IN THE SUPREME COURT OF NAURU

AT YAREN

Case No. 12 of 2016

IN THE MATTER OF an appeal against a decision of the Refugee Status Review Tribunal TFN T15/00176, brought pursuant to s 43 of the *Refugees Convention Act 2012*

BETWEEN

DWN 046 Appellant

AND

THE REPUBLIC Respondent

Before: Justice Freckelton

Appellant: Ms C. Melis
Respondent: Ms C. Symons

Date of Hearing: 8 February 2018
Date of Judgment: 19 April 2018

CATCHWORDS

APPEAL – weight of Appellant's evidence – country information – credibility assessment – role of Tribunal – internal relocation principles – 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 means "protection for people who are not refugees but who also cannot be returned or expelled to the frontiers or territories where this would breach Nauru's international obligations."

4. The determinations open to this Court are defined in s 44(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 10 May 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 1951 Refugees Convention 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.

6. The Appellant filed a Notice of Appeal with this Court on 1 September 2016, an Amended Notice of Appeal on 7 July 2017, and a Further Amended Notice of Appeal on 9 January 2018. The Appellant was granted leave to file a Second Further Amended Notice of Appeal during the hearing on 8 February 2018.

BACKGROUND

7. The Appellant is a single-male from Parachinar, Pakistan. He is a Sunni Muslim of Awan ethnicity. The Appellant's mother and four younger siblings reside in Tarnol on the outskirts of Islamabad. His older sister is married and lives with her

husband's family. His father was killed during violence in Parachinar in 2007. The Appellant claims to be at risk of persecution or other significant harm from the Taliban if returned to Pakistan.

8. The Appellant departed Pakistan for Australia via Thailand, Malaysia, and Indonesia in July 2013. He arrived in Christmas Island on 3 August 2013, and was transferred to Nauru on 5 January 2014.

INITIAL APPLICATION FOR REFUGEE STATUS DETERMINATION

9. In the Appellant's statement accompanying his application for Refugee Status Determination ("RSD") the Appellant set forth the following claims:

    - His father was killed in September or October 2006 on the way home from his shop. He did not know who was responsible but believes it may have been the Taliban.
    - In 2007 the Taliban demanded passage through Parachinar to obtain access to NATO forces. When access was denied, the Taliban declared a Fatwa against the Parachinaris, and killed both Sunnis and Shias for opposing them.
    - In July 2007, the Taliban looted and burned the Appellant's home. The Appellant and his family fled on foot in the middle of the night, and were picked up by a military vehicle and taken to a frontier base.
    - They were subsequently taken to Peshawar and left to fend for themselves, so they looked for their relatives and moved to Tarnol camp. They lived there in a tent until 2013.
    - While living at Tarnol, the Appellant worked part-time and studied until year eight, after which he was unable to continue as there was no-one to support the family and the authorities would not allow him to continue his education.[1]

10. The Appellant attended an RSD interview on 22 May 2014. At that interview, he claimed that, if returned to Pakistan, he would be killed or tortured by the Taliban, or forced to fight for them. He said that he would be perceived as opposing the Taliban as he is a young man from Parachinar, a member of the Parachinar Sunnis, and has sought asylum in a Western country. The Appellant said he also fears the ongoing conflict between the Sunni and Shi'a Muslims.[2]

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

    - The Appellant is a Sunni Awan who resided in Parachinar from birth until 2007;
    - The Appellant's father was killed and the Appellant's family home destroyed in 2007, and the Appellant suspects that either Shi'a persons or the Taliban were responsible for these acts; and

[1] Book of Documents ("BD") 44-45.
[2] BD 60.

- The Appellant and his family relocated to Islamabad in 2007, and he and his family lived in a UNHCR-administered facility, before establishing themselves in Islamabad.[3]

12. However, the Secretary did not accept the following elements of the Appellant's claims:

    - The Pakistani authorities have denied the Appellant the right to employment.
    - The Pakistani authorities have denied the Appellant the right to attend school.
    - The Appellant has lived in a UNHCR administered camp in Tarnol since 2007.[4]

13. In considering the Appellant's claim that the Taliban killed his father, the Secretary noted country information indicating violence and fighting in Parachinar in 2007 and 2008, but found that the information suggested that it was the Shi'as who perpetrated the violence against the Sunnis, as opposed to the Taliban. While the Appellant's evidence as to events in Parachinar in 2007 was vague, the Secretary recognised that the Appellant would have been 13 years of age at the time, and could not be expected to have the same recollection and understanding as an adult.[5] The Secretary was therefore prepared to accept that the Appellant's father had been killed, and that the Appellant believed that the Taliban was responsible.

