



IN THE SUPREME COURT OF NAURU

AT YAREN

[APPELLATE DIVISION]

Case No. 19 of 2015

IN THE MATTER OF an appeal
against a decision of the Refugee
Status Review Tribunal TFN 14045
brought pursuant to s43 of the
Refugees Convention Act 1972

BETWEEN **HFM045** Appellant

AND **THE REPUBLIC** Respondent

Before: Crulci J

Appellant: A. Krohn
Respondent: S. Walker

Dates of Hearing: 16, 19 April 2016
Date of Judgment: 22 February 2017

CATCHWORDS

APPEAL - Refugees – Refugee Status Review Tribunal – Whether all the integers of the claim considered – error in law – Tribunal followed principles of natural justice and procedural fairness section 22 of Refugees Convention Act 2012 – Appeal Dismissed

JUDGMENT

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

43 Jurisdiction of the Supreme Court

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

(2) The parties to the appeal are the appellant and the Republic.

...

2. The determinations open to this Court are defined in section 44 of the Act:

44 Decision by Supreme Court on appeal

(1) In deciding an appeal, the Supreme Court may make either of the following orders:

(a) an order affirming the decision of the Tribunal;

(b) an order remitting the matter to the Tribunal for reconsideration in accordance with any directions of the Court.

3. This Court is in agreement with the procedure in relation to the matter of extension of time as outlined by Judge Kahn in *ROD128 v The Republic*¹ where he stated:

"The Republic for the efficient disposal of the case agreed that the appellant be allowed to present his case on merits of the proposed appeal and at the same time present his argument on substantive issue, and if the Court was satisfied that there was merit in the appeal then the extension of time can be granted. However, after the hearing, the Republic and the lawyers for the appellant (in this case, the appellant is unrepresented) have come to an agreement that the extension of time will not be in issue. Accordingly, a consent order was filed whereby the time of appeal was properly extended by the Registrar pursuant to the amendment to the Act on 14 August 2015 (Refugees Convention (Amendment) Act 2015 and consequently the issue of appeal being out of time is no longer an issue."

4. The Refugee Status Review Tribunal ("the Tribunal") delivered its decision on the 16 January 2015 affirming the decision of the Secretary of the Department of Justice and Border Control ("the Secretary") of the 12 September 2014, that the appellant is not recognised as a refugee under

¹ [2017] NRSC 8

the Refugees Convention ² ("the Convention") and is not owed complimentary protection under the Act.

BACKGROUND

5. The appellant is a 48 year old married man. He has three children, one from his first marriage and two from his second marriage. All of the children are living with his second wife. He is of the Hindu faith, a member of the Chhetri tribe (a high caste within established Nepalese Hindu society), and a Nepalese citizen.
6. The appellant was born in the Ilam District in Eastern Nepal however he spent the majority of his life in the Jhapa District. He lived in Kathmandu for a number of months in 2005 (5-6 months), and then again in May 2013 prior to leaving Nepal.
7. The appellant lived in India on two separate occasions, initially in 2001 for about two years (working as a security guard), and secondly for a couple of months in 2004 when he lived with a cousin in Darjeeling.
8. In 1993 or 1994 he became a member of the Rastriya Prajatantra Party (Nepal) (RPP (N)). This is a pro-royalist party wanting to return Nepal to a Hindu State. The Maoists are strongly opposed to the activities of this party.
9. The Maoists would actively try to recruit him to join their party, and from 2001 to 2005 he was harassed and intimidated by their members to try and join them and also for donations.
10. The appellant stated that in 2008 he was President of a RPP (N) local committee. He was an active member and in danger because speaking about the King and religion was considered a crime against the Government of Nepal. He was not free to express its political and religious views. He stopped being involved in the local committee because of pressure from the Kirati people, (indigenous to the area and belonging to the Mongol race), to leave the district.
11. As a practicing Hindu he said he was not able to celebrate the festivals. Additionally he maintained that Mongols (backed by the Maoists) target and harm members of the Chhetri tribe throughout Nepal and their actions affected his income.

