



IN THE SUPREME COURT OF NAURU
AT YAREN

APPEAL NO. 22/2015

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

BETWEEN

ROD128

APPELLANT

AND

The Republic of Nauru

RESPONDENT

Before: Khan, J
Date of Hearing: 9 May 2016
Date of Judgement: 7 February 2017

Case may be cited as: ROD128 –v- The Republic

CATCHWORDS:

Whether inadequate translation may give rise to a point of law- it would where the translation is so poor as to deprive the appellant of a reasonable opportunity to present evidence and argument resulting in procedural unfairness.

APPEARANCES:

Appellant: In person (B Alexandra 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 the provisions of s43 of the Refugees Convention Act 2012 (the Act) which provides the jurisdiction of the Supreme Court. S43 states:

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

2. The Tribunal delivered its decision on 23 January 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.
3. On 23 April 2015, an order was made by the Registrar to extend the time for the appeal to be filed against the decision of the Tribunal received by the appellant on 23 January 2015.

EXTENSION OF TIME

4. Following the decision of this Court in *Kun –v- The Secretary for Justice and Border Control*¹ (*Kun*) the respondent took issue to the appeal being filed out of time.
5. On 23 May 2015, an order was made by the Registrar to extend the time for the appeal to be filed against the decision of the Tribunal delivered on 19 January 2015 and received by the appellant on 23 January 2015.
6. The Registrar on 23 May 2015 purported to extend the time for the filing of the appeal. The Republic’s position is that following the decision of *Kun* the Registrar did not have the powers to grant the extension; and as such there is no valid appeal before the Court.
7. The Republic for the efficient disposal of the case agreed that the appellant be allowed to present his case on merits of the proposed appeal and at the same time present his argument on substantive issue, and if the Court was satisfied that there was merit in the appeal then the extension of time can be granted. However, after the hearing, the Republic and the lawyers for the appellant (in this case, the appellant is unrepresented) have come to an agreement that the extension of time will not be in issue. Accordingly, a consent order was filed on 22 November 2016 whereby the time of appeal was properly extended by the Registrar pursuant to the amendment to the Act on 14 August 2015 (Refugees Convention (Amendment) Act 2015 and consequently the issue of appeal being out of time is no longer an issue.

BACKGROUND

8. a) The appellant is 31 years old. He is a Sunni Muslim. He is a citizen of Bangladesh. He was born in Hasmarty town, Kachikata, Gurudaspur, Nator in Bangladesh.
- b) He lived in Hasmarty town from birth until March 2011.
- c) His parents, brothers and a sister live in Bangladesh. He has 3 married brothers currently living in UAE.
- d) He completed 2 years of high school finishing in 1997.

¹ [2015] NRSC18 [Khan J 10 December 2015]

- e) He worked as a farmer from around 13 years to 21 years of age from 1997 to 2005.
- f) From 2005 to March 2011 he did 2 jobs simultaneously, each operating from the same office. One was running the family's lead machine workshop and the other was hiring bus drivers.
- g) He joined Jamat-e-Islami party in 2000 because he had strong ideologies. His role was to share Islam with people, walking the streets and sharing Islamic ideologies. At one Jamat party meeting, members of Awami League Party came and started bashing the appellant and his colleagues. His head was badly injured and he was taken to hospital where he remained for 11 days. After he returned home, he continued to attend political meetings against the wishes of his mother.
- h) After this bashing, the appellant was abducted by members of Awami League. He was blindfolded and his hands were tied together, placed in a car and taken to an unknown location and kept for 4 days.
- i) His family secured his release by paying a ransom. He did not complain to the police as they did not like members of the Jamat Party.
- j) Between 2003 and 2009, the appellant was not heavily involved in the Jamat Party activities because he was busy working and because he was responsible for his family's welfare;
- k) In 2009, the Awami League came to power and began persecuting Jamat party members. In 2009, he witnessed a fight between the 2 political parties, and members of Awami League threatened to kill the appellant if they saw him in the street again.
- l) He believed that the Awami League could come at any time and carry out their threat and so, he decided to flee. The appellant obtained the money he needed to pay the smuggler from his brother.
- m) The appellant left Bangladesh in 2011 and travelled unlawfully to Thailand, and then to Malaysia where he resided between 2011-2013 where he worked in the construction industry for cash.
- n) He travelled illegally to Indonesia by boat where he remained for 2 months and then travelled to Christmas Island by boat arriving in September 2013. He was transferred to Nauru.
- o) Since his arrival, members of the Awami League have been to his house asking for his address. He claimed that if he were to return to Bangladesh he would face persecution at the hands of the opposing party.

