IN THE SUPREME COURT OF NAURU
AT YAREN

APPEAL NO. 11/2015
Being an appeal against a decision of the Nauru Refugee Status Review Tribunal brought pursuant to s43 of the *Refugees Convention Act 2012*

BETWEEN

DWN027 APPELLANT

AND

The Republic of Nauru RESPONDENT

Before: Khan J
Date of Hearing: 2 May 2016
Date of Judgment: 22 September 2017

Case may be cited as: DWN027 v The Republic

CATCHWORDS:

Whether the Tribunal erred by importing a relocation test in its consideration of complementary protection – whether the Tribunal failed to consider all of Nauru's international obligations – whether the Tribunal was bound by obligations arising under the Convention on the Rights of the Child – whether the Tribunal failed to consider whether the appellant would be compelled to return to the area of persecution.

Held: The Tribunal applied the correct test for relocation – the provisions of the Convention on the Rights of the Child did not apply to the Tribunal's task in this matter – the Tribunal properly considered the practical realities faced by the appellant – appeal dismissed.

APPEARANCES:

Counsel for the Appellant: M Albert
Counsel for the Respondent: A Aleksov

JUDGMENT

INTRODUCTION

1. The appellant filed an appeal against the decision of the Refugee Status Review Tribunal ("the Tribunal") pursuant to s 43(1) of the *Refugees Convention Act 2012* ("the Act") which states:

> 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 Tribunal delivered its decision on 28 December 2014 affirming the decision of the Secretary for the Department of Justice and Border Control ("the Secretary") that the appellant is not recognised as a refugee and is not owed complementary protection under the Act.

3. The appellant filed an appeal in this Court on 24 April 2015 and the grounds of appeal were amended on 20 July 2015 and 7 April 2016.

EXTENSION OF TIME

4. Following the decision of this Court in *Kun v The Secretary for Justice and Border Control*[1] ("*Kun*") the respondent took issue to the appeal being filed out of time.

5. The Registrar on 11 February and 27 April 2015 purported to extend the time for the filing of the appeal. The Republic's position is that following the decision of *Kun* the Registrar did not have the powers to grant the extension and as such there is no valid appeal before the Court.

6. The Republic for the efficient disposal of the case agreed that the appellant be allowed to present his case on the merits of the proposed appeal and at the same time present his argument on the substantive issue, and if the Court was satisfied that there was merit in the appeal then the extension of time can be granted. However, at the hearing, the Republic and the lawyers for the appellant came to an agreement that the extension of time will not be in issue. Accordingly, a consent order was filed on 3 May 2016 vacating the orders of the Registrar and a further consent order was filed on 22 November 2016 whereby the time of appeal was properly extended by the Registrar pursuant to the amendment to the Act on 14 August 2015[2] and consequently the issue of appeal being out of time is no longer an issue.

BACKGROUND

4. The appellant is a 34 year old man. He is married with one child.

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[1] [2015] NRSC 18 (Khan J).
[2] *Refugees Convention (Amendment) Act 2015.*

5. He was born on 20 March 1983 in Hashtnagri, Peshawar in Khyber Pakhtunkhwa Province, Pakistan and continued to live there with his family, mother and younger brother until his departure from Pakistan. His other siblings live in Pakistan and the United Arab Emirates ("UAE").

6. The appellant worked in his father's grocery store. His father retired in 2009 and died in 2012.

7. In about 2005, one of the appellant's brothers was kidnapped and beaten for the purpose of extortion by the Taliban. He fled to UAE. In 2010, another brother was put under pressure by the Taliban to join them. He fled and joined his brother in UAE.

8. In 2009, the appellant was injured in a bomb blast that killed 150 people. In 2012, he was injured in a robbery. The appellant does not claim that he was specifically targeted by the Taliban on either of these occasions.

9. On 20 May 2013, four members of the Taliban entered his store and demanded that he join them or pay money. He refused to do either.

10. On 24 May 2013, a proprietor in the vicinity of the appellant's store was killed after ignoring a similar demand to that made to the appellant.

11. On 30 May 2013, the appellant was chased from the threshold of his store by the four men who had made the earlier demand, now wielding guns. The appellant was able to escape the men and locked up his shop and has not returned. He stayed at home unless necessary.