INITIAL APPLICATION FOR REFUGEE STATUS DETERMINATION

12. The appellant applied to the Secretary to be recognised as a refugee as the appellant feared that if returned to Nepal he would be harmed by the

² 1951 Refugee Convention and 1967 Protocol, also referred to as "the Refugees Convention" or "the Convention"

Mongols because of his active opposition and beliefs; moreover that he would be unable to subsist because of the on-going sectarian violence in his area which would negatively impact on his earning ability.

Secretary's Decision

13. The Secretary accepted that the appellant is a Hindu and a member of the Chhetri caste, and furthermore that he was a supporter of the RPP (N). However the Secretary did not accept that the appellant was President of the District Committee of the RPP (N) in 2008; nor that he had a political profile which was of interest to Maoists; nor that he was targeted by the Mongols, as claimed, because of his membership of the Chhetri caste or due to his Hindu faith.
14. The Secretary was not satisfied that the appellant would face a reasonable possibility of being harmed on return to Nepal because of his Chhetri caste, the Secretary found no country of origin information to indicate that the Chhetri (a higher caste) is subject to harm in Nepal.
15. In addition the Secretary found that country of origin information doesn't indicate any systematic religious based harm to the Hindu majority in Nepal. Therefore the Secretary found that the appellant's fear of harm is not well-founded. In having found that the appellant's fear is not well-founded the Secretary did not go on to consider whether the harm feared is one under the Convention.
16. In relation to complementary protection, the Secretary was not satisfied that the appellant faced a reasonable possibility that he would be subjected to torture, or cruel, inhuman or degrading treatment or punishment if returned to Nepal. As such the Secretary did not find that Nauru had complementary protection obligations to the appellant.

REFUGEE STATUS REVIEW TRIBUNAL

17. The Refugee Status Review Tribunal (RSRT) having heard from the appellant, accepted that he was an active member of the RPP (N) since it began in 2006 and that he had held a position within the village party. The Tribunal also accepted that from the mid 1990s until the Comprehensive Peace Agreement ("CPA") in 2006 that things were complex between government forces and Maoist guerrillas with each side making life difficult for local communities.
18. The Tribunal found the appellant to be an unreliable witness in relation to his reasons for travel between Nepal and India. Having heard the appellant they concluded that his departures from Nepal were not based on his particular political opinion but because he made an economic decision to move to India to look for employment. Although the Tribunal did recognise that the difficulties within the country, in addition to the

appellants decision to refuse to pay extortion money to whichever group was in his area at the time, were part of his determination to travel to India.

19. The Tribunal noted that although in the November 2013 elections the RPP (N) was not well supported, nonetheless on the website there was no information indicating that the leaders or members were targeted by political groups or authorities. The Tribunal concluded that were the appellant to return to Nepal and resume an active membership in the party, there is nothing to indicate that he would be persecuted because of his allegiances.
20. Although the appellant stated to the Tribunal that Kirat Janabadi Workers Party (KJWP) had sent him a letter demanding money, there had been no repercussions when the appellant did not comply. The Tribunal did not consider the appellant to be a "government representative", and therefore he is unlikely to be a target for such groups as the KJWP.
21. The Tribunal also rejected the appellant's evidence in relation to the KJWP having come to his wife's house regarding the non-payment of the "donation" as self-serving, as he only raised this when questioned by the Tribunal in relation to the KJWP's continuing interest in him. Additionally the Tribunal rejected the appellant's statement that he had received the threatening letter in the first place, finding the appellants account "to be inconsistent, implausible and fabricated to assist his claims"³.
22. In relation to the loss of his livestock, the Tribunal was of the view that this was a matter more correctly reported to the police; and rejected the appellant's claim that he would not be afforded any assistance because "all police Maoists"⁴.
23. The Tribunal concluded that they were not satisfied that the appellant had suffered any serious harm as a result of his political opinion, his race or religion or for any other Convention reason. Furthermore the Tribunal concluded that given the country's political progress recently, there was little possibility in the future of any future harm befalling the appellant.
24. The Tribunal considered all the appellants claims individually, and cumulatively, and found that there was no real possibility that he faced persecution for a Convention reason if returned to Nepal. Turning to the issue of complementary protection, the Tribunal noted that the appellant had made no claims that he had suffered any serious harm in the past when living in either Nepal or India, and concluded that the appellant is not owed complementary protection.

