant in sufficient detail.

42. In the circumstances, the appeal is dismissed.

CONCLUSION

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

DATED this 21st day of July 2017



Mohammed Shafiullah Khan
Acting Chief Justice

