IN THE SUPREME COURT OF NAURU

AT YAREN

Case No. 29 of 2017

IN THE MATTER OF an appeal against a decision of the Refugee Status Review Tribunal TFN T16/00365, brought pursuant to s 43 of the *Refugees Convention Act 2012*

BETWEEN

PIM 061 Appellant

AND

THE REPUBLIC Respondent

Before: Justice I Freckelton

Appellant: Ms Catherine Symons
Respondent: Mr Rogan O'Shannessy

Date of Hearing: 21 – 22 March 2018
Date of Judgment: 14 December 2018

CATCHWORDS

APPEAL – failure to consider evidence – irrational or unreasonable fact-finding – inadequate reasons under s 34(4) of the Act – 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 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 set out in s 44 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 26 June 2017 affirming the decision of the Secretary of the Department of Justice and Border Control ("the Secretary") of 1 December 2015, that the Appellant is not recognised as a refugee under the 1951 Refugees, and is not owed complementary protection under the Act.

6. The Appellant filed a Notice of Appeal on 7 July 2017 and an Amended Notice of Appeal on 19 February 2018.

BACKGROUND

7. The Appellant is a married man from Tehran, Iran, of Persian ethnicity and Shi'a Muslim religion. The Appellant's wife has applied for derivative status as a dependent of the Appellant.

8. The Appellant claims a fear of harm arising from disobeying and assaulting his employer, who was a Basij Commander, his conversion from Islam to Christianity, his status as a failed asylum-seeker, and from the disclosure of his

personal information by the Australian Department of Immigration and Border Protection ("DIBP") on a DIBP website in February 2014.

9. The Appellant travelled to Australia via Dubai and Indonesia in June 2013. In March 2014, the Appellant was transferred to Nauru for the purposes of having his claims assessed.

INITIAL APPLICATION FOR REFUGEE STATUS DETERMINATION

10. The Appellant attended a Refugee Status Determination ("RSD") interview on 10 July 2014. The Secretary summarised the material claims presented at that Interview as follows:

    - *The Applicant fears harm because he refused to follow the orders from Haj Ali who was his superior when the Applicant worked for the Basij. The Applicant got into a scuffle with Hai Ali and pushed him against a wall.*
    - *Since the Applicant's father passed away the Applicant became responsible for the family so he could not do compulsory military service. Therefore he joined the Basij in 2010 to reduce his military service.*
    - *In 2013 they stopped a car with two girls and a boy, the music was loud and the girls were inappropriately dressed. They took them to the Basij headquaters. Hai Ali started to beat the boy, he was injured badly. The Applicant told Haj Ali the boy needed medical attention. Hai Ali was upset with the Applicant because he questioned him in front of others. Haj Ali got angry and slapped the Applicant. The Applicant pushed him against a wall and Haj Ali fell and injured his head.*
    - *The Applicant fled and went to his aunt's for three days. The Applicant's brother Behzad told him the Basij had stormed their house and took their brother Mehdi because they could not find the Applicant.*
    - *The Applicant went to another city and hid at his cousin's house.*
    - *Thirteen days later the Applicant found out his brother had been beaten very badly and died in hospital.*
    - *The Applicant knew he could not return to Tehran. He was unemployed for seven months as he could not show his ID to get a job. His mother sold their house so he could leave the country. He left the country on his younger brother Behzad's passport.*[1]

11. The Secretary accepted the Appellant's personal details were released as part of a data breach by the DIBP. However, the Secretary rejected the claims that the authorities were pursuing the Appellant because he disobeyed his boss, that the Appellant departed Iran on his brother's passport, that the brother's death was in the circumstances as claimed by the Appellant, and that the Appellant failed to complete his military service.[2]

12. In making these adverse findings, the Secretary took into account the following:

    - the Appellant waited seven months after the brother's death to depart Iran;[3]

[1] Book of Documents ("BD") 129 – 130.
[2] Ibid 142.
[3] Ibid 130.