APPLICATION TO THE SECRETARY

9. The appellant attended a transfer interview on 1 December 2013.
10. He made an application for Refugee Status Determination (RSD) to the Department of Justice and Border Control (the Secretary) on 25 February 2014 and also made a statement on the same day. He was subsequently interviewed by a RSD officer.
11. In the interview with the RSD officer, the appellant said:
 - a) He joined the Jamat party in 2003 rather than 2000 as claimed in his written statement. He said that he was invited to join the party by a friend called Firooz, who was a “big leader” of the party.
 - b) He provided a copy of documents pertaining to the certificate as to his membership from Islami Chhatra Shibir (ICS) a student organisation. The certificate was issued in 2011 while the appellant resided in Malaysia and was signed by his brother.
 - c) The appellant stated that the central tenets of the Jamat Party was that it does not allow wrongdoing or corruption, and the Party is always doing good things, and helps people learn the Koran and sends people to be educated.
 - d) The appellant could not name the current leader of the Jamat Party stating that he left the country a long time ago.
 - e) The Secretary found that the appellant’s involvement with the Jamat Party was doubtful because he provided inconsistent evidence as to when he joined, his knowledge of the party was limited, his description of his activities and asserted motivation for joining the Party was unconvincing.
12. On 12 September 2014, the Secretary determined that the appellant was not recognised as a refugee or owed complementary protection under the Act.

APPLICATION TO THE TRIBUNAL

13. The appellant made an application on 2 October 2014 to the Refugee Status Review Tribunal (the Tribunal) for review of the Secretary’s decision pursuant to s.31 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 was not owed complementary protection.

14. On 30 November 2014, the appellant's lawyers, Craddock Murray Neumann, made written submissions to the Tribunal.
15. On 4 December 2014, the appellant attended a Tribunal hearing with his lawyer and a Bengali interpreter.
16. The appellant reiterated the substance of his claim before the Secretary and essentially argued that the Tribunal should not make adverse credibility findings.
17. The appellant claimed in his supplementary statement that he had not been given a fair opportunity to present his evidence at the first interview because the room was extremely cold, because he was stressed including the reason of detention, his memory was affected and the interpreter was giving only summarised translations of his evidence.
18. He confirmed that he joined the Jamat Party in 2003 and not in 2002.
19. He explained that the ICS Certificate had to be signed by his brother because he was out of the country and he obtained the certificate to assist his asylum application.
20. The appellant claimed that he was physically in hospital for 11 days, but he was recovering at home for a month, a fact that was not explained well in his interview.
21. He said that he was busy with work after the 2003 incident and did not have time to take on any responsibilities with the Party, he still attended meetings.
22. The appellant clarified that, the "fight" incident occurred in 2011 and not in 2009. He explained that he was mistaken when he wrote 2009 in his written statement, claiming to be confused by the fact that Awami League to be power in late December 2008. He also clarified that he had not been beaten during this incident and he must have been confusing this incident with previous incidents during the interview.
23. The Tribunal did not accept that the appellant's involvement with the Jamat Party was credible as there were inconsistencies in the date he joined the Party. He was unable to give details of the key tenets of the Party, significant events such as High Court Ruling banning the Party or its symbol.
24. The Tribunal found that his certificate from ICS was not reliable in light of widespread practice of document forgery in Bangladesh.
25. The Tribunal also found that the appellant was not abducted in 2003, noted inconsistencies in the days he spent in hospital and he was not sure that his abductors were from the Awami League.
26. The Tribunal also did not accept that he was involved in any fight in 2011 or 2009.

27. The Tribunal also did not find his reasons for leaving Bangladesh to be credible. Further, the tribunal did not accept that he would have acted on his mother's plea to leave Bangladesh after the 2003 incident some 8 years after it was made (as he left in 2011).
28. The Tribunal noted that the appellant's conduct after leaving Bangladesh was not consistent with a subjective fear of harm; as he worked in Malaysia between 2011 to 2013 and did not contact UNCHR or make enquiries about seeking asylum in Malaysia.
29. The Tribunal affirmed the Secretary's decision that the appellant was not recognised as a refugee and is not owed complementary protection under the Act.