³ Book of Documents, p180

⁴ Book of Documents, page 181, para 42

RSRT decision

25. The RSRT affirmed the determination of the Secretary that the appellant was not recognised as a refugee nor owed complementary protection under the Act.

GROUPS OF THIS APPEAL

26. The grounds of appeal are set out as follows:
- 1) The Tribunal erred in law when it concluded that there was "nothing before the Tribunal"⁵ to support the appellants claim of fear of persecution should he be returned to Nepal and resume active membership of the RPP (N);
 - 2) The Tribunal erred in law by failing to give the appellant an opportunity to respond as to why he had gone to India (not fled as claimed but made an economic choice), nor did the Tribunal give the appellant an opportunity to respond to 'Chhetri's in the police force', or to 'changed circumstances in Nepal';
 - 3) The Tribunal erred in law by failing to act according to natural justice and is in breach of section 22 of the Act (particulars as in 2 above);
 - 4) The Tribunal misinterpreted the law or applied the wrong test in relation to whether the appellant would be persecuted if he was returned to Nepal, or whether he had suffered serious harm in the past or was likely to in the future;
 - 5) The Tribunal failed to take into account relevant situations; failed to properly consider all the information before the Tribunal; and /or failed to consider and determine integers of the claim.

Tribunal finding with no evidence to support it?

27. The appellant submits that the Tribunal's finding "*there is nothing before the Tribunal which indicates that the applicant would be persecuted if he were to return to Nepal and resume an active membership in the party*"⁶ goes against a large amount of evidence before the Tribunal relating to political violence by the Maoists, and violence against the RPP (N).
28. Submissions to the Tribunal had included detailed information of reports about persecution of Royalists and violence by Maoists; and allegations that attacks against members of a royalist party were made in the presence of police who failed to intervene. It was argued on behalf of the appellant that the culture of violence of the Maoists continued; that the appellant fears harm because of his political opinion and that the Maoists are still opposed to the Chhetri.
29. The respondent replies that contrary to the appellant's submission that "*there was nothing before the Tribunal which indicates that RPP (N) members or supporters are persecuted in Nepal*", it was that the Tribunal

⁵ Book of Documents, page 177-178, para 33

⁶ *ibid*

conclusion that there was nothing before it which indicated that the appellant would be persecuted as a RPP (N) member on his return.

30. The basis for this conclusion is to be found in the Tribunal's decisions as follows:
- The appellant had been unable to explain what he meant by the word "targeted" as the leader of the RPP(N);
 - The Tribunal rejected the appellants evidence regarding the KJWP's attempts at perusing him in relation to the request for a "donation"; finding the appellants evidence to be self-serving;
 - The Tribunal found the appellants evidence of receiving a threatening letter to be not credible;
 - The Tribunal noted that no serious harm had previously happened to the appellant;
 - The Tribunal noted that Nepal had become a more peaceful place, with little possibility of the appellant being harmed in the future.
31. When considering the wording that had been used by the Tribunal, the respondent drew the courts attention to the case of *Wu Shan Liang*⁷:
"...These propositions are well settled. They recognise the reality that the reasons of an administrative decision-maker are meant to inform and not to be scrutinised upon over-zealous judicial review by seeking to discern whether some inadequacy may be gleaned from the way in which the reasons are expressed."
32. In summary the respondent concludes that it is not an error of law to fail to take into account particular material or evidence, rather an error of law may have been committed when there is failure to have regard to relevant matters. In this case all the relevant matters were subject to the Tribunals consideration.
33. I am satisfied that the Tribunal's deliberations were based upon matters before it, identified as being material to the decisions at hand, and that reasons were given for making decisions adverse to the appellant. The Tribunal referenced its decisions to the factors to which it gave the most weight. I am satisfied that the Tribunal had regard to the relevant evidence before it when making its findings, and that these findings were open to it on the basis of the evidence before it. This ground fails.