- in the Appellant's RSD statement, and at the beginning of the RSD interview, the Appellant said he believed the authorities were pursuing him, but later in the interview said he was not sure if this was the case;[4]
- the Appellant said he was able to depart Iran on his brother's passport when he did not look like his brother, he did not pay a bribe or resort to any other acts of corruption, and an outstanding warrant and summons had been issued;[5]
- the Appellant's evidence as to the possession and content of the warrant and summons suggested the documents were not genuine, as country information indicates defendants are not given a copy of the warrant, and the warrant does not detail the reason for the warrant being issued;[6]
- it was implausible that the Appellant would have been unaware of the content of the warrant and summons as claimed, given they were purportedly issued in 2012;[7]
- the length of time it took for the Appellant to obtain copies of the warrant and summons, and country information showing fraudulent documents are easily obtainable in Iran;[8]
- the date of the brother's death on his death certificate was 30 June 2012, whereas the Appellant claimed that his brother passed away on 31 August 2012. The Appellant also claimed to have departed Iran seven months after the death, which would make the brother's date of death in November or December 2012;[9]
- it was doubtful that the Appellant would not have inquired as to the exact cause of the brother's death as claimed, and that the cause of the death would be left blank on the death certificate;[10] and
- country information indicated military service includes serving with the Basij, as the Appellant has done, and given his family circumstances, it was unlikely the Appellant would have needed to cease his service to support his family.[11]

13. These findings were inconsistent with the Appellant's claims to fear persecution because he disobeyed his boss, departed Iran on his brother's passport, and failed to complete his military service.

14. The Secretary then considered the Appellant's claim to fear harm as a failed asylum-seeker, and found that country information, on balance, did not suggest that failed asylum-seekers would face harm purely on the basis of having sought asylum in the West. However, political activists with a high profile are more likely to attract the attention of the authorities.[12] The Appellant's low political profile, combined with the findings that the Appellant did not depart Iran illegally,[13] and that his personal information disclosed during the DIBP data breach was not

[4] Ibid 131.
[5] Ibid 133.
[6] Ibid 136.
[7] Ibid.
[8] Ibid 137.
[9] Ibid 139.
[10] Ibid 140.
[11] Ibid 141–142 .
[12] Ibid 144.
[13] Ibid 146

readily accessible,[14] suggested that the Appellant was not at risk of harm because of his actual or imputed anti-government political opinion due to seeking asylum in the west.[15] The Appellant did not have a well-founded fear of persecution on account of being a failed asylum-seeker and was not eligible for refugee status.[16] The Secretary was similarly satisfied that the Appellant was not eligible for complementary protection.[17]

REFUGEE STATUS REVIEW TRIBUNAL

15. On 3 and 4 March 2017, the Appellant appeared before the Tribunal to give evidence and present arguments. His hearing was held jointly with that of his wife, but he was given the opportunity to give evidence in the absence of his wife. The Tribunal did, however, express doubts as to whether the Appellant was actually married to his "wife". Following the RSD interview, the Appellant claimed that he and his wife had been married under a *Sigeh*, or a temporary marriage, which ended one year before they departed Iran.[18] The Appellant's explanations as to why they did not enter a permanent marriage were illogical and contradictory, leading the Tribunal to find that, while the Appellant and his wife were in a relationship, it was unclear whether they were actually married.[19]

16. The Tribunal also expressed doubts as to the veracity of the attack on Haj Ali, noting that the Appellant's evidence as to the events leading to the attack varied throughout the process, from saying that Haj Ali only verbally abused the girls who were dressed inappropriately, to saying he also physically abused them by grabbing their clothes and touching them.[20] In relation to the death of the Appellant's brother, the Tribunal was troubled in the same way that the Secretary had been: it questioned why the cause of death on the death certificate was blank, and rejected the assertion that the circumstances of the brother's death were as claimed.[21] The Tribunal further questioned why the Appellant did not flee Iran until seven months after his brother's death, or the settlement of his mother's apartment five months before his departure.[22]

17. The Tribunal expressed serious concerns about the Appellant's claim that he departed Iran on his brother's passport, noting country information that the Iranian airport conducts comprehensive security screening. This was inconsistent with the Appellant's claim to have been detained for interrogation for 2.5 hours, before then being allowed to go without producing any evidence of his identity.[23] Further noting that the Appellant failed to produce a photo of his itinerary in his brother's name before the Tribunal hearing, and in any case the provenance of the itinerary was questionable, the Tribunal did not accept that the Appellant

[14] Ibid 147.
[15] Ibid 148.
[16] Ibid 149.
[17] Ibid 150.
[18] Ibid 508 at [26].
[19] Ibid 509 at [32].
[20] Ibid 512 at [41]-[42].
[21] Ibid at [43].
[22] Ibid at [44].
[23] Ibid 515 at [58].