THIS APPEAL

30. 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 s43 of the Refugees Convention Act 2012 against the decision of the Refugee Status Review Tribunal made on 19 January 2015 on the following grounds:

- *In my RSD interview, I had an interpreter who was Rohingya, what I said and what he said were 2 different things.*
- *In my Tribunal hearing the interpreter did not convey my points and my emphasis I was making about my involvement in politics. When he interpreted he focussed on my family issues and brushed over my statements relating to politics.*
- *According to Human Rights and many other international independent media organisation reports, since the government has been ruling the country from 2009-2013, 1000 people have gone missing. Police arrested the opposition leader without any reason.*
- *The Tribunal has only looked at some media and country information. Additionally, many events that have taken place are reported in local press and media, you will not see this information on the internet. We also learn about events and incidents via word of mouth and many of these incidents do not get reported in the media; this is because sometimes the government is controlling what gets reported.*
- *The media reports cited in my decision only focussed on 2003-2008 when the Awami League were not ruling the country. I am requesting that the*

Tribunal please review all the independent media organisation reports from 2012-2015. In the last 2-4 years the number of news channels and outlets have resumed greatly in Bangladesh and there is more local reporting available. These reports show that the level of violence and hostility between the 2 main parties is extremely high and much of this violence you don't see reported on the internet.

- *Last year the current Prime Minister publically said that any Bangladeshi that has left the country illegally will not be allowed to return home. I have spoken out against the government, so they will not leave me alone. There is a suspicion in Bangladesh that if you leave the country illegally you have gone to claim asylum.*

TRANSFER INTERVIEW

31. Before I deal with the grounds of appeal, I shall address the issues surrounding the transfer interview. The transfer interview is part of the Book of Documents. Since the appellant was unrepresented the Book of Documents was compiled by the respondent, whilst in the cases of represented appellants, it is usually compiled by the appellant's solicitors. Mr O'Shannessy said that the respondent will not be relying on the transfer interview and if the appellant wanted to rely on it then the Republic will have no objections. He said that the Tribunal did not rely on it or that the Secretary had relied on it and for unknown reasons it was not put before the Tribunal. He further submitted that if the appellant was not going to rely on it, then it should not be part of the Book of Documents. The appellant was allowed time to discuss this matter with Miss Alexandra and he said that he did not want the Court to rely on it and therefore I will not refer to it.

SUBMISSIONS

32. The respondent filed very extensive written submissions which have been of great assistance to me. The appellant was in person and he attempted to articulate his grounds of appeal as best as he could.

CONSIDERATION OF GROUNDS OF APPEAL

33. Dot points 1-2 allege that the interpreting of the oral hearing was inadequate and affected the evidence to the Tribunal.
34. 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 a "reasonable opportunity" to present evidence and argument and thereby amount to procedure

unfairness in the context of the whole of the review². 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.

35. Indeed there is no evidence advanced by the appellant of any mistranslation. In his grounds of appeal, dot points 1 and 2, it is stated that:

- *In my RSD interview, I had an interpreter who was Rohingya, what I said and what he said were 2 different things.*
- *In my Tribunal hearing the interpreter did not convey my points and my emphasis I was making about my involvement in politics. When he interpreted he focussed on my family issues and brushed over my statements relating to politics.*

36. I note that in the RSD application and the statement in support of the application the interpretation was done by TIS interpreter whose ID number was 6527 and in his declaration the interpreter stated that he is competent in English and Bengali. Further a perusal of the transcript reveals that there was a fluent and coherent exchange between the appellant and the Tribunal. No point of law is established so this ground of appeal is dismissed.

37. Dot points 3-4 allege that the Tribunal only relied on media reports in considering alternative sources of information. This allegation does not give rise to any point of law. As the country information that the Tribunal chooses to rely on is a question of fact for the Tribunal. So this ground of appeal is also dismissed.

38. Dot point 5 alleges that the Tribunal only considered country information between 2003-2008 and requests the Tribunal to consider independent media reports from 2012-2015. I agree with the Republic's submission:

“The request that the Tribunal now considers further country information cannot, on any view, give rise to any point of law.”

² See generally SZRGA –v- Minister for Immigration [2015] FCA 1200 (unreported) Griffiths J, 9 November 2015) [36-38])

So, this ground of appeal is also dismissed.

39. Dot points 6-7 assert that the appellant may be harmed if he returned to Bangladesh by reason of a failed of a failed asylum seeker. The respondent submits that:

“That the Tribunal could not have erred by not considering an argument that was never made. This Court cannot now entertain the appellant's claim in this regard as this is not within its jurisdiction.”

I agree with the respondent's submission so this ground of appeal is also dismissed.

CONCLUSION

40. I affirm the decision of the Tribunal under s44(1)(a) of the Act.

DATED this 7 day of February 2017


Mohammed Shafiullah Khan
Judge