Failure to accord the appellant an opportunity to respond to issues or to afford him procedural fairness and natural justice according to the Act

34. The appellant states that there was a clear failure on behalf of the Tribunal to comply with natural justice as it should have been put to him that he was making an economic decision to go to India, rather than fleeing Nepal because of his political views.

⁷ *Minister for Immigration and Ethnic Affairs v. Wu Shan Liang*, (1996) 185 CLR 259, 271

35. The Tribunal has an obligation under section 40 of the Act to afford the appellant an opportunity to appear before it and respond to the issues in relation to his determination and refugee status. Section 40 reads as follows:

“40 The Tribunal must invite the applicant to appear

- (1) The Tribunal must invite the applicant to appear before the Tribunal to give evidence and present arguments relating to the issues arising in relation to the determination or decision under review.

...”

36. The appellant submitted that the determination by the Tribunal of the appellant's reasons for travelling to India was influenced by their findings as to the appellant's credit, namely that his account was *“inconsistent(cy), implausible and fabricated to assist his claims”*⁸ in relation to a separate matter of the documents produced to the Tribunal.
37. The Tribunal failed to give the appellant any particulars about the Chhetri in the army and did not allow the appellant any opportunity to respond as to how he viewed others being able to protect his safety. In so doing the appellant submits that the Tribunal offended against the principles of natural justice by not giving the appellant an opportunity to comment on the changed circumstances in Nepal.
38. The respondent rejects the appellant submissions that section 40 of the Act imposes any obligation upon the Tribunal beyond the requirements outlined in the section.
39. The respondent accepts the tenets of procedural fairness and natural justice, and cites the judgment of the Full Court of the Federal Court of Australia in *Alphaone*⁹:

“It is a fundamental principle that where the rules of the procedural fairness apply to a decision making process, the party liable to be directly affected by the decision is to be given the opportunity of being heard. That would ordinarily require the party affected to be given the opportunity of ascertaining the relevant issues and to be informed of the nature and content of the adverse material.”

40. In support of the respondent submissions that the Tribunal did not offend against natural justice and that the terms of section 40 of the Act were complied with, the respondent points the court to an exchange between the appellant and the Tribunal members during the interview¹⁰ where it was discussed that there had been substantial changes in Nepal since the

⁸ Book of Documents, p180, para 41

⁹ *Commissioner for ACT Revenue v. Alphaone Pty Ltd.* 1994 49 FCR 576

¹⁰ Book of Documents, p160 (line 28) to 165 (line 14)

appellants departure. This discussion raised with the appellant the issues determined:

Tribunal member: When you were in Kathmandu, the Communist Prime Minister was no longer there. I mean, it was now, by this stage, a government of National Unity waiting for the elections. I mean things were already changing at the time that you left.

Interpreter: There is no any changes in their action. Still they have got conflict and – if they change – I don't think that they will change their ideology. If they change themselves, then also I cannot change because if they find me they will not leave –that is what I and thinking and I am worried about that.

Tribunal member: Well I know you've been away from Nepal now for some time, but it seems to us, when we were reading information about Nepal, that they have been some very substantial changes which might –you know, which you may not have considered. You know the elections went off quite well, the government has been formed, it seems that all the country is sick of the fighting and the political instability, and even the main communist party is now working in government –not in government – as the opposition, but are working with the - - -

Interpreter: it seems the Maoists are – they are working in a different way. We can find in the news that they have got – Maoist, they are not cooperating with each other parties. We can find in the news also.