departed on his brother's passport.[24] The Tribunal expressed similar concerns as to the provenance of the summons and arrest warrant, given their late addition to his RSD claims, and found the documents to be fraudulent.[25]

18. Deficiencies in the Appellant's evidence as to the purported exemption for members of the Basij from military service, and his involvement with the Basij, also led the Tribunal to conclude that the Appellant was not a member of, or active in, the Basij.[26]

19. On the basis of these findings, the Tribunal found that the Appellant did not have a well-founded fear of being persecuted by reason of his political opinion, membership of any particular social group, or for any other Convention reason.[27]

20. As to the Appellant's claimed fear of harm on religious grounds, the Tribunal noted, despite previous claims to be a Shi'a Muslim, that on 20 October 2015 the Appellant and his wife submitted further claims that they had converted to Christianity and been baptised on Nauru in October 2015.[28] The Tribunal said that if they were to participate in Christian activities in Iran, a perception of their being apostates had the potential to arise and a fear of persecution could be "well-founded".[29] However, the Tribunal doubted the genuineness of the Appellant's conversion to Islam for a number of reasons, including that he nominated his religion as Shi'a Muslim in his transfer interview and RSD statement;[30] the Appellant was baptised three weeks after his removal to Nauru from Australia, where he came into contact with Christians and Christianity;[31] the Appellant was unable to describe the Christian faith in anything other than cursory detail;[32] and the Appellant did not show any spiritual connection to Christianity.[33] The Tribunal was not satisfied that the authorities would become aware of the Appellant's purported conversion, or that there was any reasonable possibility of the Appellant being persecuted because of any conversion, or his membership of the particular social group of Christians.[34] Similarly, there was no reasonable possibility of his being persecuted on the basis of his posting anti-regime images or Christian posts on his Facebook page, noting the page was not under his full name.[35]

21. As to the Appellant's claimed fear of harm as a failed asylum-seeker, the Tribunal noted country information indicating that seeking asylum outside Iran is not an offence, and that only those with a political profile may be subject to any possible mistreatment,[36]. It therefore found that, in light of the Appellant's low political

[24] Ibid.
[25] Ibid 516 at [60].
[26] Ibid 518 at [64].
[27] Ibid at [67].
[28] Ibid 505 at [14].
[29] Ibid 524 at [98].
[30] Ibid 525 at [101]
[31] Ibid at [102].
[32] Ibid 526 at [103].
[33] Ibid at [105].
[34] Ibid 528 at [114].
[35] Ibid at [117].
[36] Ibid 529 at [119].

profile, he would not be subject to anything more than questioning upon return.[37] The Tribunal found that there was no reasonable possibility the Appellant would be persecuted because he had applied for asylum in Australia and Nauru and because he would be returning as a failed asylum-seeker.[38]

22. In conclusion, the Tribunal found that the Appellant's fear of harm because of disobeying and assaulting his boss, his conversion from Islam to Christianity, and being a failed asylum-seeker whose personal information was disclosed in the DIBP data breach, were not well-founded. Thus it concluded that the Appellant was not a refugee within the meaning of the Convention.[39]

23. With respect to complementary protection, the Tribunal noted that the Appellant has a chronic medical condition, which resulted in his travel to Australia for medical attention. However, it did not consider that medical services in Iran would be unable to treat the Appellant.[40] Neither this, nor any other treatment the Appellant may encounter upon arrival in Iran, would amount to torture, or cruel, inhumane or degrading treatment. This meant that the Appellant was not owed complementary protection.[41] His wife was not entitled to derivative status.[42]

THIS APPEAL

24. The Appellant's Amended Notice of Appeal filed on 19 February 2018 reads as follows:

    1. *The Tribunal made errors of law in its decision by making adverse credibility findings against the appellant that were reached without any logical or probative basis; were made unreasonably; and/or were arrived at on a misapprehension of the appellant's evidence.*

