



IN THE SUPREME COURT OF NAURU

AT YAREN

[APPELLATE DIVISION]

Case No.21 of 2015

IN THE MATTER OF an appeal
against a decision of the Refugee
Status Review Tribunal TFN 14061
brought pursuant to s43 of the
Refugees Convention Act 1972

BETWEEN

ROD126

Appellant

AND

THE REPUBLIC

Respondent

Before: Crulci J

Appellant: Self-represented

Respondent: S. Walker

Dates of Hearing: 13 October 2016

Date of Judgment: 22 February 2017

CATCHWORDS

*APPEAL – Asylum seeker – Refugee Status Review Tribunal – Credibility of appellant’s claims – documentation verified or falsified – No point of law argued – Appellant arguing documentation not before the Tribunal – Appeal **DISMISSED***

JUDGMENT

1. This matter comes to the Court pursuant to section 43 of the *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 accordance 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 17 January 2015 affirming the decision of the Secretary of the Department of Justice and Border Control (“the Secretary”) on the 22 September 2014, that the appellant is not recognised as a refugee under the Refugees Convention² (“the Convention”) and is not owed complimentary protection under the Act.

¹ [2017] NRSC 8

² 1951 Convention and 1967 Protocol, referred to as “the Convention”

BACKGROUND

5. The appellant is an unmarried man of 29 years. He is a Sunni Muslim, identifying ethnically as Bengali. He was born in District Comilla in Bangladesh and lived there with his parents and siblings.
6. His father is a politician with the opposition Bangladesh National Party ("BNP"). In 2004 his father ran in the council elections and was elected a member of the council where he served for five years. His father continues to be a member of the BNP and remains actively involved with the party.
7. In 2001 he left his home and travelled to Malaysia where he remained for two and a half years, from there he travelled through Indonesia boarded a boat for Australia and landed on Christmas Island in October 2013. He was transferred to Nauru arriving on the 28 of October, 2013.

INITIAL APPLICATION FOR REFUGEE STATUS DETERMINATION

8. The appellant stated that in January 2011 he was at home and the police called, they said he had to come to take him to the police station. At the station there were other boys who had been arrested and they were all informed that there were complaints about people asking for illegal donations. He was tied up and beaten with a baton: the police put his hands on the table and hit his fingers. He was released the following midday. He went to a medical centre and has a medical certificate.
9. About a month after this incident the appellant was coming back from the market when he was abducted, by people he believes were activists from the ruling party. He was taken to a house which is located on a fish farm, then into a room where his hands and legs were grabbed and someone started to kick him. They said that they would give him a symbol which he could show his father and burnt a coin shape on his chest.
10. As a result of this the appellant lost consciousness, later coming to in the back of the car driven by his father who was taking him to a medical centre. He remained in the hospital for one day before being released. He was told later by his father that his screams were heard by neighbours who investigated, recognised him and took him to his father.
11. Approximately one and a half months later there was a fight between activists of the BNP and the ruling government supporters. Although the appellant was not present at the fight he was named as being one who was involved with anti-state activities which included 'the possession of illegal arms and involvement in a bombing'.

12. A few days after the fight, police came to his house but he was not home. He was told that the police were looking for him and so he left home. Firstly he went to a relative's house in Dawlatpur for approximately a month, then on to various other places before his family arranged for a smuggler to help him leave Bangladesh by boat.
13. He remained in Malaysia for two and a half years. As he was there unlawfully he feared he may be found as an illegal person so in October 2013 left Malaysia bound for Australia, as he determined he could not return to Bangladesh in safety.
14. In interview the appellant informed that his father, uncle and friends were also wanted over this incident and that their names appeared upon a list of some 2,500 people identified by the authorities. All of those on the list were BNP members which in particular targeted the younger generation.
15. The appellant said that his father had been in hiding to avoid arrest; however he also stated that his father was a doctor with his own practice continuing to operate a pharmacy with two employees.
16. Since arriving in Nauru he was told by his mother that her brother (his uncle) was taken and beaten by police because he is a supporter of the BNP.
17. The appellant fears that if returned to Bangladesh he will be killed by activists of the ruling government party because:
 - a) He is a supporter of the BNP;
 - b) His family supports and are members of the BNP, who are in opposition to the ruling government party; and
 - c) He has been accused of a crime which he did not commit and the complaint has been lodged with police.