...

Tribunal member: our concern is that there is a substantial change in Nepal and, whatever has happened in the past, we think there's a substantial change of circumstances."

41. The consideration of the composition of the Nepalese army was, the respondent submits, information outlined by the Tribunal as factual information, and that there is little that the appellant could have said other than he agreed or disagreed with the information before the Tribunal. The appellant himself has previously raised the issue of Maoist representation in the army or police force¹¹:

"The applicant has made written claims (which he did not pursue at hearing) that his political opponents steal his livestock. In the Tribunal's view, this is a matter that should be reported to and handled by the police. There is nothing before the Tribunal then indicates support for the appellants claim that "all police are Maoists" and therefore will not assist him. The Tribunal accepts that there was political instability and insurgency across the country, including

¹¹ Book of Documents, p 181, para 42

the armed skirmishes, from the mid-1990s until the mid-2000s. Whilst noting that the applicant's parents and brother did not feel he was necessary to leave the farm, the applicant left on at least two occasions – possibly more – taking advantage of the *Treaty of Peace and Friendship* between India and Nepal which allows free passage between the countries. Nepalese can live and work in India and the appellant has done so in the past.”

42. I am of the view that at the hearing before the Tribunal, the appellant was made aware of the Tribunal's consideration of the changing conditions in Nepal. These were discussed with the appellant at the Tribunal interview and he made his responses according to his views.
43. In relation to the Tribunal's findings as to why the appellant left Nepal for India, these findings were based upon the determination that the appellant was an unreliable witness. Credibility findings are matters for the Tribunal and this finding was open to them on the evidence before them. The Tribunal afforded the appellant the opportunity to explain his departures from Nepal and put his case.
44. On these two grounds I find no breach of procedural fairness or of natural justice on behalf of the Tribunal. Therefore the grounds of appeal have no merit and fail.

Did the Tribunal misinterpret the law or apply the wrong test in relation to whether the appellant would be persecuted if he was to return to Nepal (complementary protection)?

45. The concluding paragraph by the Tribunal is titled “Assessment of claims for reasons of political opinion” and the appellant draws the courts attention to the following statement:

“There is nothing before the Tribunal which indicates that the appellant would be persecuted if he were to return to Nepal and resume an active membership in the party.¹²
(emphasis added)”
46. What the ‘test’ is in this jurisdiction, has not yet been formulated by the Court, however the appellant puts forward examples given by Hathaway and Foster in their book *The Law Of Refugee Status*¹³ of the test being - variously - a “reasonable possibility”, a “real and substantial danger”, a “serious possibility” and a “real chance”.
47. The appellant avers that instead of applying a formulation that has been applied consistently elsewhere in relation to a well-founded fear of persecution that there was or may be “a real possibility or a real chance”,

¹² Book of Documents, p177-8, para 33

¹³ J. C. Hathaway and M. Foster, *The Law Of Refugee Status* 2nd ed., Cambridge, at University Press, 2014, at 110-115

the Tribunal used “would be persecuted”. The use of this phrase indicates a higher test than that required by law.

48. Turning to the Tribunal's assessment of the appellants claim for complementary protection, it said “*The Tribunal is not satisfied that the applicant has suffered serious harm in the past nor is likely to in the future, for a Convention reason or any other a particular reason or that he has put forward any circumstances or reasons that would engage further protection consideration.*”¹⁴
49. The appellant states that this is an application of a wrong test for complementary protection under the Act:

“4 Principle of Non-Refoulement

(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 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.”