    Particulars

    a. *The Tribunal made the dispositive finding that it did not accept that the appellant had genuinely converted to Christianity.*
    b. *The Tribunal made the dispositive finding by considering the appellant's 'circumstances as a whole', which reflected and incorporated the Tribunal's earlier finding that the appellant 'approached the conversion and baptism as a means to strengthen his claims for protection rather than from a deeply held belief and faith' (BD 525 – 526 [102]).*
    c. *In arriving at this conclusion, the Tribunal identified concerns with the appellant's evidence that he had not spent much time with the Church congregation or Pastor prior to being baptised and that he had acted with 'haste' in order to be baptised.*
    d. *However, the Tribunal failed to refer to the appellant's testimonial evidence that was directed at and capable (if believed) of redressing or overcoming such concerns:*

[37] Ibid 530 at [125]; BD 533 at [127].
[38] Ibid 433 at [127].
[39] Ibid 534 at [132].
[40] Ibid at [135].
[41] Ibid 535 at [137].
[42] Ibid at [139].

i. the appellant gave evidence at the hearing that provided an explanation as to why the constitution of the Church and the identity of the Pastor was not significant; and

ii. the appellant gave evidence (on a number of occasions) that he did not seek to hasten his baptism but instead had been convinced to take this course by the Pastor who had baptised him.

e. The failure of the Tribunal to refer to and consider this evidence in its decision amounted to an error of law.

2. The Tribunal erred on a point of law by failing to give adequate reasons for its decision.

Particulars

a. The appellant refers to and repeats particulars (a) to (d) subjoined to ground 1 above.

b. The Tribunal failed to expose the path of reasoning for the findings expressed (BD 525 – 526 [102]), including so as to allow for the identification of further legal error in the process of reasoning and/or evaluation adopted by the Tribunal in making an assessment as to the Appellant's approach to conversion and baptism.

25. The passage of the Tribunal Decision Record at the core of the Appellant's complaints is at [102], in which the Tribunal said:

> "*The Tribunal holds deep concerns about his baptism. As established with the applicant, this occurred some 2-3 weeks after he arrived back in Nauru. As the applicant had said, and as confirmed in his letter, William Ho had told the applicant in Sydney that he should do further research and attend classes before being baptised, and the applicant said that he accepted this. The applicant was then removed to Nauru and attended, at most, three Church services and three Bible classes prior to his baptism. The applicant's response that he felt personally ready to be baptised in Sydney but William told him he was not ready and so he did not get baptised out of respect, and then he went to Church and some classes in Nauru, does not address these concerns. The applicant did not demonstrate that he had, as he put it, developed the foundation during a long period. The Tribunal is also troubled by his evidence that it didn't matter that he had not spent much time with the Church congregation or Pastor prior to being baptised, and the Tribunal finds that the applicant's haste to be baptised, and his lack of concern for building a relationship with the congregation or pastor is indicative of a mechanical approach to the process of conversion. This causes the Tribunal to be concerned that the applicant approached the conversion and baptism as a means to strengthen his claims for protection rather than from a genuinely, deeply held belief and faith."*

26. The Appellant submits that this passage indicates that the Tribunal rejected the Appellant's claimed conversion to Christianity for two key reasons:

- the Tribunal was "troubled" by the Appellant's evidence that it did not matter that he had not spent much time familiarising himself with the Church or Pastor before being baptised, and considered that he took a "mechanical approach" to conversion";[43] and

[43] Ibid 526 at [102].

- the Appellant acted with "haste" to be baptised.[44]

27. Counsel for the Appellant contended that the Appellant gave evidence to the Tribunal capable of refuting the premise for each of these reasons. In particular, the Appellant drew the attention of the Court to the following exchange at the Tribunal hearing regarding the short period of time between arriving in Nauru and making the decision to get baptised:

> "*TRIBUNAL MEMBER: I suppose the point is that you arrived in Nauru and then, one or two weeks later, after only having gone to church a few times, said to the pastor, "I'm ready to be baptised".*
>
> *INTERPRETER: You mean it was a short period of time.*
>
> *TRIBUNAL MEMBER: It seems a short period of time to go into that church, to get to know that pastor, to come to the view that you were ready to be baptised in that church by a pastor.*
>
> *INTERPRETER: So I need to re-emphasise that I start the process when I have been in Sydney, but I do believe that there is no difference between churches. The holy building is a holy building and there is not difference between the pastor. But the pastors cannot do any harm to be me and I-I-I do believe that there is no reason to be fearful of any of the –the pastors*."[45]

