HIGH COURT OF AUSTRALIA

BELL, GORDON AND EDELMAN JJ

CRI028 APPELLANT

AND

THE REPUBLIC OF NAURU RESPONDENT

CRI028 v The Republic of Nauru
[2018] HCA 24
13 June 2018
M66/2017

ORDER

1. *Appeal allowed with costs.*

2. *Set aside the order of the Supreme Court of Nauru made on 11 May 2017, and in its place order that:*

   (a) *the appeal be allowed;*

   (b) *the decision of the Refugee Status Review Tribunal made on 13 August 2015 be quashed; and*

   (c) *the matter be remitted to the Refugee Status Review Tribunal for redetermination according to law.*

On appeal from the Supreme Court of Nauru

Representation

W G Gilbert SC with A F L Krohn for the appellant (instructed by Clothier Anderson Immigration Lawyers)

C J Horan QC with N M Wood for the respondent (instructed by Republic of Nauru)

CATCHWORDS

CRI028 v The Republic of Nauru

Migration – Refugees – Appeal as of right from Supreme Court of Nauru – Where Secretary of Department of Justice and Border Control determined appellant not refugee – Where Refugee Status Review Tribunal affirmed Secretary's determination – Where appellant established well-founded fear of persecution – Where Tribunal found alternative "home area" – Whether Tribunal properly applied internal relocation principle – Whether Tribunal failed to consider family unity – Whether Supreme Court erred in affirming Tribunal's determination.

Words and phrases – "family unity", "home area", "in all the circumstances", "internal relocation principle", "reasonableness of relocation", "relocation".

Appeals Act 1972 (Nr), s 44.
Nauru (High Court Appeals) Act 1976 (Cth), s 5, Sched, Art 1.
Refugees Convention Act 2012 (Nr), ss 3, 4, 5, 6, 22, 31, 34, 43, 44.
Convention relating to the Status of Refugees (1951) as modified by the Protocol relating to the Status of Refugees (1967), Art 1A(2).

1 BELL J. The joint reasons set out the scheme of the *Refugees Convention Act* 2012 (Nr) ("the Refugees Act"), together with the procedural history and facts, which I gratefully adopt. I agree with their Honours' analysis of the "internal relocation principle", which the Refugee Status Review Tribunal ("the Tribunal") was required to apply to the determination of whether the appellant is a refugee.

2 As their Honours explain, the Republic of Nauru ("Nauru") accepts that the Tribunal's characterisation of the area, described as K District, as a "home area" for the appellant did not relieve it of the need to consider whether the appellant's relocation to that district was reasonable. This acceptance left the appellant's third ground as the sole issue in the appeal: that ground contends legal error in the Tribunal's failure to take into account a "threat to family unity" in the assessment of the reasonableness of the appellant's relocation within Pakistan.

3 The Tribunal proceeded upon acceptance that the appellant is a Sunni Muslim, that he married a Shia Muslim "for love", that his wife gave birth to their child in 2010, that between the date of their marriage and 2013 when the appellant left Pakistan they lived in Karachi, that his wife's family lived in Karachi, and that his wife did not want to move from Karachi. Given the Tribunal's finding that the appellant is at risk of persecutory harm in Karachi, and its acceptance that the appellant's wife is reluctant to move to K District, the appellant argues that the Tribunal was required to take into account the prospect that his wife and their child might remain in Karachi in assessing the reasonableness of the expectation that he relocate to K District (or elsewhere in Punjab), where he was not at risk of harm.

4 Nauru accepts that consideration of the appellant's wife's situation and her reluctance to move to K District was material to the assessment of the reasonableness of his relocation. Nauru's first submission is that the occasion did not arise to address any suggested "threat to family unity" because at all times it was the appellant's case that, notwithstanding her reluctance, his wife and their child would accompany him to K District (or elsewhere in Punjab).

5 Nauru's first submission relies on the assertion in the appellant's initial statement in support of his refugee status determination:

> "I have people who are dependent upon me as detailed above. I fear if we were to attempt to relocate anywhere within Pakistan my family and I would be exposed to an increased risk of being harmed by violence."