14. In relation to the Appellant's claims to have been denied access to school and employment, the Secretary found that there was no information to indicate that Pakistani authorities prevented displaced persons from working and attending school, and at the RSD interview the Appellant himself indicated that he had been employed at various times as a baker, mechanic, security attendant, tree planter and shop assistant.[6] In relation to the Appellant's claim that his family had lived in a UNHCR-administered camp in Tarnol since 2007, the Secretary found that there were no reports pointing to the existence of such a camp in the area.[7] The Secretary considered that, instead of living in a camp, the Appellant and his family established themselves in Islamabad, such that Islamabad could be deemed a second home area for the Appellant in addition to Parachinar.[8]

15. In light of country information pointing to unstable conditions in Parachinar for Sunni Muslims, the Secretary found that the Appellant faces a reasonable possibility of persecution in Parachinar for the foreseeable future.[9] However, the Secretary considered the situation in Islamabad to be very different. While there had been some isolated attacks, there was no information to support a reasonable possibility of harm to displaced persons from Parachinar, or in general. The Appellant made no claim of being harmed in Islamabad during the

[3] BD 66.
[4] BD 67.
[5] BD 63-64.
[6] BD 64.
[7] BD 65.
[8] BD 66.
[9] BD 68.

six years he lived there, and had no adverse profile that would lead to him being identified and targeted by the Taliban or other militant groups in Islamabad.[10]

16. Given these findings, the Secretary concluded that the Appellant's fear of harm in Islamabad was not well-founded, and that he did not qualify for refugee status.[11] As he could return to Islamabad without facing a reasonable possibility of harm, the Appellant also did not qualify for complementary protection.[12]

REFUGEE STATUS REVIEW TRIBUNAL

17. The Appellant provided written submissions and a supplementary statement to the Tribunal on 4 March 2016. It was submitted on his behalf that the Appellant feared harm on the basis of an imputed political opinion as a young male of Sunni Muslim religion, and as a returned asylum-seeker.

18. In the written submissions and statement, and at the oral hearing on 5 March 2016, the Appellant reiterated the claims that his father had been killed by the Taliban in 2006, his home destroyed by Shi'a Muslims in 2007, his family escape escaped to Kohat with the help of the military, and that he subsequently relocated to Tarnol to meet relatives of his father. The Appellant clarified that he had not been living in a UNHCR camp in Tarnol, but rather living in a tent on his relatives' land, although the family travelled to Kohat once a month to collect rations from the camp at which they were registered.[13] The Appellant also reiterated his claim to having been denied employment and education in Tarnol.[14]

19. The Appellant asserted that if he returns to Tarnol, he will be sent back to Parachinar where the Taliban would kill him.[15] In any event, the Appellant claimed that relocation to Tarnol is not a safe or reasonable option. The Appellant and his family did not have a meaningful existence in Tarnol – they lived in a tent on their relatives' land, were reliant on monthly UNHCR rations, the Appellant was denied proper employment and education, and was paid very little for the work he could find.[16]

20. In the alternative, the Appellant contended that he was entitled to complementary protection on the basis that returning him to Pakistan would expose him to harm prohibited by the international treaties ratified and signed by Nauru.[17] The Appellant argued that the relocation principle is not relevant when assessing complementary protection claims, and filed further submissions after the hearing expanding upon this argument.[18]

21. The Tribunal reached the same conclusion as the Secretary, concluding that the Appellant had two home areas – one in Parachinar, and the other in Tarnol. The

[10] BD 69.
[11] Ibid.
[12] BD 70.
[13] BD 184 at [26].
[14] BD 187 at [36]-[38].
[15] BD 188 at [40].
[16] BD 190 at [51].
[17] BD 185 at [26].
[18] BD 190 at [57]-[59].

