IN THE SUPREME COURT OF NAURU

AT YAREN

[APPELLATE DIVISION] Case No. 1 of 2016

IN THE MATTER OF an appeal against a decision of the Refugee Status Review Tribunal TFN T15/00100, brought pursuant to s 43 of the *Refugees Convention Act* 1972

BETWEEN

WET 044 Appellant

AND

THE REPUBLIC Respondent

Before:	Crulci J
Appellant:	Self-represented
Respondent:	R. Knowles
Date of Hearing:	25 May 2017
Date of Judgment:	29 August 2017

CATCHWORDS

APPEAL - *Refugees – Refugee Status Review Tribunal – Point of Law – Mental Health and Memory – Inconsistencies – Credibility Findings – Appeal DISMISSED*

JUDGMENT

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

> **43 Jurisdiction of the Supreme Court**
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> (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. The determinations open to this Court are defined in section 44 of the Act:

> **44 Decision by Supreme Court on appeal**
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> (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.

3. The Refugee Status Review Tribunal ("the Tribunal") delivered its decision on the 1 February 2016 affirming the decision of the Secretary of the Department of Justice and Border Control ("the Secretary") of the 30 August 2015, that the Appellant is not recognised as a refugee under the 1951 Refugees Convention[1] relating to the Status of Refugees, as amended by the 1967 Protocol relating to the Status of Refugees ("the Convention"), and is not owed complementary protection under the Act.

4. The Appellant filed a Notice of Appeal on 6 May 2016 and an Amended Notice of Appeal on 18 May 2016. On 3 May 2017, the Appellant filed an application for an extension of time. The previous orders were vacated and new orders made; it is noted that the Respondent consented to the extension of time application and leave to amend grounds.[2]

BACKGROUND

5. The Appellant is a single male born in August 1982 in Ilam Province, Iran. He is a Shia Muslim who prefers to speak Faili Kurdish but can also speak Farsi. His parents are both Faili Kurds, and the Appellant also has four brothers and four sisters.

6. The Appellant claims a fear of persecution on the basis of his (lack of) nationality, ethnicity, membership of the particular social group of stateless Kurds, and for being a failed asylum seeker. He fears harm from the Iranian Government and members of the Iranian public.

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[1] 1951 Refugee Convention and 1967 Protocol, also referred to as "the Refugees Convention" or "the Convention".
[2] Supreme Court Transcript p 5.

7. The Appellant left Iran for Malaysia, and then Indonesia, in May 2013. He arrived in Christmas Island in July 2013 and was transferred to Nauru in February 2014.

INITIAL APPLICATION FOR REFUGEE STATUS DETERMINATION

8. The Secretary identified that the Appellant made the following key claims at the RSD interview:

- The Appellant is stateless and does not have the right to reside in any country;
- He is of Kurdish ethnicity;
- It was very difficult for him to find a job and his family were in grave poverty;
- He has never been to school and can barely read and write;
- As a stateless Kurd he was denied the right to freely travel within Iran;
- The Iranian Government does not permit Kurdish people to gather together, to wear traditional clothing, or to study in the Kurdish language;
- The Sepah and Basij detain and torture Kurdish people if they practice their culture;
- On numerous occasions he was stopped by the Iranian authorities for not having any identity documents;
- He has never held an Iranian National ID card;
- He has not served in the Iranian military.[3]

9. The Secretary noted the inconsistency with information given by the Appellant at the Transfer Interview, and put to the Appellant that he said the following at the Transfer interview:

- He could understand the interpreter at the interview;
- He is an Iranian citizen;
- He had Iranian identity documentation including a driver's licence, birth certificate, national ID card, and documents referring to Iranian military service completion;
- He completed compulsory military service and served with the Revolutionary Guards from 2002;
- His sisters are Iranian citizens;
- He departed Iran on an Iranian passport issued in his name;
- He applied for the passport through Police Plus 10 in 2010.[4]

10. The Appellant responded that he was unwell at the Transfer interview, and was stressed and did not know what he was saying.[5] The Secretary found that, based on the specificity of the information presented by the Appellant at the Transfer Interview regarding his citizenship, places of residence, identity documentation, schooling, military service and departure from Iran, he is an Iranian national.[6]

11. The Secretary therefore did not accept as credible that the Appellant experienced harm from Iranian authorities in the past because of having no identity documentation, nor that he was denied access to education or health services or was unable to move freely within Iran.[7]

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[3] Book of Documents ("BD") 55.
[4] BD 55, 60.
[5] BD 55.
[6] BD 56.
[7] BD 60.