6 And it relies on the appellant's further statement, made in support of his application for review of the Secretary of the Department of Justice and Border Control's determination (the "further statement"):

> "My wife has never visited my family in Punjab, we could not move there because we do not have the support of my family. My wife was reluctant to move because she does not have any family outside of Karachi. In Pakistan it is very difficult and dangerous to move without a support network. I would not be able to find a job or accommodation without the connections. We would struggle to subsist outside of Karachi and we would be vulnerable to harm as an interfaith couple isolated from support networks."

7 And it also relies on the submissions filed with the Tribunal on the appellant's behalf:

> "[I]t would be very difficult for [the appellant] to obtain employment should he relocate within Pakistan. This would make it extremely difficult for him to subsist, especially with his wife and child as dependents".

8 In short, Nauru contends that the effect of the appellant's case was that relocation within Pakistan would be hard on the appellant, and on his wife and their child, but that the family would be united in facing that hardship. The Tribunal's finding, that the appellant could lead a relatively normal life without facing undue hardship in K District, on this analysis, is to be understood as posited on its acceptance of that case.

9 The appellant did not, in terms, assert that his relocation to K District (or other location in Punjab) would entail separation from his wife and their child, who would remain in Karachi. The appellant had sought, unsuccessfully, to make a larger case against relocation: because theirs was a mixed marriage, he and his wife would have no support network outside Karachi and she risked becoming the victim of an honour killing. The rejection of that larger case said nothing as to the prospect that, despite her reluctance, his wife would move from Karachi to K District to be reunited with the appellant. The evidence was apt to suggest the contrary conclusion.

10 The appellant was consistent in maintaining that his wife, a member of the Shia minority in Pakistan, did not wish to leave Karachi, where she had the support of her family. Notwithstanding that the appellant had been threatened and harassed in Karachi by Muttahida Qaumi Movement ("MQM") "goons" from 2009 until he left Pakistan, he and his wife had continued to make that city their home. In his further statement, the appellant acknowledged the strength of the MQM in Karachi, but claimed that, given his love for his wife, it was not reasonable *for him* to live outside Karachi. It was an assertion that provided no support for an assessment of the appellant's claim to be a refugee upon the assumption that, were he to relocate to a place in Pakistan outside Karachi where he was not at risk of persecutory harm, his wife and their child would accompany him. The submission that this assumption is implicit in the Tribunal's conclusion

that the appellant could lead a relatively normal life in K District is unsustainable.

11 The Tribunal was required to give the appellant a written statement setting out its findings on any material questions of fact and referencing the evidence or other material on which those findings were based[1]. The Tribunal's analysis of the appellant's claim, invoking what it described as the "ordinary relocation principles", is contained in the following two paragraphs of its reasons:

> "[102] The [appellant] contends that he would lack support network elsewhere in Pakistan and have difficulty finding employment. With respect to the situation in [K District] the Tribunal rejects the suggestion that the [appellant] would lack a support network, for as explained above he lived and worked there for most of his life, and the Tribunal does not accept that he is estranged from his family. In any event, the Tribunal considers this aspect of the [appellant's] claims to have been exaggerated, for he twice relocated to Karachi for work despite having no relatives and little or no support network there, and evidently had no difficulty obtaining work. The Tribunal notes that the [appellant] has a very solid work history with experience in a range of jobs.
>
> [103] For these reasons, the Tribunal concludes that relocation would be reasonable for the [appellant] in the sense that he could, if he relocated, lead a relatively normal life without facing undue hardship in all the circumstances."

12 The alternative way in which Nauru puts its case is to say it is evident, when the Tribunal's reasons are read as a whole, that consideration was given to the appellant's circumstances as a married man and father of a child in assessing the objective reasonableness of the expectation that he would move from Karachi, where he faced persecutory harm, to K District, with which he had a longstanding association and where he did not face the threat of harm. Nauru points to the Tribunal's earlier finding, which Nauru distils as that the appellant "had no subjective fear of returning to [K District], including with his wife", and to the further finding that despite her reluctance, the appellant's wife *could* go to K District with him. In circumstances in which the appellant's case did not identify any objective reason for finding that the family would experience difficulties making it unduly harsh to expect them to relocate, Nauru submits that these findings sufficed to support the Tribunal's conclusion in paragraph [103], set out above.