Tribunal noted that the Appellant had relatives in Tarnol, had worked in the area, and used it as a base to which to return during the two years he spent working and studying in Lahore. While the family lived in a tent, this did not preclude it from being considered a home.[19]

22. The Tribunal accepted that the Taliban killed the Appellant's father, a tailor, because he failed to stop making uniforms for government officials as demanded.[20] However, the Tribunal found that this of itself did not make the Appellant of adverse interest to the Taliban. The Appellant conceded that he had not been harmed to date, despite living on land owned by relatives of his father, and travelling to Kohat to collect UNHCR rations.[21] The Tribunal also found that there was no evidence supporting the contentions that the Appellant would be kidnapped by the Taliban for being a young male, or targeted as a young Sunni Muslim from Parachinar.[22] The Tribunal further found that the Appellant had not advanced any evidence to suggest that he has faced hardship from the Shi'as since leaving Parachinar, and was therefore not satisfied there was any reasonable possibility of the Appellant being persecuted if returned to Tarnol in the reasonable foreseeable future.[23]

23. The Tribunal affirmed the finding of the Secretary that the Appellant did not qualify for refugee status.[24] In respect of complementary protection, the Tribunal considered that while he had an "impoverished existence" in Tarnol, the Appellant would not face harm prohibited by the international treaties ratified and signed by Nauru. The Tribunal also affirmed the Secretary's finding that the Appellant was not owed complementary protection.[25]

THIS APPEAL

24. The Appellant's Further Amended Notice of Appeal dated 9 January 2018 asserted that:

    1. *In the Tribunal's assessment of whether the appellant has a well-founded fear of being persecuted in Pakistan, it erred on a point of law by giving no weight to and dismissing the appellant's evidence with respect to the claim that the Taliban has targeted young men from Parachinar or Sunnis from Parachinar in circumstances where:*
        a. *there was an absence of country information evidencing the claim; and*
        b. *the Tribunal found, with respect to the credibility of the appellant, that "the applicant has given a reasonably consistent account of his background and the evidence that he says caused him to leave Pakistan" and that it preferred the appellant's "oral evidence given at hearing".*

    2. *The Tribunal erred on a point of law by failing to apply the considerations of internal relocation to the circumstances of the appellant's case. In particular, the Tribunal*

[19] BD 192 at [66].
[20] Ibid at [65].
[21] BD 193 at [78].
[22] Ibid at [79]-[80].
[23] BD 194 at [83].
[24] Ibid at [84].
[25] BD 195 at [91].

failed to properly consider whether it was reasonable to expect the appellant to return to and live in Tarnol. The failure to consider whether the appellant could reasonably be expected to return to Tarnol meant that the Tribunal could not make a final determination as to whether he appellant could be said to have a well-founded fear of persecution.

Particulars

The Tribunal found that Tarnol was the appellant's home area. On this basis the Tribunal considered that the relocation test was not relevant to its consideration of whether the appellant is recognised as a refugee. Having not been satisfied that there is any reasonable possibility of being persecuted in the event the appellant returned to his home region of Pakistan in the reasonably foreseeable future for any of the Convention reasons advanced, the Tribunal needed to consider whether it was reasonable to expect the appellant to return to Tarnol.

3. *In the alternative, the Tribunal erred on a point of law by applying the wrong standard of reasonableness of relocation to the appellant's circumstances.*

Particulars

In its assessment of the appellant's complementary protection claims, the Tribunal acknowledged the appellant's "somewhat impoverish existence involving financial disadvantage, marginal accommodation and limited opportunities since relocating to Tarnol" and that "he and his family have nevertheless received ongoing support in the form of accommodation provided by the relatives and material support from the UNHCR camp". Implicit in this finding is that living an impoverished existence involving financial disadvantage, marginal accommodation and limited opportunities as well as support from UNHCR is reasonable in the sense of being practicable in the appellant's circumstances. In doing so, the Tribunal applied the wrong standard in its conclusions at [88] of its decision.