Secretary's decision

18. The Secretary did not find the appellant's account credible and was not satisfied that he had offered an accurate account of his life experience and circumstances:
 - a) The incident is said to have occurred in 2011, however three years later there has been no enforcement action against the others involved who remain in Bangladesh;
 - b) Although his father is said to be on the list he continues to work as a doctor and operate a pharmacy, and despite the seriousness of the charges (bombs) the police attending there have not taken any action against his father;
 - c) When the appellant was asked to explain the documentation produced, he said that the case identified both the BNP, the Bangladesh Awami League, exit President late Ziaur Rahman, the appellant and the others. He said there that the charges were coded so that if the Awami League was in power they could charge

the BNP people, however if the BNP came to power then the Awami League could be charged. This is explanation is rejected as absurd and evidence of fabrication;

- d) The letter refers to the next hearing date as the 29th of February, 2014 (a date which does not exist), and it was noted that documents in Bangladesh can be fraudulently obtained.

19. The Secretary rejected all of the appellant's material claims and found no reason why the appellant would "be imputed with a political opinion or perceived as holding any kind of the adverse political profile"³. As such the Secretary was not satisfied that the appellant would face a reasonable possibility of harm should he return to his home region of Bangladesh and therefore found that the appellant's fear not well-founded. It was not necessary to go on and consider whether a fear was well-founded for a Refugee Convention⁴ ground.

20. In relation to complementary protection, for the same reasons that the Secretary found the appellants fear was not well-founded in relation to his claims, the Secretary was satisfied that there was not a reasonable possibility of the appellant been subjected to torture or cruel inhuman or degrading treatment or punishment if he was returned to Bangladesh. Therefore the Secretary found no evidence that returning the appellant Bangladesh would constitute a breach of Nauru's International obligations.

REFUGEE STATUS REVIEW TRIBUNAL

21. The refugee status review Tribunal (RSRT) noted that on the appellants own admission he was neither a member of the BNP nor any other political party⁵. They did accept that his father is a long-time member of the BNP and served as a Union Councillor.

22. The Tribunal accepted that whilst detained with other young men and questioned about their activities including fighting and extortion the appellant received a sharp blow on the hands by police. Whilst in no way condoning this behaviour, the Tribunal believed that this incident alone was not enough to constitute persecution.

23. The Tribunal rejected the appellant's testimony as implausible in relation to his account of being abducted. They found that the timeline simply did not add up with the appellant having to be unconscious for more than five hours. That after consulting a map it was seen that the hospital was no more than a kilometre away, but the appellant had stated it had taken them one and a half hours to get there.

³ Book of Documents, 54 at 8

⁴ 1951 Convention and 1967 Protocol

⁵ Book of Documents, 186 at 27

24. The Tribunal also rejected the appellant's description of having been in effect been branded: the mark on his chest so faint as to be questionable that this 'injury' would cause loss of consciousness for many hours.
25. In relation to the appellant's account of the court case resulting from the 2011 incidents, and the documentation produced in relation to this and the alleged incident of his mother being assaulted, the Tribunal concluded that these were false and furnished purely to assist his claim.
26. After the conclusion of the Tribunal hearing further documents were received from the appellant including: the documents purporting to be in relation to the 2011 incident comprising letters from the police to the court, police report and arrest warrant. The latter on a letterhead said to be of the Judge Court in Comilla. There are some 18 pages in Bengali with no translation, and the Tribunal found that the documents did not support the appellant's claims.