---

1 *Refugees Convention Act* 2012 (Nr), s 34(4).

13 The evidence raised as a distinct prospect that the appellant's wife and their child would not relocate with him to a place in Pakistan outside Karachi. It was necessary for the Tribunal to address the impact of relocation on the appellant taking that prospect into account. Whether, in the absence of an objective reason for finding that it would be unduly harsh for the family to move to K District, the Tribunal might have concluded that the appellant's relocation within Pakistan was a reasonable expectation is not an issue raised by the appeal. A fair reading of the Tribunal's reasons is that it did not have regard to the appellant's circumstances as a married man and father in its assessment of the reasonableness of his relocation within Pakistan. The Tribunal's statement, in connection with its discussion of K District as a "home area" for the appellant, that "[w]hile it might not be a home area for his wife, who has never lived there, it is the [appellant's] claims the Tribunal is assessing" reinforces that conclusion. So, too, does the Tribunal's finding that the appellant "holds no fear of returning to [K District], whether with his wife or not".

14 The subject of maintenance of the appellant's family unity was obliquely raised in the course of the Tribunal hearing. The appellant said he had discussed his departure from Pakistan with his wife and sought her advice. The presiding member commented that it seemed odd that the appellant's wife would agree to him taking a dangerous journey overseas in preference to the alternative of moving to K District, where the couple "might have a few difficulties". The appellant appeared uncertain how to respond to this comment and another member of the Tribunal intervened, explaining "I mean she doesn't want to leave Karachi, but the alternative that you're providing her with is being separated indefinitely, and if you are to be reunited she'll be leaving Karachi anyway. She'll be leaving the country." The appellant replied through the interpreter, somewhat unresponsively, "[s]o we don't know about the future, but so she's living in Karachi at the moment. She got her – the support of her family". The issue was not further explored in evidence and was not the subject of any finding. This makes it unnecessary to address the merits of Nauru's written submission, not developed in oral argument, that the unity of the appellant's family was "equally or more greatly affected by his departure from Pakistan, leaving his wife and child in Karachi".

15 I agree with the orders proposed in the joint reasons.

16 GORDON AND EDELMAN JJ. The appellant, a citizen of Pakistan, applied under s 5 of the *Refugees Convention Act* 2012 (Nr) ("the Refugees Act") to be recognised as a refugee. The Secretary of the Department of Justice and Border Control ("the Secretary") refused the application. The appellant applied for merits review of that determination by the Refugee Status Review Tribunal ("the Tribunal"). Although the Tribunal found that the appellant had a well-founded fear of persecution in Karachi, where he resided immediately before leaving Pakistan, it affirmed the Secretary's determination on the basis that the appellant had another "home area"[2] in Pakistan to which he could relocate and where he did not face a reasonable possibility of persecution. The Supreme Court of Nauru dismissed the appellant's appeal against the Tribunal's determination.

17 In this appeal, which is brought as of right[3], the central issue is whether the Supreme Court ought to have held that the Tribunal erred in law in its determination of the relocation issue. As these reasons will explain, the Tribunal did fall into error and the Supreme Court ought to have allowed the appeal. The appeal to this Court should be allowed.

The Refugees Act

18 The Refugees Act is "[a]n Act to give effect to the Refugees Convention; and for other purposes". Section 3 of the Refugees Act defines a refugee as "a person who is a refugee under the Refugees Convention as modified by the Refugees Protocol[4]". Section 4 provides:

> "(1) The Republic must not expel or return a person determined to be recognised as a refugee to the frontiers of territories where his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group

---

2 The concept of a "home area" does not derive from the Refugees Convention but has been used from time to time in judicial reasoning. It will be necessary to return to this concept later in these reasons.

3 s 44 of the *Appeals Act* 1972 (Nr); s 5 of, and Art 1 of the Schedule to, the *Nauru (High Court Appeals) Act* 1976 (Cth). See also *BRF038 v Republic of Nauru* (2017) 91 ALJR 1197 at 1203-1204 [35]-[41]; 349 ALR 67 at 73-74; [2017] HCA 44.