50. Nauru's international obligations include the International Covenant on Civil and Political Rights (ICCPR), and the *Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru, and related issues* (“the MOU”).¹⁵
51. The appellant accepts that the Tribunal does not necessarily have to list each of its findings in relation to the above international obligations, but avers that the Tribunal should have noted the existence of the ICCPR, the MOU and the Convention against Torture¹⁶.
52. It was necessary for the Tribunal to have grappled with the issue of racial discrimination, and any fear of harm to the appellant as a royalist RPP (N). The appellant says that having found that he was an active member of his party, they should also have consider these factors (in relation to Nauru's international obligations) when considering the question of complementary protection. By failing to do, so the appellants submit that the Tribunal erred in law such as to risk affecting their decision.

¹⁴ Book of Documents, p182, para 49

¹⁵ MOU signed 3 August 2013

¹⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 26 June 1987

53. The Republic responds by drawing the courts attention to the fact that the two paragraphs highlighted by the appellant are taken in isolation and that when looking at the Tribunal's decision as a whole much of what the Tribunal had dealt with in considering whether the appellant was a refugee for convention reasons, is also pertinent for complementary protection.
54. There is no reason to suppose that the Tribunal took a different approach when assessing the risk of harm in relation to complementary protection than it did when assessing the risk of harm in relation to the refugee assessment. The Tribunal found the aspects of the appellant's story "*implausible*"¹⁷; he was "*an unreliable witness*"¹⁸; they "*rejected the original basis of his story*"¹⁹; they rejected some of his submissions as "*a mere assertion*"²⁰; and found some of his "*account inconsistent, implausible, and fabricated to assist his claims*"²¹.
55. Having made a credibility finding in relation to the appellant's claims, and determined that the appellant did not face a real possibility for a Convention reason of persecution in the event that he was returned to Nepal, it followed the respondents say, that the Tribunal could consider their analysis equally appropriate in relation to the issue of complementary protection.
56. Furthermore, that a certain looseness of language in phrasing, "*that the appellant would be persecuted if he were to return to Nepal*"²² should not lead the Court to conclude that the Tribunal erred in law when making its decision on complementary protection.
57. In relation to this ground I am satisfied that taken as a whole the Tribunal considered whether the appellant's "*life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion*" were he to be returned to Nepal. These considerations were continuing from the determinations in relation to whether he was recognised as a refugee for a Convention reason as to whether he would suffer such prohibited treatment if returned to Nepal.
58. The Tribunal determined on the evidence before it that as the appellant had not been harmed previously (or "persecuted"); nor was there anything to indicate, in all the circumstances of the situation now pertaining in the country, that such harm would befall him in the future. The country information was discussed with the appellant, including the improvement in the social stability and prospects of Nepal. I find that the Tribunal did

¹⁷ Book of Documents, p180, para 40 (speaking to his wife but not ascertaining her whereabouts)

¹⁸ Book of Documents, p177, para 31 (in relation to his reasons for going to India)

¹⁹ Book of Documents, p180, para 41 (as to whether he received a threatening letter from the KJWP)

²⁰ Book of Documents, p180, para 39 (Maoists in police force not protecting him from other Maoists)

²¹ Book of Documents, p180, para 41 ('receipt' produced to the Tribunal regarding money not paid to KJWP)

²² Para 41, above

not misinterpret the law in relation to Nauru's complementary obligations towards the appellant and this ground fails.

Failure to take into account relevant considerations, and/ or to properly consider all the information before the Tribunal, and /or failed to consider and determine integers of the claim