12. On 3 June 2013, the appellant went out to purchase medication for his wife. He was shot at from a car in a market by who he suspects were the same men.

13. On 16 June 2013, the appellant was run down by a car by who he suspects were the same men.

14. Following this incident, the appellant then decided to flee Pakistan and departed on 2 July 2013.

APPLICATION TO THE SECRETARY

15. On 27 November 2013, the appellant attended a Transfer Interview.

16. On 19 December 2013, the appellant made an application to the Secretary for recognition as a refugee and for complementary protection under the Act.

17. On 17 July 2014, the Secretary made a determination that the appellant is not a refugee and is not owed complementary protection.

APPLICATION TO THE TRIBUNAL

18. The appellant made an application for review of the Secretary's decision pursuant to s 31(1) of the Act which provides:

> A person may apply to the Tribunal for merits review of any of the following:
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> a) a determination that the person is not recognised as a refugee;
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> b) a decision to decline to make a determination on the person's application for recognition as a refugee;
>
> c) a decision to cancel a person's recognition as a refugee (unless the cancellation was at the request of the person);
>
> d) a determination that the person is not owed complementary protection.

19. On 3 August 2014, the appellant made a statement and on 30 September 2014 his lawyers, Craddock Murray Neumann, made written submissions to the Tribunal.

20. On 2 October 2014, the appellant appeared before the Tribunal to give evidence and present his arguments with his representative and an interpreter in Pashto and English languages.

21. The appellant's lawyers sent an email to the Tribunal attaching further evidence on 24 October 2014.

22. The Tribunal was satisfied that the appellant has a well-founded fear of persecution in his home area but that this could be avoided by relocating within Pakistan.

23. The Tribunal handed down its decision on 28 December 2014 affirming the decision of the Secretary that the appellant is not recognised as a refugee and is not owed complementary protection under the Act.

THIS APPEAL

24. The appellant filed three grounds of appeal which are:

> 1) The Tribunal erred by importing a relocation test in its analysis of the Appellant's 'complementary protection assessment' in breach of s 4(2).
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> 2) The Tribunal erred by failing to consider all of Nauru's international obligations when it determined whether the Appellant could relocate within Pakistan, namely its obligation to give 'primary consideration' the best interests of the Appellant's child.
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> 3) The Tribunal erred by failing to consider an integer of the Appellant's relocation objections, namely that if the Appellant returned to Pakistan other

than to Peshawar he would 'be compelled to go back to the original area of persecution'.

SUBMISSIONS

25. In addition to the submissions filed by the appellant and the respondent, they also made oral submissions which were of great assistance to me and I am indeed very grateful to both counsel.

CONSIDERATION

Ground One - The Tribunal erred by importing a relocation test in its analysis of the Appellant's 'complementary protection assessment' in breach of s 4(2)

26. At the hearing of the appeal the appellant's counsel amended ground one. Section 4(2) was deleted and was replaced by "in breach of the Act".

27. The appellant submits that as an alternative to the claim to be a refugee, he also submitted that he was owed complementary protection on the basis that there was a real risk that he would face, inter alia, arbitrary deprivation of life or cruel, inhumane or degrading treatment.

28. It is submitted by the appellant that the Tribunal dealt with the 'complementary protection' at [45][3] and the Tribunal rejected his claim and stated:

> ...However, for the same reasons as are set out above with respect to relocation, the Tribunal is not satisfied that the applicant faces a real possibility of degrading or other treatment such as to enliven Nauru's international obligations.

29. Having rejected the complementary protection claim, the Tribunal found that the appellant could relocate within Pakistan to avoid mistreatment.

30. The appellant further submits in its written submissions[4] that it is well established that the 'internal flight alternative' or 'internal relocation principle' is part of the determination of a claim to protection under the Refugees Convention; and that in international law a person is entitled to the protection if:

a) The person has a well-founded fear of persecution for a Convention reason in one place in the country of return; and

b) The person cannot reasonably relocate to another part of that country.

