IN THE SUPREME COURT OF NAURU

AT YAREN

[APPELLATE DIVISION] Case No. 3 of 2016

IN THE MATTER OF an appeal against a decision of the Refugee Status Review Tribunal TFN T15/00168, brought pursuant to s 43 of the *Refugees Convention Act* 1972

BETWEEN

WET 068 Appellant

AND

THE REPUBLIC Respondent

Before: Crulci J

Appellant:
Respondent:

Date of Hearing: 7 September 2017
Date of Judgment: 20 October 2017

CATCHWORDS

APPEAL - *Refugees – Refugee Status Review Tribunal – Point of Law – Relevant considerations – Appeal DISMISSED*

JUDGMENT

1. This matter is before 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. The Refugee Status Review Tribunal ("the Tribunal") delivered its decision on 1 February 2016 affirming the decision of the Secretary of the Department of Justice and Border Control ("the Secretary") of 30 August 2015, that the Appellant is not recognised as a refugee under the 1951 Refugees Convention[1] relating to the Status of Refugees, as amended by the 1967 Protocol relating to the Status of Refugees ("the Convention"), and is not owed complementary protection under the Act.

4. The Appellant filed a Notice of Appeal on 6 May 2016. On 31 March 2016 the Appellant filed an Application for an Order to Extend Time up to the date on which the Order was made under s 43(5) of the Act, although this Application for incompetent. On 2 August 2017, the Appellant filed a competent Application for an Order to Extend Time, and the Respondent indicated its consent to that Application in its written and oral submissions on the appeal. Leave was granted by the Court.

BACKGROUND

5. The Appellant was born in Gujarat, India, in 1983. He has a wife and young child who live with his cousin in Ahmedabad; his widowed mother lives in a village in Gujarat.
6. The Appellant claims a fear of harm arising from a debt owed by his deceased father to two money lenders. The Appellant characterises this as a fear of harm due to his membership of the particular social group constituted by his father's family, as he is being targeted as the only son of his father. The Appellant says the authorities are corrupt and unable to protect him, because the men are powerful and one of them is a member of the ruling party.

[1] 1951 Refugee Convention and 1967 Protocol, also referred to as "the Refugees Convention" or "the Convention".

7. The Appellant fled India in or about June 2013, and then travelled to Malaysia and Indonesia. He arrived on Christmas Island on 2 August 2013, and was transferred to Nauru on 26 January 2014.

INITIAL APPLICATION FOR REFUGEE STATUS DETERMINATION

8. The Appellant attended a Refugee Status Determination interview on 8 July 2014. The Secretary summarised the Appellant's material claims as follows:

- *In about 1990, his father borrowed Rs.50 lakh from Babubhai and Rs.70 lakh from Ghulapsingh.*
- *Babubhai is a member of the Bharatiya Janata Party (BJP). The BJP was in opposition but recently won elections.*
- *In about 1998, his father's business suffered financial losses and he was unable to repay the loan to his friends.*
- *In about 1998, when he was in year 10, Babubhai and Ghulapsingh started to mentally and physically harm his father because he had not repaid the debt.*
- *In about 1999, his family moved from Ahmedabad city to Mehsana district, Gujarat because of the issues with Babubhai and Ghulapsingh and the dangers to his father's life. After they moved, the men continued to harass, intimidate and harm his father. His father constantly told the men that he and his family did not have enough to financially support themselves let alone repay the debt.*
- *In about 2008, owing to the psychological pressure and he (sic) constant threats, intimidation and physical violence from Babubhai and Ghulapsingh, his father committed suicide.*
- *At about 10-11 am, one month after his father's death, Babubhai and Ghulapsingh came to his home in Abasana village, Mehsana. He and his wife were at home. The men swore at him and demanded that their money be repaid. Hey (sic) knew his father had passed away. They threatened to kill him if the money was not repaid and then beat him severely in front of his wife. His wife was distraught.*
- *While he was already working, he told the men that he was looking for work and would repay them when he found a job.*
- *He believes the men targeted him as the only son of his father.*
- *One month later, he returned to work in Ahmedabad. About two months later, in 2009, the men started coming to his work place, beating him and verbally assaulting him. The men would alternate and came on four to five occasions between 2009 and 2010. The sum they demanded was large and the Applicant could not pay his family.*
- *In about late 2010, he quit his job and moved house to get away from the two men.*
- *In about January 2013, he moved to Bhuj City, Kach District to live with friend and then fled to India in June 2013.*