12. Based on the Appellant's ability to speak fluent Kurdish as his primary language at the Transfer Interview, and his consistent claims that he is Kurdish, the Secretary found that the Appellant is of Kurdish ethnicity.[8] The Secretary accepted that the Appellant could be recognised in Iran as being Kurdish, and therefore from a minority culture, and also accepted that the Appellant fears harm on the basis of being a failed asylum seeker.[9]

13. Upon the basis of country information, including reports issued by the Iran Human Rights Documentation Center and the Danish Refugee Council, the Secretary considered that there was no reasonable possibility that the Appellant would be targeted by the Iranian authorities for reason of his Kurdish ethnicity upon return to Iran.[10] While acknowledging that Kurds may face discrimination in finding employment, and a level of harassment in practicing their customs, the Secretary found no country information to suggest Iranian Kurds are denied access to education and health services, or to employment opportunities. Therefore, there was no reasonable possibility of the Appellant facing systematic discrimination from Iranian authorities or anyone else in Iran.[11]

14. In relation to the Appellant's claimed fear of persecution on the basis of being a failed asylum seeker, the Secretary noted instances of detention and mistreatment of failed asylum seekers, however found that these persons had an adverse political profile in Iran for various reasons. Failed asylum seekers with no such profile are not likely to face persecutory harm from the authorities upon return.[12] The Appellant's fear of persecution on the grounds identified was not well-founded.

15. The Secretary also found that there was no evidence before him of a reasonable possibility of the Appellant facing harm if returned to Iran that would constitute a breach of Nauru's international obligations.[13]

REFUGEE STATUS REVIEW TRIBUNAL

16. The Tribunal discussed with the Appellant the various aspects of his claim inconsistent with the claims made at the Transfer Interview. The Appellant claimed that he was addicted to methamphetamine, and was suffering withdrawals and delusions at the time of the Transfer Interview, and therefore gave unreliable information. He said that if he were to be returned to Iran:

> *"I will fall back into my deep misery at the knowledge of my terrible life and lack of a future. Ice is readily accessible throughout Iran. I fear that as an addict I will start to self-medicate again and will begin abusing Ice the way I did before. My family will disown me because they would not tolerate my further use of Ice. I fear that I will then be arrested by the authorities for illicit drug use or will die of an overdose."* [14]

17. In relation to the various inconsistencies, the Appellant asked the Tribunal to be *"merciful with me as I am a young person who has fled Iran to find a better life. I*

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[8] BD 58.
[9] BD 61.
[10] BD 62.
[11] BD 63.
[12] BD 65.
[13] BD 66.
[14] BD 205 at [40].

was stateless and could not stand for my rights." The Appellant's representative addressed the concerns the Tribunal raised,[15] and said the Appellant had a well-founded fear of persecution on the basis of being a member of the particular social group of stateless Faili Kurds, and a failed asylum seeker, because he would be imputed with an adverse political opinion.[16]

18. Noting reputable information on the time frame for suffering Ice withdrawals, the Tribunal did not accept the Appellant was suffering from withdrawals at the time of the Transfer Interview, some seven months after he said he last used the drug, and did not accept the Appellant was an Ice addict.[17]

19. The Tribunal also stressed that it listened to the audio recording of the Transfer Interview and the Appellant did not seem distressed or not alert. He reportedly answered questions coherently and on occasion's volunteered further information. He was able to answer questions regarding official documents and military service fluently and in considerable detail,[18] and provided the addresses of where he last stayed and lived in Iran without hesitation.[19] The Tribunal was therefore satisfied that the information presented at the Transfer Interview best describes the Appellant.[20]