31. The appellant further submits[5] that under s 4(2) of the Act, Nauru "must not expel or return any person to the frontiers of territories in breach of its international

[3] Refugee Status Review Tribunal Decision.
[4] Appellant's written submissions, [24].
[5] Ibid, [26].

obligations"; those obligations include Article 7 of the International Covenant on Civil and Political Rights ("ICCPR") which provides that no one "shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment"; and that the UN Human Rights Committee on the implied non-refoulement obligation stated that:

> The text of Article 7 allows of no limitation... States parties must not expose individuals to the danger of torture or cruel, inhumane or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement.

32. The appellant further submits[6] that the international obligations on Nauru are confirmed by Article 19(c) of the Memorandum of Understanding between Nauru and Australia on 3 August 2013 where Nauru "assured" Australia that it would not "send a Transferee to another country where there is a real risk that the Transferees will be subject to torture, cruel, inhumane or degrading treatment or punishment...".

33. The appellant further submits[7] that there is no relocation test under international law if a decision-maker is satisfied that the person is at risk of being subject to relevant mistreatment at the place of country of return.[8] The appellant relies on *Minister for Immigration and Citizenship v MZYYL*[9] where the Full Federal Court of Australia stated:

> ...express and implied non-refoulement obligations under the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (CAT) and the Convention on the Rights of the Child (CROC)... do not require the non-citizen to establish that the non-citizen could not avail himself or herself of the protection of the receiving country or that the non-citizen could not relocate within that country. Sections 36(2B)(a) and (b) [of the Australian *Migration Act*] have adopted a different and contrary position.

34. The appellant also submits that Australia, New Zealand, the European Union, the United Kingdom and Canada have an express relocation provision in respect of complementary protection in their legislation.

35. In oral submissions, the appellant's counsel submitted as follows:

> The very short point that the appellant makes by this ground is that there is no relocation test as a matter of international law and therefore under the Act in respect of complementary protection.[10]

36. The appellant in conclusion submits that "...the Tribunal was in error to import into Nauruan law a relocation test in respect of a complementary protection claim."[11]

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[6] Appellant's written submissions, [26].
[7] Ibid, [27].
[8] See commentary on this question by leading refugee and complementary protection scholars, Professors Jane McAdam and Michelle Foster as recorded in J. McAdam "Australian Complementary Protection; A Step-By-Step Approach" [2011] SydLawRw 29; (2011) 33(4) Sydney Law Review 687 at 707.
[9] [2012] FCAFC 147, [18].
[10] Transcript of Proceedings, page 25, lines 38-40.

37. The respondent submits[12] that the appellant's argument cannot be accepted where it stated:

> Indeed, the logical extension of the appellant's argument is that it would not permit the Tribunal to have regard to internal relocation or protection under a treaty that expressly provided for internal relocation or protection. This absurdity emphasises that the appellant's argument cannot be accepted.

38. The respondent submits that any international obligations on Nauru in regard to 'complementary protection' ought to be examined according to the terms and context of the source treaty or customary law and the context of each treaty or custom will include the general body of international law regarding international protection obligations. The respondent discussed relocation and non-refoulement under international law in its written submissions[13] where it stated:

> 25) Having regard to the manner in which the review before the Tribunal was conducted, it appears that the appellant's argument on this appeal must focus on the [*Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* ("CAT")] and the ICCPR.
>
> 26) The respondent submits that it is helpful to consider these treaties by reference to the jurisprudence regarding the Refugees Convention.
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> 27) Article 33(1) of the Refugees Convention provides:
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> > No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
>
> 28) There are at least two analyses by which a relocation test is implied into the Refugees Convention[14]:
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> > 28.1) One analysis flows from the observation that the Refugees Convention adopts as subject matter the geopolitical unit of a 'country' (or State). This has been said to imply that for any *obligation* to arise upon a country to afford protection to an asylum seeker, the person seeking protection must be unable to obtain that protection from their country of nationality. This implication derives from the fact that in the Refugees Convention, principal responsibility for protection lies with an individual's country of nationality. It follows that a foreign country does not owe protection obligations under the Refugees Convention to a person who can obtain the protection of his or her country of nationality. Inherent in this task is an examination of whether a person

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[11] Appellant's written submissions, [29].
[12] Respondent's written submissions, [23].
[13] Ibid, [25] – [28].
[14] Hathaway and Foster, *The Law of Refugee Status* (2014, 2nd ed) 332ff.

might reasonably be able to 'relocate' to an area within his or her country of nationality where he or she can access protection.