4 Convention relating to the Status of Refugees done at Geneva on 28 July 1951 as modified by the Protocol relating to the Status of Refugees done at New York on 31 January 1967.

or political opinion except in accordance with the Refugees Convention as modified by the Refugees Protocol.

(2) The Republic must not expel or return any person to the frontiers of territories in breach of its international obligations."

19 Section 5 provides that a person may apply to the Secretary to be recognised as a refugee. Under s 6(1), the Secretary must determine an application to be recognised as a refugee. Section 6(3) requires the determination to be made as soon as practicable after the application is received.

20 A person may apply to the Tribunal for merits review of a determination that the person is not recognised as a refugee[5]. The Tribunal is not bound by technicalities, legal forms or rules of evidence, and must act according to the principles of natural justice and the substantial merits of the case[6]. The Tribunal may exercise all the powers and discretions of the person who made the determination under review[7]. It may affirm or vary the determination, remit the matter to the Secretary for reconsideration, or set the determination aside and substitute a new determination[8]. Section 34(4) provides that the Tribunal must give the applicant for review and the Secretary a written statement that:

"(a) sets out the decision of the Tribunal on the review; and

(b) sets out the reasons for the decision; and

(c) sets out the findings on any material questions of fact; and

(d) refers to the evidence or other material on which findings of fact were based."

21 Section 43(1) of the Refugees Act provides that 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. In deciding an appeal, the Supreme Court may make either (a) an order affirming the decision of the Tribunal, or (b) an order remitting the matter to the Tribunal for reconsideration[9].

---

5 s 31 of the Refugees Act.

6 s 22 of the Refugees Act.

7 s 34(1) of the Refugees Act.

8 s 34(2) of the Refugees Act.

9 s 44(1) of the Refugees Act.

In the latter case, the Court may also make either an order declaring the rights of a party or of the parties or an order quashing or staying the decision of the Tribunal, or both[10].

The internal relocation principle

22 Whether a person is a refugee for the purposes of the Refugees Act is determined by reference to the Refugees Convention as amended by the Refugees Protocol. Relevantly, Art 1A(2) of the Refugees Convention provides that a refugee is a 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 or, owing to such fear, is unwilling to avail himself of the protection of that country". (emphasis added)

23 According to what is sometimes described as the internal relocation principle, a person is not a refugee if there is an area in the country of their nationality: (1) where the person would not have a well-founded fear of persecution; and (2) to which the person could, "in all the circumstances", reasonably be expected to relocate[11]. The second of these matters recognises that, although there may be a notionally "safe" area free of the risk of persecution, other factors may exist which make it unreasonable to expect a person to take refuge there. The area may not be "a viable or realistic alternative"[12].

24 The explanation given by the House of Lords in *Januzi v Secretary of State for the Home Department*[13], and subsequently adopted by this Court[14], is that the issue of relocation arises as part of the requirement in Art 1A(2) of the

---

10 s 44(2) of the Refugees Act.

11 *Minister for Immigration and Border Protection v SZSCA* (2014) 254 CLR 317 at 326-328 [23], [26]; see also at 332 [41]; [2014] HCA 45.

12 *E v Secretary of State for the Home Department* [2004] QB 531 at 543 [23] quoted in *SZSCA* (2014) 254 CLR 317 at 329 [30].

13 [2006] 2 AC 426 at 440 [7].

14 *SZATV v Minister for Immigration and Citizenship* (2007) 233 CLR 18 at 24-26 [15]-[22]; [2007] HCA 40; *SZSCA* (2014) 254 CLR 317 at 326-327 [23], 332 [40]. See also *CRI026 v The Republic of Nauru* [2018] HCA 19 at [42].

Refugees Convention that a person be outside the country of their nationality "owing to" a well-founded fear of persecution for one of the reasons identified in that article. If there is an area in the country of their nationality where the person would not have a well-founded fear of persecution (where protection of that country would be available), and the person could reasonably be expected to relocate there, they are not outside the country of their nationality owing to a well-founded fear of persecution. The "causative condition" in Art 1A(2) is not satisfied[15].