28. The Appellant submitted that the Appellant's explanation that, in his belief, there is no difference between churches and pastors is responsive to the Tribunal's concerns regarding the timing of the baptism.[46]

29. Regarding the purported "haste" with which the Appellant acted to get baptised, the Appellant submitted that the following exchange reveals that the Appellant was, in fact, prepared to delay the baptism to a date when he could be baptised in the sea:

> "*TRIBUNAL MEMBER: So a week before you got baptised, you said you were – you said to the pastor that you wanted to be baptised.*
>
> *INTERPRETER: Yes.*
>
> *TRIBUNAL MEMBER: And you believed you were ready to be baptised?*
>
> *INTERPRETER: Yes, and I can tell you that I tried to collect more information. Whatever I collect I got more interested and I even ask Pastor Richard that if it is possible to postpone it in a few days and take me to the sea. I don't know why. I have an understanding if I am going to be baptised in the sea it is more valuable for me, and he said there is no difference to be baptised in the sea or not, and he baptised us the same day.*
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> *TRIBUNAL MEMBER: Why did you want to be baptised in the sea?*

[44] Ibid.
[45] BD 418 at ln 38 – BD 419 at ln 5.
[46] Supreme Court Transcript Part 1 6 at ln 30 – 36.

INTERPRETER: I don't know exactly. It was my belief that if I be baptised in the sea they can put my head down and take me from the sea water. It was my understanding, and he said there is no difference, and I agreed to do in the same day.

TRIBUNAL MEMBER: So if that was your belief or that's what you wanted, why didn't that happen?

INTERPRETER: So I told about my preference. I don't know. And the Pastor Richard told me that there is no difference between the sea or anywhere else and because I am a new believer in a new religion for me, what the – the pastor told me, I agree with. There will be – be no question.

TRIBUNAL MEMBER: But why not be baptised as you would prefer to be baptised? I mean, was there a hurry to be baptised?

INTERPRETER: I was not in a rush. To – to clarify for you the matter. I – I was not in a rush. I was not in a hurry. Even I ask him, "If you do have a time, I'm happy to come here the week after and you can take me to the sea", and he said, "No, there is no difference. You can go for baptism today". [47]

30. In the Appellant's submission, both of the reasons identified in [102] of the Tribunal Decision Record (set out at [26] above), as well as the other reasons identified at [100] to [109] (set out at [20] above), acted cumulatively in leading the Tribunal to conclude at [110] that it "does not consider it credible, and does not accept, that the applicant has genuinely converted to Christianity". The Appellant relied on the Full Court of the Australian Federal Court authority of *ARG15 v Minister for Immigration and Border Protection* to submit that a tribunal may rely upon a "series of adverse findings in coming to its ultimate conclusion", with no single finding capable of influencing the decision entirely on its own.[48] This being the case, if error is found with respect to one of those reasons or adverse findings, the decision cannot stand, and the matter must be remitted to the Tribunal for reconsideration, if "these were findings that could not be relevantly isolated or quarantined from one another."[49].

31. The Appellant submitted that, in failing to refer to this evidence in its reasons for decision, the Tribunal erred in three ways. Firstly, it failed to refer to evidence that was cogent and central to the Appellant's review, given its potential to alter the Tribunal's view of whether the Appellant's conversion to Christianity was genuine. The Appellant relied upon the decision of Robertson J in *Minister for Immigration and Citizenship v SZRKT* ("*SZRKT*") as support for the proposition that the "failure to deal" with a ground of review applies to claims, as well as evidence, and that "[t]he fundamental question in each case must be the importance of the material to the exercise of the tribunal's function, and thus the seriousness of any error".[50]

[47] BD 417 at ln 14 – BD 418 at ln 2.
[48] [2016] FCAFC 174 at [74].
[49] Supreme Court Transcript 9 at ln 28 – 29.
[50] [2013] FCA 317 at [111].