28.2) A second analysis flows from the definition of refugee, in that a person who can reasonably relocate to an area within his or her country of nationality is not outside his or her country of nationality 'owing to' a well-founded fear of persecution. Such a person is not regarded to be a refugee.

39. The respondent discussed the relocation test under Article 3(1) of the CAT and Articles 2, 6, 7 of the ICCPR and submits that unlike the Refugees Convention both the CAT and the ICCPR do not have an express non-refoulement obligation but non-refoulement obligations are implied in the same manner as in Article 33 of the Refugees Convention.

40. The respondent further submits[15] that the Tribunal applied the UNHCR Guidelines on International Protection (No. 4), dated 23 July 2013; and that the appellant does not challenge the correctness of that test set in the Guidelines and the appeal should be dismissed.

41. I am satisfied that both the CAT and the ICCPR contain an implied non-refoulement obligation and that the Tribunal was correct in arriving at its decision at [45].

42. In coming to this conclusion, I am assisted by the decision of Crulci J in *ULA007 v The Republic*[16] where the entire appeal was based on complementary protection and Nauru's international obligations. In that case Crulci J stated as follows at [59] to [62] as follows:

[59] In Nauru, the Act is the primary instrument of protection for an asylum seeker, and consideration of internal relocation is part of the determination of refugee status. The determination of complementary protection is secondary and 'complements' the first enquiry. If there is not a well-founded fear of harm for a Convention reason so as to determine that the applicant is a refugee, the question then moves to whether he/she nonetheless faces a real risk of harm if returned to the home country (or any country to which they may be moved).

[60] Having considered that an asylum seeker has an internal relocation alternative and is therefore not a refugee, and then moving on to consider complementary protection on the same facts but without the relocation alternative, would potentially render the primary legislation redundant.

[61] The purpose of international obligations and complementary protection is to protect those who are not refugees from harm (a harm which is not one of the five convention reasons). If there is an internal relocation alternative open to the appellant then this is as relevant to the complementary protection consideration as it was to the refugee status determination.

[15] Respondent's written submissions, [40] – [41].
[16] [2017] NRSC 40.

[62] The Court endorses the considerations laid out by Hathaway and Foster in *The Law of Refugee Status*[17] when determining if there is an internal relocation alternative for an applicant:

1) Can the applicant safely, legally and practically access an internal site of protection?

2) Will the applicant enjoy protection from the original risk of being persecuted?

3) Will the site provide protection against any new risks of being persecuted or of any indirect *refoulement*?[18]

4) Will the applicant have access to basic civil, political and socio-economic rights provided by the home country or State?

43. In the circumstances, this ground of appeal is dismissed.

Ground Two – The Tribunal erred by failing to consider all of Nauru's international obligations when it determined whether the appellant could relocate within Pakistan, namely, its obligations to give 'primary 'consideration' to the best interest of the appellant's child

44. The appellant submits that he has a child who was aged 18 weeks old when he fled Pakistan and the Tribunal concluded that the appellant could lead a relatively normal life without facing undue hardship in all the circumstances. [19] The Tribunal acknowledged that his family would join him in the place of relocation.[20]

45. The appellant submits that the Tribunal was obliged to consider the best interests of his child under the *Convention on the Rights of the Child* ("CRC") and in particular Article 3(1) of the CRC which states:

> In all actions concerning children, whether undertaken by... courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

46. The appellant further submits that the Tribunal failed to ask itself as to whether the reasonableness of the appellant's relocation was in the best interests of his child.

47. The appellant submits that Article 23(1) of the ICCPR requires Nauru to protect "the family [a]s the natural and fundamental group unit of society"; and that the Executive Committee of the UNHCR as well as the conference that led to the drafting of the Refugees Convention confirmed this; and that this conclusion accords with the UNHCR Handbook on Refugee Status Determination that "family situation and relationship [is] of relevance in making this [internal flight] assessment".[21]

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[17] Hathaway, J.C. and Foster, M *The Law of Refugee Status*, Cambridge University Press, 2nd Ed.
[18] Ibid p 361 lines 14 – 17.
[19] Refugee Status Review Tribunal Decision, [41].
[20] Ibid, [39].
[21] Applicant's written submissions, [33].