25 Whether a person could reasonably be expected to relocate to another area in the country of their nationality involves a comparison between the circumstances or conditions that prevail in the person's existing area of residence and those circumstances or conditions that prevail in the other identified area, with a view to assessing the impact of the relocation on the person[16]. The assessment is not concerned with comparing a person's quality of life in the other identified area with the basic norms of civil, political and socio-economic human rights recognised in international human rights instruments[17]. Importantly, the reasonableness of relocation "depend[s] upon the particular circumstances of the applicant for refugee status and the impact upon that person of relocation of the place of residence within the country of nationality"[18].

26 Put in different terms, the assessment of whether a person can relocate is not answered only by reference to the *risk of harm*. The assessment also requires consideration of the individual circumstances of the person, and what is practicable and reasonable for that person. As this Court said in *SZATV v Minister for Immigration and Citizenship*[19], "[w]hat is 'reasonable', in the sense of 'practicable', must depend upon the particular circumstances of the applicant for refugee status and the impact upon that person of relocation of the place of residence within the country of nationality". The practical realities must be carefully considered[20]. And, as will be explained, the particular circumstances

---

15 *SZSCA* (2014) 254 CLR 317 at 326-327 [23]; see also at 332 [40].

16 *SZSCA* (2014) 254 CLR 317 at 329 [30].

17 *Januzi* [2006] 2 AC 426 at 441-448 [9]-[19], 457 [45]-[46], 459-460 [54].

18 *SZATV* (2007) 233 CLR 18 at 27 [24].

19 (2007) 233 CLR 18 at 27 [24].

20 See, eg, *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437 at 442; *SZATV* (2007) 233 CLR 18 at 27-29 [26]-[32]; *SZSCA* (2014) 254 CLR 317 at 329 [31]-[32]; see generally at 327-330 [25]-[33].

may include the person's family situation. It will be necessary to return to those principles.

Application for refugee status

27 The appellant is a Sunni Muslim of Punjabi ethnicity. He was born in a district in the province of Punjab ("K District"). In 2004, he moved to Karachi, where he continued to reside apart from a period in 2006 and 2007 during which he returned to K District. Other than his wife and child, who remain in Karachi, the members of his immediate family still live in K District.

28 The appellant departed Pakistan on 17 August 2013. He arrived in Australia at Christmas Island on 14 December 2013 and was transferred to Nauru on 19 December 2013.

29 On 8 March 2014, the appellant applied to the Secretary to be recognised as a refugee, alleging that he had a well-founded fear of persecution on the basis of an imputed political opinion. The appellant stated that he feared he would be harmed by the Muttahida Qaumi Movement ("MQM"), its supporters and other violent and militant groups in Pakistan, because he had been imputed with the political opinion of opposition to the MQM. The appellant stated that State authorities would not protect him, and that he and his wife and child could not safely relocate to another place in Pakistan.

30 On 14 March 2015, the Secretary refused the appellant's application. The Secretary rejected the appellant's claims that he had been threatened and assaulted by MQM members and supporters. The Secretary went on to conclude that the appellant did not have a well-founded fear of persecution because he did not face a reasonable possibility of harm in Karachi. In view of that conclusion, the Secretary did not consider whether the appellant faced a reasonable possibility of harm in K District or whether he could reasonably relocate.

Proceedings in the Tribunal

31 On 31 March 2015, the appellant applied to the Tribunal for merits review of the Secretary's determination under s 31 of the Refugees Act. The Tribunal affirmed the Secretary's determination on 13 August 2015.

32 The Tribunal found that the appellant was threatened and harassed by members of the MQM. The Tribunal also accepted that the appellant had a well-founded fear of persecution in Karachi. However, the Tribunal considered the risk of harm to be localised, and was not satisfied that the appellant faced a reasonable possibility of persecution in the reasonably foreseeable future *outside* Karachi, including in K District.

33 The Tribunal accepted that the appellant was in a mixed Sunni-Shia marriage but rejected his claim that this had led to significant problems with his family in K District. Rather, the Tribunal found that the appellant and his wife *could* have moved to K District but that his wife did not want to because she did not want to leave her own family in Karachi.