20. In light of this the Tribunal was satisfied that the Appellant was a citizen of Iran and therefore had no well-founded fear of persecution for reason of his (lack of) nationality.[21]

21. In relation to the Appellant's claimed fear of persecution on the basis of his ethnicity, the Tribunal accepted that Kurds may face discrimination but certain discriminatory provisions apply only to those who are not Shia Muslim (the Appellant is Shia Muslim), and noted that, in thirty years of living in Iran, the Appellant only had two brief altercations with the authorities. The Tribunal was therefore not satisfied that the Appellant suffered serious harm in the past by reason of his ethnicity and that there would be any reasonable possibility of the Appellant suffering harm in Iran in the reasonably foreseeable future.[22]

22. In relation to the Appellant's claimed fear of persecution on the basis of being a member of the particular social group of failed asylum seekers, the Tribunal adopted the Secretary's reasoning and findings. It was satisfied the Appellant left Iran lawfully and would therefore not be subject to prosecution for leaving the country illegally. Thus, if the Appellant was returned to Iran, there was nothing that would bring him to the adverse attention of the authorities.[23] The Tribunal found that the Appellant would not be imputed with an adverse political opinion for having sought asylum in Nauru.[24]

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[15] BD 210 at [68].
[16] BD 211 at [69].
[17] BD 214 at [87].
[18] BD 213 at [82].
[19] BD 214 at [85].
[20] BD 214 at [88].
[21] BD 215 at [89].
[22] BD 216 at [93].
[23] BD 216 at [96].
[24] BD 216 at [97].

23. The Tribunal was therefore not satisfied that the Appellant would face a real possibility of Convention persecution if returned to Iran.[25] For the same reasons for finding that the Appellant was not a refugee, the Tribunal found that the Appellant was not owed complementary protection.[26]

THIS APPEAL

24. The Appellant's Amended Notice of Appeal filed on 18 May 2016 said that the Tribunal erred in its decision for the following reasons:

    - What I said to the tribunal I believe was sufficient to be accepted as a refugee. They didn't believe me because of inconsistencies in my transferee interview. I was not prepared at that time and did not understand the legal process when I made that interview. At the time of the transferee interview I was suffering from memory problems and stress and did not have the mental capacity to know what I was saying. This was not considered.
    - In the RSD interview when I was more relaxed and had some mental health sessions I started to gain confidence and recall my memories, so I tried to correct what I had said in the first interview. This was seen unreasonably as inconsistencies.
    - I have said many times that I am stateless and do not have documents. The tribunal did not give a proper reason for why they did not accept the explanation relating do (sic) my documents. I gave what I had; only a Green Card and the tribunal did not properly explain why they thought I had more or different documents. They assumed this without checking. A stateless Faili Kurd is a simple decision to find them to be stateless and a refugee. The tribunal gave no proper basis for not accepting my statelessness.
    - I don't think the tribunal took proper account of my mental capacity to undergo this Refugee Status Determination process. They failed to give me the benefit of the doubt. They didn't account for my taking medication for sleeping problems.
    - They made an adverse credibility finding without a proper basis for doing this.
    - I believe the tribunal members had an unrealistic expectation of what I could remember or say and they applied a standard to me of what would be expected of a normal person.

25. The Appellant did not file written submissions. At the oral hearing, the Appellant indicated that he solely relied on the Amended Notice of Appeal. He also presented to the court medical records from International Health and Medical Services (IHMS) detailing his medication, physical and mental state which it is submitted are relevant to the Appellant's claimed lack of concentration.

26. In relation to the Appellant's claim that the Tribunal failed to have regard to the problems he was experiencing with his memory, stress and lack of mental capacity, the Respondent submits that the Tribunal did refer to the Appellant's mental health difficulties, however found that these difficulties were not the cause of inconsistencies between his evidence at the Transfer Interview and subsequently.

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[25] BD 216 at [98].
[26] BD 217 at [101].