32. Secondly, it was said to be an example of irrational, unreasonable, and arbitrary fact-finding, as the Tribunal failed to refer at all to evidence that was capable of affecting the Tribunal's reasoning as to the Appellant's conversion claim; see *Minister for Immigration and Border Protection v Stretton* ("*Stretton*") at [11].[51]

33. Thirdly, the Appellant submitted that the failure to refer to this evidence resulted in a failure on the part of the Tribunal to give adequate reasons for its decision as it was obliged to do pursuant to s 34(4) of the Act. The Appellant relied in this regard upon the decision of Crulci J in *DWN 008 v Republic of Nauru* ("*DWN 008*"), in which her Honour held that compliance with s 34(4) is necessary to enable "the appellant to understand the reasoning and process of the Tribunal and also affords the appellant the opportunity to properly construct an appeal against the decision if an error or errors of law are disclosed".[52]

34. The Respondent submitted that the Tribunal accurately recorded and considered the Appellant's evidence on the timing of his baptism, including his lack of concern as to the church at which he was to be baptised, and which pastor was to perform the baptism. This consideration is found at [85] of the Tribunal's reasons:

> "*The Tribunal noted that, if the baptism was 11 October or 18 October, his statement said he had told the Pastor a week before that that he wished to be baptised, and the applicant agreed. The Tribunal observed that if he was baptised on 11 October or 18 October, he was returned to Nauru on 25 September, so it appeared that he was baptised only 2 – 3 weeks after coming to Nauru and starting to attend church, which seemed quite a short period of time. The applicant asked what the problem was. The Tribunal noted that the previous day he had said he had been going to the classes for 4 – 6 weeks before baptism, but it was at most 3 weeks. This meant that he arrived back in Nauru, and then one or two weeks later, after only going to the church a few times, he had said to the pastor that he was ready to be baptised. In the Tribunal's view this seemed a short period of time to go to that church, to get to know that pastor and to form the view that he was ready to be baptised. He said he needed to re-emphasise that he started the process in Sydney, there was no difference between the church or the pastor, a holy building is a holy building, the pastors cannot do any harm to him and he does [not] (sic) believe there is any reason to be fearful of any of them."*

35. The Respondent submitted that the Tribunal's observation that the Appellant acted with "haste" to be baptised ties in directly with the Appellant's lack of concern for the circumstances of his baptism, in that the Appellant's lack of concern for those circumstances could be attributed to his wish to be baptised quickly. Concerning the exchange at the Tribunal hearing highlighted by the Appellant (set out at [29] above), the Respondent asserted that this was in the context of a discussion of whether the Appellant could be baptised in the sea, and was not capable of rationally affecting the Tribunal's conclusion that the baptism was "hasty".[53]

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[51] [2016] FCAFC 11.
[52] [2016] NRSC 13 at [22].
[53] Supreme Court Transcript Part 1 23 at ln 13 – 18.

36. Irrespective of the view taken by the Court as to whether the evidence given by the Appellant was considered by the Tribunal, the Respondent argued that the evidence was not sufficiently material to the question of whether the Appellant's conversion was genuine to give rise to a point of law.[54]

37. Regarding the Appellant's claims based on irrational or unreasonable fact-finding, the Respondent contended that the Tribunal's ultimate rejection of the Appellant's claimed conversion to Christianity at [110] was informed by a number of factors, and having regard to the process of reasoning, the claim that the Tribunal had engaged in irrational or unreasonable fact-finding could not be sustained. The Respondent identified seven factors, aside from those pointed to by the Appellant, that led the Tribunal to its conclusion, namely:

    - at the RSD interview, the Appellant said he was a Shi'a despite having claimed to have rejected Islam prior to leaving Iran;
    - the Appellant converted to Christianity as a means of strengthening his claims for protection;
    - the Appellant failed to give any persuasive evidence of his spiritual journey towards Christianity;
    - the inability of the Appellant to detail any discussions of the matters he had with Mr William Ho regarding Christianity;
    - the Appellant's inability to indicate he had contemplated the significance of baptism to him;
    - the Appellant's poor knowledge of Christianity; and
    - the rejection of other potentially corroborative evidence, including a letter from Mr Ho, the tattoo of a cross on the Appellant's chest, and the evidence of the Appellant's wife.