34 Having made those findings, the Tribunal turned to the issue of relocation to K District. The Tribunal proceeded on the basis that "where a person has more than one home area, the decision maker is not required to assess whether or not it is reasonable to relocate from one area to the other, merely whether the person has a well-founded fear of persecution in each of the home areas". The Tribunal observed that the appellant had been born, raised and educated in K District and that his family continued to reside there. The Tribunal found that he had a "close, longstanding and ongoing connection" with K District and that K District was a "home area". It further concluded that "[w]hile it might not be a home area for his wife, who has never lived there, it [was] the [appellant's] claims the Tribunal [was] assessing".

35 The significance of the Tribunal's finding that K District was a "home area" was later explained as being that "the ordinary principles of relocation do not apply in this situation". The Tribunal took the view that, once K District was identified as a "home area", it was unnecessary to ask whether there was a different area in Pakistan to which it would be reasonable to expect the appellant to relocate.

36 The Tribunal went on to consider, in the alternative, what it described as "the application of the ordinary relocation principles". First, the Tribunal found that the appellant could practically, safely and legally relocate to an area within Pakistan where he would not face a well-founded fear of persecution. Second, the Tribunal rejected the contention that the appellant lacked a support network in K District, and stated that he had "evidently had no difficulty obtaining work" when he moved to Karachi. The Tribunal therefore concluded that relocation would be "reasonable" in that the appellant could "lead a relatively normal life without facing undue hardship in all the circumstances".

37 Importantly, the Tribunal did not, in the section of its reasons dealing with the application of the relocation principle, expressly give consideration to the position of the appellant's wife or child.

Appeal to the Supreme Court

38 On appeal to the Supreme Court, Crulci J dismissed the appeal and made an order affirming the decision of the Tribunal[21].

39 The appellant contended, among other things, that the Tribunal was wrong to consider that principles relating to internal relocation, in particular principles concerning the reasonableness of relocation, did not apply if a person could relocate from one "home area" to another "home area". Crulci J rejected that contention, concluding that where a person "has ties or links to more than one area" in their country of nationality, it is sufficient for the Tribunal to assess whether that person has a well-founded fear of persecution in each of those areas. It was not necessary to consider "the relocation alternative principles". Accordingly, the Tribunal had made a "finding of fact" that K District was a "home area" and there was no legal error.

40 Crulci J rejected a contention that, in its analysis of whether K District was the appellant's "home area", the Tribunal had erred by disregarding that he was married and had a child and, in particular, whether his wife would be safe in K District. Her Honour stated that the Tribunal did consider the appellant's family situation and that there was nothing to suggest that the appellant's wife and child were disregarded when considering whether K District was a "home area" for the appellant.

41 Crulci J further held that the Tribunal made a determination that there was no risk of harm to the appellant and his wife if they were to go to K District, and that this determination was open to it.

Issues on appeal

42 The two principal issues on appeal were, first, whether the Tribunal erred in its approach to the principles relating to internal relocation and, second, whether the Tribunal failed to take into account a threat to family unity as a relevant consideration to the question of internal relocation. A third issue, which was framed on the assumption that designating K District as a "home area" had legal significance, does not arise.

Principles relating to internal relocation

43 In this Court, Nauru accepted – contrary to the express reasoning of the Tribunal – that characterising K District as a "home area" did not remove the

---

21 *CRI028 v The Republic* [2017] NRSC 32.

need for the Tribunal to consider whether relocation to K District was reasonable in the manner described earlier.

44 Nauru was correct not to endorse the approach expressly taken by the Tribunal. It was unhelpful and distracting for the Tribunal (and thus the Supreme Court) to focus on whether K District was a "home area" and to treat that label as eliminating the need to consider the reasonableness of the proposed relocation.

45 The concept of a "home area" or a "home region" is not derived from the Refugees Convention. These terms have been used from time to time in judicial reasoning. There is nothing inherently objectionable or remarkable about their use in that context. But their sole function is as concise descriptors, which may be convenient in considering whether a person could reasonably be expected to relocate from one area in the country of their nationality to another. These terms do not displace the relevant and necessary inquiry. And there is no basis in the text or the purposes of the Refugees Convention to treat such descriptors as though they were terms in a statute to which meaning can and must be given. The decision of the Federal Court of Australia in *SZQEN v Minister for Immigration and Citizenship*[22] should not be followed to the extent that it suggests otherwise.