59. Summarising the appellant's claims for this ground, he says that the Tribunal failed to properly consider what risk he might face being an active member of a royalist party, when there was clear evidence before the Tribunal that there were Maoists in government. The appellant referred the Court to the cases of *Bugdaycay*²³, *Htun*²⁴ and *SCAT*²⁵.
60. The appellant emphasised that part of the role of the Tribunal involved looking to the future and determining what was reasonably foreseeable; part of the consideration of this reasonable foreseeability was the evidence before the Tribunal of violence between the royalists and Maoists. References to torture by the police in Nepal were of significance as there were noted to be clashes between activists of the differing political parties.
61. Therefore the Tribunal should have been on notice and taken into account the risks to the appellant on his return to a situation in which he would take an active political role, and the effect that this would have on his family unit in terms of them all living safely.
62. The respondent asserts in the round that the matters averred to by the appellant do not identify anything that is a 'consideration in the relevant sense' and does not identify anything as being an error in law. That in effect the appellant, impermissibly, invites the Court to undertake a merits review.
63. Furthermore it is the purview of the Tribunal to determine what the facts are on the information before it, and subsequent to that determination what implications flow from that. Such are not matters within the disposition of matters of law.
64. Consideration of the cases referred to in paragraph 56 above distinguish them from this case as follows. *Bugdaycay*²⁶ (in relation to the second appellant) turned on the particulars that the decision maker hadn't come to grips with with the real possibility that sending the appellant back would likely involve him being moved on to another country where his life may be in peril. In the matter before this Court, the Tribunal has considered the levels of violence and policing in the appellants home country and made a determination on the information before it that he would not be persecuted for a Convention reason, nor would his life or liberty be in danger. It

²³ *Bugdaycay and Others v. Secretary for State for the Home Department* [1987] HL 514, at 538

²⁴ *Htun v Minister for Immigration and Multicultural Affairs*, [2001] FCA 1802, 244

²⁵ *SCAT v. Minister for Immigration and Multicultural and Indigenous Affairs*, [2003] FCA 80, 625

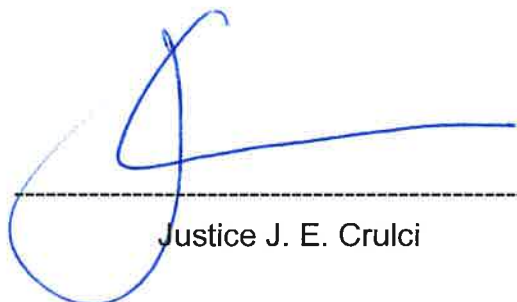
²⁶ *Bugdaycay and Others v. Secretary for State for the Home Department* [1987] HL 514, at 538

follows on from this that his family would not be endangered by the appellant's return and resumption of his life with them.

65. In *SCAT*²⁷, the Tribunal fell into error having not considered a material part of the appellant's claim. This resulted in the Tribunal's failure to carry out its essential review function. In the appellant's case the Tribunal has considered the elements of his claim and performed its statutory task to review the matters placed before it.
66. *Htun*²⁸ can be distinguished from the present case as the matters the Court was concerned with were the appellant's activities whilst in Australia (after his departure from his home country); these activities were of an anti-government and pro-democracy nature which involved that appellant being photographed at demonstrations with new pro-democracy friends. This was information that was highly likely to come to the attention of the authorities in his country of origin.
67. There is no evidence before the Court that the appellant has engaged in any such activities since his departure from Nepal that would place him in danger with government authorities upon his return. On the contrary the finding of the Tribunal was that the political and social situation in Nepal was leading to a 'more peaceful society'²⁹.
68. For the reasons given above I do not find that the Tribunal failed to take into account relevant considerations, or failed to properly consider all the information before it, or failed to consider and determine integers of the claim. This ground of appeal has no merit and fails.

ORDER

69. The appeal is dismissed. The decision of the Tribunal TFN 14045 of the 16 January 2015 is affirmed pursuant to the provisions of s.44(1)(a) of the Act.


Justice J. E. Crulci

Dated this 22 day of February 2017



²⁷ *SCAT v. Minister for Immigration and Multicultural and Indigenous Affairs*, [2003] FCA 80, 625

²⁸ *Htun v Minister for Immigration and Multicultural Affairs*, [2001] FCA 1802, 244

²⁹ Book of Documents, p 182, para 45