RSRT decision

27. In light of the Tribunal's findings it concluded that the appellant had not suffered harm because of his political opinion; nor was it satisfied that the appellant's fear of persecution by reason of his political opinion was well-founded. The Tribunal noted that the appellant is not a member of any political party. There was no real chance of harm amounting to persecution to the appellant in the reasonably near future if he were returned to Bangladesh.
28. The Tribunal noted that there was no evidence before it that the appellant had been hounded because of his father's BNP activities, and therefore found that he does not have a well-founded fear persecution because of his membership in relation to a particular social group (family of well-known BNP members). Considering all matters the Tribunal found that the appellant is not a refugee.
29. The Tribunal rejects the appellants claims that if returned to Bangladesh he would be adversely dealt with in a way that would breach Nauru's international human rights treaty obligations, and is thus satisfied that the appellant is not owed complementary protection.
30. The Tribunal affirmed the determination of the Secretary that the appellant is not recognised as a refugee, nor is he owed complementary protection.

GROUND OF APPEAL AND APPELLANT'S SUBMISSIONS

31. The appellant represented himself and stated that the documents he provided were to be believed, and questioned why they were not believed by the Tribunal when the Tribunal has not proved that the documents were forged.
32. He also relies on his grounds of appeal in his written submissions:
 - a) The appellant stated that according to international law he believes he is entitled to have refugee status;

- b) The appellant questions the Tribunal's concerns about the authenticity of these documents, commenting that because some documents were found by other cases not to be genuine it does not therefore follow that other documents are fabricated;
- c) The appellant states that he has consistently claimed that he had political problems in his home country;
- d) The appellant submits that he has articles from different newspapers referring to his being wanted by the local police;
- e) The appellant states that his business and documentation are genuine and that he has a history of paying the tax and maintaining the registration of his business;
- f) The appellant states that his circumstances are special as he is an asylum seeker who has been held in detention 'who has been mentally unwell for a long time'
- g) The appellant requests this Court to verify the authenticity of his claim and documents and not to make a decision without such investigation.

33. The week before the hearing the appellant provided his advisors with a document in relation to his case to be printed as he was unable to get them translated and printed in the centre; at the Tribunal he said he couldn't get them translated. The Tribunal believed what he said about his family's involvement in the political parties but it did not believe the documents about the appellant.

34. The appellant asks the court to believe that the Tribunal made an error when making a decision that the documents were forged.

RESPONDENT'S SUBMISSIONS

35. The respondent submits that the complaint in appeal grounds a), c) and e) are not on a point of law, but an objection to the findings of fact made by the Tribunal and not reviewable by this Court.

36. Appeal d) above relates to matters not before the Tribunal, accordingly the Appellant cannot establish an error on behalf of the Tribunal's decision on this ground

37. In relation to the appellant's request in g) the role of this Court is not to conduct a *de novo* review, but to consider whether the Tribunal's decision has erred on a point of law.

38. The respondent points to numerous instances where the Tribunal considered the legitimacy of the documents before it and highlighted with the appellant in

interview the discrepancies on the face of the documents. It was the role of the Tribunal to consider the issue of the veracity of the documentation afresh and it was not bound to accept or agree with the Secretary's decision.

CONSIDERATION

39. The matters complained of by the appellant fall largely into two areas, firstly he is unhappy that the Tribunal did not believe his claims and found his documentation fabricated to bolster his claims.
40. Secondly that he wishes this Court to in effect conduct an investigation of documentation not before the Tribunal.
41. I have carefully considered the findings made by the Tribunal and the submissions before this Court, and find that the decisions of Tribunal were open to it on the material before it.
42. No points of law are raised by the appeal, and the grounds pleaded have no merits.

ORDER

43. The appeal is dismissed. The decision of the Tribunal TFN 14061 on the 17 January 2015 is affirmed pursuant to the provisions of s.44(1)(a) of the Act.



Judge Jane E Crulci

Dated 22 February 2017