THE SUBMISSIONS

25. In relation to ground 1, the Appellant submitted that country information is not determinative of a claim to refugee status, and must be tested against the evidence of the claimant. In this case, the Appellant was found generally to be a consistent and credible witness, yet the Tribunal gave no weight to the Appellant's evidence with respect to the Taliban targeting Sunni Muslims from Parachinar.[26] Instead, the Tribunal preferred the country information that suggested it was Sunnis from Parachinar who were being targeted, as opposed to Shias, stating:

> "*No country information in support of these contentions is to be found in the materials submitted to the Tribunal under the hearing Persecutions of Opponents of the Taliban appended to the submission of 4 March 2016; rather, this claim too relies on mere assertion by the applicant.*"[27]

[26] Appellant's Submissions at [27], [33].
[27] BD 193-194 at [80].

26. In relation to ground 2, during the course of the Appellant's oral submissions, it became apparent that the ground as articulated in the Appellant's Further Amended Notice of Appeal did not encapsulate the entirety of the ground. The hearing was adjourned to enable the Appellant to reframe the ground of appeal, and leave was granted for the Appellant to amend ground 2 in terms of the reframed ground handed up to the Court. The Respondent did not object to the amendment. The amended ground 2 reads as follows:

> "*The Tribunal erred on a point of law by failing to apply the considerations of internal relocation, in particular, the reasonableness of the appellant returning to Tarnol, in circumstances where the Tribunal failed to dispose of the claimed fear of harm in Parachinar because it presumed that the appellant would return to Tarnol.*"

27. The Appellant took the Court to [83] of the Tribunal Decision Record, where the Tribunal stated:

> "*On the basis of the applicant's own evidence that he has not actually had any problems with Shi'as since leaving Parachinar, and in the absence of any evidence to support the applicant's contention that he would be harmed as a failed asylum seeker either by the Taliban or the government itself, the Tribunal is not satisfied that there is any reasonable possibility of the applicant being persecuted for either of these reasons if he returns to Tarnol in the reasonably foreseeable future*".[28]

The Appellant submitted, therefore, that it was apparent that the Tribunal had not made any positive or negative finding as to whether the Appellant had a well-founded fear of persecution in Parachinar.

28. The Appellant submitted that this omission triggered a duty on the part of the Tribunal to consider the "reasonableness analysis" built into the internal relocation principles. Relying on *Minister for Immigration and Border Protection v SZSCA* ("*SZSCA*"),[29] and the United Kingdom authorities of *Januzi v Secretary of State for the Home Department*[30] and *E v Secretary of State for the Home Department*[31] cited therein, the Appellant submitted that a person is not to be found a refugee if there is a region within their home country where there is no appreciable risk of the well-founded fear, and, if so, it would be reasonable for the person to locate to that region upon return.[32] According to *SZSCA*, the same "reasonableness analysis" applies where a Tribunal identifies an area where the asylum-seeker may be safe, as long as he or she remains there.

29. In this case, the Appellant submitted, it was incumbent upon the Tribunal to consider the Appellant's living conditions in Tarnol, including that the family are accommodated in a tent, there is minimal opportunity of earning an income, they are unable to rely on family any further, they have no other social links to Tarnol, and there are a number of family members to support, which, collectively,

---

[28] BD 194 at [83].
[29] (2014) 254 CLR 317.
[30] [2006] 2 AC 426.
[31] [2004] QB 531.
[32] Appellant's Supplementary Submissions at [2].

constitute persecution in the form of undue hardship marked by economic destitution.[33]

30. The Appellant submitted that the Tribunal's consideration of whether it was reasonable to expect the Appellant to return to Tarnol was "cursory and hypothetical":

> "*The Tribunal also noted that even if the relocation test did apply to his situation, it was not clear why it would not be reasonably practicable for him to relocate to either Tarnol or Lahore, places where he seemed to have been able to safely live, and also worked and in the case of Lahore studied for two years. The applicant responded by asking why he would have come here if it were safe there. When the Tribunal suggested that he could simply have come here for a better life, the applicant replied that it was for both reasons, adding that humans don't know when they will die. He went to Lahore to study and get a certificate but nothing happened, and he came back. He thought at least he would get good job, but could only obtain work for a few hours at a time. He had a horrible life there.*"[34]