38. The Respondent also submitted that the failure of the Tribunal to give adequate reasons is not a "point of law" for the purposes of s 43(1) of the Act. In this regard, the Respondent relied upon *Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Palme* ("*Palme*")[55] as authority for the proposition that the failure to provide adequate reasons does not impeach a decision of an administrative tribunal per se, as it is an act that follows the making of the decision, and is therefore posterior to the decision-making process.[56] However, it may lead to an order of mandamus requiring the provision of adequate reasons.[57] To the extent the judgment of Crulci J in *DWN 008* says otherwise, the Respondent submitted that her decision is plainly wrong and ought not be followed.[58]

CONSIDERATION

Ground One

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[54] Ibid 23 at ln 24 – 30.
[55] (2003) 216 CLR 212.
[56] Supreme Court Transcript Part 2 9 at ln 26 – 36.
[57] *Palme* at [48]. See also *Public Service Board of NSW v Osmond* (1986) 159 CLR 656; *Avon Downs Proprietary Limited v The Federal Commissioner of Taxation* (1949) 78 CLR 353.
[58] Supreme Court Transcript Part 1 26 at ln 18 – 20.

39. The Tribunal is asserted to have made errors of law in its decision by making adverse credibility findings against the Appellant without any logical or probative basis; or unreasonably; or on the basis of a misapprehension about the Appellant's evidence.

40. The task for this Court is to have regard to the decision and the conclusions reached in determining whether, amongst other other things, there is unreasonableness. In that regard it needs to ask the question whether the decision "has the character of being unreasonable, in sufficiently lacking rational foundation, or an evident or intelligible foundation, or in being plainly unjust, arbitrary, capricious, or lacking common sense having regard to the terms, scope and purpose of the statutory source of the power, such that it cannot be said to be within the range of possible lawful outcomes as an exercise of that power."[59]

41. However, the Tribunal made adverse findings on a variety of identified bases relating to the Appellant's alleged conversion to Christianity within a short time frame.

42. The key paragraph complained about by the Appellant is [102] of the Tribunal's reasons.

43. The Tribunal's reasoning in this paragraph, and at [101] and [103]–[109], led it to the ultimate conclusion at [110] that:

> "*Looking at the applicant's circumstances as a whole the Tribunal does not consider it credible, and does not accept, that the applicant has genuinely converted to Christianity. Therefore it does not accept he will practise that religion if he returns to Iran, or that he would wish to do so. He would not disclose his claimed conversion or his baptism.*"[60]

44. The Appellant has contended that the Tribunal's reasoning was cumulative and that if aspects of that reasoning were defective, the outcome should fall as being, amongst other things, illogical or unreasonable. In the context of components of the reasoning process, the issue is whether the material in question is sufficiently important or serious by way of error to justify an inference of illogicality or unreasonableness.[61]

45. The Appellant makes two specific complaints. The first is that the Tribunal failed to consider a response that the Appellant gave to the Tribunal in response to the comment that one or two weeks was not a long time to get to know a new pastor and a new congregation, that response being:

> "*So I need to re-emphasise that I start the process when I have been in Sydney, but I do believe that there is no difference between churches. The holy building is a holy building and there is not difference between the pastor. But the pastors cannot do any harm to be me and I-I-I do believe that there is no reason to be fearful of any of the –the pastors."*[62]

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[59] *Stretton* at [11].
[60] BD 527 at [110].
[61] *SZRKT* at [111].
[62] BD 419 at ln 1 – 5.

46. In this context, the fact that the Tribunal failed to refer to the baptism in the sea option is in no sense unreasonable or illogical. Nor is the fact that it did not incorporate the Appellant's answer in its reasoning in a way which was to his advantage in its assessment of his credibility. Nor does it betoken any form of misapprehension.

47. On the contrary, the Tribunal summarised the exchange accurately at [85] (see [34] above). It is apparent that the Appellant's evidence explained the Appellant's lack of concern but for the Tribunal the issue was the actual lack of concern. In this respect the Appellant failed to discharge the onus to show unreasonableness or illogicality or any form of misapprehension in the Tribunal's reasoning process.

48. The Appellant also complains that his haste in securing his baptism was misconstrued. The concern of the Tribunal was that the Appellant accepted advice from a person whom he respected that he should deepen his knowledge of Christianity before being baptised and yet he pursued baptism within two to three weeks of arriving in Nauru after attending at most three church services and a similar number of Bible classes. It summarised its concern at [102] (see [25] above). This was a separate matter to the Appellant's wish to be baptised at sea but his being persuaded that this would make no spiritual difference.

49. In this context, the fact that the Tribunal failed to refer to the baptism in the sea option is in no sense unreasonable or illogical. The issue was the expedition in the baptism in the particular circumstances. This argument has no merit.