27. The Tribunal came to this conclusion having considered the matters discussed at [19] above. The complaint that the Tribunal failed to take into account his mental capacity generally is also not made out, says the Respondent, given the Appellant failed to make any complaints about his mental capacity during the RSD process. In any event, the Tribunal considered that the Appellant had been prescribed sleeping tablets and calming medication to treat his "nightmares about the ocean".

28. In relation to the Appellant's claim that it was unreasonable for the Tribunal to reject his evidence because of inconsistencies between his evidence at the Transfer Interview and RSD interview, the Respondent says the Tribunal preferred the account given by the Appellant at the Transfer Interview based on a careful analysis of the evidence and the way in which it was presented. The Respondent says the credibility findings made by the Tribunal were findings of fact that cannot be disturbed by this Court. Having regard to the inconsistencies in the Appellant's evidence, the adverse credibility findings made by the Tribunal were open to it.

29. Regarding the Appellant's claim that the Tribunal rejected his claim of statelessness without any proper basis, the Respondent submits that the Tribunal rejected this claim because it found the Appellant is an Iranian citizen and gave sound reasons for so finding. Regarding the Appellant's fifth ground of appeal: "*They made an adverse credibility finding without a proper basis for doing this*", the Respondent repeats its submission that the Tribunal was entitled to make the adverse finding based on the inconsistencies in the Appellant's evidence.

CONSIDERATIONS

30. The arguments advanced by the Appellant in his Amended Notice of Appeal relate broadly to the following four issues:
    - whether the Tribunal failed to consider the Appellant's mental health condition and impact this had on his memory, stress and mental capacity;
    - whether the Tribunal's treatment of inconsistencies in the Appellant's evidence was unreasonable;
    - whether the Tribunal rejected the Appellant's claim that he was stateless without any proper basis; and
    - whether the Tribunal made adverse credibility findings without any proper basis.

31. Under s 43(1) of the Act, any appeal to the Supreme Court from a decision of the Tribunal must be on "a point of law".

32. Australian courts have considered the need for courts performing judicial review to confine their review to whether the decision made by the Tribunal was made within the legal limits of the relevant power. In the often cited authority of *Attorney-General (NSW) v Quin*,[27] Brennan J said:

> "*The duty and jurisdiction of the court to review administrative action do not go beyond the declaration and enforcing of the law which determines the limits and governs the exercise of the repository's power. If, in so doing, the court avoids administrative injustice or error, so be it; by the court has no jurisdiction simply to cure administrative injustice or error. The merits of administrative action, to the extent that they can be distinguished from*

[27] *Attorney-General (NSW) v Quin* (1990) 170 CLR 1.

legality, are for the repository of the relevant power and, subject to political control, for the repository alone".[28]
(emphasis added)

33. In *Minister for Aboriginal Affairs v Peko-Wallsend* ("*Peko-Wallsend*"),[29] Mason J, as his Honour then was, said:

> "*The limited role of a court reviewing the exercise of an administrative discretion must constantly be borne in mind. It is not the function of the court to substitute its own decision for that of the administrator by exercising a discretion which the legislature has vested in the administrator. Its role is to set limits on the exercise of that discretion, and a decision made within those boundaries cannot be impugned".*[30]
> (emphasis added)

34. Australian courts have further recognised that credibility findings are findings of fact reserved for the primary decision maker. In *Minister for Immigration and Multicultural Affairs; Ex parte Durairajasingham*, in relation to the finding that it was "utterly implausible" that members of a party tried to recruit the Appellant, Mc Hugh J said:

> "... *this was essentially a finding on credibility which is the function of the primary decision maker par excellence. If the primary decision maker has stated that he or she does not believe a particular witness, no detailed reasons need to be given as to why that particular witness was not believed. The Tribunal must give reasons for its decision, not the sub-set of reasons why it accepted or rejected individual pieces of evidence.*" [31]

35. This has subsequently been approved and applied by the Federal Court.[32]

Appellant's Mental Health

36. In *Minister for Aboriginal Affairs v Peko-Wallsend*, Mason J, as his Honour then was, said:

> "*The failure of a decision-maker to take into account a relevant consideration in the making of an administrative decision is one instance of an abuse of discretion entitling a party with sufficient standing to seek judicial review of the ultra vires administrative action.*" [33]

37. It is apparent from the decision record that the Tribunal had regard to the Appellant's claims of poor mental health, and the impact this had on his memory, stress and mental capacity at the time of the Transfer Interview.