46 Indeed, the fact that it is not uncommon for a person to have lived in more than one place in a country (whether by reason of displacement or otherwise) or, for that matter, to have no identifiable "home area", reinforces that the concept of a "home area" may not only be a distraction but be inapposite.

47 Where a person has established a well-founded fear of persecution in their country of nationality, a question may arise as to whether there is a place within that country to which the person could reasonably relocate (being an aspect of the ultimate question of whether the person was outside their country of nationality owing to a well-founded fear of persecution). In seeking to answer that question, it is neither helpful nor correct to interpolate or substitute a free-standing concept of a "home area", and to purport to make factual findings about whether a particular area is or is not such an area[23]. That approach may lead to legal error.

48 The relevant question in the present matter was not whether K District was a "home area" but, rather, whether the appellant could reasonably be expected to relocate there. No doubt, the appellant's historical and familial ties to K District were among the circumstances which had to be considered when answering that

---

22 (2012) 202 FCR 514 at 523 [38].

23 cf *CRI028* [2017] NRSC 32 at [36].

question. The next question is whether, in the appellant's case, the Tribunal addressed and answered that question.

Tribunal failed to consider family unity in internal relocation

49 Nauru's primary submission in this Court was that the Tribunal's reasons, when "read as a whole", disclosed that the Tribunal properly considered whether it would be reasonable to expect the appellant to relocate to K District. This was despite Nauru having accepted that the Tribunal did not "in terms" address the reasonableness of the appellant moving to K District. Nauru's primary submission should be rejected.

50 Neither in its principal thread of reasoning, nor in its alternative reasoning based on "ordinary relocation principles", did the Tribunal discharge its task of considering all of the circumstances relevant to whether the appellant could reasonably be expected to relocate.

51 The appellant submitted in the Tribunal that he was not welcome in K District with his wife and child because he had married a Shia Muslim woman against the wishes of his family, and that he and his wife might be murdered in "honour killings" or otherwise harmed. The appellant also gave evidence that it would be "really a hard thing to do" to sell his house in Karachi and to establish himself and his wife and child in a new area.

52 The Tribunal rejected the appellant's claims that his marriage to a Shia Muslim had led to any significant problems with the appellant's family in K District or that his immediate family or relatives would harm his wife. However, the Tribunal found that the appellant's wife, unlike the appellant himself, had never lived in K District; the family of the appellant's wife was in Karachi; and the appellant's wife did not want to move to K District because she did not wish to leave her family.

53 The "particular circumstances"[24] of the appellant included the fact that he had a wife and child who lived with, and, on his evidence, were dependent on, him. The question of the reasonableness of relocation to K District fell to be determined against that backdrop. As for the attitude of his wife, the appellant did not squarely assert in his evidence to the Tribunal that she had firmly resolved not to move with the appellant to K District. But it is apparent from the evidence, and the factual findings that the Tribunal actually made, that the appellant's wife did not wish to go to K District and that there were particular reasons – which could not be thought to be frivolous or trivial – for why she might be so unwilling.

---

24 *SZATV* (2007) 233 CLR 18 at 27 [24].

54 As is apparent, the Tribunal's determination contained two distinct and alternative threads of reasoning. In neither of those threads of reasoning did the Tribunal take into account the fact that the appellant had a wife and child at all, let alone its particular findings about the wife's wish not to relocate to K District.

55 First, the Tribunal's principal thread of reasoning expressly focused on whether K District was a "home area" of the appellant. As noted earlier, that was a distraction and led to legal error. While the position of the appellant's wife (or child) may not have been relevant to whether K District was the appellant's "home area", that was not the question which the Tribunal had to determine. The question was whether K District was an area to which the appellant could, in all the circumstances, reasonably be expected to relocate. At the conclusion of its reasons for finding that K District was a "home area", the Tribunal stated that "[w]hile it might not be a home area for his wife, who has never lived there, it [was] the [appellant's] claims the Tribunal [was] assessing". It is not possible to read that statement as reflecting anything other than a conclusion that the wife's position was not relevant to the Tribunal's task. Contrary to the position adopted by the Tribunal, the wife's position was not only relevant to the Tribunal's task but an essential part of it.