9. The Secretary did not accept the following material elements of the Appellant's claims as credible:

- The Appellant's father borrowed a large sum of money from Babubhai and Ghulapsingh;
- Babubhai is a member of the BJP and will use his political affiliation to harm the Appellant without recourse from the authorities;

- The Appellant left India due to a fear of harm from Babubhai and Ghulapsingh in connection with this loan.[2]

10. The Secretary accepted that private money lending is widespread across India, and money lenders often use violence to extract repayments. However, the Secretary did not accept that this had occurred to the Appellant for the following reasons:

- At the Transfer Interview, the Appellant said his father borrowed 5 lakh from Babubhai and 7 lakh from Ghulapsingh. In the RSD application, the Appellant claimed his father borrowed 50 lakh from Babubhai and 70 lakh from Ghulapsingh. At the RSD interview, the Appellant put this down to error of translation;[3]
- The Appellant said the money was to be used to open a small grocery shop. The sum of money borrowed (total USD $199,344 in the 1990s) appears in excess of what would have been required to open such a shop;[4]
- It was not plausible that Babubhai and Ghulapsingh, being astute wealthy real-estate agents, would accept as low a return as 1.6% on the loan;[5]
- It was unlikely Babubhai and Ghulapsingh would loan this amount with no security;[6]
- It was not logical or internally consistent that the Appellant's father would have gone into business partnership with another but assume all the risk;[7]
- It was not internally consistent that the business partner would have been able to leave the state to escape the debts but the Appellant would be tracked down if he were to be returned to India;[8]
- The behaviour of Babubhai and Ghulapsingh not "*going after*" the Appellant's other family members, despite that the Appellant was "*in hiding*" from 2010, was not consistent with the lenders' business of making money;[9]
- The delay between the father's business suffering losses and Babubhai and Ghulapsingh seeking repayment of the loan from the father, or, following his death, other family members, was unexplained;[10]
- It was implausible that Babubhai and Ghulapsingh would not seek to recover their debts by taking land owned by the Appellant's mother in his village;[11]
- The Appellant gave vague responses to questioning on whether just Babubhai, or Babubhai and Ghulapsingh, were members of the BJP;[12]
- Details given by the Appellant at the RSD interview as to the dates, duration, and residences in India were inconsistent with claims in the RSD statement;[13]

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[2]Ibid 66.
[3]Ibid 63.
[4]Ibid.
[5]Ibid 64.
[6]Ibid.
[7]Ibid.
[8]Ibid.
[9]Ibid.
[10]Ibid 65.
[11]Ibid.
[12]Ibid.
[13]Ibid 66.

- It was implausible that the Appellant's friend would support the Appellant, his wife, and his newborn child for several years because he "*understood his situation*";[14]
- The Appellant did not appear to have genuinely considered relocating to another state in India.[15]

11. Having found the Appellant's claims to be fabricated, the Secretary rejected that the Appellant had any well-founded fear of harm and declined to grant the Appellant refugee status. In view of the finding that the Appellant's claims were fabricated, the Secretary also considered there to be no reasonable possibility that the Appellant would face harm if returned to India that would constitute a breach of Nauru's international obligations.[16]

REFUGEE STATUS REVIEW TRIBUNAL

12. Before the Tribunal, the Appellant maintained that he feared harm at the hands of two money lenders in respect of a large debt incurred by his deceased father. At the Tribunal hearing, the Tribunal obtained further details concerning the opening of his father's store, the deterioration and closure of the store in 1998, the consequences of the father's failure to repay the debt, and the targeting of the Appellant before and after the father's death.