38. At [35], the Tribunal noted that the Appellant said that he "*vaguely remembers being transferred from Christmas Island to Nauru*", but he has "*no recollection of*

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[28] *Attorney-General (NSW) v Quin* (1990) 170 CLR 1 at 35-36.
[29] *Minister for Aboriginal Affairs v Peko-Wallsend* (1986) 66 ALR 299.
[30] *Minister for Aboriginal Affairs v Peko-Wallsend* (1986) 66 ALR 299 at 309.
[31] *Re Minister for Immigration and Multicultural Affairs; Ex parte Durairajasingham* (2000) 168 ALR 407 at [67] (per McHugh J).
[32] *SZKJU v Minister for Immigration and Citizenship* [2008] FCA 802 at [19]; *SZKSU v Minister for Immigration and Citizenship* [2008] FCA 610 at [14].
[33] *Minister for Aboriginal Affairs v Peko-Wallsend* (1986) 66 ALR 299 at 308-309.

what questions were asked or what I said in response" to the questions at the Transfer Interview. At [61], the Tribunal referred to its questioning of the Appellant on the information he gave at the Transfer Interview on his military service, and said the Appellant said "*He thought he must have said things at the transfer interview because he was in a state of delusion, or fear. He was not in a good mental state at the time of that interview. He was not feeling well after 20 days in a tent and did not know what he was saying*".[34]

39. The Tribunal further noted that the Appellant claimed that he was suffering from poor mental health at the time of the Transfer Interview because he was suffering from withdrawals from his ice addiction.[35] The Appellant said that he had "*got better*" during the seven-month period between the Transfer Interview and RSD interview. The Tribunal put it to the Appellant that seven months had also elapsed between when he last claimed to have taken ice in Indonesia and the Transfer Interview. The Appellant responded that he believed it took longer than seven months to get over the effects of ice.[36]

40. At [87], the Tribunal considered the Appellant's claim that the inconsistencies between his testimony at the Transfer Interview and subsequently were because he was unwell and suffering withdrawals. However, on the basis of weaknesses in the Appellant's testimony regarding the seven-month withdrawal period, and reputable research on typical withdrawal periods from ice, the Tribunal rejected the claim that the Appellant was an ice addict. The inconsistencies in his testimony were not because of poor mental health due to withdrawals from his ice addiction.[37]

41. It is therefore apparent that the Tribunal considered the Appellant's claims with respect to his claimed poor mental health, and the impacts of this, and whether this may explain the inconsistencies in his testimony. This ground is dismissed.

Inconsistencies in Evidence

42. The Appellant argues that it was unreasonable for the Tribunal to view his attempts to "correct" what he said at the Transfer Interview, and the subsequent differences between his testimony at the Transfer and RSD Interviews, as inconsistencies. This argument invites this Court to reconsider the merits of the claims advanced by the Appellant. This is not the role of the Court; it is the role of the Tribunal.[38]

43. Irrespective, the Tribunal had a sound basis for finding that there were inconsistencies between the testimony given by the Appellant at the Transfer interview and subsequently. There were a number of differences in the testimony with respect to key claims advanced by the Appellant. These differences include, but are not limited to:
    - At the Transfer Interview, the Appellant said that he was an Iranian citizen.[39] At the RSD interview and Tribunal hearing, the Appellant claimed that he was stateless.[40]

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[34] BD 209 at [61].
[35] BD 209 – 210 at [62].
[36] BD 210 at [63].
[37] BD 214 at [87].
[38] *Attorney-General (NSW) v Quin* (1990) 170 CLR 1 at 35-36; *Minister for Aboriginal Affairs v Peko-Wallsend* (1986) 66 ALR 299 at 309.
[39] BD 55;