Ground Two

50. There is considerable authority on the existence or otherwise of a common law duty on an administrative decision-maker to provide reasons for an administrative decision. In *Public Service Board of NSW v Osmond*, for instance, Gibbs CJ, with whom Wilson, Brennan, Deane and Dawson JJ agreed, said:

> "*There is no general rule of common law, or principle of natural justice, that requires reasons to be given for administrative decisions, even decisions which have been made in the exercise of a statutory discretion and which may adversely affect the interests, or defeat the legitimate or reasonable expectations, of other persons. That this is so has been recognized in the House of Lords (Sharp v. Wakefield [1891] AC 173, at 183; Padfield v Minister of Agriculture, Fisheries and Food [1968] UKHL 1; [1968] AC 997, at pp 1032-1033, 1049, 1050-1054 and 1061-1062) and the Privy Council (Minister of National Revenue v Wrights' Canadian Ropes, Ltd [1947] AC 109, at p 123); in those cases, the proposition that the common law does not require reasons to be given for administrative decisions seems to have been regarded as so clear as hardly to warrant discussion. More recently, in considered judgments, the Court of Appeal in England has held that neither the common law nor the rules of natural justice require reasons to be given for decisions of that kind: Reg v Gaming Board, Ex parte Benaim (1970) 2 QB 417, at pp 430-431; Payne v Lord Harris (1981) 1 WLR 754, at pp 764, 765; 2 All ER 842, at pp 850-851. It has similarly been held that domestic tribunals are not bound to give reasons for their decisions; see McInnes v Onslow-Fane (1978) 1 WLR 1520; 3 All ER 211 and earlier authorities*

collected in Pure Spring Co. Ltd. v. Minister of National Revenue (1947) 1 DLR 501, at pp 534-535."[63]

51. However, where there is a statutory obligation for a decision-maker to give reasons, the failure to do so may constitute an error of law, subject to the limitation enunciated by the plurality of the High Court in *Palme.*[64] So much was concluded by the Full Court of the Australian Federal Court in *Re John Hugh Michael Dornan; Reginald Chester Crowe and Extended Hours Pharmacies Association v JM Riordan; MA Jackson; JR Richardson and the Commonwealth of Australia*, where Sweeney, Davies and Burchett JJ said:

> "*Notwithstanding an observation to the contrary by Brennan J in his dissenting opinion in Repatriation Commission v O'Brien [1985] HCA 10; (1985) 58 ALR 119 at pp 136-7, the law appears to us to be that a substantial failure to state reasons for a decision, in the circumstance that a statement of reasons is a requirement of the exercise under the statute of the decision-making power, constitutes an error of law…*"[65]

52. More recently in *Civil Aviation Safety Authority v Central Aviation Pty Ltd*, Bennett, Flick and McKerracher JJ held that:

> "*A failure to state reasons for a decision – at least in those circumstances where a statement of reasons is a requirement of the exercise of the decision-making process – constitutes an error of law: Preston v Secretary of Family and Community Services (2004) 39 AAR 177 at [21] per Stone J; Hill v Repatriation Commission (2004) 207 ALR 470 at 474 per Mansfield J.*"[66]

53. These authorities are good law also in Nauru.

54. However, a statement of reasons for a decision does not require that every matter raised by a party must be referred to, evaluated and made the subject of explicit acceptance or rejection by a tribunal.

55. Further, the fact that a tribunal fails to make reference to a matter does not justify a finding of inadequacy of reasons unless the omitted matter was sufficiently central or important. In both of these instances, the material did not reach such a status and the essence of the Tribunal's evaluative process in respect of the Appellant's credibility was sufficiently clearly enunciated in its reasons.

Summary of Decision

56. In summary, I reject the proposition that the reasoning of the Tribunal in the respects identified was illogical, unreasonable or based upon a misapprehension of evidence. Further, I find that the reasons are not defective by omission to make reference to the matters identified by the Appellant

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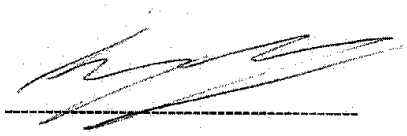
[63] (1986) 159 CLR 656 at [6].
[64] *Palme* at [48].
[65] [1990] FCA 264 at [18].
[66] [2009] FCAFC 137 at [50].

CONCLUSION

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



Justice Ian Freckelton
Dated this 14th day of December 2018