13. The Tribunal considered it implausible that Babubhai and Ghulapsingh, as two astute businessmen, would grant such a large loan, even to an old friend, without any collateral, security, or documentation.[17] It was difficult to accept that a shop could take cash loans of 50 and 70 lakhs without making any use of any bank account facilities.[18] The Tribunal noted that in the supplementary statement, written after the Secretary's determination had been delivered, the Appellant added the explanation that several separate loans had been taken out, with the total amount owing after some repayments being 50 and 70 lakhs.[19] The Tribunal rejected the claim that the money lenders would be willing to loan more money given the lack of consistent repayments.

14. In addition, the Tribunal was of the opinion that the Appellant had "*invented*" the character of the business partner to explain how a small grocery shop could lose such a large amount of money (12 million rupees) in a few years. The Tribunal noted that the Appellant said he knew little about the business partner despite being present in the shop for eight years and being a very old friend of his father, and that the money lenders were unaware of the business partner.[20] The Tribunal further considered that the use of verbal and physical abuse was an unlikely way of recovering the debt, particularly when the Appellant's family lived 40 km from where the lenders were based.[21] There were no claims that the lenders sought

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[14] Ibid.
[15] Ibid.
[16] Ibid 68.
[17] Ibid 159 at [43].
[18] Ibid 159 at [45]
[19] Ibid 159 at [46]
[20] Ibid 159 at [44].
[21] Ibid 160 at [48]-[49].

for the Appellant's father or mother to sell their land to repay some of the debt, instead insisting on the Appellant repaying the loan from his meagre wages.[22] The abuse was also inconsistent with the Appellant's claims of his father being old friends with the lenders.[23]

15. It was further noted in the Decision Record that the electoral enrolment card tendered by the Appellant as evidence of his identity showed his current address at the time and was inconsistent with his claim to have been "in hiding".[24] The Tribunal was of the view that the Appellant fabricated the story of leaving his cousin's house after a month of settling his wife and child into those premises to "go into hiding" at a friend's house to add weight to his claims. It noted that the address of the friend was not listed on the Transfer Interview form despite it being the last place he claimed to have lived before leaving India.[25] The Tribunal further considered that there was no reason for the Appellant to be fearful to remain in the same place, as the lender's pattern of behaviour indicated that they inflicted no real harm on the Appellant.

16. The Tribunal therefore did not accept the Appellant's claims that his father died with a debt of 120 lakhs owing to two money lenders. Hence it did not accept that any harm, let alone harm amounting to persecution, would befall anyone in respect of any alleged debt. The Tribunal was not satisfied that the Appellant had a well-founded fear of persecution for a Convention reason and found that he was not a refugee.[26] For the same reasons, the Tribunal did not accept that the Appellant would face any real possibility of adverse treatment amounting to harm that would breach Nauru's international obligations, and the Appellant was therefore not owed complementary protection.[27]

THIS APPEAL

17. The Appellant's Notice of Appeal filed on 6 May 2016 reads as follows:

    1. *The Tribunal erred by not understanding the way that these private lenders ("loan sharks") operate to extort money out of me using violence and the threat of violence.*
    2. *The Tribunal erred by failing to adequately recognise as persecution or inquire further into the manner of violence inflicted on me in the past by these "loan sharks", and also by their "henchmen".*
    3. *The Tribunal erred by failing to consider or adequately inquire into the explicit and implicit threats to further inflict violence, up to and including to kill me made by the loan sharks.*
    4. *The Tribunal erred by failing to recognise or inquire further into the risk that these "loan sharks" would inflict further violence on me or commit murder because of my non repayment of loans.*
    5. *The Tribunal failed to recognise that violence and murder is common in Gujarat and India for non-repayment of private loans.*

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[22] Ibid 161 at [53].
[23] Ibid 160 at [50].
[24] Ibid 160 at [51].
[25] Ibid 161 at [57].
[26] Ibid 162 at [61].
[27] Ibid 163 at [64].