56 Second, in its alternative reasoning based on "ordinary relocation principles", the Tribunal purported to consider whether relocation within Pakistan was reasonable. In so doing, it focused entirely on whether the appellant had a "support network" elsewhere in Pakistan and on his prospects of employment, observing that he had twice relocated to Karachi for work (in 2004 and 2007). Other than those identified matters, there were no findings made in relation to, and there was no analysis of, the reasonableness of the stated and powerful reasons for his wife's reluctance to leave Karachi and move to K District. Those powerful reasons included that she was a Shia Muslim woman who had studied and grown up in Karachi, who did not want to leave her family and support networks in Karachi, as well as her fears of honour killings and other harm, including from her husband's family and extended family, on the grounds that she was a Shia Muslim woman and a Shia Muslim woman married to a Sunni Muslim of Punjabi ethnicity.

57 The Tribunal failed to perform the task required of it in order to determine whether the appellant could relocate to another part of his country of nationality. The Tribunal did not deal at a factual level with specific objections raised by the appellant and, in particular, did not examine the material or make findings about whether the appellant as an individual with his wife and child could, as a matter of practical reality and so as to meet their basic needs as individuals and as a family, relocate to K District. No reference was made to the appellant's wife's attitude to relocation or to any other issues that might arise, in relation to relocation, from the fact that the appellant had a wife and child. It may be added that each of the appellant's previous relocations to Karachi predated the

appellant's marriage to his wife, and his wife had never visited or lived in K District.

58 On any reading of the Tribunal's determination, the Tribunal did not properly consider whether K District was an area to which the appellant could reasonably be expected to relocate, having regard to all the circumstances particular to the appellant. The Tribunal was instead distracted by an extraneous inquiry into whether K District was a "home area" of the appellant.

59 Three final matters should be noted.

60 First, in this Court, Nauru sought to meet the failure of the Tribunal to address the appellant's wife and child, in the context of the reasonableness of the appellant relocating to K District, by contending that the Tribunal "implicitly found" that the appellant's wife would move with him to K District. There is no basis for that "implicit" finding. And if such a finding had been made and relied upon in the context of the analysis of the relocation issue, it would have been a finding on a material question of fact which the Tribunal was obliged to include in its determination[25].

61 Second, as the preceding analysis demonstrates, even if that implicit finding were open (and it was not), that finding did not address the reasonableness of the stated and powerful reasons for the appellant's wife's reluctance to leave Karachi and move to K District.

62 Third, Nauru did not contend that, had that finding been made, those identified omissions could have had no bearing on the outcome[26]. Whether that is in fact the case is a matter to be determined by the Tribunal.

Conclusion

63 For these reasons, the appellant should succeed on his first ground of appeal, by which he contended that the Tribunal erred in its approach to the principles relating to internal relocation; and his third ground of appeal, by which he contended that the Tribunal did not take into account a threat to family unity as a consideration relevant to the question of internal relocation. The second

---

25 See s 34(4)(c) of the Refugees Act.

26 Compare *Stead v State Government Insurance Commission* (1986) 161 CLR 141; [1986] HCA 54 (cited in *Re Refugee Review Tribunal; Ex parte Aala* (2000) 204 CLR 82 at 122 [104]; [2000] HCA 57) and *SZBYR v Minister for Immigration and Citizenship* (2007) 81 ALJR 1190 at 1202-1203 [55]-[59]; 235 ALR 609 at 624-625; [2007] HCA 26 with *R (Osborn) v Parole Board* [2014] AC 1115.

ground of appeal, which was framed on the assumption that designating K District as a "home area" had legal significance, does not arise.

64 The following orders should be made:

1. Appeal allowed with costs.

2. Set aside the order of the Supreme Court of Nauru made on 11 May 2017, and in its place order that:

   (a) the appeal be allowed;

   (b) the decision of the Refugee Status Review Tribunal made on 13 August 2015 be quashed; and

   (c) the matter be remitted to the Refugee Status Review Tribunal for redetermination according to law.