- At the Transfer Interview, the Appellant said that he had a driver's licence, birth certificate, national ID card and certificate of army service.[41] At the RSD interview, the Appellant said he only held a "transport card" and no other official documentation.[42] He told the Tribunal he had some documents but they were all fraudulent.[43]
- At the Transfer Interview, the Appellant said he flew out of Iran on his own passport.[44] At the RSD interview and Tribunal hearing, the Appellant said he left Iran on a false passport but did not encounter any difficulty.[45]
- At the Transfer Interview, the Appellant said his father was a citizen of Iraq and his mother is a citizen of Iran.[46] At the RSD interview, the Appellant said his parents were stateless.[47]
- At the Transfer Interview, the Appellant said he completed compulsory military service.[48] At the RSD interview and Tribunal hearing, the Appellant said he had never completed military service.[49]
- At the Transfer Interview, the Appellant gave two addresses in Tehran for where he had last stayed and lived. In the RSD interview, the Appellant said he had never lived anywhere other than his birthplace in Ilam Province.[50] At the Tribunal hearing, the Appellant also said he lived in his village all his life, except for a very brief period in Tehran immediately before his departure.[51]

44. In light of these substantial discrepancies in the Appellant's evidence, it was open to the Tribunal to find that there were inconsistencies between the Appellant's testimony at the Transfer Interview and subsequently at the RSD interview and Tribunal hearing. As noted in relation to the previous ground, the Tribunal gave due regard to the Appellant's claim that he was suffering from poor mental health, and considered whether the inconsistencies could be attributed to this. This ground is dismissed.

Statelessness

45. The assertion that the Tribunal made a finding of fact without any proper basis does not, in itself, give rise to a point of law; rather it invites this Court to reconsider the merits of the claims put before the Tribunal.[52] However, the making of findings and the drawing of inferences in the absence of evidence is an error of law.[53] Mason CJ in *Australian Broadcasting Tribunal v Bond* said:

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[40] BD 55; BD 204 at [34].
[41] BD 201 at [14].
[42] BD 203 at [27].
[43] BD 205 at [38].
[44] BD 202 at [21].
[45] BD 203 at [28]; BD 205 at [39].
[46] BD 54.
[47] BD 54.
[48] BD 201 at [15].
[49] BD 55; BD 209 at [61].
[50] BD 203 at [24].
[51] BD 205 at [36].
[52] *Attorney-General (NSW) v Quin* (1990) 170 CLR 1 at 35-36; *Minister for Aboriginal Affairs v Peko-Wallsend* (1986) 66 ALR 299 at 309.
[53] *Sinclair v Maryborough Mining Warden* (1975) 132 CLR 473 at 481, 483; *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 355 (per Mason CJ). See also *McPhee v Bennett* (1934) 52 WN (NSW) 8 at 9; *The Australian Gaslight Company v The Valuer-General* (1940) 40 SR (NSW) 126 at 138 (per Jordan CJ); *Azzopardi v Tasman UEB Industries Ltd* (1985) 4 NSWLR 139 at 155 (per Glass JA).

> *"So long as there is some basis for an inference – in other words, the particular inference is reasonably open – even if that inference appears to have been drawn as a result of illogical reasoning, there is not place for judicial review because no error of law has taken place."*[54]

46. The basis for the inference drawn by the Tribunal that the Appellant was an Iranian citizen was that, at the Transfer Interview, the Appellant gave coherent evidence that he was a citizen of Iran, had official documentation verifying his identity, and had completed compulsory military service. However at the RSD interview and Tribunal hearing the Appellant's claims about his life in Ilam Province as a Faili Kurd were *"inconsistent and subject to change in order to fit the moment"*.[55]

47. The Tribunal said that, when the Appellant was asked what official documentation he had, the Appellant at once listed his National identity card, driver's licence, certificate of military service, and a birth certificate. The Appellant also had no hesitation in answering where and when each document had been obtained. He responded with the same ease when asked about his passport. The Tribunal further noted that the Appellant was able to answer questions about his military service fluently and in considerable detail. He said that he had just turned 19 when he was called up, and served for 21 months in Bezfor and Tehran. He also named the section of the army in which he served his time.[56]

48. The Tribunal described a number of inconsistencies in the Appellant's testimony before the Tribunal, including in relation to the name of his village, the "transport card" the Appellant held, the schooling he received, how the Appellant obtained his passport, whether the Appellant had left his village to look for work, whether his mother and siblings were born in Iran or Iraq, and when his father moved from Iraq to Iran.[57] The Tribunal therefore said that it found *"his testimony unreliable and can place no weight on his assertions"*.[58]

49. It was therefore reasonably open to the Tribunal to find that the Appellant was a citizen of Iran. This ground is dismissed.