6. *The Tribunal erred by failing to adequately recognise or inquire further into economic persecution inflicted on me in the past by these "loan sharks", and also by their "henchmen", such as to make it impossible for me to make and keep a subsistence livelihood.*
7. *The Tribunal erred by not considering the broken arm, fingers, and stress inflicted on my late father to be persecution.*

18. The Appellant was self-represented and did not file any written submissions. The Appellant also did not appear at the hearing before the Court. The Appellant's Claim Assistance Providers ("CAPs") submitted an affidavit indicating that the Appellant had not attended meetings regarding the upcoming hearing, although he was aware of the hearing date. The Court was satisfied that the Appellant had notice of the hearing, and the opportunity to discuss his case with CAPs had he wished to do so. In these circumstances, the Court proceeded to hear the appeal.

19. The Respondent submits that the grounds of appeal advanced by the Appellant in the Notice of Appeal do not identify any appellable points of law for the purpose of s 43(1) of the Act. Rather, the grounds appear to be an invitation to the Court to re-determine the Appellant's case on the merits.

20. The claimed errors are said to be in not understanding, or failing to consider, adequately recognise, or inquire into, various claims of fact made by the Appellant. Referring to various authorities, the Respondent submits that a wrong finding of fact is not an error of law. Further, misunderstanding evidence or overlooking an item of evidence in considering an Applicant's claim will not typically amount to an error of law, unless it means that the Tribunal did not consider a claim: *Minister for Immigration and Citizenship v SZNPG.*[28]

21. The Respondent accepts that failing to take into account a relevant consideration can amount to an error of law if the decision-maker was bound to take into account that consideration. However, a Tribunal is not to be criticised for failing to refer in the written reasons to every matter a decision-maker might conceivably regard as relevant. In any case, according to the Respondent, the Tribunal in the current matter did not fail to take into account any factor or consideration.

CONSIDERATIONS

Failure to understand how lenders operate

22. In *Minister for Immigration and Citizenship v SZNPG*, the Full Court of the Federal Court said:

> "*However, an error of fact based on a misunderstanding of evidence or even overlooking an item of evidence in considering an applicant's claims is not jurisdictional error, so long as the error, whichever it be, does not mean that the RRT has not considered the applicant's claim...*"[29]

[28] *Minister for Immigration and Citizenship v SZNPG* (2010) 115 ALD 303, 309 at [28].
[29] Ibid.

23. The Full Court of the Federal Court approved of this statement of authority in *LVR (WA) Pty Ltd v Administrative Appeals Tribunal*,[30] and *MZXSA v Minister for Immigration and Citizenship*,[31] finding that an error of fact based on a misunderstanding does not, in of itself, amount to an error of law. The failure to understand how money lenders operate does not therefore constitute a "*point of law*" for the purpose of s 43(1) of the Act.

24. It does appear, however, that the Tribunal correctly understood that lenders operate by using violence and the threat of violence. In the Decision Record, the Tribunal recounted the Appellant's evidence of the lenders visiting his father, and inflicting injuries including a broken arm, and two broken fingers, shortly before his father's suicide in June 2008.[32] The Tribunal also recounted the Appellant's evidence of the lenders visiting the Appellant at his workplace, and then his cousin's house, and abusing and occasionally hitting him.[33]

25. Further, the Tribunal's questions of the Appellant set out at [37]-[38] below also reflect the Tribunal's understanding that lenders use violence or the threat of violence to extort money from a person who took out a loan. This ground fails.

Failure to consider or recognise violence and harm as persecution

26. Australian authorities clarify that it is not for the court to disturb the findings of fact made by the Tribunal, as this power reposes in the primary decision maker alone. In *Waterford v Commonwealth* ("*Waterford*"),[34] Brennan J said:

> "*A finding by the AAT on a matter of fact cannot be reviewed on appeal unless the finding is vitiated by an error of law. Section 44 of the AAT Act confers on a party to a proceeding before the AAT a right of appeal to the Federal Court of Australia "from any decision of the Tribunal in that proceeding" but only "on a question of law". The error of law which an appellant must rely on to succeed must arise on the facts as the AAT has found them to be or it must vitiate the findings made or it must have led the AAT to omit to make a finding it was legally required to make. There is no error of law simply in making a wrong finding of fact.*"[35]
> (emphasis added)