31. In relation to ground 3, the Appellant submitted that the Tribunal failed to consider the reasonableness of the Appellant returning to Tarnol in the context of his Convention claims. The Tribunal simply considered the question in the context of his complementary protection claims:

> "*In particular, while the Tribunal acknowledges that the applicant has endured a somewhat impoverished existence involving financial disadvantage, marginal accommodation and limited opportunities since relocating to Tarnol, he and his family have nevertheless received ongoing support in the form of accommodation provided by relatives and material support from the UNHCR camp where the family continues to [be] registered, and the applicant has also been able to temporarily relocate to and reside in Lahore where he was able to both study and support himself by working over a two year period. The applicant claims that some of the problems he has accessing education stemmed from his lack of documentation, but even that issue was resolved when he obtained identity documents in 2012.*"[35]

32. The Appellant submitted that, as a consequence, the Tribunal could not make a final determination as to whether the Appellant had a well-founded fear of persecution for a Convention reason.[36] The Appellant further submitted that the Tribunal erred in determining a "somewhat impoverished existence" in Tarnol to be reasonable. Hathaway and Foster in *The Law of Refugee Status*[37] have said that the "cultural context and the social and economic position of both the applicant and her persecutors", and "an inability to sustain an adequate standard of living", are relevant to whether it is reasonable to expect an Applicant to relocate.[38]

33. The Respondent submitted that ground 1 of the Appellant's Second Further Amended Notice of Appeal is simply a "thinly veiled invitation to this Court to

---

[33] Supreme Court Transcript at 17 – 18, 25; Appellant's Supplementary Submissions at [8].
[34] BD 189 at [46].
[35] BD 195 at [88].
[36] Appellant's Supplementary Submissions at [11].
[37] 2nd ed, Cambridge Uni Press, 2014.
[38] Appellant's Supplementary Submissions at [14]-[15].

engage in merits review of the Tribunal's decision".[39] The question of whether the Appellant's evidence was to be preferred over the country information (or lack thereof) was a question of fact that was the province of the Tribunal. The Respondent also noted that the Appellant's evidence was comprised of "mere assertions" without evidentiary foundation, as exemplified by the following statement in the Tribunal Decision Record:

> "*Similarly, the Tribunal indicated at the hearing that it was unaware of any evidence to suggest that young men or Sunnis from Parachinar were being targeted by the Taliban (as opposed to Shias from Parachinar). No country information in support of these contentions is to be found in the materials submitted to the Tribunal under the heading Persecution of Opponents of the Taliban appended to the submission of 4 March 2016; rather, this claim too relies on mere assertion by the applicant. The Tribunal is also not satisfied that this claim is made out.*"[40]

34. In relation to ground 2, the Respondent submitted that, as the Tribunal found Tarnol to be the Appellant's "home area", it was unnecessary to consider the internal relocation principles, including the "reasonableness analysis" that is incorporated into those principles.

35. The Respondent distinguished the authority of *SZSCA* on the facts. In that case, *SZSCA*, the Respondent in the High Court appeal did not have a well-founded fear of persecution in Kabul, but would risk persecution for a Convention reason if he were to travel on the roads outside Kabul, as he was required to do in the course of his employment as a truck driver. The High Court found that, given the novel circumstances, it was necessary to consider whether the Respondent could reasonably be expected to remain in Kabul. These circumstances included that the Tribunal found the Respondent had a real chance of persecution on the roads outside Kabul, but was "relatively safe" as long as he remained in Kabul. In particular, the Respondent directed the Court's attention to the following passage from that decision:

> "*The Tribunal in this case did not consider that the internal relocation principle applied, because the respondent already lived in Kabul. The Tribunal therefore did not consider the question whether the respondent could reasonably be expected to remain there and not transport materials on the roads outside Kabul, where he would be at risk of harm. This was an incorrect approach. Although the respondent had lived in Kabul since 2007, he had not been confined to that area and his work had taken him outside it. An expectation that he now remain within Kabul raises considerations analogous to those with which the internal relocation principle is concerned – specifically, whether such an expectation is reasonable*".[41]