48. The appellant further submits that the Tribunal did not ask itself whether the reasonableness of the appellant's relocation was qualified by whether the relocation was in his child's best interests under the CRC[22]; and in failing to do so it was in error.

49. In response, the respondent agrees that both the CRC and/or Article 23(1) of the ICCPR give rise to an 'international obligation' upon Nauru such that the Tribunal was required to consider the best interests of the appellant's children. The respondent also accepts that the family is the natural and fundamental group unit of society; that unity of family is an essential right of refugees; that family situations and relationships are relevant in relocation assessments. The respondent submits that no argument was advanced by the appellant as to how these propositions affect the argument based on the CRC.[23]

50. The respondent states:[24]

44.1) The Tribunal did not find the appellant's children 'would join him in the place of relocation', contrary to the submissions in paragraph 30 of the appellant's submissions in this Court.

44.2) The appellant did not make any objection as to why relocation to some other part of Pakistan, as opposed to settlement in Nauru, would be in the best interests of the child.

44.3) The CRC is engaged only with respected (sic) to 'each child within [Nauru's] jurisdiction.' The appellant's child is not within the jurisdiction of Nauru.

44.4) In any event, the decision of the Tribunal was not an 'action concerning children', within the meaning of art 3(1) of the CRC because it could not, on any view, involve an alteration of the circumstances of children.

44.5) Further still, no 'point of law' arises because there would be no 'international obligation' breached in *expelling or returning* the appellant to the frontiers of Pakistan.

51. The respondent further submits that the Tribunal made a finding[25] that it will take some time for the appellant to re-establish himself; and a finding that it would take the appellant some time before his family could join him if they so wished.

52. The respondent also submits that the appellant never made a claim to the Tribunal that his relocation to another part of Pakistan would not be in the best interests of his child.

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[22] Appellant's written submissions, [37].
[23] Respondent's written submissions, [43].
[24] Ibid, [44].
[25] Refugee Status Review Tribunal Decision, [39].

Appellant's Child not within Nauru's Jurisdiction

53. The respondent submits that Article 2(1) of CRC limits the protections set out in the CRC to protections with respect to "each child within [Nauru's] jurisdiction".[26]

54. The respondent further submits that there is no evidence and it is accepted that the child is not within Nauru's territory or that Nauru exercises 'physical power and control' over the appellant's child. It therefore follows that there was no international obligation owed by Nauru under the CRC to the appellant's child in Pakistan.

55. The respondent further submits that the decision of the Tribunal cannot constitute an action concerning children and it makes further submissions at [53] to [55][27] as follows:

> [53] In no way does the decision of the Tribunal constitute an 'action' 'concerning' children. The terms of art 3(1) require that this action have a particular character – that is 'concern' children. This requires that there be a connection between the action and the rights or interests, legal and practical, of a child or children.
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> [54] The decision is not capable of affecting the rights or interests of any child, directly or indirectly, nor is it capable of having any practical effect upon a child. Rather, it concerns the rights and interests, both legal and practical, of the appellant – who is not a child.
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> [55] The fact that the appellant has a child is not to the point. If that were so, then any State action in respect of someone who happens to be a parent of a child would come within the ambit of the CRC, which would be a surprising result.

56. The respondent also submits that no point of law arises as the duty of the Tribunal is defined by ss 3, 6(1) and 34 of the Act in that the Tribunal is required to determine whether the expulsion or return would breach Nauru's international obligations; and that the reference to the concepts of 'expulsion' and 'return' indicates that the Tribunal is to consider whether 'expulsion of itself' or 'return of itself' breaches Nauru's international obligations 'not to expel' and 'not to return' and therefore the CRC has limited non-refoulement obligations.

57. The respondent then discusses Article 22 of the CRC which provides:

> 1) State parties shall take measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

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[26] Respondent's written submissions, [49].
[27] Respondent's written submissions.

2) For this purpose, State Parties shall provide as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organisations or non-governmental organisations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

58. And the respondent submits that it is clear that Article 22 was not engaged in this case.

59. The respondent further submits that any failure to comply with Article 3(1) would not be in breach of Nauru's obligations within the limited meaning of ss 3, 6 and 34; and that the expulsion or return of the appellant has no connection with Nauru's non-expulsion and non-return obligations under the CRC.