27. In relation to the Tribunal's alleged failure to recognise the purported violence and harm inflicted upon the Appellant and his father as persecution, the Tribunal made findings of fact recognising that "*two or three meetings in a public place in respect of the recovery of a very large debt cannot be construed as harassment, let alone persecution*",[36] and that harm amounting to persecution would not befall anyone in respect of the alleged debt.[37] As a mistake of fact is not an error of law,

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[30] *LVR (WA) Pty Ltd and Another v Administrative Appeals Tribunal and Another* (2012) 203 FCR 166 at [144] (per North, Logan and Robertson JJ).
[31] *MZXSA v Minister for Immigration and Citizenship* [2010] FCAFC 123 at [83] (per Keane CJ, Perram and Yates JJ).
[32] BD 155-156 at [27]-[28]; BD [48]-[50].
[33] Ibid 156 at [30]-[31]; BD 161 [55]-[56]
[34] *Waterford v Commonwealth* (1987) 163 CLR 54.
[35] Ibid at 77-78.
[36] Ibid 160 at [47].
[37] Ibid 162 at [60].

even if these findings did lack a proper factual basis, this Court could not revisit them on appeal.

28. In relation to the failure to consider a relevant factor or consideration, this Court has previously approved[38] of the formulation of the relevant ground by Brennan J in *Minister for Aboriginal Affairs v Peko-Wallsend*, in which his Honour said:

> "*The failure of a decision-maker to take into account a relevant consideration in the making of an administrative decision is one instance of an abuse of discretion entitling a party with sufficient standing to seek judicial review of the ultra vires administrative action.*
>
> ...
>
> *The ground of failure to take into account a relevant consideration can only be made out if a decision-maker fails to take into account a consideration which he is bound to take into account in making that decision...*
>
> *What factors a decision maker is bound to consider in making the decision is determined by construction of the statute conferring discretion. If the statute expressly states the considerations to be taken into account, it will often be necessary for the court to decide whether those enumerated factors are exhaustive or merely inclusive. If the relevant factors – and in this context I use this expression to refer to the factors which the decision-maker is bound to consider – are not expressly stated, they must be determined by implication from the subject matter, scope and purpose of the Act...*"

29. Given the subject matter, scope and purpose of the Act, (being to regulate the assessment of an asylum seeker's claim for refugee status or complementary protection), and noting the definition of "refugee" in the *Refugees Convention 1951* as 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*",[39] whether the violence and harm that the Appellant and his father were subject to, amounts to persecution, is a relevant consideration that the Tribunal was bound to consider.

30. The Tribunal considered the Appellant's claims with respect to the nature of the violence and harm inflicted upon both himself, and his father. Following questioning as to the Appellant's fears if he returned to India set out at [40] below, the Tribunal put to the Appellant:

> TRIBUNAL MEMBER: I don't like to minimise, you know, the beatings you've had, but really you have never suffered any serious injury of a sort that would make you go to the doctor. You know, this is sort of fairly low down on the list in terms of persecution.

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[38] *ETA 090 v Republic of Nauru* [2017] NRSC 61 at [33]-[34]; *WET 044 v Republic of Nauru* [2017] NRSC 66 at [36]; *ETA 080 v Republic of Nauru* [2017] NRSC 45 at [32].

[39] United Nations General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, UNTS vol. 189 p. 137 art 1, pt A.

THE INTERPRETER: Yes, you are right, but I am very fearsome now, it is inside me now. In my mind I'm so fearful of those people that I can't even think about it.[40]

31. The Tribunal also questioned the Appellant on the abuse and violence inflicted by the lenders on the Appellant's father:

> TRIBUNAL MEMBER: Okay. So after 18 months with no repayments, the creditors were getting impatient. What did they do to your father?
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> THE INTERPRETER: They were, like, they started hitting him. They started verbal abuse.
>
> TRIBUNAL MEMBER: Right. And is this still in tea shops or places like that?
>
> THE INTERPRETER: Yes.
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> TRIBUNAL MEMBER: Verbally abusing him and hitting him. All right. And how long did this continue?
>
> THE INTERPRETER: It went quite for a long time, for quite a few years. My father died in 2008. Till then this was happening.[41]

32. It is clear that the Tribunal considered the Appellant's claims with respect to the violence and harm inflicted on the Appellant and his father by the lenders, and whether this amounted to persecution.