36. The Respondent further took the Court to the Full Federal Court decision of *CSO15 v Minister for Immigration and Border Protection* ("*CSO15*"), which was said to underscore that the High Court's reasoning in *SZSCA* applies only in limited circumstances, namely, where the question arises of "*whether it is reasonable to expect or assume, as a matter of fact, that a claimant can or should act in a particular way, or live, or work, in a particular place or in particular*

[39] Respondent's Submissions at [15].
[40] BD 193-194 at [80].
[41] *SZSCA* at [29].

circumstances".[42] This may include whether it would be reasonable to expect or assume a claimant to return to a home area when the claimant "clearly indicated an intention" to return to another region.[43]

37. The Respondent submitted that such circumstances do not exist in this case, as the Tribunal did not find that Tarnol was a "safe area" within which the Appellant could reside safely within certain parameters,[44] and the Appellant did not identify Parachinar as a place to which he intended to return.[45] This being the case, the Tribunal did not need to engage in any "reasonableness analysis". The Respondent further submitted that the Appellant was on notice that the internal relocation principles would not be applied should the Tribunal find Tarnol to be the Appellant's home area. At the Tribunal hearing, a Tribunal member explained to the Appellant:

> "*Now, one of the issues that arises in this case is whether we have to consider relocation or not, and whether Parachinar is your home area or whether Tarnol has become your home area, because if Tarnol is your home area we just have to assess whether you are at risk of being persecuted there, and, if not then we don't have to consider whether the relocation principles, which are a set of legal principles that apply to internal relocation*".[46]

38. In relation to ground 3, the Respondent reiterated that it was unnecessary for the Tribunal to consider the reasonableness of the Appellant "relocating" to Tarnol.[47] Irrespective of this, the Respondent submitted that the Tribunal did consider whether it was reasonable to expect the Appellant to live in Tarnol, as evident through the following passages in the Tribunal Record:

> "*In particular, while the Tribunal acknowledges that the applicant has endured a somewhat impoverished existence involving financial disadvantage, marginal accommodation and limited opportunities since relocating to Tarnol, he and his family have nevertheless received ongoing support in the form of accommodation provided by relatives and material support form the UNHCR camp where the family continues to registered [sic], and the applicant has also been able to temporarily relocate to and reside in Lahore where he was able to both study and support himself by working over a two year period. The applicant claims that some of the problems he had accessing education stemmed from his lack of documentation, but even that issue was resolved when he obtained identity documents in 2012.*
>
> *The applicant's family has been in a somewhat impoverished but nevertheless stable situation from 2007 to the present, and there is no suggestion that during this period either the applicant or any other family member has been subject to prohibited treatment under the CAT, ICCPR or MOU such as torture, cruel, inhuman or degrading treatment or punishment, or arbitrary deprivation of life*".[48]

---

[42] *CSO15* at [27].
[43] Ibid at [54].
[44] Respondent's Submissions at [25].
[45] Supreme Court Transcript at ln 34.
[46] BD 164 at ln 26 – 32.
[47] Respondent's Submissions at [28].
[48] BD 195 at [88]-[89].

39. The Tribunal acknowledged that, while the Appellant's accommodation in Tarnol was modest, this did not preclude it from being considered a home.[49] The Respondent submitted that these findings were open to the Tribunal on the evidence, and reflect that the Tribunal applied the correct reasonableness test.[50]

CONSIDERATION

Ground One

40. Before the Tribunal, independent country information was provided on behalf of the Appellant but it was of limited extent, a fact that was raised explicitly with the Appellant by the Tribunal, eliciting a response from him about why he feared the Taliban. It was accepted in written submissions on behalf of the Appellant that, "It is correct to say that the material presented at the hearing, namely Appendix 1 to the submissions of the appellant: *Persecution of Opponents of the Taliban*, did not *specifically* address young men or Sunnis from Parachinar being targeted by the Taliban".[51]

41. The argument on behalf of the Appellant was that the Tribunal had erred by failing to give weight to the Appellant's evidence with respect to the propensity of the Taliban to target young men from Parachinar or Sunnis from Parachinar.