60. I find that the respondent's submission has merits and agree that the Tribunal took the interests of the child into consideration when making the finding of relocation. The Tribunal was indeed very cautious in its approach when it acknowledged firstly that it would take the appellant some time to re-establish himself; and secondly, that it would take some time before his family including the child could re-join him.

61. In the circumstances, this ground of appeal is dismissed.

Ground Three – The Tribunal erred by failing to consider an integer of the appellant's relocation objections, namely that if the appellant returned to Pakistan rather than to Peshawar he would be compelled to go back to his original area of persecution

62. The appellant submits that the Tribunal in making the finding of relocation did not address the issue that given the appellant's circumstances he would be compelled to return to the place where he was persecuted, that is, his home area. The Tribunal therefore failed to consider an integer of his objection to relocation.

63. The appellant relies on *SZIED v Minister for Immigration and Citizenship*[28] ("*SZIED*") where it was found that the Australian Refugee Review Tribunal failed to consider an objection to relocation.

64. The respondent submits that the appellant never raised any objections to being relocated or never made a claim that if he were to relocate he would be compelled to go back to his 'home area' where he would face persecution.

65. In *SZIED*, his Honour considered the question of whether the appellant could reasonably be expected to relocate to another area in the context of the following evidence:[29]

[28] [2007] FCA 1347, [49].

Chairperson: Now, what I want to hear from you, if anything, is any reason why you could not live in other part of Colombia.

Interpreter: So, if I go back to Colombia, I would go back to the farm, because that's what I can do. I would have to growing coffee and being involved with the political life, because because that what I like, that's what I learned to do; and I'm not going to... let a few bandits dictate what I can or cannot do.

66. His Honour noted that the decision-maker had not accepted this claim on the basis that the appellant was willing to live in Australia without returning to his farm.[30] The evidence was therefore rejected.

67. In conclusion, Moore J found:[31]

> On one view, the Tribunal's conclusion that it "did not accept the [appellant's] claim in this regard" was no more than a finding of fact. That was the approach of the Federal Magistrate. But in substance, it was significantly more. It was not a finding about past events but a conclusion that it would be reasonable to expect the appellant to relocate within Colombia without given any real consideration to the specific issue he had raised. An assessment of whether it was reasonable in the circumstances to expect the appellant to relocate could not be made by merely pointing to the fact that the appellant had not been on the farm for some years because he is in Australia and had not been doing farm work whilst in Australia. The test propounded by Black CJ in *Randhawa* requires that the evaluation be proper, realistic and fair and all the circumstances be taken into account. In my opinion, the Tribunal misunderstood the content of the principle propounded in *Randhawa*, did not apply it and thereby fell into jurisdictional error.

68. In this case, the Tribunal heard evidence that the appellant has a motivation to return to his home area, and that it will be difficult for him to re-establish himself in a new area of the country due to his personal circumstances. However, it is agreed that there was no express evidence before the Tribunal of a refusal to relocate away from the area of persecution.

69. Consistent with the decision of *Randhawa*, the Court was required to consider the practical realities faced by the appellant. It is clear from the Tribunal's reasons at paragraph [39] that it did not fail to do so. The Tribunal noted that he had the assistance of two brothers in his home area, and that there was no reason why his property could not be sold through an agent. Further, it was noted that the appellant had experience as a small trader, and has written and spoken language skills in Urdu and English. It therefore concluded that it would be reasonable for the appellant to relocate.

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[29] [2007] FCA 1347, [43].
[30] Ibid, [50].
[31] Ibid, [52].

70. The decision of *SZIED* is distinguished. In that case, the evidence before the decision-maker included an express claim that the appellant would refuse to relocate. The decision-maker failed to complete an evaluation of all of the circumstances relevant to the question of whether the appellant could reasonably be expected to relocate to another area because it refused to consider this claim.

71. In this matter, no such failure occurred. The Tribunal weighed all of the evidence regarding the difficulties of moving to a different area of Pakistan as well as the skills and resources available to him for relocation.

72. This ground of appeal is dismissed.

CONCLUSION

73. Under s 44(1) of the Act, I make an order affirming the decision of the Tribunal.

DATED this 22nd day of September 2017

Mohammed Shafiullah Khan
Judge