33. In any event, the failure to accept or recognise a particular fact does not amount to an error of law. As noted by Beaumont J in *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* ("*Randhawa*"), and approved in other Australian Federal Court authorities,[42] the liberal attitude that may be called for by decision-makers determining an application for refugee status should not lead to "*an uncritical acceptance of any and all allegations made by suppliants*".[43] The Tribunal was not required to uncritically accept that the alleged violence and harm constituted persecution. This ground fails.

Failure to recognise or consider/adequately inquire into manner of violence; threats to inflict violence; "economic persecution"

34. In relation to any duty on the Tribunal to make inquiries, this Court[44] has approved of the statement of authority in *SZIAI v Minister for Immigration and Citizenship*, that the "*failure to make an obvious inquiry about a critical fact, the existence of which is easily ascertained*" may amount to a constructive failure to

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[40] Ibid 140 ln 4 – 10.
[41] BD 113 at ln 12 – 26. See also BD 114 at ln 1 – 27.
[42] *SZTKA v Minister for Immigration and Border Protection* [2014] FCA 1294 at [54] (per Barker J); *SZOYZ v Minister for Immigration and Citizenship* [2011] FCA 859 at 30 (per Collier J); *SZOOM v Minister for Immigration and Citizenship* [2011] FCA 152 at [20] (per Flick J); *SZATG v Minister for Immigration and Multicultural and Indigenous Affairs* [2004] FCA 1595 at [14] (per Hely J).
[43] *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437, 451 at [21].
[44] *TOX 093 v Republic of Nauru* [2017] NRSC 80.

exercise jurisdiction, and therefore an error of law.[45] It is unclear whether the Appellant in this case is asserting that the Tribunal ought to have made external inquiries into his claims. If this is what the Appellant intended to assert, the Appellant has not pointed to any such "*obvious*" and "*easy*" inquiry about a critical fact that the Tribunal ought to have made.

35. Further, as stated by Flick and Rangiah JJ in *Sun v Minister for Immigration and Border Protection* ("*Sun*"), "*it remains for the claimant to present evidence and advance arguments adequate to enable the decision-maker to make a decision favourable to the claimant.*"[46] Their Honours in *Sun* also approved of the below statement of Kirby J in *Dranichnikov v Minister for Immigration and Multicultural Affairs* regarding the nature of the Tribunal's inquisitorial function:

> "*The Tribunal acts in a generally inquisitorial way. This does not mean that a party before it can simply present the facts and leave it to the Tribunal to search out, and find, any available basis which theoretically the Act provides for relief. This Court has rejected that approach to the Tribunal's duties. The function of the Tribunal, as of the delegate, is to respond to the case that the applicant advances.*"[47]
> (emphasis added)

36. The Tribunal was therefore not required to search for, or demand of the Appellant, evidence that may support his claims, or found a basis for relief. Nonetheless, the Tribunal did question the Appellant closely on the alleged manner of violence inflicted against him, the threats to inflict further violence, and the "*economic persecution*" suffered by the Appellant, to illicit relevant evidence.

37. In relation to the alleged failure of the Tribunal to "*inquire further into the manner of violence inflicted on me*" - the Tribunal noted in the Decision Record that the "*Tribunal clarified the question of harm with the applicant and there was no claim, nor does the evidence suggest, that the applicant suffered more than "verbal abuse" and the occasional hit which even the applicant could not describe as serious harm*".[48]

38. According to the Tribunal transcript, the Tribunal questioned the Appellant as to the pattern of the visits by the money lenders and their associates, whether the Appellant sustained injuries from the violence, and what the Appellant did to avoid the lenders and their associates.[49] After questioning the Appellant on his move to his cousin's residence in Ahmedabad to escape the lenders, the Tribunal enquired of the Appellant as follows:

> TRIBUNAL MEMBER: ... So presumably they only came one time to your cousin's address?
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> THE INTERPRETER: Yes.
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> TRIBUNAL MEMBER: And you say they beat you?