42. Reliance was placed on scholarly commentary that identifies that there are occasions when country information is not available and that in such cases the applicant's evidence may be the best, or even the only evidence of a well-founded fear. Some support for this clearly correct proposition is to be found in observations by Wilcox and Madgwick JJ in *Sellamuthu v Minister for Immigration and Multicultural Affairs.*[52]

43. However, it is the prerogative of the Tribunal to evaluate the weight it gives to the evidence of an applicant, including in the context of the absence of evidence which supports the applicant's claims. It was not to the point that the Tribunal in a number of respects found the Appellant to be credible. There is no requirement for a Tribunal to accept uncritically what is asserted by an applicant.[53] Even if it finds an applicant generally credible, it does not follow that it should or must accept what the applicant asserts in all respects, even if there are deficits in the availability of other evidence.

44. It is not appropriate for an appellate court to intervene on what is essentially an issue of credibility assessment that is the purview of the Tribunal. This ground fails.

Ground Two

---

[49] BD 192 at [66].
[50] Respondent's Submissions at [32].
[51] Appellant's Submissions at [23].
[52] (1999) 90 FCR 287 at 294 [24].
[53] See eg *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437 at 451-452.

45. In Ground Two the Appellant argues that the Tribunal fell into error by failing to apply the considerations of internal relocation, in particular, the reasonableness of the appellant returning to Tarnol, in circumstances where the Tribunal failed to dispose of the claimed fear of harm in Parachinar because it presumed that the appellant would return to Tarnol.

46. There was no substance to this argument because, on sound bases, the Tribunal determined that the home of the Appellant had become Tarnol:[54] the Appellant moved to Tarnol and lived, studied and worked there save for a period of time he spent working in Lahore when he still used Tarnol as his home base. It became his home. There was no good reason why the Tribunal should have considered Parachinar any longer to be his home. The reference point for the Tribunal's assessment of the Appellant's Convention-related and complementary protection claims was properly Tarnol.

Ground Three

47. The issue raised by the Appellant under Ground Three arose from the fact that the Tribunal found that Tarnol was the Appellant's home area and thus the relocation test was not relevant to determining whether he was to be recognised as a refugee. The Tribunal acknowledged the Appellant's "somewhat impoverished existence involving financial disadvantage, marginal accommodation and limited opportunities since relocating to Tarnol" and that "he and his family have nevertheless received ongoing support in the form of accommodation provided by the relatives and material support from the UNHCR camp".[55]

48. The argument of the Appellant was that it was incumbent on the Tribunal to consider not just whether the Appellant would face a real chance of persecution if returned to Tarnol but also the impact of the Appellant remaining in Tarnol. It was said that: "Addressing this question properly may have raised various issues for the Tribunal's consideration. At the very least, the question clearly directs attention to the appellant's ability to earn income from other sources and to his needs and those of his family."[56] It was contended that the Tribunal erred in failing to address what was necessary to determine whether it was reasonable to expect the Appellant to remain in Tarnol.

49. The criticism on behalf of the Appellant was that the Tribunal's description of the Appellant's financial accommodation and lifestyle difficulties was made in the context of his complementary protection claims, rather than his Convention-based claims – "Consequently the Tribunal could not make a final determination as to whether the appellant could be said to have a well-founded fear of persecution."[57]

---

[54] BD 192 at [66].
[55] BD 195 at [88].
[56] Appellant's Supplementary submissions at [8].
[57] Ibid at [11].

50. Notably, the Appellant asserted that his circumstances amounted to persecution in the form of "undue hardship marked by economic destitution" – this is not a recognised ground of persecution under the Refugees Convention.

51. Secondly, it was asserted that the Tribunal applied the wrong standard in assessing reasonableness of relocation, namely that a "somewhat impoverished existence" is unreasonable and that dependence on support from the UNHCR is unreasonable.