Adverse Credibility Findings

50. Findings as to the credibility of an Appellant's evidence are findings of fact reserved for determination by the Tribunal. It is not open to this Court to review the credibility findings made by the Tribunal with respect to an Appellant's evidence.[59]

51. There is nothing before the Court to indicate that the credibility findings made by the Tribunal were not sound. The Tribunal noted the differences in the Appellant's evidence described at [39] above and found the Appellant's testimony to be inconsistent. The Tribunal further noted that the Appellant's story presented at the

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[54] *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 356 (per Mason CJ).
[55] BD 212 at [79].
[56] BD 213 at [82].
[57] BD 212 at [76]-[78].
[58] BD 212 at [79].
[59] *Re Minister for Immigration and Multicultural Affairs; Ex parte Durairajasingham* (2000) 168 ALR 407 at [67] (per McHugh J); *SZKJU v Minister for Immigration and Citizenship* [2008] FCA 802 at [19]; *SZKSU v Minister for Immigration and Citizenship* [2008] FCA 610 at [14].

Transfer Interview outlined in summary at [9] above, and set out by the Tribunal at [14] – [23] of the decision record, was credible and coherent.

52. The Tribunal said that it was "*not credible that a person who lived an isolated life in an isolated provincial village, with no interactions with government services or the majority culture, and who, because barely literate, could not read about other places or the activities pursued elsewhere, could present a credible and coherent story*", as that presented at the Transfer Interview.[60]

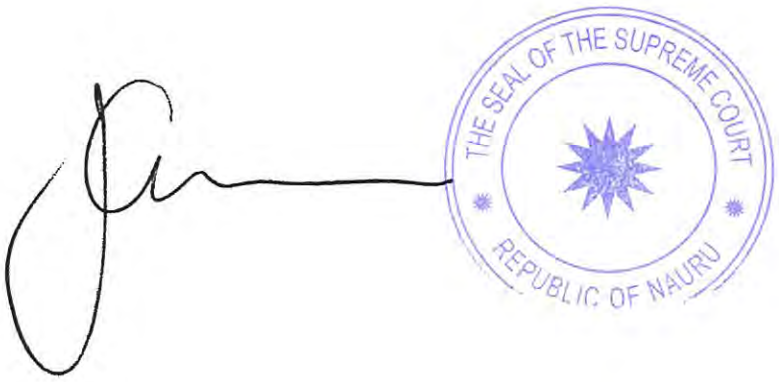
53. Finally, the Tribunal noted that the Appellant's explanation for the inconsistencies in his evidence that he was suffering from poor mental health due to withdrawals from his addiction to ice was unconvincing. As outlined at [35] – [36] above, the Tribunal found it difficult to reconcile the Appellant's evidence that during the seven months between the Transfer Interview and RSD interview he was able to recover from ice withdrawals with the fact that seven months had elapsed between the Appellant's claimed consumption of Ice in Indonesia, and the Transfer Interview in Nauru. The Tribunal also considered that reputable research indicated very much shorter withdrawal periods than the seven-month period indicated by the Appellant.[61]

54. It was therefore reasonably open to the Tribunal to make adverse credibility findings with respect to the Appellant's evidence. This ground is dismissed.

ORDER

55. (1) The Appeal is dismissed.

(2) The decision of the Tribunal TFN T15/00100 dated 1 February 2016 is affirmed.



Judge Jane E. Crulci

Dated this 29 August 2017

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[60] BD 214 at [86.
[61] BD 214 at [87].