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[45] *SZIAI v Minister for Immigration and Citizenship* (2009) 259 ALR 429 at [26].
[46] *Sun v Minister for Immigration and Border Protection* [2016] FCAFC 52 at [69].
[47] *Dranichnikov v Minister for Immigration and Multicultural Affairs* (2003) 77 ALJR 1088 at [78].
[48] BD 161 at [56].
[49] Ibid 129 ln 42 – BD 131 ln 15.

THE INTERPRETER: Yes.

TRIBUNAL MEMBER: And, again, did you – you know, did you suffer bad injuries? Did you have to go to a doctor or anything?

THE INTERPRETER: No, they didn't beat me to the extent that I would be badly injured. Not that.

TRIBUNAL MEMBER: Right. So this prompted you to leave there, and you went over to your friend's house in Kutch?[50]

39. The Tribunal then questioned the Appellant on his move to a friend's house in Kutch, and the verbal abuse and hitting inflicted on the Appellant in Kutch.[51]

40. In relation to the alleged failure of the Tribunal to recognise the risk of the lenders inflicting further violence or murdering the Appellant, the Tribunal made a clear finding that the Appellant had not suffered any harm in the past. Further the Tribunal was "*not satisfied that there is any reasonable possibility that such harm will befall him in the reasonably foreseeable future*" in India.[52] As provided by *Randhawa* (see [33] above), the Tribunal was not required to accept uncritically all the allegations made by the Appellant.

41. With respect to the alleged failure to inquire further into the risk of the lenders inflicting further violence, the Tribunal questioned the Appellant as to the visits by the lenders to the Appellant's wife in Ahmedabad, and the content of the conversations on those visits.[53] The Tribunal also questioned the Appellant on the feared turn of events should he return to India as follows:

TRIBUNAL MEMBER:... So if you went back to India, what do you think would happen?

THE INTERPRETER: I fear that whatever happened to my father would happen to me. Same thing will continue and it will not stop.

TRIBUNAL MEMBER: That is, you will get ongoing visits from Ghulapsingh or Babupi, or their men, every few months to come and ask you for money and sometimes to hit you?

THE INTERPRETER: Yes.[54]

42. Following on from this exchange, as set out at [30] above, the Tribunal also put to the Appellant that the harm suffered by the Appellant up to the point of departure from India did not appear to be particularly significant.

43. In relation to the alleged failure of the Tribunal to consider or adequately inquire into the threats to inflict further violence, the Decision Record indicates that the

[50]Ibid 134 ln 29 – 45.
[51]Ibid 135 ln 41 – 136 ln 7.
[52]Ibid 162 at [60].
[53]Ibid 138 ln 29 – 45.
[54]Ibid 139 ln 12 – 22.

Tribunal considered the "*verbal abuse*" directed at the Appellant by the lenders, which presumably included threats of further violence.[55] The Tribunal critically considered the claim of repetitive physical and verbal abuse in light of the Appellant's other evidence, and noted:

> "*He claims a pattern of paying an instalment or two of 7,000 rupees a month to the creditors – money generally obtained by an advance on his next month's pay – and then being unable to pay for some time, at which point, the two creditors would come to the factory where he worked and verbally abuse him, or perhaps hit him (but without leaving any visible injuries). The Tribunal finds it implausible that this pattern continued for three years (2009 until late 2012) for the same reasons mentioned before – the complete lack of cost-effectiveness as a means of two businessmen recovering a debt.*"[56]

44. The Tribunal therefore fulfilled its duty to consider the threats of further violence purportedly directed at the Appellant, a consideration the Tribunal was likely bound to consider in light of the matter, scope and purpose of the Act. The Tribunal transcript also demonstrates that the Tribunal enquired into the verbal abuse directed at the Appellant by the lenders on three separate occasions when the Appellant was staying at a friend's house in Kutch, prompting the Appellant to leave India for Indonesia.[57]