52. It was argued on behalf of the Appellant that the test of reasonableness of relocation in Nauruan refugee law has been set out authoritatively in *DWN 113 v The Republic of Nauru*, where the formulation of Hathaway and Foster was applied:

> "*Hathaway and Foster in The Law of Refugee Status, adopted the terminology 'protection' in the Convention and proposed four questions for consideration in determining whether another location within the country of nationality offers a real alternative available to an applicant:*
>
> *(a) is the proposed site of internal protection in fact accessible to the applicant (ie practically, safely and legally accessible)?*
> *(b) does it provide an antidote to the well-founded fear of being persecuted identified in the applicant's place of origin?*
> *(c) Is the quality of the internal protection available such that the applicant would not face a new risk of being persecuted or of being effectively forced back to her place of origin?*
> *(d) Is the home country able to provide affirmative state protection in line with international standards to the applicant in the proposed place of internal relocation?*
>
> *There is merit in their proposed assessment methodology.*" [58]

53. In respect of the second question, Hathaway and Foster assert that sensitivity to the cultural context and the social and economic position of the applicant is vital,[59] and in respect of the third question they noted that an inability to sustain "an adequate standard of living" is relevant to reasonableness.[60]

54. In addition, under the UNHCR Guidelines on International Protection, it is asserted that, in assessing "reasonableness", there should not be "undue hardship" experienced in the relocation area, and:

> "*It would be unreasonable, including from a human rights perspective, to expect a person to relocate to face economic destitution or existence below at least an adequate level of subsistence. At the other end of the spectrum, a simple lowering of living standards or worsening of economic status may not be sufficient to reject a proposed area as unreasonable.*"[61]

---

[58] [2016] NRSC 28 at [30].
[59] Hathaway and Foster, *The Law of Refugee Status* (2nd edition, Cambridge 2014), p 344.
[60] Ibid p 349.
[61] UNHCR, Guidelines on International Protection: Internal Flight or Relocation Alternative within the Context of Article 1A(2) of the 1951 Convention and/or Protocol Relating to the Status of Refugees, 23 July 2003, 5 at [22].

55. The UNHCR Guidelines also note that "receiving international assistance in one part of the country is not of itself conclusive evidence that it is reasonable for the claimant to relocate there."[62]

56. This combination of considerations led the Appellant to submit that the Tribunal did not direct itself or satisfactorily or properly direct itself to the reasonableness of the particular circumstances of the Appellant in terms of the Appellant having no established dwelling, being reliant on UNHCR handouts, being unable to obtain meaningful work or regular work, being paid very little and not enough on which to survive, and relatives having given all that they could give. Thus, the argument was that the Tribunal had applied the wrong test of relocation.

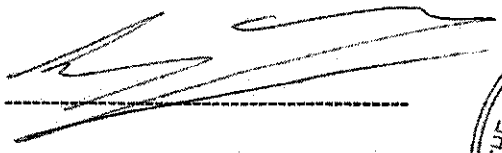
57. However, it was a matter for the Tribunal whether it was of the view that it was unreasonable for the Appellant to return to his latterly assumed home area in Pakistan. It is apparent that the Tribunal considered the circumstances overall of the Appellant in Tarnol. It found that he was not at risk of persecution in any part of Pakistan and noted that he had lived in Tarnol from 2007 to 2013 and that he had furthered his education while based in Tarnol, and been employed there.[63]

58. While it is quite apparent that the circumstances of the Appellant would be difficult from a financial and lifestyle point of view upon return to Tarnol, even if the analogy to the relocation principle were to apply, there is no reason to conclude as a matter of law that the Tribunal erred in its analysis of whether it was unreasonable for the Appellant to return to Tarnol. His situation in Tarnol is financially marginal but is not unreasonable by reference to the Hathaway and Foster principles, and does not constitute such a level of destitution or subsistence as to qualify for unreasonableness.

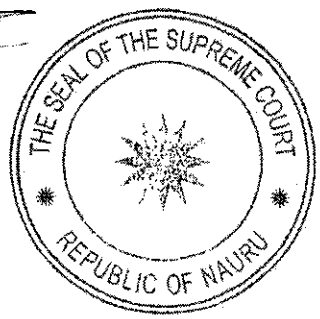
59. This ground therefore does not succeed.

CONCLUSION

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



Justice Ian Freckelton
Dated this 19th April day of 2018



[62] Ibid 7 at [31].
[63] BD 189 at [45].