45. In relation to the alleged failure of the Tribunal to adequately recognise or inquire further into the "*economic persecution*" inflicted by the lenders, the Decision Record indicates that the Tribunal was alert to the economic difficulties purportedly faced by the Appellant as a result of the behaviour of the money lenders. At [29]-[30], the Tribunal describes the Appellant's claim that the lenders instructed the Appellant to pay them 7,000 rupees every month, when the Appellant's monthly salary was only 8,000 rupees, and that meant there was little money left over to support the family.[58] At [30], the Tribunal also describes how the Appellant generally obtained an advance on his monthly salary so that he could pay a small instalment to the lenders. At [31], the Tribunal describes the Appellant's claim that he needed to terminate his employment at the end of 2012 without having alternative employment available to avoid the lenders.

46. The Tribunal transcript also indicates that the Tribunal enquired into the arrangement with the lenders for the Appellant to pay 7,000 rupees of his monthly salary of 8,000 rupees, whether the Appellant was able to maintain the payments under this arrangement,[59] and the advance obtained by the Appellant on his salary in order to be able to pay small instalments on the loan.[60] At one point, a Tribunal member questioned the Appellant as follows:

> TRIBUNAL MEMBER: How was it that you were able to continue to subsist if you were dedicating your wages in this way, on a forward basis?

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[55]Ibid 156 at [30], [31].
[56]Ibid 161 at [55].
[57]Ibid 135 ln 41 – 136 ln 10.
[58]See also ibid 159 at [43] and 161 at [53].
[59]Ibid 128 ln 37 – 129 ln 5.
[60]Ibid 130 ln 9 – 42.

> THE INTERPRETER: There were months when I was not giving them anything. I weren't paying them anything. Those – the salary – money from those months I was using for my own expenditure and was giving it to my family to run the household.[61]

47. The Tribunal transcript further indicates that the Tribunal inquired into the claim that the Appellant was forced to give up his job in Ahmedabad and move to a friend's house in Kutch to escape the lenders.[62]

48. There was no error on the part of the Tribunal as alleged in not inquiring into the manner of violence, the threats and risk of further violence, and the "*economic persecution*" purportedly inflicted upon the Appellant. Nor was any error committed as alleged by misunderstanding the way the lenders operate; recognising the violence inflicted as persecution, the risk of further violence, or the "*economic persecution*" purportedly suffered by the Appellant; or not considering the threats to inflict further violence. These grounds fail.

Failure to recognise violence is common in Gujarat and India for non-repayment of loans

49. In light of the Tribunal's factual findings that the Appellant did not inherit a debt of 120 lakhs to the money lenders, there was no occasion for the Tribunal to consider the prevalence of violence and murder in Gujarat for the non-repayment of loans. As noted at [26] above, a mistake of fact is not an error of law, and the Appellant cannot therefore re-agitate the question before this Court of whether the Appellant inherited a debt from his father, and the subsequent likelihood of violence or murder by the lender to procure the repayment of the monies owed.

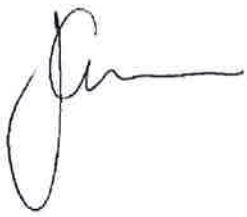
50. In any event, as provided by *Randhawa* at [33] above, the failure to recognise that violence and murder is common in Gujarat and India for non-repayment of loans does not amount to an error of law. The Tribunal was entitled to critically assess the Appellant's claimed threat of being the target of violence and murder for non-repayment of the loan, and make relevant findings. This ground fails.

ORDER

43. (1) The Appeal is dismissed.

[61] Ibid 131 ln 28 – 33.
[62] Ibid 132 ln 27 – 41.

(2) The decision of the Tribunal in TFN T15/00188 dated 1 February 2016 is affirmed pursuant to the provisions of s 44(1)(a) of the Act.



Judge Jane E Crulci

Dated this 20 October 2017